



COMMUNITY SUBSCRIPTION AGREEMENT

This Community Subscription Agreement (the “Agreement”) is entered into and effective as of this ____ day of _____, 20__ (the “Effective Date”), by and between the American Speech-Language-Hearing Association (“ASHA,”) and _____ (“Organization”) to participate in ASHA’s speech-language pathology and/or audiology National Outcomes Measurement System (NOMS) Registry. ASHA and Organization are each a “Party” to this Agreement and are referred to collectively as the “Parties.”

1. Purpose and General Terms

- 1.1. Organization’s participation in ASHA’s speech-language pathology and/or audiology National Outcomes Measurement System (NOMS) Registry, including any use by Organization of all related data collection instruments, training materials, data, databases, specifications, schema, systems, software, apps, services and documentation contained therein (collectively, “NOMS”) and any data, reports or other output regarding treatment results generated through the NOMS reporting tool (the “NOMS Data”) shall be solely for the purpose of improving treatment outcomes, research, patient/client advocacy, and public policy discussions in the fields of speech-language pathology and audiology (the “Purpose”).
- 1.2. The responsibilities for both ASHA and Organization (including liability in connection with acts or omissions of Organization’s Administrator, Subscribers, Users, and Third-Party Providers) are set forth in this Agreement.
- 1.3. In addition to agreeing to be bound by this Agreement, Organization hereby agrees to:
 - 1.3.1. meet and maintain the eligibility requirements for use of NOMS, as such requirements may be modified by ASHA from time to time (as further described in Appendix A);
 - 1.3.2. designate a Subscriber (as further described in Section 2);
 - 1.3.3. ensure that all Subscribers and Users have been trained to use NOMS;
 - 1.3.4. submit all data and information specified on the ASHA-provided data collection forms collected by Organization from its patients receiving speech-language or audiology treatment (“Treatment Data”) to NOMS through a Web-based portal or other electronic means designated by ASHA (as further described in Section 7) within the specified timeframe while this Agreement is in effect; and
- 1.4. Organization also hereby acknowledges and agrees to ASHA’s right to terminate this Agreement and/or terminate any use of NOMS by Subscriber or any User as contemplated by Sections 9 and 13 below.

1.5. Organization agrees to execute and deliver to ASHA a Business Associate Agreement/Data Use Agreement (BAA/DUA), attached herein as Appendix B, contemporaneously with the execution and delivery of this Agreement, which contemporaneously herewith provides for the rights, duties, and obligations of the Parties regarding certain federal regulations governing Protected Health Information (PHI).

2. Definitions

2.1. “User” means any individual who has been granted access to NOMS (as further described in Appendix A).

2.2. “Subscriber” means a qualified individual with the appropriate credentials in good standing, who represents the Organization and serves as the primary point of contact between the Organization and ASHA (as further described in Appendix A).

2.3. “Specifications” means ASHA’s proprietary file specifications to be set forth upon your selection of the electronic data transmission option. Specifications may be modified by ASHA from time to time in its sole discretion.

2.4. “Third Party Provider” has the meaning set forth in Section 4.4.

3. Responsibilities of ASHA

3.1. ASHA shall use reasonable efforts to make NOMS available to each Subscriber and User(s) under this Agreement, as described in the documentation and specifications it publishes from time to time.

3.2. During the Term (as defined below), and subject to the terms and conditions set forth herein and any other applicable requirements promulgated by ASHA, ASHA hereby grants to Organization a non-exclusive, revocable, non-transferrable, limited license subject to all of ASHA’s rights in NOMS and the NOMS Data and the terms of this Agreement, to display, copy, incorporate into Organization’s electronic medical record (if applicable) in accordance with the Specifications set forth by ASHA, report and publish the NOMS Data, solely for the Purpose stated above, including for marketing the treatment provided by Organization and the results of Organization’s treatment against NOMS benchmarks and for demonstrating quality treatment to payers and other relevant parties. For the avoidance of doubt, and without limiting any of Organization’s other obligations under this Agreement, Organization shall have no right or license, and shall not disclose to any third party, any Confidential Information (as defined below) of ASHA, including ASHA’s data collection instruments and Functional Communication Measures (a series of domain-specific measures used to describe an individual’s functional abilities over the course of speech-language pathology intervention), training materials, specifications, schema, systems, apps, and documentation.

3.3. ASHA shall make reasonable efforts to ensure that the NOMS data collection system which enables Organization to submit Treatment Data to ASHA as required under this Agreement is HIPAA-compliant and, further, shall make reasonable efforts to ensure that all appropriate safeguards are employed to secure any Protected Health Information (as further described in the BAA/DUA in Appendix B) that may be shared with the NOMS database for the Purpose stated above.

4. Responsibilities of Organization

4.1. Organization hereby represents and warrants that:

4.1.1. Any Treatment Data provided to ASHA has been collected by Organization and transmitted to ASHA in compliance with all applicable laws, rules, and regulations (including the Health Insurance Portability and Accountability Act of 1996 as amended);

4.1.2. Organization is authorized and has all necessary rights to collect any Treatment Data transmitted to ASHA pursuant to this Agreement and to export, transmit, and provide ASHA with access to such data as required hereunder;

4.1.3. The Treatment Data will be current, accurate and complete as of the date it is transmitted to ASHA; and

4.1.4. Organization will use NOMS and the NOMS Data in strict compliance with all applicable laws, rules, and regulations.

