

Provider Agreement

In consideration for being permitted to participate as a Provider in the BeWell Financing Program (the "Program") offered by FTL Capital Partners, LLC, d/b/a FTL Finance ("FTL"), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the undersigned Provider ("Provider") hereby enters into this Provider Agreement (this "Agreement") as of _____, 201__ as follows:

1. **TERM.** This Agreement shall be effective on the date listed above and shall remain effective until one party gives the other party written notice of its decision to terminate this Agreement.

2. **WARRANTY.** Provider represents and warrants that the information contained on the New Provider Registration Form is correct and complete.

3. **PROVIDER COVENANTS.**

(a) Provider agrees to honor without discrimination any valid customer ("Customer") account when properly presented as payment from patients or clients for purchases, and will maintain a policy that shall not discriminate among patients or clients seeking to make purchases through the use of a Customer account. Provider will promote the Program to encourage patients or clients who do not have a Customer account to apply for one and to encourage Customer account holders who have a Customer account to use it to purchase certain approved products ("Products") and medical services ("Financed Services") from Provider for which FTL might provide financing.

(b) Without limiting the foregoing, the following shall apply with respect to the Program:

(1) Provider will promote the Program by directing the Customer to the Program website at www.bewellftl.com (or such other website instructed by FTL in accordance with FTL's Instructions and Procedures). If Products or Financed Services are sold to a person or to be sold to a person who does not then have, but wishes to obtain a Customer account, the potential Customer shall apply for financing at the website listed above. If the Customer wishes not to use the website, Provider shall print the application, disclosures, and all other relevant materials and present them to the Customer for review and to be manually signed, at which point Provider shall submit such items to FTL at the fax number or email address provided by FTL to Provider.

(2) FTL will review the application and, if approved in FTL's discretion, FTL will deliver an approval number electronically to the Customer approving the financing of Products and Financed Services up to an approved maximum dollar amount. Customer must present the approval number to Provider. Provider may also access the approval number through the Provider's online dashboard on the Program website. Upon confirmation of the approval number, Provider will receive confirmation of the approved maximum amount for the Products and Financed Services. The approval number is valid only for the Products and Financed Services and any remaining balance may not be carried over to future Products or Financed Services. Each Contract (as defined in Section 3(e), below) is for closed-end (and not revolving) credit. If the approved

maximum amount is insufficient to cover the total actual cost of the Products and Financed Services, Customer may apply for additional funds.

(3) Provider shall submit a true and accurate invoice (each an "Invoice") to FTL promptly upon completion of the Financed Services and Products sale containing ONLY (1) the name of the patient, (2) the date of the Financed Services and Products sale, (3) the applicable approval number, (4) the actual cost of the Products and Financed Services, and (5) such other information requested by FTL pursuant to its Instructions and Procedures. In addition to Provider's other obligations in Section 3(c) of this Agreement, Provider also agrees that in no event shall Provider submit information about Customer to FTL if such information would allow FTL to ascertain the medical diagnosis or treatment of a Customer, and Provider will identify purchases of health treatments, procedures and products on numbered Invoices by date and purchase price and not descriptions of the Products and Financed Services provided.

(c) Provider will comply with all applicable Federal, state and local laws, ordinances, rules and regulations with respect to the provision of Financed Services and sales of Products. Provider is and its personnel shall remain duly licensed to practice in Provider's area of practice and specialty. Provider represents and warrants that neither Provider nor any of its personnel are currently or will be at any time this Agreement is in effect excluded from participation as a provider in any Federal or state healthcare program and will notify FTL as soon as practicable of any exclusion in the future.

(d) Provider agrees not to disclose Customer information to any third party or any employee of Provider who does not have a business need to know such information. Provider further agrees not to retain in any format, electronic or otherwise, any Customer information beyond what is required of Provider under this Agreement. Provider is to treat all information furnished by FTL or its managers, members, officers, employees, affiliates or representatives as confidential and shall not disclose any of such information to any third party or employee of Provider who does not have a business need to know such information without prior written consent granted by FTL. FTL is hereby entitled to seek equitable relief, including but not limited to, injunctive relief, in addition to other remedies to which FTL may be entitled, to enforce any provisions of this Agreement. Provider agrees not to use or disclose information described in this Section 3(d) other than to carry out the purposes of this Agreement. Provider will obtain FTL's written consent before allowing any nonpermanent employee of Provider (such as a temporary employee or vendor) access to Customer information even if such access is for purposes of this Agreement. Provider agrees to take appropriate security measures to protect any information in this Section 3(d) against accidental or unlawful destruction of any such information. In the event that Provider discovers or suspects any such information has been disclosed to or accessed by a third party, Provider shall immediately notify FTL of the disclosure to a third party and assist in investigating the unauthorized disclosure to determine the magnitude and impact of such disclosure. Provider shall promptly notify FTL of any unauthorized access to Customer information and take appropriate action to prevent further unauthorized access to Customer information while Customer information is in Provider's possession or while it is in transit to FTL. Provider shall cooperate with FTL, and shall pay all related expenses, provide any notices and information regarding such unauthorized access to appropriate law enforcement agencies and government regulatory authorities, and affected patients or clients which FTL, in its sole

discretion, deems necessary. At Provider's expense and in consultation with FTL, Provider shall provide such affected patients or clients with access to credit monitoring services, credit protection services, credit fraud alerts, or similar services which FTL, in its sole discretion, deems necessary to protect such affected patients or clients.

