

**MEMORANDUM OF UNDERSTANDING
BETWEEN
TIPPECANOE COUNTY BOARD OF COMMISSIONERS
AND
FRANCISCAN ALLIANCE, INC. D/B/A
FRANCISCAN HEALTH LAFAYETTE**

THIS MEMORANDUM OF UNDERSTANDING (MOU) is entered into this 1st day of July, 2022 between the Tippecanoe County Board of Commissioners (“County”), on behalf of Tippecanoe County Women, Infants & Children (WIC) Agency (hereafter “WIC”) and Franciscan Alliance d/b/a Franciscan Health Lafayette (hereafter “Hospital”) in Lafayette, Indiana. The goal is to improve breastfeeding initiation and duration rates among WIC clients who deliver their infants at the Hospital through providing WIC program and breastfeeding services.

WITNESSETH:

WHEREAS, WIC provides a supplemental nutrition program committed to improving the health of eligible pregnant women, new mothers, infants, and children by providing nutrition education, nutritious foods, and breastfeeding support; and

WHEREAS, Franciscan Alliance, Inc. is an organization exempt from federal income taxation under Section 501(c) (3) of the Internal Revenue Code of 1986, as amended, and is organized and operates exclusively for charitable purposes, including the provision of health care services through hospitals and healthcare facilities which are owned or leased and operated by Franciscan Alliance, Inc. or its affiliates comprised of Franciscan Health Lafayette East; and

WHEREAS, the Hospital is willing to make available its facilities to WIC Personnel for the purpose of performing certifications, providing nutrition education and counseling and breastfeeding support. WIC Personnel includes Registered Dietitians and/or Nutritionists (hereinafter “CPA”s -competent professional authority), and Breastfeeding Peer Counselors (hereinafter “BPC”s).

NOW THEREFORE, WIC and Hospital hereby agree as follows:

I. The Relationship between WIC and Hospital. It is recognized that the Hospital and its medical staff have sole responsibility for control of Hospital activities and WIC and its staff have sole responsibility for the conduct of WIC activities. Each party agrees to respect these rights and to assure that the philosophy of this Agreement is implemented.

- A. While the Hospital and medical staff may contribute, all parties agree that the ultimate responsibility for education lies with WIC.
- B. All parties agree that the ultimate responsibility for patient care remains with the Hospital and its medical staff.

II. WIC shall:

A. WIC agrees to provide the following Personnel and services for WIC clients and/or potential clients at the Hospital:

1. Allow WIC CPA's to perform certifications and counseling; providing WIC services and benefits as well as basic nutrition and breastfeeding education, support, and referrals during rounds at the Hospital.
2. BPCs that have been trained through WIC Breastfeeding Peer Counseling Program will provide basic breastfeeding education, support, and referrals during rounds at the Hospital.
3. WIC Personnel will be screened by the Hospital volunteer office to ensure that they meet all the requirements necessary to provide patient care in the Hospital, and will comply with all the guidelines provided by the volunteer office.
4. An International Board Certified Lactation Consultant ("IBCLC") or breastfeeding expert from WIC or Hospital will provide additional training on working in the Hospital, and will mentor the BPCs until they are competent to conduct rounds independently.
5. WIC will designate a liaison to provide technical assistance and to mediate any concerns that may arise.
6. In connection with the performance of this Agreement, WIC Personnel may be given access to or otherwise come into contact with or become aware of confidential patient information. Therefore, WIC and its employees shall use confidential information solely in connection with the performance of this Agreement and shall not directly or indirectly disclose or use any confidential patient information without the patient's prior written consent, both during and after the termination of this Agreement.
7. Assure that WIC Personnel will follow all Hospital's policies and procedures.
8. Assure that WIC Personnel will be in good health as far as can be determined by examination by a licensed physician. Assure that all WIC Personnel will comply with all Hospital policies, procedures, standards and practices including the following:
 - a. Prior to providing services for Hospital
 - i. WIC will assure that their Personnel can provide documentation of personal health records upon request by the Hospital. Health records must include a 10-panel minimum drug screening which

shall include tuberculosis screening, Hepatitis B, varicella titer, tetanus diphtheria, MMR and an influenza immunization (flu shot)

- ii. Satisfactorily complete the new employee orientation program
- iii. WIC will conduct criminal background checks for WIC Personnel providing services as outlined in this agreement and will provide verification of such upon request by Hospital.