4.2. Organization hereby grants, and agrees to grant, ASHA and all other Users of NOMS, a royalty-free, perpetual, irrevocable, transferable, sublicenseable, worldwide, non-exclusive license under all of Organization's and Organization's Subscribers' rights in and to such data, to copy, publicly display, store and retrieve in a database, extract, create derivative works of, report, publish and otherwise fully exploit all such data, including for the Purpose and for purposes of operating, improving, supplementing, updating, or otherwise modifying or maintaining NOMS or the NOMS Data.

4.3. Organization shall be liable to ASHA for all acts and omissions of Subscriber and each of its Users in connection with or relating to NOMS or the NOMS Data, and the license grant in this Agreement.

4.4. If Organization chooses to transmit Treatment Data via electronic means, Organization may permit a third-party service provider ("Third Party Provider") to incorporate and configure the NOMS data fields into Organization's electronic medical record pursuant to the license set forth in Section 3.2, provided that Organization contractually binds such Third Party Provider to confidentiality and security obligations that are at least as stringent as those set forth in Section 10. Such Third Party Provider shall be deemed the agent of Organization, and Organization shall be liable to ASHA for the Third Party Provider's non-compliance with confidentiality obligations and other material portions of this Agreement and for all acts and omissions of the Third Party Provider.

5. Responsibilities of Subscriber

5.1. Organization shall ensure that each individual designated as a Subscriber by such Organization will be responsible for disseminating all information pertaining to training, data collection and reporting to all Users employed by or otherwise associated with Subscriber's associated Organization at such Organization's sole expense, and shall be responsible for notifying ASHA of changes in employment status and eligibility status of any User(s).

- 5.2. Organization shall ensure that each Subscriber accepts ASHA's right to terminate Subscriber or any User that ASHA may determine to be insufficiently qualified to use NOMS pursuant to the process and requirements described in Section 9.3 below.
- 5.3. Organization shall ensure that each Subscriber may designate one or more Users within Subscriber's Organization to use NOMS and the NOMS Data. Organization shall ensure that each Subscriber and each User shall also be subject to the privacy policies applicable to NOMS and NOMS Data.
- 5.4. Organization shall ensure that each Subscriber shall be responsible for coordinating the collection and submission to ASHA of the Treatment Data within Organization, ensuring that all Users comply with the terms of this Agreement, and all other activities relative to NOMS, as further described in Section 1.3 above.

6. Responsibilities of Users

- 6.1. Organization shall ensure that each User acting on behalf of such Organization complies with the requirements of Sections 1.3.1, 1.3.3, 1.3.4, 10.1, and 10.5.
- 6.2. Organization shall ensure that each User acting on behalf of such Organization administers a patient/client's NOMS submissions, but not necessarily all of the treatment.
- 6.3. Organization shall ensure that each User acting on behalf of such Organization shall maintain sufficient qualifications and satisfy all applicable payment obligations, as applicable (as further set forth in Appendix A), as specified by ASHA in its sole and complete discretion, to qualify for access to and use of NOMS and NOMS Data.

7. Provision of Data

- 7.1. During the Term (as defined below), Organization shall submit all Treatment Data to NOMS through a secured Web-based portal or other electronic means, including via JSON, CSV, or proprietary apps, designated by ASHA within ninety (90) days (for Web-based data collection) or 180 days (for electronic transmission) of the Effective Date and maintain such data submission without a lapse greater than ninety (90) days through the duration of the Term.
- 7.2. For electronic data transmission:
 - 7.2.1. Beginning no more than thirty (30) days after the NOMS data fields have been incorporated into Organization's electronic medical record, Organization shall export to ASHA, in accordance with the Specifications and maintain data submission on no less than a monthly basis, all relevant Treatment Data entered by or on behalf of the Users. Organization hereby acknowledges and agrees that ASHA will include the Treatment Data into NOMS and will use the Treatment Data for the Purpose.
 - 7.2.2. ASHA may provide Organization with updates, enhancements, or modifications ("Updates") to the NOMS data fields from time to time in ASHA's sole discretion. In the event that ASHA provides Organization with any such Update, Organization shall promptly (but in no event in more than thirty (30) days) implement such Update into the electronic medical record in accordance with the specifications provided by ASHA.

8. Disclaimers

- 8.1. ASHA DOES NOT REPRESENT OR WARRANT THAT NOMS OR THE NOMS DATA, OR REPORTS GENERATED THEREFROM, WILL BE AVAILABLE, WITHOUT INTERRUPTION, ERROR-FREE, COMPLETE, ACCURATE, SECURE OR COMPATIBLE OR SAFE TO USE WITH ANY SYSTEMS.
- 8.2. ASHA UNDERTAKES NO DUTY TO CORRECT OR PREVENT ANY MISTAKES, MISINFORMATION, BUGS, FLAWS OR INCOMPATIBILITY OF ANY SOFTWARE OR SYSTEM WITH NOMS OR THE NOMS DATA. ORGANIZATION'S USE OF NOMS AND NOMS DATA IS ON AN AS-IS BASIS WITH ALL FAULTS. ASHA MAKES NO EXPRESS WARRANTIES AND DISCLAIMS ALL IMPLIED WARRANTIES, ORAL OR WRITTEN, INCLUDING MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, AND COMPLIANCE WITH LAWS AND REGULATIONS.
- 8.3. ORGANIZATION HAS NOT ENTERED INTO THIS AGREEMENT IN RELIANCE UPON ANY REPRESENTATION, WARRANTY, COVENANT, OR UNDERTAKING OF OR BY ASHA THAT IS NOT EXPRESSLY SET FORTH IN THIS AGREEMENT.