(e) Each agreement ("Contract") entered into between Provider and a Customer for the provision of the Financed Services and sale of Products will be correct, accurate, and complete and will comply in all material respects with, and was created in accordance with and does not contravene any, applicable state and federal laws and regulations (including, without limitation, consumer laws, healthcare compliance laws, and data and information security laws), or any agreement with any third party (including, without limitation, contracts with third party payors). At the time financing is provided by FTL to the Customer, no Contract is or will be subject to any right of rescission, offset, set-off, counterclaim, cooling-off period, claim or defense (collectively, a "Defense"), nor will the operation of any of the terms of any Contract, or the exercise of any right thereunder, render either the Contract unenforceable in whole or in part, or subject the Contract to any Defense, and no such Defense has been asserted with respect thereto. Provider has not made and will not make any false or misleading statements to the Customer in connection with the Contract, Products or Financed Services, including but not limited to false and misleading statements related to the performance and benefits of the Products or Financed Services.

(f) Each Contract and the signature thereon is and will be genuine and is the legal, valid and binding obligation of the Customer and Provider and is enforceable in accordance with its terms.

(g) At the time of the provision of the Financed Services and sale of Products, they will have been performed and completed in accordance with applicable industry and local standards and best practices.

(h) Provider will retain any manually signed originals of Contracts and other related documentation (including applications), or if no such originals exist because the Customer signed the application electronically, a copy thereof, for seven (7) years (or such other time period FTL notifies Provider of) from the date the date Provider has performed all of its obligations to the Customer in connection with such Contract, and in accordance with FTL's Instructions and Procedures. If FTL requests copies of any such retained Contract and related documentation, Provider shall deliver it to FTL within seven (7) days after receiving the request.

(i) Presentment of an Invoice will constitute an endorsement and assignment to FTL of Provider's rights against the Customer. Provider will allow FTL to conduct regular audits of any Contracts and related documentation retained by Provider at any location where FTL may conduct audits during Provider's regular business hours as often as FTL believes is necessary, and Provider will allow FTL to conduct an audit any time with 24 hours' notice. If FTL requests, Provider will execute a separate assignment of any Contract and related documentation and FTL is authorized to place Provider's endorsement on any Contract or related documentation or any check or similar instrument related thereto at any time. Payment on a Contract or related documentation shall not constitute a waiver by FTL of any of its rights. All figures are subject to final audit and checking by FTL.

4. RIGHTS TO FTL

(a) If FTL determines, in FTL's sole discretion, that: (1) Provider's financial condition has deteriorated; (2) Provider has breached this Agreement; (3) FTL has experienced unusual levels of Customer disputes or complaints; (4) the number of Invoices presented to FTL is substantially different from historical trends; (5) FTL has become aware of some other fact, event or circumstance related to this Agreement that leads FTL to establish a reserve account ("Reserve Account"); or (6) if a notice of termination has been provided by one party to the other in connection with this Agreement, then Provider must pay FTL upon FTL's demand, or FTL may withhold from any amounts FTL owes Provider for Invoices presented FTL, or FTL may debit Provider's bank account an amount FTL deems necessary to fund a Reserve Account. FTL may charge to the Reserve Account any amount Provider owes FTL. Provider's obligations to FTL shall not be limited by the amount held in the Reserve Account.

(b) FTL will pay Provider the net amount of all Invoices presented to FTL by Provider in accordance with FTL's Instructions and Procedures and accepted by FTL during the period less the applicable discount rate and any other fees associated with the transaction.

(c) FTL may refuse to accept, or having accepted, may revoke acceptance of any Invoice presented by Provider if Provider has presented the Invoice to FTL in violation of this Agreement, or any other Agreement, or FTL's Instructions and Procedures. If FTL revokes acceptance of any Invoice, Provider will pay FTL on demand the amount of the Invoice affected plus any finance charges related thereto.

(d) FTL has the sole right to collect or receive payments on Invoice(s) presented to FTL unless they are rejected or revoked by FTL. Provider agrees not to attempt to collect or accept any payments that FTL has the right to receive. Provider authorizes FTL to do every act and thing necessary to collect and discharge Invoices and Contracts, including the right to endorse any check or draft payable to Provider in connection with such Invoices and Contracts.