- 9. Provide instruction and instructional materials as may be necessary to carry out education regarding the WIC program.

B. Duties of WIC Personnel are to:

- 1. Check in with the hospital nurse or lactation consultant.
- 2. Make rounds with all WIC clients and/or potential clients to assess their interest in WIC program services, breastfeeding and to provide basic assistance.
- 3. Observe a feeding within accordance with hospital policy to check positioning and latch.
- 4. Report any breastfeeding concerns that are beyond the BPC scope of practice to the patient's assigned nurse or lactation consultant, and WIC designated breastfeeding expert.
- 5. Keep accurate records for all contacts and submit them in a timely manner to WIC supervisor and to the hospital nurse following agreed upon procedures.
- 6. Give breastfeeding literature provided by the WIC Program.
- 7. Refer to WIC office for follow-up with WIC designated breastfeeding expert to arrange for an electric breast pump, if necessary.
- 8. Arrange for follow-up contacts after discharge if agreeable to the mother.
- 9. Assist patients with accessing WIC services.

C. County shall at all times, during this Agreement, secure and maintain the following insurance for WIC and their employees that will be providing services to or on behalf of Hospital:

- (1) General Liability of \$1,000,000 per claim and \$3,000,000 per annual aggregate for bodily injury, personal injury, contractual liability and property damage claims arising out of or based upon WIC and their employee's acts, errors

or omissions while naming Hospital as an additional insured on a primary and non-contributory basis.

(2) Workers Compensation as statutorily required in the State of Indiana and shall include a waiver of subrogation. WIC agrees that any injury (including death) sustained by any employee of WIC that occurs while providing services under this Agreement shall be reported immediately to their Workers Compensation Carrier regardless of negligence.

(3) Employers Liability of \$500,000 per employee, accident and disease which shall include a waiver of subrogation.

(4) Property insurance for all property owned or brought onto Hospital's premise.

- D. Agree that any services provided under this Agreement will comply in all material respects with all federal and state mandated regulations, rules or orders applicable to Hospital, including but not limited to regulations promulgated under Title II Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-91) – "HIPAA" and Title XIII of the American Recovery and Reinvestment Act of 2009 ("ARRA") and Health Information Technology for Economic and Clinical Health Act ("HITECH") collectively referred to as HIPAA, and have previously executed a Business Associate Agreement, attached as Exhibit A and incorporated herein. Furthermore, WIC and Hospital shall promptly amend the Agreement to conform with any new or revised legislation, rules and regulations to which Hospital is subject now or in the future including, without limitation, the Standards of Privacy of Individually Identifiable Health Information or similar legislation (collectively, "Laws") in order to ensure that Hospital is at all times in conformance with all Laws. If, within ninety (90) days of either party first providing notice to the other of the need to amend the Agreement to comply with Laws, the parties acting in good faith, are (i) unable to mutually agree upon and make amendments or alterations to this Agreement to meet the requirements in question, or (ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate this Agreement upon thirty (30) days prior written notice.

III. The Hospital shall:

- A. Designate a contact person to whom WIC Personnel will report.
- B. Facilitate rounds in conjunction with WIC; referring potential WIC clients to the WIC Local Agency
- C. Provide the WIC BPC with referrals of breastfeeding mothers under their care who demonstrate a need for breastfeeding support.

- D. Provide patient information, as requested, for certification (height, weight, hemoglobin, etc.) to CPA's representing the WIC Local Agency.
- E. Provide adequate space for WIC Personnel to complete their work and to store program information, forms, and equipment and breastfeeding and nutrition education materials.
- F. Work with the WIC liaison to report any concerns, and to regularly communicate progress of the services being provided.
- G. May require a Hospital orientation for WIC Personnel through the volunteer program.
- H. Provide classroom and/or conference room space as may be reasonably necessary and available to carry out clinical instruction in this program.
- I. Retain ultimate responsibility for the care of patients in the facility.
- J. Make available written or electronic copies of the Hospital's policies and procedures that apply to WIC Personnel.

