



Thank you for your continued interest in HCANJ Foundation's Advanced Standing Program. This year we are sending the applications electronically. They can also be found on our website at [www.hcanj.org](http://www.hcanj.org), Facility Resources, Advanced Standing. The materials you need to complete your package include:

- Advanced Standing Program Description
- Application for Advanced Standing
- Quality Measurement Guidelines
- Affidavit of Compliance
- Contract between your facility and the HCANJ Foundation
- HIPPA Business Associate Agreement between your facility and HCANJF
- Invoice

Please note that all materials, including payment in full, must be received in the HCANJ Foundation office by **COB, Friday, January 7, 2022**. Please note: This is a firm deadline. If you do not submit your materials by that time, you can still participate in the program next year, but you will not be able to participate in 2022.

To assist you in completing your packet, please note the "Attachments" list at the bottom of the *Application for Advanced Standing*.

Please send all required materials to:

HCANJ Foundation Advanced Standing Program

4 AAA Drive, Suite 203

Hamilton, NJ 08691

If you have any questions, please contact Kathy Fiery at [Kathy@hcanj.org](mailto:Kathy@hcanj.org) or by phone at 609-890-8700.

4 AAA Drive, Suite 203, Hamilton, New Jersey 08691-1813 ♦ (609) 890-8700 ♦ Fax: (609) 584-1047

[www.hcanj.org](http://www.hcanj.org)



## WHAT'S NEW IN 2022

To comply with the quality indicator component of Advanced Standing, you may choose to use either the Health Research and Educational Trusts of New Jersey's Garden State Patient Safety Center (GSPSC), which is a Patient Safety Organization (PSO), or the American Health Care Association/National Center for Assisted Living's (AHCA/NCAL) Long Term Care Trend Tracker (LTC TT). Please remember that data submitted to the PSO is protected under the rules of the Patient Safety and Quality Improvement Act of 2005 as patient safety work product. Both products allow for the collection of data as required for the Advanced Standing Program.

All PSO documents and invoicing will be processed by the PSO.

### **IMPORTANT INVOICE INFORMATION:**

- If your facility has the distinction of Advanced Standing, and you were in the PSO in 2021, the invoice you receive reflects **ONLY** the Advanced Standing fee. The PSO will invoice you directly for the PSO fee. If you were in LTC TT in 2021, your invoice reflects the Advanced Standing fee as well as the LTC TT fee.
- If your facility does NOT have Advanced Standing, your invoice will reflect the Advanced Standing fee. If you elect to use the PSO, please contact Jennifer Barrett Sryfi at 609-275-4126. If you elect to use LTC TT, please pay the LTC TT fee as specified.

PLEASE MAKE CHECKS PAYABLE TO **HCANJ FOUNDATION**. (Emphasis intentional. Please include Foundation on the "pay to" line.)

Finally, all required data must be submitted monthly by the 15<sup>th</sup>. The Foundation is required to produce reports to DOH that include this data in aggregate. Please do not jeopardize your Advanced Standing – **please submit your data by the 15<sup>th</sup> to remain in the program.**

If you have any questions about any aspect of the Advanced Standing application, please contact Kathy Fiery at 609-890-8700 or [kathy@hcanj.org](mailto:kathy@hcanj.org)



## Advanced Standing Program Description

The Health Care Association of New Jersey Foundation (HCANJF) is collaborating with the Department of Health (DOH) on a voluntary program titled Advanced Standing (AS). The program is open to all licensed assisted living residences and comprehensive personal care homes in NJ. To receive the Department's distinction of Advanced Standing, a facility must comply with all applicable local, state and federal regulations as well as submit quality data that reaches benchmarks established by a Peer Review Panel. In addition, a facility must use a Disclosure Statement outlining the services received at the facility. Once all regulations are satisfactorily met and the quality measures meet the established benchmarks, DOH will make the final determination on Advanced Standing. A facility that is granted Advanced Standing by DOH will be able to advertise that designation and HCANJ members with Advanced Standing status will have a special designation on the HCANJ website.

### Compliance Visit

The HCANJ Foundation has hired staff to perform compliance visits to ensure that the New Jersey state licensing regulations are substantially met. Compliance visits are performed yearly. DOH will provide follow-up surveys on a random sample of the facilities that participate in the 2022 program. In addition, any time a facility falls below DOH standards, such as poor performance on a complaint investigation, that facility can be removed from the program for cause by DOH. A facility participating in the AS program will not receive a routine survey by DOH.

### Quality Data

A facility must submit monthly quality data, by the 15<sup>th</sup> of every month, to at least one of two entities; the Health Research and Educational Trusts of New Jersey's Garden State Patient Safety Center (GSPSC) Patient Safety Organization (PSO) and/or AHCA/NCAL LTC Trend Tracker. Certain quality indicators will be reviewed during each year of the AS program. 2022 Quality Measures are:

Does the community have a formal on-going training program for all employees?

Does the community measure resident and family satisfaction?

Does the community act upon suggestions from Resident Council? Is Resident Council inclusive of residents with dementia?

Does the community promote Advanced Care Planning?

Are Agency Staff provided a basic orientation to the facility and are they supervised by qualified staff, as appropriate, during their time in the building? Does the community track re-hospitalization rates and work to reduce those rates to 20% or below?

Does the community track off-label antipsychotic drug use and work to reduce that rate to 15% or below?

Does the community use a Disclosure Statement outlining the services received at the facility?

Does the community have a *documented* infection control training exercises to maintain competency in the proper use of personal protection equipment (PPE)?

Please see the quality measurement guidelines for meeting these requirements. To participate in the program a facility must sign a contract with HCANJF which specifies the program criteria, submit a signed affidavit of compliance, and submit payment for the program in full during the open enrollment period. In addition, facilities that choose enrollment in the PSO must sign all required forms for the PSO and pay the appropriate rate. Facilities that choose enrollment in LTC TT must enroll in LTC TT and pay the appropriate rate.

**Please note:** Data submitted to the PSO is protected under the rules of the Patient Safety and Quality Improvement Act of 2005 as patient safety work product.

### Quality Measurement Guidelines – 2022 (9 Total)

1. **Quality Measure:** Does the community have a formal on-going training program for all employees?

**Guideline:** Training modules should be established to educate all staff on areas not currently required in the assisted living regulations; in other words, above and beyond what is specified by regulation.

2. **Quality Measure:** Does the community measure resident and family satisfaction?

**Guideline:** At a minimum, each resident (or their designated responsible party) and their family, as appropriate, should be provided with a formal, written inquiry on their level of agreement with the following statements (using a five-point scale):

1. Overall, I am satisfied with this community.
2. I would recommend this community to others.
3. Overall, staff shows genuine respect and treats me (for family: my loved one) with dignity.
4. Overall, I am satisfied with the way my (my loved one's) choices and preferences are met.
5. Management is timely in their responses to me (my loved one's) and my family's suggestions and concerns.
6. Staff recognizes and responds in a timely manner to changes in my (my loved one's) needs.
7. Overall, I (my loved one) feel(s) safe in this community.

A comment section should be included for additional feedback on each of the areas, above.

OR

Coincide with the CoreQ Measures of LTC Trend Tracker – Likert scale: Poor, Average, Good, Very Good, Excellent

1. In recommending this facility to your friends and family, how would you rate it overall?
2. How would you rate the staff?
3. How would you rate the care you receive?
4. Overall, how would you rate the food?

Blank surveys are made available for review at the time of the Compliance Visit. The required questions are highlighted. Feedback is collected, and an action plan developed and administered, for areas that meet with low levels of satisfaction. Written feedback is provided to all residents and families on the action plan. At the very minimum, there must be at least one area identified for improvement, including how and when the area(s) will be addressed and by whom.

3. **Quality Measure:** Does the community act upon feedback provided at Resident Council? Is Resident Council inclusive of residents with dementia?

**Guideline:** An ongoing action plan on the progress made on feedback given at Resident Council meetings is documented and provided at the beginning of the Compliance Visit. This is **a separate document** from the Resident Council notes. **Any resident identifiers MUST be redacted.** Resident Council includes residents with a dementia diagnosis.

4. **Quality Measure:** Does the community use advanced care planning with residents to determine individual preferences for end-of-life care?

**Guideline:** In addition to Advance Directives, Practitioner Orders for Life-Sustaining Treatment (POLST) is made available to all residents who wish to complete one with their medical practitioner, and a policy developed and implemented for its use.