5. INTELLECTUAL PROPERTY RIGHTS. Upon prior written consent of FTL, during the term of this Agreement, FTL hereby grants to Provider a limited, non-exclusive, non-transferable, right to use materials created or provided by FTL to Provider, for use in connection with the Program and any other materials that are copyrighted or capable of being copyrighted by FTL ("FTL Provided Materials"), subject to the terms and conditions of this Agreement, including the following. (i) Provider may not modify, change, alter, delete from or add to FTL Provided Materials, including but not limited, to any change in text, graphics, color, size or position; (ii) Provider shall not use or disclose the FTL Provided Materials, in whole or in part, for the purpose of offering a product that competes with FTL; (iii) Provider shall use the FTL Provided Materials in the manner specified by FTL or as otherwise agreed to by the parties in writing; (iv) FTL retains all right, title and interest in and to the FTL Provided Materials; (v) FTL Provided Materials are the sole property of FTL and any and all uses by Provider of the FTL Provided Materials shall inure to the benefit of FTL; (vi) any rights to the FTL Provided Materials are limited to the express terms of the license in this Section 5; (vii) Provider will not take steps that would cause one to believe that materials created or provided by Provider ("Provider Provided Materials") were created or provided by FTL or that FTL endorses the Provider Provided Materials; and (viii) FTL will at all times be the sole and exclusive owner of

all such FTL Provided Materials. No other rights to the FTL Provided Materials, express or implied, are granted by virtue of this Agreement.

6. INDEMNIFICATION. Provider agrees to indemnify, defend and hold harmless FTL, its officers, directors, managers, members, employees and agents (the “FTL Parties”) from and against any and all claims, losses, damages, demands, suits, costs, expenses (including attorneys’ fees and court costs) incurred by any of the FTL Parties arising out of or related to a breach of the Provider’s representations, warranties and/or covenants herein, or negligent acts or omissions by Provider or its officers, directors, managers, members, employees, or agents, or any breach of Provider’s obligations hereunder. Sections 3(d), 3(h), 3(i), 4(d), 6, and 8 of this Agreement shall survive any termination of this Agreement.

7. ASSIGNMENT. Provider will not assign (including by operation of law), transfer or convey this Agreement without FTL’s prior written consent.

8. MISCELLANEOUS.

(a) Provider is not an agent or partner of FTL for any purpose whatsoever and may not bind FTL in any manner whatsoever. Further, Provider agrees that FTL is not a “business associate” as the term is defined and used under the Health Insurance Portability and Accountability Act of 1996 (otherwise known as HIPAA) and related laws, interpretations and regulations (including 45 C.F.R. Parts 160 and 164). Notwithstanding the foregoing, at FTL’s request, FTL and Provider shall sign and deliver a Business Associate Agreement in the form attached hereto as Exhibit A.

(b) If any part of this Agreement is found to be illegal or unenforceable, then that part will be curtailed only to the extent necessary to make it, and the remainder of this Agreement legal and enforceable.

(c) This Agreement shall be construed in accordance with the laws of the State of Missouri except for the laws regarding conflict of laws. The parties waive any right to a jury trial, and agree that the state and federal courts situated in St. Louis, Missouri shall have exclusive jurisdiction over all disputes relating to this Agreement.

(d) “Instructions and Procedures” means any instruction or procedures that FTL communicates to the Provider to update Provider from time to time.

(e) This Agreement and the Application supersede all prior agreements, representations, promises and statements, written or oral, made in connection with the subject matter of this Agreement and the Application and no prior agreement, representation, promise or statement not written in this Agreement will be binding on the parties.

(f) A signature in electronic form (and in compliance with the E-Sign Act) shall be considered a “signature” for purposes of this Agreement and a document signed with a signature in electronic form (and in compliance with the E-Sign Act) shall be considered to be “signed” for purposes of this Agreement.

(g) In no event shall Provider provide any refunds or rebates to any Customer with respect to Financed Services or Products.

[Signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

Provider, a _____

FTL Capital Partners, d/b/a FTL Finance,
a Missouri limited liability company

By: _____
Name: _____
Title: _____

By: _____
Name: _____
Title: _____

[Signature page to Provider Agreement]

EXHIBIT A
FORM OF BUSINESS ASSOCIATE AGREEMENT

See attached.

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is dated as of _____, 201__ and is by and between FTL Finance, LLC (“FTL”) and _____ (“Provider”).

WHEREAS, FTL and Provider, are parties to a Provider Agreement (“Provider Agreement”) whereby FTL provides certain services to the Provider’s patients.