9. Audits; Inactive Status

- 9.1. Organization agrees that, from time to time, ASHA may utilize its automated audit tools to verify Organization's, and Subscribers' and Users' eligibility for use of NOMS and Organization's compliance with this Agreement (e.g., data submission, certification, payment, if applicable).
- 9.2. If ASHA notifies Organization, or any User or Subscriber, that Organization has failed to comply with the requirements set forth in Section 7 above, then Organization shall have thirty (30) days (for Web-based data collection) or sixty (60) days (for electronic transmission) to cure such failure. If Organization fails to cure such failure within the specified timeframe after the notice, then Organization shall be classified as an "Inactive Entity" and this Agreement (including Organization's license to use NOMS and the NOMS Data specified in Section 3.2 above, as well as any rights held by any Users or Subscribers to use NOMS and the NOMS Data) shall immediately terminate.
- 9.3. If ASHA notifies Organization or any User or Subscriber that such User or Subscriber has been determined by ASHA in its sole discretion to be insufficiently qualified to use NOMS in accordance with the requirements specified herein, then Organization shall have ninety (90) days to cure such failure. If such failure is not cured within ninety (90) days after the notice, then such Subscriber or User shall be classified as an "Inactive User" and its rights to use NOMS or the NOMS Data shall immediately be terminated.
- 9.4. Inactive Entities and Inactive Users must cease use of NOMS and any NOMS Data (including data collection instruments, Functional Communication Measures (if applicable), training materials, specifications, schema, systems, apps, and documentation). An Inactive Entity must enter into new Agreement to again be eligible for use of NOMS or the NOMS Data.

10. Confidentiality

- 10.1. Organization agrees that NOMS, NOMS Data, ASHA’s data collection instruments and Functional Communication Measures (if applicable) and any and all training materials, specifications, schema, systems, apps, documentation and any other information disclosed to Organization, Subscribers, or Users by ASHA in connection with this Agreement is the proprietary and confidential information of ASHA (“Confidential Information”) and is exclusively owned by ASHA. Accordingly, Organization shall hold all Confidential Information in strict confidence and shall use at least the same degree of care the applicable Organization employs with respect to its own proprietary or confidential information, but in no event less than a reasonable standard of care. Organization shall not, without the prior written consent of ASHA, disclose or reveal to any third party or utilize for Organization’s own benefit the Confidential Information, or any part thereof, other than as expressly permitted under this Agreement. Organization shall ensure that the Subscriber, all Users, and the Third Party Provider (if applicable) comply with the obligations and restrictions set forth in this Section.
- 10.2. Organization shall ensure that any Third Party Provider contracted to incorporate and configure the NOMS data fields into Organization’s electronic medical record has agreed in writing to obligations of confidentiality and non-use regarding the Confidential Information set forth in Section 10.1 no less restrictive than those set forth herein.
- 10.3. The Organization shall implement and maintain security measures and safeguards which are adequate to prevent the unauthorized access, use, destruction, loss, or alteration of the Confidential Information.
- 10.4. Notwithstanding anything to the contrary contained herein, if Organization breaches any of its obligations contained herein with respect to confidentiality and unauthorized use of Confidential Information under this Agreement, ASHA, without limiting or waiving any other rights or remedies and without being required to post a bond, interim, interlocutory and permanent injunctive relief without the necessity of proving either actual damage or that any irreparable harm would or might result from a failure to obtain such relief, shall be entitled to equitable relief to protect its interests therein, including injunctive relief and money damages, it being acknowledged and agreed by Organization that any such breach may cause irreparable harm to ASHA and that monetary damages, alone, will not provide an adequate remedy (provided, that no provision of this Agreement shall preclude ASHA from seeking and collecting monetary damages).
- 10.5. Any Treatment Data or other information provided to ASHA by the Organization for the purpose of data collection for the NOMS database will be reported only in aggregated form to maintain confidentiality. No patients/clients, individual programs, facilities, or systems will be identified in any of the aggregated data reports. Organization shall ensure that all of its Subscribers and Users comply with the obligation in this provision.

11. Limitations of Liability

- 11.1. Except as provided in Sections 11.2 and 11.3 below, in no event will either Party be liable to the other for any consequential, indirect, special, punitive, or incidental damages, whether based on breach of contract,

tort (including negligence and strict liability) or otherwise, including lost data and lost profits, arising from this Agreement, even if such Party has been advised of the possibility of such damages.

11.2. The limitations on consequential and other damages set forth in the first sentence of Section 11.1 shall not apply to any of the following: (a) any breach by Organization of any obligations, representations, or warranties applicable to Organization and contained in Sections 1.3, 4 and 5; (b) a breach of the confidentiality obligations set forth in Sections 10.1, 10.2, and 10.3 herein; (c) Organization's infringement or misappropriation of any of ASHA's intellectual property or other proprietary rights in or to NOMS or the NOMS Data; and (d) fraud, gross negligence, willful misconduct or violation of applicable law, rules or regulations by Organization.

11.3. ASHA's aggregate liability to Organization, its Subscriber and Users and any third party under this Agreement, whether based on breach of contract, tort (including negligence and strict liability), or otherwise, will be limited to \$50.