IV. WIC and Hospital mutually agree that:

- A. WIC Personnel shall dress professionally and wear a Hospital name badge while on duty at Hospital.
- B. Hospital reserves the right in its sole and absolute discretion to exclude from its facility anyone whose work or conduct may reflect discredit to the Hospital or the program.
- C. WIC and Hospital shall provide all services hereunder in a manner consistent with the philosophy of the Franciscan Alliance, Inc. and with The Ethical and Religious Directives for Catholic Health Care Services as promulgated and amended from time to time by the United States Conference of Catholic Bishops or its successor and as interpreted by the local bishop from time to time ("Directives"), provided, however, that nothing in this Agreement shall be construed to require WIC to endorse any particular religious doctrine or belief. A copy of the Directives as of the date of this Agreement may be found at the following link:

<http://www.usccb.org/about/doctrine/ethical-and-religious-directives/upload/ethical-religious-directives-catholic-health-service-sixth-edition-2016-06.pdf>

- D. Both parties agree to notify one another promptly of any claim made by or expected from a claimant against a party to this Agreement, which claim relates to the subject matter of this Agreement. The parties agree to cooperate to dispose of any such claim. Each party to this Agreement ("Indemnitor") agrees to indemnify

and hold harmless the other party (“Indemnitee”) (together with Indemnitee’s successors, assigns, directors, officers, employees, and any other person for whom Indemnitee may be legally responsible) from and against any loss, cost, claim, or expense, including reasonable attorney’s fees, arising from any negligent act or omission that is the sole responsibility of the Indemnitor, its successors, assigns, directors, officers, employees, or agents. If, however, such claims and suits are the result of the joint negligence of both WIC and the Hospital in same proportionate percentages, then the above indemnification and hold harmless provisions shall not apply. Further, Indemnitor agrees to indemnify, defend and hold harmless Indemnitee for any Claims arising out of or based upon of any bodily injury to an Indemnitor employee even if the Indemnitor, its employees or agents are negligent or in any other way at fault for such injury unless Indemnitor is solely at fault for such injury.

V. Term

This Agreement will commence on July 1, 2022 and terminate on June 30, 2024. This Agreement may be cancelled or terminated without cause by either party by giving (30) calendar days advance written notice to the other party.

VI. Termination without Cause

Either party may terminate this Agreement without cause with thirty (30) days written notice to the other party.

VII Confidentiality

The parties shall, and shall require each employee or agent to, at all times: (a) hold Confidential Information in confidence, (b) use Confidential Information for the benefit of and not to the detriment of Hospital, and (c) not, directly or indirectly, through one or more intermediaries, disclose Confidential Information to an unauthorized person or use Confidential Information in an unauthorized manner. Confidential Information may, however, be disclosed in the event that a party is required to disclose all or any part of the Confidential Information under the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction or regulatory or administrative body that has power to compel the disclosure of information. “Confidential Information” shall mean any proprietary, confidential or competitively-sensitive information and materials that are the property of or relate to a party including a party’s policies, procedures, business practices, patient lists, charges, reimbursement levels, financial information, referral sources, operations manuals, strategic plans, marketing strategies, profits, revenues, financial condition, training programs or materials, service techniques, service procedures or processes, marketing plans or techniques, business strategies, and trade secrets (as that term is defined under the Indiana Trade Secrets Act, Ind. Code §§ 24-2-3-1 et seq., as amended from time to time) and any other information that possesses independent economic value to a party. The term “Confidential Information” shall not include information that (i) was in the possession of the other party prior to its disclosure by a party; (ii) is or becomes generally available to the public at large other than as a result of

knowingly employ or contract with an unauthorized alien, nor shall Hospital retain an employee or contract with a person that Hospital subsequently learns is an unauthorized alien.

Hospital shall:

1. Sign and deliver to County a sworn affidavit that affirms that the Hospital has enrolled and is participating in the E-Verify program;
2. Provide documentation to County substantiating that Hospital has enrolled and is participating in the E-Verify program; and
3. Sign and deliver to County an affidavit affirming that Hospital does not knowingly employ an unauthorized alien.

Hospital shall require all subcontractors, who perform work under this contract, to certify to Hospital in a manner consistent with federal law that the subcontractor, at the time of certification, does not knowingly employ or contract with an unauthorized alien and that the subcontractor has enrolled and is participating in the E-Verify program. Hospital agrees to maintain this certification throughout the duration of the term of each subcontract.

County may terminate the contract immediately if Hospital fails to cure a breach of this provision no later than thirty (30) days after being notified thereof by County or another state agency or political subdivision. In accordance with IC 22-5-1.7, any challenge by Hospital to a termination pursuant to this provision must be made in Tippecanoe County Superior or Circuit Court not later than twenty (20) days after Hospital receives notice of such termination.