5. **Quality Measure:** Are Agency Staff provided a basic orientation to the facility and are they supervised by qualified staff, as appropriate, during their time in the building?

**Guideline:** Agency staff work in several different locations. They require basic orientation and supervision to assist them in following established policies and procedures, including infection prevention and control.

6. **Quality Measure:** Does the community track the number of residents admitted to the hospital as well as the number readmitted to the hospital within 30 days of hospital discharge?

**Guideline:** The community not only tracks those numbers but is actively engaged in working to decrease re-hospitalization rates to 20% or lower. Data is submitted by the 15<sup>th</sup> of each month.

7. **Quality Measure:** Does the community track off-label use of antipsychotic drugs?

**Guideline:** The community not only tracks the usage but is actively engaged in working to reduce off-label antipsychotic drug use to 15% or lower. Data is submitted by the 15<sup>th</sup> of each month.

8. **Quality Measure:** Does the community use a Disclosure Statement outlining the services received at the facility?

**Guideline:** The community distributes an approved Disclosure Statement to all prospective and new residents, including inquiries, tours and move-ins. The Disclosure Statement is provided by HCANJ.

9. **Quality Measure:** Does the community have a *documented* infection control training exercises to maintain competency in the proper use of personal protection equipment (PPE)?

**Guideline:** The community shall maintain a record of proper *donning and doffing competency trainings* across all service lines: wellness, administration, dining, maintenance, housekeeping, programming, therapy department, transport, etc. The PPE competency training should include caring for a resident under transmission-based precaution or isolation.



## Application for Advanced Standing Program

Date \_\_\_\_\_

Name of Facility \_\_\_\_\_

Facility Name **as licensed by DOH** (if different than above) \_\_\_\_\_

\_\_\_\_\_

Address \_\_\_\_\_

Executive Director \_\_\_\_\_

Phone number **of ED** \_\_\_\_\_

Email address of ED \_\_\_\_\_

Date Facility was **originally** licensed \_\_\_\_\_

Number of beds \_\_\_\_\_

**Facility** License No.: \_\_\_\_\_

**PLEASE review carefully which attachments apply to your application.**

**HCANJF Documents – ALL applicants must complete and sign**

☐ Affidavit of Compliance (including page 5 completed in its entirety)

☐ Signed Contract    ☐ Signed Business Associate Agreement

**ONLY If NEW to LTC Trend Tracker**

☐ Signed Letter of Understanding

**AND**

☐ Fees for Advanced Standing (& LTC Trend Tracker if applicable) on a single check made payable to HCANJ Foundation.

**If interested in joining or learning more about Garden State Patient Safety Center (GSPSC) PSO for Advanced Standing data collection, please contact Jennifer Barrett Sryfi at [jsryfi@njha.com](mailto:jsryfi@njha.com) or at 609-275-4126.**



**Please Note:** Complete this form **ONLY** if you are using LTC TT for the **FIRST** time in 2022.

**Letter of Understanding – Long Term Care Trend Tracker (LTC TT)**

(Applicable ONLY if you have elected to use LTC TT)

Please check the appropriate line and sign below.

\_\_\_\_\_ I am an HCANJ member and I am already registered with LTC TT.

\_\_\_\_\_ I am an HCANJ member who has not used LTC TT. I will register with LTC TT by **December 31, 2021**.

\_\_\_\_\_ I am not an HCANJ member and I agree to register with LTC TT when contacted to do so.

Signed:

\_\_\_\_\_



**New Jersey Department of Health  
Division of Health Facility Survey and Field Operations**

**AFFIDAVIT OF COMPLIANCE  
ASSISTED LIVING RESIDENCES, COMPREHENSIVE PERSONAL CARE HOMES  
AND ASSISTED LIVING PROGRAMS  
MANDATORY STANDARDS COVERED BY THIS AFFIDAVIT  
(ALL REFERENCES ARE TO N.J.A.C. 8:36)**

I, \_\_\_\_\_, Administrator of  
\_\_\_\_\_, hereby state

that to the best of my personal knowledge and understanding, the facility is in substantial compliance with the mandatory standards enumerated in this statement except as follows:

Describe exceptions to compliance:


I acknowledge that I must provide prompt notification to the Director, Division of Health Facility Survey and Field Operations, at the address below, should I become aware of any substantial change in compliance:

Director, Division of Health Facility Survey and Field Operations  
New Jersey Department of Health  
PO Box 367  
Trenton, NJ 08625-0367

Telephone Number: (609) 633-8993

I understand that a willfully false statement could result in enforcement penalties.

Signature of Administrator	Date
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3.1 (a)	7.4 (c)	18.1
4.1	7.5	18.2 (a) through (d)
5.1 (e)	9.1	18.3
5.1 (g)	9.2	18.4 (a) (b)
5.1 (h) through (k)	10.5 (b)	18.5
5.2 (b)	11.3 (a)	18.6 (a) (b)
5.5 (a)	11.6 (a) 3	19.2 (a)
5.5 (b)	11.7 (e)	19.2 (b)
5.6 (b) (1-7)	11.7 (f)	19.3 (a)
5.6 (c) and 9.3 (c)	11.7 (g)	19.4 (a) 1
5.7 (a) 1-8	14.1 (b)	19.4 (b) 1 and 2
5.8	14.2 (a) (b) (c)	19.4 (b) 3
5.9	14.3 (a)	20.2 (a)
5.10 (a) 1-6	14.3 (b)	20.2 (f)
5.11 (a) 1-7	14.3 (c)	21.1
5.13	15.3	21.2 (a)
5.14	15.4	22.1 – 22.7
5.15	15.6	23.1 – 23.18
5.16	15.7	
5.17		<b><u>8:43E</u></b>
5.18	17.2	6.1 through 6.6
6.1(a) (1-11)	17.3 (b) 8	10.1 through 10.5
6.3 (a)	17.4 (a)	
6.3 (b) (c)	17.6	
7.4 (b)	17.8	

Signature of Administrator	Date
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**AFFIDAVIT OF COMPLIANCE  
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- 3.1 (a) Administrator and alternate is designated in writing.
- 4.1 Resident rights.
- 5.1 (e) Facility admission agreement.
- 5.1 (g) Facility adheres to all applicable Federal, State and Local laws.
- 5.1 (h) - (k) Compliance with 10% Medicaid occupancy if licensed on or after 9/1/01.
- 5.2 (b) Facility is not owned or operated by any person convicted of a crime.
- 5.5 (a) Written job descriptions.
- 5.5 (b) Staff licensure, certification and authorization as required.
- 5.6 (b) 1-7 Develop and implement orientation and education plan as required.
- 5.6 (c) & 9.3 (c) Staffing at level of care required by residents.
- 5.7 (a) 1-8 Policy and procedures developed, implemented and reviewed.
- 5.8 Resident transportation.
- 5.9 Written agreements for services not provided directly by facility.
- 5.10 (a) 1-6 Reportable events.
- 5.11 (a) 1-7 Required postings.
- 5.13 Admission and retention of residents.
- 5.14 Involuntary discharge.
- 5.15 Notification requirements.
- 5.16 Interpretation services.
- 5.17 Written transfer agreements.
- 5.18 Managed risk agreements.
- 6.1 (a) 1-11 Written resident care policies and procedures.
- 6.3 (a) Policies and procedure for handling monthly personal needs allowance.
- 6.3 (b) (c) Written records of personal needs accounts maintained.
- 7.4 (b) RN develops nursing practice policies and procedures.
- 7.4 (c) Health care policies and procedures are implemented.
- 7.5 Written policies and procedures to ensure quality care.
- 9.1 Qualifications of personal care assistants.
- 9.2 Qualifications of certified medication aides.
- 10.5 (b) Current diet manual available.
- 11.3 (a) Staff trained to supervise self administration of medications.
- 11.6 (a) 3 Pharmacy policy and procedures regarding self administration of medications.
- 11.7 (e) Medication destruction.
- 11.7 (f) Medication destruction witnessed.
- 11.7 (g) Unit of use crediting mechanism.