12. Ownership

12.1. Organization acknowledges and agrees that NOMS and the NOMS Data is the sole and exclusive property of ASHA. Except for the licenses expressly granted in Section 3.2, neither Organization nor Subscriber or any User is granted any intellectual property rights in or to NOMS or the NOMS Data, whether by implication, estoppel or other legal theory, and all rights in and to the NOMS and the NOMS Data not expressly granted in this Agreement are hereby reserved and retained by ASHA.

12.2. Organization will not copy, disclose or publish NOMS, the NOMS Data, or any information contained therein to any third party except in accordance with Section 4.4 of this Agreement.

12.3. Organization will not allow any facility not covered under the Agreement to use or access the NOMS and the NOMS Data.

13. Term; Effect of Termination

13.1. This Agreement is effective as of the Effective Date and will remain in effect for one (1) year thereafter (the "Initial Term"). Thereafter, this Agreement shall automatically renew for successive one (1) year periods, unless either Party gives at least thirty (30) days prior written notice to other Party for termination. The "Term" shall collectively mean the Initial Term and any renewal periods.

13.2. Upon expiration or termination of this Agreement, whether Organization or ASHA terminates this Agreement, the Organization, Subscriber and User(s) must immediately cease use of NOMS, the NOMS Data, or other ASHA proprietary materials (data collection instruments, Functional Communication Measures (if applicable), training materials, specifications, schema, apps, systems, and documentation). In addition, if applicable, the Organization shall immediately uninstall or disable the proprietary app and all aspects and components of the NOMS data fields from the electronic medical record. Organization shall have no further licenses or rights to the use of NOMS or NOMS Data upon termination of this Agreement for any reason and agrees that it shall not make any claim to the contrary.

14. General Terms

- 14.1. Governing Law. The construction, interpretation and performance of this Agreement shall be governed by and construed in accordance with the laws of the State of Maryland, without regard to any conflicts of law principles that would require the application of the laws of any other jurisdiction, and shall be subject to the exclusive jurisdiction of its federal or state courts in Maryland.
- 14.2. Entire Agreement. This Agreement and its Appendices constitutes the entire agreement between the Parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter.
- 14.3. No Waivers. Either Party’s failure to enforce any of the provisions of this Agreement, or to exercise any option, shall not be construed as a waiver of such provisions, rights, or options, or affect the validity of this Agreement.
- 14.4. Severability. If any provision of this Agreement shall be invalid or unenforceable, then such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement. The entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of the Parties shall be construed and enforced accordingly.
- 14.5. Publicity. Neither Party will use the name, logo, trademarks, trade names, or other marks of the other Party (or its affiliates), or issue a press release or other public statement regarding the subject matter of this Agreement, without the other Party’s prior written consent. However, subject to the restrictions set forth in Section 3.2 above, nothing will restrict Organization from publicizing the fact that Organization is a user of NOMS.
- 14.6. Notices. Notices concerning this Agreement shall be in writing and shall be given or made by means of electronic email, certified or registered mail, express mail or other overnight delivery service, or hand delivery, proper postage or other charges paid and addressed or directed to the respective Party using the contact information provided in this Section (or such other contact information provided from time to time in accordance with this provision). A notice that is sent by electronic mail shall also be sent by one of the other means described in this Section.

If to ASHA:

Rob Mullen
American Speech-Language-Hearing Association
2200 Research Blvd #245
Rockville, MD, 20850
RMullen@asha.org

If to Organization:

- 14.7. Construction. Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.”

- 14.8. Relationship of the Parties. Neither Party undertakes to perform or discharge any liability or obligation of the other Party, whether regulatory or contractual, or to assume any responsibility whatsoever for the conduct of the business or operations of the other Party. Nothing contained in this Agreement is intended to give rise to a partnership or joint venture between the Parties or to impose upon the Parties any of the duties or responsibilities of partners or joint venturers.
- 14.9. Assignment. Organization shall not assign (whether by way of direct assignment or operation of law in connection with a sale of substantially all assets, controlling, equity, merger, or other business combination) this Agreement, in whole or part, without ASHA's prior written consent. Any assignment in contravention of this Section shall be void.
- 14.10. Amendment. No amendment to, or change, waiver or discharge of, any provision of this Agreement shall be valid unless in writing and signed by both Parties.
- 14.11. Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. Signatures of the Parties transmitted by facsimile or in electronic format shall be deemed to be such Parties' original signatures for all purposes.

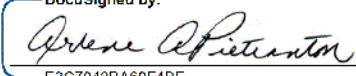
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be signed by their respective duly authorized representatives as of the Effective Date.

Organization

By: _____
Name: _____
Title: _____
Date: _____

American Speech-Language-Hearing Association

DocuSigned by:
By: 
Name: Arlene A. Pietranton, PhD, CAE
Title: Chief Executive Officer
Date: _____

Appendix A

NOMS ELIGIBILITY REQUIREMENTS

SLP Healthcare Registry: All speech-language pathologists must be ASHA certified and 100% must be ASHA members for participation in the speech-language pathology registry.

Audiology Registry: All audiologists must be ASHA certified members, or non-members of ASHA who hold certification from ASHA or the American Board of Audiology (ABA) and have paid the subscription fee for participation in the audiology registry (see Subscription Fee Requirements).

NOMS SUBSCRIPTION FEE REQUIREMENTS

Registry Fees

The following explains the fees associated with the NOMS registry.

SLP Healthcare Registry: There are no fees to participate in the SLP Healthcare Registry. All participants must be certified ASHA members.