- XI. Investment Activities in Iran. As required by IC 5-22-16.5-13, the Hospital hereby certifies that the Hospital is not engaged in investment activities in Iran.
- XII. Entire Agreement. This Agreement constitutes the entire agreement of the parties concerning the subject matter hereof and supersedes all previous representations, understandings and agreements of the parties, whether oral or written, concerning same. The parties agree that, upon execution of this Agreement, the Memorandum of Understanding entered into by the parties as of May 1, 2018 is hereby terminated.
- XIII. Exclusion from State or Federal Health Care Programs. County and WIC represent and warrant that it they are not: excluded from participation in any Federal Health Care Program; debarred, suspended or otherwise excluded from participating in any other federal or state procurement or non-procurement program or activity; or designated a Specially Designated National or Blocked Person by the Office of Foreign Asset Control of the U.S. Department of Treasury. County and WIC further represent and warrant that to their knowledge, there are no pending or threatened governmental investigations that may lead to such exclusion. County and WIC shall notify Hospital in writing upon the

commencement of any such exclusion or investigation within seven (7) business days of receiving first notice of such exclusion or investigation. Hospital shall have the right to terminate this Agreement immediately upon learning of any such exclusion and shall be kept informed of the status of any such investigation.

[The remainder of this page intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been executed as of the date and year first above written. This Agreement may be executed in multiple counterparts and delivered by facsimile or other electronic or digital transmission, and a printout of the computerized version shall be considered an original.

TIPPECANOE COUNTY BOARD OF COMMISSIONERS:

FRANCISCAN ALLIANCE, INC. d/b/a FRANCISCAN HEALTH LAFAYETTE:

David Byers, President


Terry Wilson (Jun 8, 2022 17:00 EDT)

Terrance E. Wilson
President/CEO

Date _____

Date 06/08/2022

Tracy Brown, Vice-President

Date _____

Thomas Murtaugh, Member

Date _____

Attest: _____
Robert Plantenga , Tippecanoe County Auditor

EXHIBIT A
BUSINESS ASSOCIATE AGREEMENT

(see the attached)

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is made and entered into by and between Franciscan Alliance, Inc. d/b/a Franciscan Health Lafayette (“PROVIDER”) and The Tippecanoe County Board of Commissioners on behalf of Tippecanoe County Women, Infants & Children (“BUSINESS ASSOCIATE”).

RECITALS

- A. PROVIDER and BUSINESS ASSOCIATE have entered into, and may in the future enter into, one or more underlying contracts or purchase orders (“Underlying Contracts”) that will require BUSINESS ASSOCIATE to perform, or assist in the performance of a function or activity, or otherwise provide services of a type for PROVIDER which qualifies BUSINESS ASSOCIATE as a “Business Associate” as that term is defined by the Health Insurance Portability and Accountability Act of 1996 and all such regulations promulgated thereunder (“HIPAA”).
- B. BUSINESS ASSOCIATE, in fulfilling its obligations for and on behalf of PROVIDER, shall be expected to create or receive and maintain certain Protected Health Information and other forms of nonpublic personal information, including, but not limited to, social security numbers and other identifying information protected under applicable state law(s) (hereinafter collectively referred to as “PHI”) from time to time that is the property of PROVIDER.
- C. PROVIDER and BUSINESS ASSOCIATE desire to enter into this Agreement which shall supplement each of the Underlying Contracts, as required by HIPAA, in order to provide satisfactory assurances to PROVIDER that BUSINESS ASSOCIATE shall maintain appropriate Administrative, Physical and Technical Safeguards to protect the Confidentiality, Integrity and Availability of all such PHI in accordance with HIPAA as amended, including but not limited to the statutory amendments to HIPAA that were enacted under Title XIII of the American Recovery and Reinvestment Act of 2009 (“ARRA”) which is entitled the Health Information Technology for Economic and Clinical Health (“HITECH”) Act (hereinafter collectively referred to as “HIPAA”) and other applicable requirements discussed herein. Except as supplemented, the terms of the Underlying Contracts shall continue unchanged and shall apply with full force and effect as to the matters addressed therein.