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- 14.1 (b) Written plan for emergency transportation.
- 14.2 (a) - (c) Emergency plans, policies and procedures developed.
- 14.3 (a) Fire drills.
- 14.3 (b) One joint drill with local fire department.
- 14.3 (c) Facility tests one pull alarm per month and documents result.
- 15.3 Confidentiality of resident records.
- 15.4 Record retention.
- 15.6 Residents' individual records.
- 15.7 Record of death.
- 17.2 Written housekeeping work plan and staff trained as required.
- 17.3 (b) 8 Annual electrical inspection.
- 17.4 (a) Solid waste procedure.
- 17.6 Water supply.
- 17.8 Written laundry service policies and procedures.
- 18.1 Infection Control Program.
- 18.2 (a) - (d) Infection control policies and procedures. Pneumovac and Flu vaccine requirements.
- 18.3 General facility infection control policies and procedures.
- 18.4 (a) (b) Mantoux testing for employees.
- 18.5 Staff trained in infection control procedures.
- 18.6 (a) (b) Regulated medical waste.
- 19.2 (a) Individualized Alzheimer's care.
- 19.2 (b) Criteria for admission to Alzheimer's unit.
- 19.3 (a) Mandatory staff training in Alzheimer's/Dementia care.
- 19.4 (a) 1 Staffing schedules for Alzheimer's unit available to public on request.
- 19.4 (b) 1 & 2 Alzheimer activity schedule and frequency, available to public on request.
- 19.4 (b) 3 Safety and security policies and procedures in Alzheimer's unit.
- 20.2 (a) Respite care policies and procedures.
- 20.2 (f) Pharmacist's policies and procedures for residents receiving respite services.
- 21.1 Quality Improvement Program.
- 21.2 Use of restraints.
- 22.1 – 22.7 CPCH
- 23.1 – 23.18 ALP

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- 6.1 – 6.6 Pain management.
- 10.1 – 10.5 Patient safety policies, committee, plan.

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**PHYSICAL ENVIRONMENT INSPECTIONS**

Date of Last Standard Survey: \_\_\_\_\_

Quarterly Fire Official Inspections since last Standard Survey:

Dates: \_\_\_\_\_

Municipality: \_\_\_\_\_

Semi-annual Kitchen Suppression System Inspections and Maintenance since last Standard Survey:

Dates: \_\_\_\_\_

Vendor: \_\_\_\_\_

Fire Alarm Detection System Tests and Maintenance since last Standard Survey:

Dates: \_\_\_\_\_

Vendor: \_\_\_\_\_

Boiler or Heating System Inspections since last Standard Survey:

Dates: \_\_\_\_\_

Inspector: \_\_\_\_\_

Electrical Inspections by a Licensed Electrician since last Standard Survey:

Dates: \_\_\_\_\_

Electrician: \_\_\_\_\_

Elevator Inspections (if applicable) since last Standard Survey:

Dates: \_\_\_\_\_

Inspector: \_\_\_\_\_

Quarterly Sprinkler System Tests and Maintenance since last Standard Survey:

Dates: \_\_\_\_\_

Vendor: \_\_\_\_\_

Fire Drills conducted since last Standard Survey. *Complete grid below.*

Shift	Date	Shift	Date	Shift	Date

Identify drills performed for disasters other than a fire:

Identify joint drills with the local fire officials:

Drills conducted: ☐ In-house ☐ Out-sourced If out-sourced, Vendor: \_\_\_\_\_

Has every employee participated in at least one fire drill each year? ☐ Yes ☐ No

Signature of Person Completing Form	Date
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## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

This **HIPAA Business Associate Subcontractor Agreement** (“Agreement”), dated effective as of \_\_\_\_\_, 2020 (the “Effective Date”), is by and between \_\_\_\_\_ (“Covered Entity”), and **HCANJ FOUNDATION, INC.** (“HCANJ”), as the HIPAA Business Associate of Covered Entity, and relates to HCANJ’s provision of services on Covered Entity’s behalf as described in the Background paragraphs hereof. Hereinafter, Covered Entity and HCANJ may be referred to, each, as a “Party” and, collectively, as the “Parties”.

### **BACKGROUND**

Covered Entity has engaged HCANJ, pursuant to the underlying services agreement between the Parties (as may be amended, the “Services Contract”), to provide certain functions and activities for and on behalf of Covered Entity (the “Services”) as a result of which Covered Entity may Disclose Protected Health Information to HCANJ.

To the limited extent that HCANJ receives, Uses, Discloses or maintains Covered Entity’s Protected Health Information as a result of HCANJ’s performance of the Services, HCANJ shall be considered a Business Associate of Covered Entity.

Covered Entity and HCANJ intend to protect the privacy and provide for the security of Protected Health Information that may be Disclosed to HCANJ in connection with the Services in compliance with this Agreement and the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended, along with its implementing regulations promulgated by the Secretary of the Department of Health and Human Services (“HHS”), including, the “Privacy Rule” (45 C.F.R. Part 160 and Subparts A and E of Part 164), the “Security Rule” (45 C.F.R. Part 160 and Subparts A and C of Part 164), and the “Breach Notification Rule” (45 C.F.R. Part 160 and Subparts A and D of Part 164), as each may be amended from time to time (collectively, “HIPAA”).

Covered Entity and HCANJ intend for this Agreement to meet those requirements under HIPAA that mandate a written agreement between a Covered Entity and its Business Associate, and for this Agreement to set forth each Party’s respective obligations in connection with each Party’s Use and Disclosure of Covered Entity’s Protected Health Information in connection with HCANJ’s performance of the Services.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information provided for herein, the Parties, intending to be legally bound hereby, agree as follows:

### **AGREEMENT**

#### **1. General.**

1.1 Incorporation. The Background paragraphs of this Agreement are hereby incorporated into this Agreement in full.

1.2 Definitions. Each capitalized term appearing in this Agreement not otherwise expressly defined herein shall have the meaning ascribed to it under HIPAA. The meanings given to the terms “Disclosure” and “Use” in 45 C.F.R. 160.103 shall also apply to those capitalized terms used herein that are in the plural or in any tense or variant of the terms “Disclosure” and “Use”, such as “Disclose”, “Discloses”, “Disclosing” and “Disclosed”, and “Uses”, “Using” and “Used”, respectively. “PHI” shall mean Protected Health Information that is created, received, maintained or transmitted by Covered Entity and is Used or Disclosed by HCANJ in order for HCANJ to perform the Services. “e-PHI” shall mean Electronic Protected Health Information that is created, received, maintained or transmitted by Covered Entity and is Used or Disclosed by HCANJ in order for HCANJ to perform the Services. “Unsecured PHI” shall mean Unsecured Protected Health Information that is created, received, maintained or transmitted by Covered Entity and is Used or Disclosed by HCANJ in order for HCANJ to perform the Services.

2. Term. This Agreement shall be effective as of the Effective Date and shall continue in full force indefinitely until terminated upon the earlier of either Party terminating this Agreement pursuant to Section 7.1 hereof or the termination or expiration of the Services Contract. Upon the termination of this Agreement for any reason, Section 7.2 hereof shall apply.

3. Obligations of Covered Entity.

3.1 Safeguards; Encryption. Covered Entity shall comply with HIPAA and all applicable federal and state laws governing the privacy and security of health information. Covered Entity shall implement and maintain reasonable and appropriate administrative, technical and physical safeguards to ensure the privacy and security of PHI in accordance with the applicable standards and requirements under HIPAA. With respect to e-PHI, Covered Entity shall: (i) ensure the confidentiality, integrity, and availability of all e-PHI Covered Entity creates, receives, maintains, or transmits; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of such e-PHI; (iii) protect against any reasonably anticipated uses or disclosures of such e-PHI that are not permitted or required under HIPAA; and (iv) ensure compliance with the Security Rule by its Workforce. Covered Entity shall implement security measures to protect e-PHI transmitted to HCANJ from unauthorized access, which may include use of the Transport Layer Security (“TLS”) protocol or other encryption mechanism.

3.2 Permissible Requests; Minimum Necessary. Covered Entity shall not request HCANJ to Use or Disclose PHI in any manner that, if done by Covered Entity, would not be permissible under HIPAA, all applicable federal and state law or any applicable third-party agreement to which Covered Entity is a party. Furthermore, Covered Entity shall Disclose to HCANJ only the amount of PHI that Covered Entity determines to be the minimum necessary for HCANJ to perform its obligations under the Services Contract. Covered Entity shall adhere to all applicable minimum necessary standards established from time to time by HHS or any other federal or state agency.