Audiology Registry:

- There are no fees to participate in the Audiology Registry for audiologists who are certified ASHA members.
- An annual, nonrefundable, subscription fee* will be required for each participating audiologist who is a non-member of ASHA who holds certification from ASHA or the American Board of Audiology (ABA). The subscription fee is due when the audiologist registers to join the NOMS registry, and subsequent payments will be due on the twelve-month anniversary thereafter. These fees are not pro-rated. Subscription payments will be applied to the provider audiologist, not to the Organization; therefore, the payments are transferable if the audiologist changes employers during the subscription period. Non-payment of registry fees will lead to an interruption of service and access to the registry.
- Participation in the registry is contingent upon maintaining certification either through ASHA or ABA, regardless of subscription fee status. Failure to maintain certification will lead to an interruption of service and access to the registry.

***Current fees will be posted online and may be adjusted annually at ASHA's discretion. Any changes to the subscription fees will be communicated to the participants in accordance with the Notices section (Section 14.6) of this Agreement.**

USERS OF NOMS

Clinician

- A clinician for the SLP Registry is an ASHA-certified member speech-language pathologist who evaluates and/or treats individual patients/clients for whom data are reported.
- A clinician for the Audiology Registry is an ASHA-certified member audiologist or non-member of ASHA who holds certification from ASHA or the American Board of Audiology (ABA) and has paid the subscription fee, who evaluates and/or treats individual patients/clients for whom data are reported.

Clinician Proxy: an individual who is acting on behalf of the Clinician for the purposes of data entry.

Subscriber

- A subscriber for the SLP Registry is an ASHA certified member in good standing who represents the Organization and serves as the primary point of contact between the Organization and ASHA.
- A subscriber for the Audiology Registry means an ASHA certified member in good standing or non-member of ASHA who holds certification from ASHA or the American Board of Audiology (ABA) and has paid the subscription fee, who represents the Organization and serves as the primary point of contact between the Organization and ASHA.

Subscriber Proxy: an individual who is acting on behalf of the Subscriber for the purposes of organization management. A Subscriber Proxy may be a data analyst or support personnel acting under the supervision of the Subscriber to generate data reports or to assist with administrative duties related to NOMS.

Organization: the facility or facilities under whose auspices the qualified User(s) provide speech-language pathology or audiology evaluation/treatment.

Appendix B
BUSINESS ASSOCIATE AGREEMENT
AND DATA USE AGREEMENT

This Business Associate Agreement and Data Use Agreement ("BAA/DUA") is entered into on the dates set forth on the signature page below (the "Effective Date"), and is between the American Speech-Language-Hearing Association ("ASHA") and the undersigned Covered Entity which has entered into a Community Subscription Agreement concurrently with this BAA/DUA to participate in ASHA's National Outcomes Measurement System (NOMS) Registry. ASHA and the Covered Entity are each a Party to this BAA/DUA and are referred to collectively as the "Parties."

BACKGROUND

Covered Entity is entering into a business relationship with ASHA that is more specifically memorialized in the Community Subscription Agreement which permits and provides for the Covered Entity to submit data to the NOMS Registry, and pursuant to which ASHA may have access to "Protected Health Information" ("PHI") and may be considered a "Business Associate" and "Limited Data Set Recipient" of Covered Entity as those terms are defined or construed under the Health Insurance Portability and Accountability Act of 1996.

The Parties desire to allocate responsibility for the Use and Disclosure of PHI, including Limited Data Set Information, and to comply with applicable requirements of the Health Insurance Portability and Accountability Act of 1996, Public Law 104 191 ("HIPAA"), as amended by the Privacy and Security provisions set forth in Section 13400 of the Health Information Technology for Economic and Clinical Health Act, Public law 111-5 ("HITECH Act"), and the regulations promulgated thereunder codified at 45 C.F.R Parts 160 and 164, (commonly known as the Privacy and Security Rules and collectively referred to herein as the "HIPAA Regulations");

NOW THEREFORE, in consideration of the mutual promises and conditions contained herein, and for other good and valuable consideration, the Parties agree as follows:

SECTION 1

DEFINITIONS

Capitalized terms used, but not otherwise defined, in this BAA/DUA will have the meaning ascribed to them in the HIPAA Regulations or the Community Subscription Agreement, as the case may be.

- (a) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R 160.103, and in reference to the party to this BAA/DUA, shall mean the undersigned Covered Entity.
- (b) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R 160.103, and in reference to the party to this BAA/DUA, shall mean ASHA.
- (c) Breach. "Breach" has the same meaning as the term "breach" in 45 C.F.R. 164.402.

- (d) Designated Record Set. “Designated Record Set” means the same as the term “designated record set” defined in 45 C.F.R. 164.501.
- (e) Protected Health Information (or “PHI”). “PHI” will have the meaning ascribed to it in the HIPAA Regulations, but for the purposes of this BAA/DUA will refer solely to PHI transmitted from or on behalf of Covered Entity to ASHA. PHI will include PHI in electronic form (“Electronic PHI”) unless specifically stated otherwise. Unless otherwise specified, the use of the term PHI will be interpreted to include Limited Data Set Information.
- (f) Limited Data Set Information. “Limited Data Set” will have the meaning ascribed to it in the HIPAA Regulations, but for the purposes of this BAA/DUA will refer solely to Limited Data Set Information transmitted from or on behalf of the Covered Entity to ASHA, or created by ASHA on behalf of the Covered Entity.
- (g) Security Incident. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI maintained or interference with system operations in an information system maintained by ASHA that contains PHI received from Covered Entity.