NOW THEREFORE, PROVIDER and BUSINESS ASSOCIATE agree as follows:

- 1. **Definitions.** All capitalized terms and phrases in this Agreement shall have the same meanings as defined by HIPAA and if not otherwise defined therein, shall have their ordinary and customary meaning:

2. **Restriction on Use and Disclosure of Protected Health Information.** BUSINESS ASSOCIATE shall not Use or Disclose PHI except as permitted or required by an Underlying Contract, this Agreement, or HIPAA.
3. **Authorized Uses and Disclosures.** BUSINESS ASSOCIATE is hereby authorized to Use and Disclose PHI on a “Need to Know” basis, but only in connection with the performance of the particular functions, activities or services set forth in the Underlying Contracts or as otherwise required by PROVIDER, in writing, from time to time. BUSINESS ASSOCIATE may also Use and Disclose PHI for the proper management and administration of BUSINESS ASSOCIATE or to carry out the legal responsibilities of BUSINESS ASSOCIATE; provided (a) the Disclosure is Required by Law; or (b) BUSINESS ASSOCIATE obtains reasonable assurances from the third party to whom the PHI is Disclosed that the PHI will be held confidential and will be Used or further Disclosed only for authorized purposes or as otherwise Required by Law, and the third party agrees to immediately notify the BUSINESS ASSOCIATE if there is any reason to believe the confidentiality of the PHI has been breached.
4. **BUSINESS ASSOCIATE Obligations.**
 - (a) **Compliance; Safeguards.** BUSINESS ASSOCIATE represents and warrants that BUSINESS ASSOCIATE has or will comply with the HITECH Act amendments to HIPAA on or before the compliance dates established therein. BUSINESS ASSOCIATE shall implement and document appropriate Administrative, Physical and Technical Safeguards in order to preserve the Confidentiality, Integrity and Availability of all PHI and to prevent any unauthorized Use or Disclosure of PHI, or any Breach or actual Security Incident, or other violation of HIPAA (hereinafter collectively referred to as “Incident”) and make all such documentation available to PROVIDER for review upon request.
 - (b) **Encryption.** BUSINESS ASSOCIATE shall encrypt PROVIDER files that are accessed, created, stored, or transmitted electronically by BUSINESS ASSOCIATE. Examples include but are not limited to files stored on their servers, workstation hard drives, email transmission, FTP, as well as any portable media. This provision is not meant to limit in any way any legal requirements imposed on a BUSINESS ASSOCIATE by law.
 - (c) **Reporting.** BUSINESS ASSOCIATE shall report to PROVIDER's Privacy Officer any Incident that BUSINESS ASSOCIATE has reason to believe has or may have resulted in a breach of the Confidentiality, Integrity or Availability of PHI. BUSINESS ASSOCIATE shall report all Incidents to PROVIDER's Privacy Officer, not more than twenty-four (24) hours after BUSINESS ASSOCIATE learns of the Incident. Said report shall identify: (i) the known facts and circumstances related to the Incident; (ii) the PHI that is known to be the subject of the Incident; (iii) the persons who are known to have information about the

Incident; and (iv) the corrective action that BUSINESS ASSOCIATE took or will take to mitigate any deleterious effects of the Incident and to prevent future Incidents. BUSINESS ASSOCIATE shall submit a written report to PROVIDER for review upon request. Additionally, BUSINESS ASSOCIATE, in its capacity as a “service provider” to PROVIDER under the FTC Red Flags Rule set forth at 16 CFR part 681, as amended, shall report to PROVIDER any suspicious circumstances or “red flags” indicative of actual or possible identity theft or deception as required therein.

- (d) **Agents, Contractors, and Subcontractors.** BUSINESS ASSOCIATE shall ensure that any agent, contractor, or subcontractor, to whom it provides Protected Health Information, agrees, in writing, to the same restrictions and conditions that apply to BUSINESS ASSOCIATE under this Agreement.
- (e) **Patient’s Access to PHI.** BUSINESS ASSOCIATE shall act in a manner that permits PROVIDER to permit Patient Access to PHI in accordance with HIPAA as amended.
- (f) **Amendment of PHI.** BUSINESS ASSOCIATE shall act in a manner that permits PROVIDER to make amendments to PHI in accordance with HIPAA, as amended.
- (g) **Accounting of Disclosures.** BUSINESS ASSOCIATE shall act in a manner that permits PROVIDER to provide an accounting of Disclosures to Patients in accordance with HIPAA, as amended.
- (h) **Practices, Books and Records.** BUSINESS ASSOCIATE shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by BUSINESS ASSOCIATE on behalf of PROVIDER, available to the Secretary for the purpose of determining PROVIDER’S compliance with the HIPAA, subject to the BUSINESS ASSOCIATE’S professional obligations with respect to such practices, books and records. For purposes of clarity, this provision does not obligate BUSINESS ASSOCIATE to provide any information unrelated to the services provided to PROVIDER by BUSINESS ASSOCIATE pursuant to the Underlying Contracts.
- (i) **Cure of Noncompliance.** If PROVIDER notifies BUSINESS ASSOCIATE of any Incident, or alternatively, if BUSINESS ASSOCIATE notifies PROVIDER of an Incident under Section 4(c) herein, BUSINESS ASSOCIATE shall immediately take all steps necessary to cure any such Incident immediately, notwithstanding PROVIDER’S right to terminate the Underlying Contract(s) and this Agreement under Section 6(a) herein.