3.3 Notice of Privacy Practices. If Covered Entity is required under HIPAA to maintain a Notice of Privacy Practices (“NPP”), Covered Entity shall promptly provide HCANJ with its

current NPP, and any amendments thereto or replacements thereof, to the extent that the terms of the NPP will affect HCANJ's performance under the Services Contract or this Agreement or HCANJ's compliance with HIPAA.

3.4 Prompt Notification. To the extent that it affects HCANJ's performance of its obligations under this Agreement or the Services Contract or HCANJ's compliance with HIPAA, Covered Entity shall promptly notify HCANJ of any and all requests it receives by or on behalf of any and all Individuals with respect to Covered Entity's obligations under 45 C.F.R. 164.522 (restricting Disclosure of PHI), 164.524 (providing access to or a copy of PHI), 164.526 (amending PHI), or 164.528 (accounting of Disclosures of PHI).

3.5 Authority. Covered Entity represents and warrants that it is authorized under HIPAA, all applicable federal and state laws, and all applicable third-party agreements to which Covered Entity is a party to Disclose PHI to HCANJ for the purpose of HCANJ's provision of the Services. Covered Entity shall promptly notify HCANJ if the immediately preceding sentence ceases to be true, including instances where a third party implements any restriction or limitation which may affect HCANJ's ability to render the Services or to Use or Disclose PHI pursuant to the terms of this Agreement.

#### 4. Obligations of HCANJ.

4.1 Permitted Uses and Disclosures, Generally. Subject to the terms of this Agreement and HIPAA, HCANJ may Use or Disclose any and all PHI it creates, receives, maintains or transmits on behalf of Covered Entity, as follows:

4.1.1 Purpose and Scope. HCANJ may Use or Disclose PHI as follows: (i) as permitted hereunder to provide or perform the Services; (ii) as Required by Law; or (iii) as otherwise permitted under HIPAA and applicable law.

4.1.2 Amount of Information. HCANJ may Use or disclose only the minimum necessary amount of PHI needed, in HCANJ's discretion, for HCANJ to render the Services, and HCANJ shall adhere to all applicable minimum necessary standards established from time to time by HHS or any other federal or state agency.

4.1.3 Use for Management and Administration. HCANJ may Use PHI for the proper management and administration of HCANJ if such Use is necessary: (i) for the proper management and administration of HCANJ; or (ii) to carry out the legal responsibilities of HCANJ.

4.1.4 Disclosure for Management and Administration. HCANJ may Disclose PHI to a third party for the proper management and administration of HCANJ if: (i) the Disclosure is Required By Law; or (ii) HCANJ obtains from such third party reasonable assurances that: (a) PHI will be held confidentially and in compliance with HIPAA, and Used or further Disclosed by such third party only as Required By Law or for the purpose for which it was Disclosed to such third party; and (b) the third party will notify HCANJ, without unreasonable delay, of any Breach or potential Breach of PHI of which such third party becomes aware. Notwithstanding the foregoing, **in no event** shall HCANJ Disclose PHI for the foregoing purposes to any third party not subject to the laws and the jurisdiction of the United States of America without the prior written



consent of Covered Entity, which may be withheld in Covered Entity's sole and unfettered discretion.

4.2 Uses or Disclosures Requiring Prior Authorization. HCANJ understands that, except as expressly provided in this Agreement or permitted under HIPAA and all applicable federal and state laws, it shall not Disclose PHI to any third party without first having received an authorization that complies with 45 C.F.R. 164.508 ("Authorization") from the affected Individual(s). To the extent Disclosure of PHI to a third party is required for HCANJ to render the Services, Covered Entity shall assist HCANJ in obtaining, or obtain for HCANJ, the necessary Authorizations. HCANJ shall retain a copy of each Authorization it obtains pursuant to this Section 4.2 in accordance with the retention requirements set forth in 45 C.F.R. 164.508.

4.3 Prohibited Uses and Disclosures. HCANJ shall not directly or indirectly accept remuneration in exchange for Using or Disclosing any PHI except HCANJ may accept such remuneration from Covered Entity in exchange for Services rendered by HCANJ on Covered Entity's behalf. Furthermore, HCANJ shall not Use or Disclose PHI as follows: (i) for Marketing, except for or on behalf of Covered Entity with Covered Entity's express written consent and the applicable Individual's Authorization; (ii) other than as permitted or required by this Agreement or as Required By Law; or (iii) in any manner that would violate HIPAA or other applicable law if done by Covered Entity. HCANJ shall take reasonable measures to mitigate the harmful effect of any Use or Disclosure of PHI by HCANJ that is not in accordance with the terms of this Agreement.

4.4 Data Aggregation and De-identification of Data. HCANJ may use PHI to perform Data Aggregation, and, if expressly agreed to in writing by Covered Entity, may de-identify PHI in accordance with 45 C.F.R. 164.514 in connection with such Data Aggregation.

4.5 Part 2. Notwithstanding the disclosures of PHI permitted by this Section 4, HCANJ acknowledges that if it receives, maintains or transmits with any information protected by 42 C.F.R Part 2, it shall comply with all applicable requirements of 42 C.F.R Part 2 and, if necessary, will resist in judicial proceedings any efforts to obtain access to patient identifying information related to substance use disorder diagnosis, treatment, or referral for treatment information protected by 42 C.F.R. Part 2, except as permitted by 42 C.F.R Part 2.

#### 4.6 Security Matters.

4.6.1 General. HCANJ shall comply with the requirements of the Security Rule applicable to HCANJ as a Business Associate.

4.6.1.1 Safeguards; Encryption. HCANJ shall comply with HIPAA and all applicable federal and state laws governing the privacy and security of health information. HCANJ shall implement and maintain reasonable and appropriate administrative, technical and physical safeguards to prevent the Use or Disclosure of PHI other than as permitted under this Agreement. With respect to e-PHI, HCANJ shall: (i) ensure the confidentiality, integrity, and availability of all e-PHI HCANJ creates, receives, maintains, or transmits; (ii) protect against any reasonably anticipated threats or hazards to the security or integrity of such e-PHI; (iii) protect against any reasonably anticipated uses or disclosures of such e-PHI that are not permitted or

required under HIPAA; and (iv) ensure compliance with the Security Rule by its Workforce. HCANJ shall implement security measures to protect e-PHI transmitted by HCANJ from unauthorized access, which may include use of the TLS protocol or other encryption mechanism.

4.6.1.2 Documentation. HCANJ shall maintain records, in hard copy or electronic format, of the following, and retain such records in accordance with 45 C.F.R. 164.316(b)(2)(i): (i) policies and procedures implemented by HCANJ to comply with the Security Rule; and (ii) any action, activity or assessment required of HCANJ under the Security Rule.

#### 4.6.2 Reporting Breaches and Security Incidents.

4.6.2.1 Reporting Breaches. HCANJ shall comply with the notification requirements under HIPAA relating to a Breach of PHI, including the applicable provisions of the Breach Notification Rule. HCANJ shall promptly report to Covered Entity any Use or Disclosure of PHI that is not permitted under this Agreement or HIPAA that constitutes a Breach of PHI. HCANJ shall make such report to Covered Entity within **ten (10) business days** from the date that HCANJ discovers such impermissible Use or Disclosure of PHI. For purposes of this Agreement, HCANJ shall be deemed to have “discovered” an impermissible Use or Disclosure of PHI as of: (i) the first day on which such impermissible Use or Disclosure of PHI is actually known to any person that is a member of HCANJ’s Workforce, other than the person committing such impermissible Use or Disclosure; or (ii) by exercising reasonable diligence, the first day on which such impermissible Use or Disclosure should have been known to HCANJ. HCANJ shall take all commercially reasonable steps to allow it to discover impermissible Uses and Disclosures of PHI.

4.6.2.2 Assistance and Cooperation. The Parties shall assist and cooperate with each other as reasonably necessary for each Party to comply with the Breach Notification Rule. HCANJ shall provide Covered Entity with such information as may be required for Covered Entity to determine if a Breach of PHI occurred, and to notify affected Individuals of such event, if so required under the Breach Notification Rule. If HCANJ or any of HCANJ’s Subcontractors is the direct cause of a Breach of PHI, HCANJ shall provide Covered Entity with administrative support and other resources as may be reasonably requested by Covered Entity to assist Covered Entity to satisfy its obligations, if any, under the Breach Notification Rule. In the event that HCANJ does not provide such requested assistance and resources in a timely manner, as reasonably determined by Covered Entity, then HCANJ shall reimburse Covered Entity for all reasonable and actual costs and expenses (e.g., postage; supplies; administrative staff time, etc.) incurred by Covered Entity, as a result of HCANJ’s delay, in Covered Entity’s efforts to comply with the Breach Notification Rule.