SECTION 2

EFFECT AND INTERPRETATION

The provisions of this BAA/DUA shall apply with respect to the Use or Disclosure of any PHI by the Parties under the Community Subscription Agreement. In the event of any conflict or inconsistency between the Community Subscription Agreement and this BAA/DUA concerning the Use or Disclosure of PHI, the terms of this BAA/DUA will prevail unless the Parties mutually agree that the applicable terms of the Community Subscription Agreement would be more protective of PHI. The provisions of this BAA/DUA are intended in their totality to implement the HIPAA Regulations as they concern Business Associate Contracts and 45 C.F.R 164.514(e) as it concerns Data Use Agreements. The provisions of the Community Subscription Agreement will remain in full force and effect and are amended by this BAA/DUA only to the extent necessary to effectuate the provisions set forth herein.

SECTION 3

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF ASHA

ASHA represents, warrants, and covenants that, to the extent that ASHA creates, maintains, or receives any PHI or Unsecured PHI on behalf of or from Covered Entity, ASHA will:

- a) not use or further disclose PHI other than as permitted or required by this BAA/DUA or as Required by Law and agrees to maintain the security and privacy of all PHI in a manner consistent with all applicable laws;
- b) use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA/DUA; Without limiting the generality of the foregoing, ASHA further agrees to:

- i. implement Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R 164.308, 164.310, and 164.312;
 - ii. ensure that any Subcontractor, to whom it provides such PHI agrees to implement reasonable and appropriate safeguards to protect the PHI and comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic PHI;
- c) promptly report to Covered Entity, within 10 days following Discovery, any use or disclosure of PHI not provided for by this BAA/DUA of which ASHA becomes aware, including breaches of unsecured PHI as required at 45 C.F.R 164.410, and any Security Incident of which ASHA becomes aware;
- d) ensure that any subcontractor that creates, receives, maintains, or transmits PHI, on behalf of ASHA, agree to the same restrictions and conditions that apply through this BAA/DUA to ASHA with respect to such PHI;
- e) to the extent applicable, provide access or make the PHI available to Covered Entity in a Designated Record Set at reasonable times at the request of or as directed by Covered Entity to an individual in order to meet the requirements of and in accordance with 45 C.F.R. 164.524 of the Privacy Rule. In the event an Individual contacts ASHA directly about gaining access to his or her PHI, ASHA will not provide such access but rather will forward such request to Covered Entity within three (3) business days of such contact, unless otherwise Required by Law.
- f) make any amendment(s) to PHI in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 C.F.R 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R 164.526. In the event an Individual contacts ASHA directly about making amendments to his or her PHI, ASHA will not make such amendments, but rather will promptly forward such request to Covered Entity, unless otherwise Required by Law.
- g) make internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary of the United States Department of Health and Human Services, during regular business hours, for purposes of the Secretary's determining compliance with the HIPAA Regulations;
- h) document and make available such information pursuant to commercially reasonable directions of Covered Entity in order to provide an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528 of the Privacy Rule;
- i) shall mitigate, to the extent practicable, any adverse effects from any improper Use and/or Disclosure of PHI by ASHA that are known to ASHA.

SECTION 4
PERMITTED USES AND DISCLOSURES BY ASHA

- (a) Except as otherwise limited in this BAA/DUA, ASHA may Use or Disclose PHI on behalf of, or in order to provide services to, Covered Entity to the extent such Use or Disclosure is reasonably necessary to facilitate Covered Entity's participation in the NOMS Registry, consistent with the Community Subscription Agreement, provided that such Use or Disclosure of PHI would not violate the HIPAA Regulations if done by Covered Entity.
- (b) ASHA may Use PHI received by ASHA in its capacity as a Business Associate to Covered Entity as necessary for the proper management and administration of ASHA or to carry out the legal responsibilities of ASHA.
- (c) ASHA may Disclose PHI received by ASHA in its capacity as a Business Associate to Covered Entity for the proper management and administration of ASHA or to carry out the legal responsibilities of ASHA if:
 - i. the disclosure is Required by Law; or
 - ii. ASHA obtains reasonable assurances from any person or entity to whom PHI is disclosed that: (1) the PHI will be held confidential and further used and disclosed only as Required by Law or for the purposes for which it was disclosed to the person or entity, and (2) the person or entity will notify ASHA of any instances of which it is aware in which confidentiality of the PHI has been breached.
- (d) ASHA may Use and Disclose PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R 164.504(e)(2)(i)(B).
- (e) ASHA may de-identify any PHI, provided such de-identification conforms to the requirements of 45 C.F.R. 164.502(d) and 45 C.F.R. 164.514(a) and (b), including without limitation any documentation requirements. ASHA may Use or Disclose such de-identified information at its discretion, as such de-identified information does not constitute PHI and is not subject to the terms of this BAA/DUA, pursuant to 45 C.F.R. 164.502(d)(2); provided that such Use or Disclosure is consistent with the Community Subscription Agreement and applicable law.
- (f) ASHA may partially de-identify any PHI to create a Limited Data Set, provided such partial de-identification conforms to the Limited Data Set requirements of 45 CFR 164.514(e)(2).
- (g) ASHA may Use and Disclose PHI obtained by ASHA under this BAA/DUA to create a Limited Data Set without any of the identifiers listed in 45 C.F.R. 164.514(e) ("Limited Data Set") for Research, Public Health, and Health Care Operations purposes. ASHA may not use or further disclose a Limited Data Set for any other purpose, except as may otherwise be Required by Law. ASHA must use appropriate safeguards to prevent use or disclosure of a Limited Data Set other than as provided for herein. ASHA must report to Covered Entity any use or disclosure of a Limited Data Set not provided for herein of which ASHA becomes aware. ASHA must ensure that any third party to whom ASHA provides a Limited Data Set agree to the same restrictions and conditions that apply to ASHA with respect to such information. ASHA may disclose a Limited Data Set to any recipient that agrees to the same restrictions and conditions that apply to ASHA with respect to such information. With respect to any particular Limited Data Set, ASHA will not use the Limited