- (j) **Mitigation.** Business Associate shall take reasonable steps to mitigate, to the extent practicable, any harmful effect to PHI that is known to BUSINESS ASSOCIATE or communicated to BUSINESS ASSOCIATE by PROVIDER that is the result of any Incident; provided, however, that this provision shall not be deemed to permit or excuse any such violation.
- (k) **Legal Obligations.** In the event BUSINESS ASSOCIATE believes it has a legal obligation to further Disclose any PHI in BUSINESS ASSOCIATE'S possession, including, but not limited to obligations that arise from the issuance of a third party discovery request, subpoena or court order, BUSINESS ASSOCIATE shall notify PROVIDER as soon as reasonably practical after it learns of such obligation, and in any event within a time sufficiently in advance of the proposed release date such that PROVIDER'S rights and interests would not be prejudiced, as to the legal requirement pursuant to which BUSINESS ASSOCIATE believes the PHI must be released. If PROVIDER objects to the release of such PHI, BUSINESS ASSOCIATE shall allow PROVIDER to exercise any legal rights or remedies which either PROVIDER or BUSINESS ASSOCIATE might have with respect to the further Disclosure of PHI.
- (l) **Return or Destruction of the PHI.** Upon the termination of the business relationship between PROVIDER and BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall return to PROVIDER, or, at PROVIDER'S direction, destroy, all PHI that BUSINESS ASSOCIATE has created or received and maintained or stored in any medium or storage system, pursuant to the Underlying Contracts, subject to any professional responsibilities of BUSINESS ASSOCIATE to maintain such information, in which event BUSINESS ASSOCIATE shall maintain all such PHI in accordance with its custom and practice with respect thereto. BUSINESS ASSOCIATE shall complete such return or destruction of PHI (if applicable) as promptly as possible, but not later than thirty (30) days after the effective date of the termination, cancellation, expiration or other conclusion of the Underlying Contracts. BUSINESS ASSOCIATE shall identify any recorded PHI of PROVIDER that is in BUSINESS ASSOCIATE'S possession and which cannot feasibly be returned to PROVIDER or destroyed, and BUSINESS ASSOCIATE shall limit any further Use of that PHI to those purposes that make return or destruction of said PHI infeasible. Within said thirty (30) days, BUSINESS ASSOCIATE shall certify to PROVIDER, in writing and under oath, (i) that the return of all PHI has been completed; and (ii) that any PHI not returned will be Used or Disclosed by BUSINESS ASSOCIATE only for those purposes which make return of the PHI infeasible or not required. BUSINESS ASSOCIATE shall remain bound by the provisions of this Agreement, even after termination of any Underlying Contracts, until such time as all PHI has been (i) returned to PROVIDER; (ii) De-Identified; or (iii) otherwise destroyed as provided in this Section; provided that the parties understand and agree that certain unrecorded information cannot be returned, destroyed, or De-

Identified, so the BUSINESS ASSOCIATE shall remain bound by the provisions of this Agreement so long as BUSINESS ASSOCIATE possesses the PHI.