4.6.2.3 Reporting Security Incidents. Consistent with this Section 4.4.2.4, HCANJ shall report as soon as practicable to Covered Entity any Security Incident of which HCANJ becomes aware that involves PHI. Notwithstanding the immediately foregoing sentence, HCANJ and Covered Entity acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are inconsequential or harmless in nature, such as pings and port scans, and HCANJ is not required to provide Covered Entity with subsequent notification upon the occurrence of such unsuccessful Security Incidents. Nevertheless, to the extent that HCANJ becomes aware of a pattern or an unusually high number of such unsuccessful

Security Incidents involving PHI and resulting from the repeated acts by a single person or entity, HCANJ shall notify Covered Entity of such attempts.

4.6.2.4 Notice of Breach or Security Incident. To the extent HCANJ is required to provide Covered Entity with notice of any impermissible Use or Disclosure of PHI, under Section 4.4.2.1 hereof, or any Security Incident involving PHI, under Section 4.4.2.4 hereof, HCANJ shall provide such notice to Covered Entity in writing pursuant to Section 13.5 hereof (relating to issuing notices hereunder) or, if Covered Entity has identified an email address for such notifications, by way of electronic mail to the email address identified by Covered Entity.

4.7 Requested Restrictions. To the extent instructed by Covered Entity in writing, HCANJ shall comply with a request by an Individual to restrict Disclosure of the Individual's PHI to a health plan in accordance with 45 C.F.R. 164.522. HCANJ shall promptly direct to Covered Entity all such requests HCANJ receives directly from an Individual.

4.8 Availability of Information. HCANJ shall make available to Covered Entity such information in HCANJ's possession that is necessary to permit Covered Entity to fulfill its obligations to provide access to, provide a copy of, to amend and to account for Disclosures of PHI pursuant to 45 C.F.R. 164.524, 164.526, and 164.528.

4.9 HCANJ's Subcontractors. HCANJ shall enter into a written agreement with each of its Subcontractors that Use or Disclose PHI that satisfies the applicable requirements under HIPAA with respect to Subcontractor's Use or Disclosure of PHI (the "Subcontractor Agreement"). In the event that HCANJ knows of a pattern of activity or practice of any of those Subcontractors that constitutes a material breach or material violation of the applicable Subcontractor Agreement, HCANJ shall take reasonable steps to, or shall cause such Subcontractor to, cure such breach or end such violation, as applicable. If such steps to cure such breach or end such violation are unsuccessful, HCANJ shall terminate the applicable Subcontractor Agreement and, to the extent feasible, those provisions of such Subcontractor's underlying services agreement or arrangement with HCANJ that requires the Use or Disclosure of PHI.

4.10 Internal Practices. HCANJ shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to HHS for purposes of determining Covered Entity's compliance with HIPAA.

4.11 Application of Privacy Rule. To the extent HCANJ is to carry out a function or obligation of Covered Entity with respect to the Privacy Rule, HCANJ shall comply with the requirements under the Privacy Rule that apply to Covered Entity in the performance of such function or obligation.

5. State Law. HCANJ and Covered Entity shall comply with any provision or requirement concerning privacy or security of information under any state law applicable to HCANJ's Use and Disclosure of PHI that is more stringent than a similar provision or requirement under HIPAA, as provided in 45 C.F.R. 160.203.

6. Information on Safeguards. Upon Covered Entity's reasonable request, which shall be in writing, HCANJ shall provide Covered Entity with information concerning the safeguards

and/or other information security practices that the HCANJ utilizes to protect the confidentiality of PHI in its possession.

## 7. **Termination.**

### 7.1 **Terminable Events.**

7.1.1 **Noncompliance.** If either Party (the “**Notifying Party**”) becomes aware of an activity or practice by the other Party (the “**Breaching Party**”) that constitutes a material breach or material violation of the Breaching Party’s obligations under this Agreement, HIPAA or any other applicable privacy or security law, the Notifying Party shall notify the Breaching Party of such breach or violation. Thereafter, the Breaching Party shall have an opportunity to cure such breach or end such violation, as applicable, within a reasonable timeframe as agreed to by the Parties (the “**Cure Period**”). Following receipt of the aforementioned notice, if the Breaching Party does not take reasonable steps to or otherwise does not successfully cure the breach or end the violation, as applicable, then, following the expiration of the Cure Period, the Notifying Party is permitted to terminate this Agreement. An activity or practice that shall constitute a material breach hereof, as referenced in the first sentence of this Section 7.1.1, shall include the following occurrences: (i) the other Party is named as a defendant in a criminal proceeding that involves a violation of HIPAA; or (ii) a finding or stipulation is made in any administrative or civil proceeding, in which such other Party has been joined, that the other Party has violated any standard or requirement of HIPAA or other applicable security or privacy law or regulation, federal or state. The foregoing is not intended to, and does not, limit any other remedy which may be available to the Notifying Party hereunder or as a matter of law.

7.1.2 **Completion of Services Requiring Use or Disclosure of PHI.** In the event that HCANJ’s continued representation of Covered Entity no longer requires HCANJ to Use or Disclose PHI, either Party shall be permitted to terminate this Agreement upon so notifying the other Party of such intent in writing.

7.2 **Effect of Termination.** Upon termination of this Agreement or the Services Contract for any reason, HCANJ shall return to Covered Entity, or destroy, all PHI that HCANJ still maintains in any form, and shall retain no copies of such PHI, or if return or destruction of all or any portion of PHI is not feasible as determined by HCANJ, HCANJ shall, at Covered Entity’s reasonable expense, continue to extend the protections of this Agreement to such information, and limit further Use or Disclosure of PHI to those purposes that make the return or destruction of such PHI infeasible. Any term or provision of this Agreement that, by its nature, is intended to survive the termination of this Agreement, shall survive the termination of this Agreement, including this Section 7.2 and Sections 4.6.1, 4.6.2 and 10, hereof..

8. **Disclaimer.** Neither Party represents or warrants to the other Party that compliance by the other Party with this Agreement will be adequate or satisfactory for such other Party’s own purposes, including such other Party’s compliance with applicable law, or that any information in such other Party’s possession or control, or transmitted or received by such other Party, is or will be secure from unauthorized Use or Disclosure. Each Party is solely responsible for all decisions made by such Party regarding the safeguarding of PHI.

9. **Change of Law.** The Parties acknowledge that state and federal law and regulation relating to electronic data security and privacy, including, HIPAA, are rapidly evolving and that the Parties may be required to amend this Agreement in order to ensure each Party's compliance with applicable law or regulation. Accordingly, if either Party reasonably determines that this Agreement must be amended in order for the Parties to be compliant with applicable law or regulation, such Party shall so notify the other Party, and the Parties shall then promptly enter into negotiations concerning the terms of such amendment, to the extent required for the Parties to be compliant with applicable law or regulation. If either Party requests an amendment to this Agreement pursuant to this Section 9 and (i) the other Party fails to promptly enter into negotiations to establish the terms of such amendment or (ii) the other Party refuses to enter into the agreed upon amendment following such negotiations or terminates such negotiations, then either Party may terminate this Agreement and that portion of the Services Contract that requires or permits Covered Entity to Disclose PHI to HCANJ, upon thirty (30) days' advance written notice to the other Party.

10. **No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and HCANJ and their respective heirs, representatives, successors and assigns, any rights, remedies, obligations or liabilities whatsoever, whether as creditor beneficiary, donor beneficiary or otherwise.

11. **Independent Contractor.** Nothing contained herein shall be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint venturers or any similar relationship, between the Parties hereto. Covered Entity and HCANJ acknowledge that HCANJ is an independent contractor, and not an agent, of Covered Entity, and HCANJ shall be solely liable for the payment of all income, unemployment, workers' compensation, Social Security insurance or similar taxes or assessments on the fees or other remuneration paid or to be paid to HCANJ by Covered Entity.

12. **Insurance.** Each Party represents and warrants that it currently maintains one or more liability insurance policies, with reputable carriers, at commercially reasonable coverage limits, based on the size, operations and business of such Party. Each Party shall maintain such coverage throughout the term of this Agreement.