Data Set in such a way as to identify any individual whose data is incorporated in the Limited Data Set or to contact any such individual. The term Health Care Operations as used herein includes Data Aggregation.

SECTION 5

REPRESENTATIONS, WARRANTIES, AND COVENANTS OF COVERED ENTITY

Covered Entity represents, warrants, and covenants that Covered Entity:

- (a) has developed and makes available to all patients a Notice of Privacy Practices that complies with 45 C.F.R. 164.520 and any other applicable provisions of the HIPAA Regulations. Covered Entity will provide ASHA with a copy of its Notice of Privacy Practices upon request.
- (b) must provide ASHA with any changes in, or revocation of, authorizations by individuals relating to the Use or Disclosure of PHI, if such changes affect ASHA's permitted or required uses or disclosures.
- (c) will ensure on a continuing basis that all Disclosures of PHI made to ASHA are permissible under the HIPAA Regulations and are not subject to restrictions that would make the Disclosure of an Individual's PHI to ASHA impermissible.
- (d) will notify ASHA of any specific or general restrictions on the Use or Disclosure of PHI submitted to ASHA that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, if such restrictions affect ASHA's permitted or required Uses or Disclosures.
- (e) will not ask ASHA to Use or Disclose PHI in any manner that would not be permissible under the HIPAA Regulations if undertaken by Covered Entity, provided that Covered Entity may, as otherwise permitted under this BAA/DUA, request that ASHA Use or Disclose PHI for the purposes of Data Aggregation or the management and administrative activities of ASHA, as provided for in 45 C.F.R. 164.504(e)(4).

SECTION 6

TERM AND TERMINATION

- (a) Term. This BAA/DUA will commence as of the Effective Date and will remain in effect for a period that is coterminous with the Community Subscription Agreement, unless (i) this BAA/DUA is terminated sooner in accordance with either Subsection (b) or (c) of this Section; or (ii) the Community Subscription Agreement is amended by written BAA/DUA of the Parties in a manner that the Parties mutually agree renders the provisions of this BAA/DUA unnecessary.
- (b) Termination for Cause. Either Party may terminate this BAA/DUA based upon a material breach of this BAA/DUA by the other Party, provided that the non-breaching Party gives the breaching Party thirty (30) days written notice and the opportunity to cure such breach, and the breach is not cured during the notice period. In the event such material breach is not cured, the non-breaching Party may terminate this BAA/DUA immediately upon the expiration of the notice period. In the event it is not possible to cure such material breach, the non-breaching Party may terminate this BAA/DUA immediately and without any notice.

(c) Termination Due to Change in Law. Either Party may terminate this BAA/DUA as permitted in accordance with Section 8(b) of this BAA/DUA upon a change in an applicable law that causes performance in compliance with this BAA/DUA to violate the law. Except as otherwise specified herein, this BAA/DUA shall terminate immediately upon the termination of the Community Subscription Agreement.

(d) Effect of Termination.

- i. Except as provided in paragraph (ii) of this Subsection and except with respect to Limited Data Set Information, upon termination of this BAA/DUA for any reason, ASHA will return or destroy all PHI received from Covered Entity, or created or received by ASHA on behalf of Covered Entity. ASHA will retain no copies of the PHI, except as provided in paragraph (ii) of this Subsection or to the extent that the PHI constitutes Limited Data Set Information.
- ii. In the event that ASHA reasonably determines that returning or destroying the PHI is infeasible due to inclusion of such PHI in the NOMS Registry or for other reason, ASHA will not return or destroy the PHI, may retain copies of the PHI to the extent it has been entered into the NOMS Registry, and will promptly notify Covered Entity of the circumstances that make return or destruction infeasible. Based on such determination, ASHA will extend the protections of this BAA/DUA to such PHI and limit any further Use or Disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as ASHA maintains such PHI.
- iii. The Parties acknowledge and agree that the provision of any PHI to ASHA in accordance with the Community Subscription Agreement is conditioned upon this BAA/DUA being in full force and effect. Therefore, upon termination of this BAA/DUA, the Parties agree that Covered Entity will refrain from submitting PHI to ASHA, and ASHA will refrain from accepting PHI from Covered Entity. In the event of a termination under either Subsection (b) or (c) of this Section 6, either Party may also elect to terminate the Community Subscription Agreement. In the event the Parties engage in negotiations undertaken in accordance with Subsection 8(b) of this BAA/DUA, the Parties will suspend during such period of negotiation any provision of the Community Subscription Agreement requiring or obligating either Party to Use or Disclose PHI in a manner that either Party reasonably believes would violate any applicable state or federal law or regulation, including without limitation the HIPAA Regulations.
- iv. The obligations of this Subsection 6(d) will survive any expiration or termination of this BAA/DUA.