5. **Term of this Agreement.** This Agreement shall be effective when executed on behalf of both of the parties hereto and shall continue in full force and effect until the effective date of the termination, cancellation, expiration or other conclusion of all Underlying Contracts executed by and between the parties hereto.
6. **Remedies.**
 - (a) **Termination.** PROVIDER may terminate the business relationship between PROVIDER and BUSINESS ASSOCIATE, including any Underlying Contracts, agreements, arrangements or understandings, whether or not in writing, upon which the business relationship is based and such other agreements, arrangements or understandings are hereby amended to permit such termination, if PROVIDER determines that BUSINESS ASSOCIATE has violated a material term of this Agreement or HIPAA that cannot otherwise be cured by BUSINESS ASSOCIATE under Section 4(i) herein. Termination of the business relationship by PROVIDER shall be in addition to and not in place of any other remedies that may be available to PROVIDER.
 - (b) **Injunction.** Notwithstanding any other rights or remedies provided for in this Agreement, the parties agree that PROVIDER may seek injunctive relief to prevent or stop the unauthorized Use or Disclosure of PHI by BUSINESS ASSOCIATE, or any agent, subcontractor or other third party that received PHI from BUSINESS ASSOCIATE, without the necessity of proving actual damages or the occurrence of an unauthorized Use or Disclosure or other Security Incident.
7. **Indemnification.** BUSINESS ASSOCIATE shall indemnify and hold PROVIDER and each of its officers, employees, directors, agents and representatives (“Indemnified Persons”) harmless from and against any and all claims, losses, costs, damages, or expenses, including reasonable attorneys’ fees, that arise out of any actions or omissions by BUSINESS ASSOCIATE, or any of its officers, employees, directors, agents or representatives which result in a breach by BUSINESS ASSOCIATE of this Agreement or HIPAA as that term is defined herein. Without limiting the foregoing, PROVIDER shall give BUSINESS ASSOCIATE prompt written notice of such claim, suit, or proceeding. The parties hereto agree that no provision in the Underlying Contract(s) shall, in any way, modify or nullify this Section 7 in any manner.
8. **Conflicting Laws and Obligations.** If BUSINESS ASSOCIATE believes that it is unable to comply with any of its obligations under this Agreement due to any conflicting laws, regulations, pronouncements, or ethical obligations, it may seek a determination, or judgment, from a court of competent jurisdiction regarding its ability to comply with such

obligations, so long as such actions will not cause PROVIDER to be in violation of HIPAA.

9. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be personally delivered or sent by certified or registered mail, first class postage prepaid, return receipt requested, or by prepaid overnight delivery service such that proof of delivery will be obtained, and shall be addressed as set forth below or to such other address as may be specified in a prior written notice to the other party:

IF to PROVIDER:
Franciscan Health Lafayette
1501 Hartford Street
Lafayette, Indiana 47903
ATTN: Privacy Officer

IF to BUSINESS ASSOCIATE:
Tippecanoe County WIC Program
1322 Tippecanoe Street
Lafayette, Indiana 47904
ATTN: Alicia Keen, R.D., IBCLC

Such notice shall be deemed to be given on the date it is deposited in the mail as stated above, on the date it is given to the overnight delivery service, or the date it is given personally to the party to whom it is directed. A notice shall be deemed to have been given personally to a party if it is handed to the representative of the party to whom the notice must be addressed or if left at his or her office located at the street address to which a notice would be mailed.

10. **Amendment.** This Agreement may not be changed, modified, or amended except by a written agreement executed by an authorized representative acting on behalf of each of the parties.
11. **No Waiver.** No waiver of one or more of the provisions of this Agreement or the failure to enforce any provision of this Agreement by either party shall be construed as a waiver of any subsequent breach of this Agreement, or a waiver of the right at any time thereafter to require strict compliance with all of its terms.
12. **Entire Agreement.** This Agreement sets forth the entire agreement and understanding between the parties as to the matters contained in it, and supersedes all prior discussions, agreements, and understandings of every kind and nature between them.
13. **Headings.** The headings placed before the various paragraphs and subparagraphs of this Agreement are inserted for each of reference only, do not constitute a part of this Agreement, and shall not be used in any way whatsoever in the construction or interpretation of this Agreement.
14. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the state of Indiana without reference to the choice of laws principles thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives on the dates set forth below.

“PROVIDER”

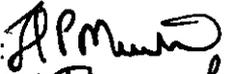
Franciscan Alliance, Inc. d/b/a

Franciscan Health Lafayette

BY: 
NAME: Terrance E. Wilson
ITS: President/CEO
DATED: 4/25/18

“BUSINESS ASSOCIATE”

Tippecanoe County Board of Commissioners, on behalf of Tippecanoe County Women, Infants & Children

BY: 
NAME: Thomas P. Murtagh
ITS:
DATED: 4-27-2018