13. **Miscellaneous.**

13.1 **Entire Agreement.** This Agreement supersedes all prior or contemporaneous agreements, written, oral or electronic, between Covered Entity and HCANJ with respect to the subject matter hereof and contains the entire understanding and agreement between the Parties with respect to the subject matter hereof.

13.2 **Governing Law.** This Agreement shall be governed by and construed in accordance with the applicable law governing the Legal Services Contract without regard to conflict of laws principles.

13.3 **Binding Effect.** This Agreement shall be binding upon and inure to the benefit of each Party hereto and their respective heirs, representatives, successors and assigns.

13.4 Mutual Negotiation. Each and every provision of this Agreement has been mutually negotiated, prepared and drafted and, in connection with the construction of any provisions hereof, no consideration shall be given to the issue of which Party actually prepared, drafted, requested or negotiated any provision of this Agreement, or its deletion.

13.5 Notices. Except as otherwise expressly permitted under Section 4.4.2.5, all notices, demands and other communications to be made by either Party under this Agreement (“Notice”) shall be given in writing and shall be deemed to have been duly given if personally delivered or sent by conHCANJed facsimile transmission, recognized overnight courier service which provides a receipt against delivery, or certified or registered mail, postage prepaid, return receipt requested, to the other Party at the address provided by such other Party to the first Party from time to time. Notice shall be deemed effective, if personally delivered, when delivered; if sent by conHCANJed facsimile transmission, when sent; if sent by overnight delivery, on the first business day after being sent; and if mailed in accordance herewith, at midnight on the third business day after such Notice is deposited with the U.S. Postal Service.

13.6 Modification. This Agreement shall be amended or superseded only by a written instrument that references this Agreement and is signed by both Parties.

13.7 Preservation of Rights. No delay on the part of any Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any waiver on the part of any Party of any such right, power or privilege, nor any single or partial exercise of any right, power or privilege, preclude any further exercise thereof or the exercise of any other such right, power or privilege. No term of this Agreement shall be deemed waived unless such waiver is in writing and such writing is signed by the Party waiving compliance with such term.

13.8 Provisions Severable. The provisions of this Agreement are independent of and severable from each other. No provision will be affected or rendered invalid or unenforceable by virtue of the fact that, for any reason, any one or more of any of the provisions of this Agreement may be deemed invalid or unenforceable in whole or in part.

13.9 Counterparts. This Agreement may be executed by the Parties hereto in separate counterparts, each of which when so executed shall be an original, but all such counterparts shall together constitute one and the same instrument. Each counterpart may consist of a number of copies hereof each signed by less than all, but together signed by all of the Parties. For purposes of this Agreement, signatures received electronically or by facsimile transmission shall be deemed original signatures.

13.10 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with, and is consistent with, HIPAA. In the event of any conflict with respect to the subject matter of this Agreement between the provisions of this Agreement and the Services Contract, the provisions of this Agreement shall be controlling and effective to the extent of such conflict. The headings in this Agreement are for convenience of reference only and shall not be used to interpret or construe its provisions. Furthermore, any reference in this Agreement to a section in HIPAA or any other law, regulation or guidance means such referenced authority as in effect from time to time. The words “include” or “including” are intended to be interpreted as if followed in each case by the words “without limitation”. For purposes of this Agreement,

unless the context of this Agreement clearly requires otherwise, (i) the word “or,” has the inclusive meaning represented by the phrase “and/or”; (ii) the word “hereof” shall have the same meaning as the phrase “of this Agreement”; and (iii) the word “hereunder” shall have the same meaning as the phrase “under this Agreement”.

13.11 Limitation on Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN NO EVENT SHALL EITHER PARTY HERETO BE LIABLE TO THE OTHER PARTY HERETO FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES, INCLUDING, DAMAGES FOR LOSS OF PROFITS, DATA OR USE, INCURRED BY THE OTHER PARTY OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

*(signature page follows)*

IN WITNESS WHEREOF, the Parties hereto have duly executed this Agreement on the day and year below written.

COVERED ENTITY	HCANJ FOUNDATION, INC.
By: _____	By: _____
Title: _____	Title: _____
Print Name: _____	Print Name: _____
Date: _____	Date: _____

*Signature Page to HIPAA Business Associate Agreement*



## **ADVANCED STANDING PROGRAM AGREEMENT**

**THIS ADVANCED STANDING PROGRAM AGREEMENT** (this “Agreement”) is entered into as of \_\_\_\_\_, 20\_\_ (the “Effective Date”) by and between **HCANJ FOUNDATION, INC.**, a New Jersey nonprofit corporation (the “Foundation”), having an address at c/o the Health Care Association of New Jersey, 4 AAA Drive, Suite 203, Hamilton, New Jersey 08691; and \_\_\_\_\_, a \_\_\_\_\_ (the “Operator”), having an address at \_\_\_\_\_ (the Foundation and the Operator, each, a “Party” and collectively, the “Parties”).

### **BACKGROUND**

A. The Foundation has been authorized by the New Jersey Department of Health (the “Department”) to offer to licensed New Jersey assisted living facilities, subject to, among other things, the prior approval of the Department, the opportunity to participate in the Program (as defined and more particularly described below).

B. The Operator is the current licensed operator of the assisted living residence located at \_\_\_\_\_, which is commonly known as “\_\_\_\_\_” (the “Facility”).

C. The Operator wishes to apply to the Department for approval for the Facility to participate in the Program, all in accordance with the terms and conditions of this Agreement.

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties intending to be legally bound, hereby covenant, acknowledge and agree as set forth below.

### **TERMS**

#### **1. PROGRAM DESCRIPTION**

A. **Overview of Program.** Pursuant to an agreement between the Department and the Foundation (the “Department Agreement”) the Foundation offers an Advanced Standing Pilot Program (the “Program”), through which the Department provides New Jersey assisted living residences the opportunity to apply for and be granted “Advanced Standing.” A Facility’s Advanced Standing status is for a one (1) year period only and a Facility is required to comply with the entire application process described in Section 1.D, below each year it wishes to achieve or retain Advanced Standing. In order to apply for Advanced Standing, a Facility must have been licensed for the two (2) immediately preceding years.

B. **Peer Review Panel.** In connection with the Program, the Foundation has

established a Peer Review Panel that includes: (i) the Department's Assistant Commissioner of Health Facilities, Evaluation and Licensing, or his or her designee; (ii) the New Jersey Ombudsman for the Institutionalized Elderly, or his or her designee; and (iii) five (5) public members, each of whom meets certain educational and/or licensure requirements and who has recent assisted living or nursing home working experience. The Peer Review Panel will select certain quality indicators for the Program. The Facility will be required to meet each of the quality indicators in order to meet the Program requirements. In addition, the Peer Review Panel requires all Advanced Standing participating facilities to provide a Disclosure Statement to every prospective resident and every new resident. The form of Disclosure Statement will be provided by the Foundation to the Facility.

**C. Patient Safety Organization and/or Long Term Care Trend Tracker.**

(i) Required Utilization. In order to participate in the Program, the Facility must utilize, and submit monthly data to, either the Garden State Patient Safety Center (the "PSO"), or The American Health Care/National Center for Assisted Living (AHCA/NCAL) Long Term Care Trend Tracker ("LTC TT"), including paying the applicable utilization fee in the amount specified in the PSO Documents (as defined in Section C.(ii)(a) below) or, with regard to the LTC TT Fee, as set forth on the attached Schedule 1.C.

(ii) PSO and LTC TT Requirements. Both the PSO and LTC TT require the Facility to submit data monthly, no later than the 15<sup>th</sup> of each month, as required by the Peer Review Panel.

(a) PSO. If the Facility chooses to utilize the PSO, AND the Facility is a new applicant to the Program, then as part of the Program application process, the Facility must submit the PSO Membership Agreement and all related documents (the "PSO Documents"), together with the PSO Fee, directly to the PSO. If the Facility chooses to utilize the PSO and (i) currently has the distinction of Advanced Standing; and (ii) is currently utilizing the PSO, then it must contract with and pay the PSO Fee directly to the PSO.

(b) LTC TT. If the Facility chooses to utilize LTC TT, it must register (or currently be registered) with LTC TT, as well as pay the LTC TT Fee to the Foundation as part of the Program application process. The Foundation will forward the LTC TT Fee to LTC TT.