SECTION 7

INDEMNIFICATION; BREACH NOTIFICATION

(a) Indemnification. ASHA agrees to indemnify and hold harmless Covered Entity from direct losses and damages relating to third party claims suffered by Covered Entity as a result of ASHA's breach of its obligations under this BAA/DUA. Covered Entity agrees to indemnify and hold harmless ASHA from direct losses and damages relating to third party claims suffered by ASHA as a result of Covered Entity's breach

of its obligations under this BAA/DUA. Under no circumstances, however, will either Party be liable to the other for any indirect or consequential damages of any kind, including lost profits (whether or not the Parties have been advised of such loss or damage) arising in any way in connection with this BAA/DUA. The Parties' obligations under this Section 7 regarding indemnification will survive any expiration or termination of this BAA/DUA.

- (b) Breach Notification. Covered Entity and ASHA agree that if either fails to adhere to any of the provisions set forth in this BAA/DUA or the Community Subscription Agreement, and as a result, PHI or other confidential information is unlawfully accessed, used, or disclosed, the Party or Parties responsible for the Breach agree to pay all (or their proportionate share of) costs associated with any notification to affected individuals that is required by law, and the Party or Parties responsible will also pay any and all (or their proportionate share of) fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting. Unless otherwise agreed upon by the Parties, if ASHA notifies Covered Entity of a Breach of Unsecured PHI, Covered Entity shall be responsible for providing notification to comply with Breach Notification requirements set forth in the HIPAA regulations. Such notification shall not identify ASHA unless agreed upon by ASHA in writing.

SECTION 8

MISCELLANEOUS

- (a) Regulatory References. A citation in this BAA/DUA to the Code of Federal Regulations (C.F.R.) means the cited section as that section may be amended from time to time and for which compliance is required.
- (b) Amendment. This BAA/DUA may not be amended except by the mutual written BAA/DUA of the Parties. Notwithstanding the foregoing, the Parties agree to work together in good faith to take such action as is necessary to make technical amendments to this BAA/DUA from time to time if necessary for Covered Entity and/or ASHA to comply with the requirements of HIPAA, the HIPAA Regulations, or any applicable provisions of any other federal or state law, as such laws or regulations may be amended from time to time. However, should any state or federal law or regulation now existing or enacted after the Effective Date of this BAA/DUA, including without limitation HIPAA or the HIPAA Regulations, be amended or interpreted by judicial decision or a regulatory body in such a manner that either Party reasonably determines renders any provision of this BAA/DUA in violation of such law or regulation or adversely affects the Parties' abilities to perform their obligations under this BAA/DUA, the Parties agree to negotiate in good faith to amend this BAA/DUA so as to comply with such law or regulation and to preserve the viability of this BAA/DUA. If, after negotiating in good faith, the Parties are unable to reach BAA/DUA as to any necessary amendments, either Party may terminate this BAA/DUA without penalty.
- (c) Applicable Law and Forum. This BAA/DUA will be interpreted and construed in accordance with the laws of the State of Maryland.

- (d) Interpretation. Any ambiguity in this BAA/DUA will be resolved in favor of a meaning that permits Covered Entity and ASHA to comply with the HIPAA Regulations. Where provisions of this BAA/DUA are different from those mandated in the HIPAA Regulations, but are nonetheless permitted by the HIPAA Regulations, the provisions of this BAA/DUA will control.
- (e) Waiver. No provision of this BAA/DUA may be waived except by a BAA/DUA in writing signed by the waiving Party. A waiver of any term or provision shall not be construed as a waiver of any other term or provision.
- (f) Third Party Rights and Assignment and Delegation of Duties. The terms of this BAA/DUA are not intended nor should they be construed to grant any rights to parties other than ASHA and Covered Entity.
- (g) Arbitration. Any controversy or claim arising out of this BAA/DUA, or the breach thereof, will be settled by arbitration in accordance with the rules of the American Arbitration Association, and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof. The arbitration agreement set forth herein will not limit a court from granting a temporary restraining order or preliminary injunction in order to preserve the status quo of the parties pending arbitration. Further, the arbitrator(s) will have power to enter such orders by way of interim award, and they will be enforceable in court. The place of such arbitration will be in Maryland.
- (h) Requests for PHI. Either party will immediately notify the other party in writing, and provide the other party with a copy, of any subpoena or other discovery request or any judicial, governmental, or administrative order requesting or requiring the party to disclose PHI that may be held by the other party pursuant to this BAA/DUA.
- (i) Severability. The provisions of this BAA/DUA will be severable, and if any provision of this BAA/DUA is held or declared to be illegal, invalid, or unenforceable, the remainder of this BAA/DUA will continue in full force and effect as though such illegal, invalid, or unenforceable provision had not been contained herein.
- (j) Notices. The Parties will send any reports or notices required under this BAA/DUA to the addresses set forth in the notice provision of the Community Subscription Agreement.

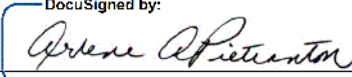
[Signature Page Follows]

IN WITNESS WHEREOF, the Parties hereto have entered into this BAA/DUA on the dates set forth below, so that it may take effect as of the Effective Date.

Organization

By: _____
Name: _____
Title: _____
Date: _____

American Speech-Language-Hearing Association

By: 
Name: E3C7042BA60F4BF... Arlene A. Pietranton, PhD, CAE
Title: Chief Executive Officer
Date: _____