**D. Application Process.** Applications for the Program (the "Program Application") will be accepted only during each annual open-enrollment period ("Open Enrollment Period"). The dates of each Open-Enrollment Period will be posted on the Health Care Association of New Jersey's website as follows: [www.hcanj.org](http://www.hcanj.org). In order to apply, a Facility must deliver to the Foundation during the applicable Open Enrollment Period, the following items (collectively, the "Application Package"), completed and executed, as applicable, by an authorized person on behalf of the Operator:

- (i) the Program Application;

- (ii) the Affidavit of Compliance;
- (iii) this Agreement;
- (iv) the Business Associate Agreement in the form attached to this Agreement as **Exhibit 1.D**;
- (v) a check made payable to “HCANJ Foundation, Inc.” in the aggregate amount of (a) the Program Fee (as defined in Section 3, below); plus (b) the LTC TT Fee, if applicable.

E. **Loss of Eligibility.** Any Facility that does not fully comply with the applicable requirements for the Application Process in Section 1.D, above, during the current Open Enrollment Period, shall not be eligible to apply for Advanced Standing until the commencement of the next Open-Enrollment Period.

(i) Any Facility that chooses to utilize the PSO must submit: (a) a complete, executed Application Package to the Foundation; and (ii) the PSO Documents, together with the full PSO Fee to the PSO.

(ii) Any Facility that chooses to utilize LTC TT must: (i) submit a complete, executed Application Package to the Foundation, together with the full LTC TT Fee; and (ii) be registered with LTC TT.

F. **Right to Decline.** The Foundation reserves the right to decline, at its sole discretion, to accept or process any Facility’s Application Package. If the Foundation declines to process an Application Package, it shall return the Application Fee and any LTC TT Fee, in full, that the Facility has paid and this Agreement shall immediately and automatically terminate.

G. **Review by Department.** The Foundation may forward to the Department for review the completed Program Application and Affidavit of Compliance that the Foundation accepts and agrees to process. The Department has agreed to review each Application submitted by the Foundation in order to determine the Facility’s appropriateness for Advanced Standing and to advise the Foundation, within thirty (30) days of receipt, of its determination, which shall be final and not appealable. If the Department determines that the Facility is not eligible to apply for Advanced Standing, the Foundation shall refund the Program Fee and, if applicable, the LTC TT Fee, in full, to the Facility and this Agreement shall automatically terminate.

H. **Survey Process.** If the Department determines that the Facility is eligible to apply for Advanced Standing, the terms and conditions set forth below shall apply.

(i) **Department Surveys.** The Department may conduct follow-up surveys as set forth in Section I below and shall continue to investigate all complaints made against the Facility during that period.

(ii) Compliance Visits. A consultant retained by the Foundation, who will have a specified minimum level of administrative, clinical or regulatory experience with regard to assisted living residences (a “Consultant”), shall conduct a compliance visit of the Facility. The Consultant may be accompanied by another member of the staff of the Foundation or of the Health Care Association of New Jersey (the Consultant and other members, collectively, the “Staff”). Compliance visits will be either scheduled or unscheduled.

In connection with the compliance visit, the Facility shall provide the Foundation for review those relevant materials requested by the Consultant or other Staff, such as a copy of the Facility’s policies and procedures and the like. The Foundation anticipates that, in the normal course, a compliance visit will be completed in one (1) day. If the Consultant determines that, due to conditions at the Facility, the compliance visit cannot be completed in one (1) day, he or she will advise the Facility and the Facility will have the option to either: (i) terminate the compliance visit; or (ii) agree to extend the compliance visit, as necessary, in which case the Facility shall be required to pay an Additional Program Fee (as defined in Section 3, below). If the Facility elects to terminate, rather than extend, the compliance visit (i) this Agreement shall immediately and automatically terminate and the Facility shall not be entitled to a refund of any portion of the Program Fee and/or, if applicable, the LTC TT Fee; and (ii) the Foundation shall notify the Department that the Facility has withdrawn from the Program and the Facility shall be returned to the Department’s routine survey schedule.

(iii) Post-Visit Consultant Meeting.

(a) Regulatory Compliance. At the conclusion of the compliance visit, the Consultant shall meet with the personnel designated by the Facility to discuss the Consultant’s findings and the corrective measures, if any, the Consultant determines the Facility must undertake in order to comply with all applicable regulatory requirements and/or to meet all quality indicators. The Consultant shall prepare at the meeting a written report of the foregoing (the “Evaluation Form”) and, with the participation of the Facility personnel, determine a date by which the Facility agrees to implement any required corrective measures, which timeframe shall be included in the Evaluation Form.

(b) Verification Visits. If the Consultant determines that a visit to the Facility is required in order to verify that the Facility has satisfactorily implemented the corrective measures specified in the Evaluation Form (a “Verification Visit”), the Consultant will notify the Facility and schedule a date for the Verification Visit, which will be conducted at no additional charge to the Facility. If, after the initial Verification Visit, the Consultant determines that an additional Verification Visit is required in order to verify the Facility’s compliance, the Consultant will notify the Facility and the Facility will have the option to (i) agree to the Additional Verification Visit, in which case the Facility shall be required to pay, in advance, an Additional Program Fee; or (ii) decline the Additional Verification Visit, in which case (a) this Agreement shall immediately and automatically terminate, (b) the Facility shall not be entitled to a refund of all or any portion of the Program Fee, the LTC TT Fee or any Additional Program Fee, and (c) the Foundation shall notify the Department that the Facility has withdrawn from the Program and the Facility shall be returned to the Department’s routine survey schedule.

(c) Consulting Services. At the meeting, the Consultant shall also be available to consult with the Facility personnel in order to address any issues they may reasonably request regarding assisted living matters, such as best practices, regulatory issues and the like. The Consultant may prepare a written report, either at or after the meeting, of the consulting services (the “Best Practices Report”). The decision of whether to prepare a Best Practices Report shall be at the Consultant’s sole discretion.

(iv) Award of Advanced Standing. If the Foundation determines that the Facility has, in a timely manner (a) satisfactorily complied with the corrective measures specified in the Evaluation Form, and (b) met all of its other obligations in order to be considered for Advanced Standing, including having reported monthly data to the PSO or LTC TT, having met all of the quality indicators and having continued to work cooperatively with the Foundation and/or staff of HCANJ, the Foundation shall notify the Department that the Facility has complied with all Program requirements.

Within thirty (30) days after receiving notification of compliance, the Department has agreed to notify the Foundation whether it has bestowed on the Facility the distinction of Advanced Standing. Each Facility that is awarded Advanced Standing will receive a Program Certificate and be permitted to advertise that it has achieved Advanced Standing. In addition, the Department has indicated that it will update its website to indicate that a Facility has achieved Advanced Standing, and HCANJ will also update its website to indicate the Advanced Standing status of any HCANJ member Facility. Despite the Foundation’s notification of the Department that the Facility has complied with all Program requirements, the Department retains at all times the right in its sole discretion to decline to award, and to withdraw at any time, Advanced Standing status to the Facility, which decision of the Department is final and not subject to appeal.

(v) Regulatory Compliance Dispute. If at any time the Foundation determines that the Facility has not timely (i) complied with all of the corrective measures specified in an Evaluation Form; (ii) met all of the quality indicators; and (iii) worked cooperatively with the PSO and/or LTC TT as well as Foundation and HCANJ staff, the Foundation shall promptly notify the Facility and the Facility may request, by written notification of the Foundation within five (5) business day thereafter, reconsideration of the Foundation’s determination (the “Reconsideration Period”). Upon timely receipt of a written request for reconsideration, the Foundation shall schedule a meeting between the Facility’s authorized personnel and one or more Staff (in lieu of, or in addition to, the Consultant that performed the compliance visit) to reconsider the Consultant’s findings and/or the Foundation’s determination of non-compliance with the specified corrective measures or failure to meet all of the quality indicators. Within five (5) business days thereafter, the Foundation shall notify the Facility of the Foundation’s determination upon reconsideration, which determination shall be final and not subject to appeal. If the Foundation determines that a Facility has failed to meet Program requirements the Foundation shall notify the Department, but not until the expiration of the Reconsideration Period or the Foundation’s final determination upon reconsideration, whichever is later.

I. Department Follow-Up Survey. The Department will conduct follow-up surveys

(a “Follow-Up Survey”) of a specified percentage of Facilities that have elected to participate in the Program in order to ensure that the compliance visits are conducted by the Foundation in accordance with N.J.A.C. 8:36. Each Follow-Up Survey shall be conducted within sixty (60) days after the Facility’s compliance visit.

2. **ADDITIONAL PROGRAM REQUIREMENTS**

A Facility that has achieved Advanced Standing shall maintain, on-site, the following:

A. a copy of each Evaluation Form, for a minimum of four (4) years from the date of such Evaluation Form, which it shall make available to the Department, at its request, during any Department survey, including a Follow-Up Survey; and

B. a general statement of Program criteria and the Consultant’s assessment of the Facility’s compliance with such criteria, which shall be available to the public, upon request.

The Facility is not required to make the Evaluation Form available, or disclose its contents, to the public and is not required to maintain or provide to the Department a copy of any Best Practices Report.

3. **PROGRAM FEE**

A. The Foundation’s fee to apply to participate in the Program is set forth on the attached **Schedule 3.A** (the “Program Fee”). As provided in Section 1.D.(iv), above, the Program Fee (and, if applicable, the LTC TT Fee) shall be paid by a single check made payable to “HCANJ Foundation, Inc.” and shall be submitted as part of the executed Application Package. If the Consultant determines that a compliance visit cannot be completed in one (1) day, the Facility will be obligated to pay an additional program fee in the amount set forth on the attached **Schedule 3.B** (the “Additional Program Fee”) for each additional hour the Consultant requires to complete the compliance visit. Neither the Program Fee, the LTC TT Fee or the Additional Program Fee, if applicable, shall be refundable, in whole or in part, except as otherwise expressly provided in this Agreement.

B. The Program Fee for both Members and Non-Members of the Health Care Association of New Jersey will be discounted for any Facility that is applying to participate in the Program for the fourth (4<sup>th</sup>) consecutive year. This is a one-time discount, available only in the fourth (4<sup>th</sup>) year of the Facility’s participation. Any such discount to which the Facility is entitled will be specified on the invoice for the Program Fee provided to the Facility.

4. **ACKNOWLEDGEMENT BY FACILITY**

The Facility hereby acknowledges and agrees, as follow:

A. The Foundation is required to, and shall, notify the Department of the occurrence of the following:

(i) a determination by the Foundation that any issues at the Facility of which the Foundation becomes aware in connection with the Program, including the compliance visit, pose a significant risk to patient health or safety; or

(ii) the withdrawal of the Facility from the Program.

B. At any time during the Facility's participation in the Program, Staff may visit, request documentation from the Facility or otherwise interact with the Facility as required in connection with the Program.

C. The Foundation retains the sole right to determine whether the Facility has timely complied with the requirements in any Evaluation Form or otherwise achieved compliance with all Program requirements, including meeting all quality indicators, monthly submission of data no later than the 15<sup>th</sup> of each month, paying any Additional Program Fee or failing to fully cooperate with the Consultant and other Staff, thereby unduly prolonging the process.

D. A Participating Facility shall remain subject to a Follow-Up Survey within sixty (60) days after the compliance visit, and to **complaint** surveys by the Department, at any time.

E. The Department retains the right, in its sole discretion, to make the final decision of whether a Facility is awarded Advanced Standing and retains the right, at all times to revoke such status, and the determination of the Department shall be final and non-appealable.

F. The Department and the Foundation have the right to terminate the Program with or without cause upon thirty (30) days written notice to the other party. If either the Department or the Foundation terminates the Department Agreement: (i) the Foundation shall notify the Facility and this Agreement shall automatically terminate; (ii) if the termination is by Foundation prior to the end of a Program year, the Foundation shall return to the Facility a prorated portion of its Program Fee (but not the LTC TT Fee) for that year; and (iii) if the Department terminates the Program, at any time, the Facility shall not be entitled to the return of any portion of the Program Fee, the LTC TT Fee or any Additional Program Fee.

G. Except as expressly provided in this Agreement in connection with: (i) a termination of the Program by the Foundation as set forth in Section 4.F.(ii), above; (ii) the Foundation's declining to accept the Facility's Application Package as set forth in Section 1.F, above; or (iii) the Department's determination that the Facility is not eligible to participate in the Application process as set forth in Section 1.D, above, the Facility shall not be entitled to a refund of all or any portion of the Program Fee or the LTC TT Fee.

H. The Foundation and the Staff are authorized by the Facility to communicate with the Department regarding the Facility as provided in this Agreement and in order to comply with all Program requirements.

I. The Facility shall redact any protected health information ("PHI"), to the greatest

extent possible, from all documentation that it provides to the Foundation, such that the documentation shall include only the minimum necessary PHI in accordance with, and pursuant to, the Health Insurance Portability and Accountability Act of 1996, as amended.

J. The Compliance Visit does not purport to be, and does not constitute, a survey by the Department. Accordingly, during a survey the Department may report deficiencies at the Facility that were not identified by the Consultant during a Compliance Visit. In addition, the Consultant may during a Compliance Visit identify compliance issues at the Facility that had not been identified during a previous Compliance Visit.

## 5. **FACILITY REPRESENTATIONS AND WARRANTIES**

The Facility hereby represents and warrants, as set forth below.

A. The Facility has been licensed for a period of at least two (2) years prior to the Effective Date.

B. There has been no material change in the Facility's physical plant since the Department and the New Jersey Department of Community Affairs (the "DCA") approved the Facility's architectural plans and specifications that has not been subsequently approved by the Department and the DCA. For purposes of the Section 5.B, a "material change" shall mean any change that would require the prior approval of the Department and/or the DCA.

## 6. **CONFIDENTIALITY**

The Foundation and the Association shall, and shall advise the Staff to, keep confidential and not disclose (including to the Peer Review Panel) the Facility's information that is contained in its LTC TT report, if applicable, or its Evaluation Form, or of which the Foundation becomes aware in connection with the Consulting Services, except to the extent required to be disclosed under applicable law or as ordered by a court of competent jurisdiction.

## 7. **RELEASE BY FACILITY**

The Facility hereby unconditionally and irrevocably release the Foundation, the Health Care Association of New Jersey, and all of their respective members, officers, employees, independent contractors, agents and representatives, including all Staff, from and against any and all claims, demands, causes of action, liabilities, damages and costs whatsoever arising out of or relating in any way to the Program, including (if applicable) any failure by the Facility to comply with the requirements of the PSO or any determination of the Foundation or the Department regarding the Facility's eligibility to participate in the Application process or its failure to achieve or maintain Advanced Standing.

## 8. **CHOICE OF LAW**

This Agreement shall be governed by, and construed in accordance with, the laws of the



State of New Jersey without regard to its principles of conflict of laws.

9. **NOTICES**

All notices and other communications required or permitted under this Agreement shall be in writing and delivered in person or sent by certified or registered mail, or federal express to the other Party at its address stated in the Introduction to this Agreement or such other address as may be specified to the other Party in the manner provided. Unless specified otherwise, any notice so given shall be deemed to have been given when so delivered or mailed.

10. **MISCELLANEOUS**

This Agreement shall constitute the entire agreement between the Parties with regard to its subject matter and shall supersede all previous negotiations, agreement and commitments and shall not be released, discharged, changed or modified in any manner, except by instruments signed by each of the Parties. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors but may not be assigned by either Party. Whenever used in this Agreement, the term “including” shall be deemed to mean “including without limitation.” This Agreement may be executed in two counterparts and/or by facsimile or electronic signature.

**[signatures on following page]**

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the Effective Date.

**[OPERATOR]**

By: \_\_\_\_\_  
Name/Title:

**HCANJ FOUNDATION, INC.**

By: \_\_\_\_\_  
Name/Title:

**SCHEDULE 1. A**

**LTC TT FEE**

The LTC TT Fee for Members and Non-Members of the Health Care Association of New Jersey is, as follows:

**MEMBERS**

no additional cost

**NON-MEMBERS**

\$21/licensed bed  
(not to exceed \$2,940)

**EXHIBIT 1.D**

**BUSINESS ASSOCIATE AGREEMENT**

[attached]

**SCHEDULE 3. A**

**PROGRAM FEE**

The Program Fee for Members and Non-Members of the Health Care Association of New Jersey is, as follows:

**MEMBERS**

\$3,000

**NON-MEMBERS**

\$3,700

**SCHEDULE 3.B**

**ADDITIONAL PROGRAM FEE**

The Additional Program Fee for Members and Non-Members of the Health Care Association of New Jersey is, as follows:

**MEMBERS**

\$150/hour

**NON-MEMBERS**

\$200/hour