WHEREAS, the HIPAA Rules (as defined below) may require FTL and Provider to enter into a “business associate agreement” to comply with applicable sections of the HIPAA Rules; and

WHEREAS, the parties have elected to enter into such this Business Associate Agreement in connection therewith.

1. Definitions.

- (a) “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.
- (b) “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.
- (c) “Electronic Health Record” shall mean an electronic record of health-related information on an Individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- (d) “Electronic PHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.
- (e) “HIPAA Rules” means the collective privacy, transaction and code sets, and security regulations promulgated pursuant to the Health Insurance Portability and Accountability Act, as codified at 45 C.F.R. Parts 160, 162 and 164, as amended from time to time.
- (f) “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- (g) “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E, as amended from time to time.
- (h) “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by FTL from or on behalf of Provider.
- (i) “Required by Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.
- (j) “Secretary” shall mean the Secretary of the Department of Health and Human Services or his/her designee.

(k) “Security Incident” shall have the same meaning as “security incident” in 45 C.F.R. § 164.304

(l) “Security Standards” shall mean the Security Standards, 45 C.F.R. Part 164, Subpart C, as amended from time to time.

(m) “Transactions Standards” shall mean the Standards for Electronic Transactions, 45 C.F.R. Part 162, Subpart I, as amended from time to time.

(n) “Unsecured PHI” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402.

(o) Capitalized terms used, but not otherwise defined, in this Business Associate Agreement shall have the same meaning as those terms in the HIPAA Rules.

2. General Use and Disclosure Provisions. FTL and Provider acknowledge and agree as follows:

(a) *Use or Disclosure.* FTL agrees not to use or further disclose PHI other than as expressly permitted or required by this Business Associate Agreement or the HIPAA Rules or as Required by Law.

(b) *Minimum Necessary.* FTL will take reasonable efforts to limit requests for, use and disclosure of PHI to the minimum necessary to accomplish the intended request, use or disclosure.

(c) *Specific Use or Disclosure Provisions.* Except as otherwise limited in this Business Associate Agreement, FTL may use and disclose PHI to properly provide, manage and administer the services required under the Provider Agreement and consistent with applicable law to assist Provider in its operations, as long as such use or disclosure would not violate the HIPAA Rules if done by Provider, or such use or disclosure is expressly permitted in (i) through (iii) below:

(i) FTL may use PHI for the proper management and administration of FTL or to carry out FTL’s legal responsibilities.

(ii) FTL may disclose PHI to third parties for the proper management and administration of FTL or to carry out the legal responsibilities of FTL provided that the disclosures are Required by Law, or FTL obtains reasonable assurances from the person to whom the information is disclosed that: (A) the information will remain confidential, (B) the information will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and (C) the person notifies FTL of any instances of which it is aware in which the confidentiality of the information has been breached.

(iii) FTL may use PHI to perform Data Aggregation services on behalf of Provider as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

(d) *Reporting.* FTL agrees to promptly notify the Provider if FTL has knowledge that PHI has been used or disclosed by FTL in a manner that violates this Business Associate Agreement. To the extent that FTL creates, receives, maintains or transmits Electronic PHI, FTL agrees to report promptly to the Provider any Security Incident, as determined by FTL, involving PHI of which FTL becomes aware. FTL shall comply with 45 C.F.R. § 164.402 and shall, following the

discovery of a Breach of Unsecured PHI, notify the Provider of such Breach, in accordance with 45 C.F.R. § 164.410.

(e) *Safeguards.* FTL agrees to use appropriate safeguards, consistent with applicable law, to prevent use or disclosure of PHI in a manner that would violate this Business Associate Agreement. FTL shall provide Provider with such information concerning such safeguards as Provider may reasonably request from time to time. To the extent that FTL creates, receives, maintains or transmits Electronic PHI, FTL agrees to use appropriate administrative, physical and technical safeguards, and comply with the Security Standards, to protect the confidentiality, integrity and availability of the Electronic PHI that FTL creates, receives, maintains or transmits on behalf of Provider.

(f) *Mitigation.* FTL agrees to mitigate, to the extent practicable, any harmful effect that is known to FTL of a use or disclosure of PHI by FTL in violation of this Business Associate Agreement or the Provider Agreement.

(g) *Subcontractors and Agents.* FTL agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created or received by FTL on behalf of Provider, agrees, in writing, to the same restrictions, terms and conditions that apply through this Agreement to FTL with respect to such information, including the requirement that it implement reasonable and appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164, to protect any Electronic PHI that is disclosed to it by FTL.

(h) *Access.* Within fifteen (15) business days of a request by Provider, FTL shall provide access to Provider to PHI in a Designated Record Set in order to meet the requirements under 45 C.F.R. § 164.524. If FTL receives a request directly from an Individual, or if requested by Provider that access be provided to the Individual, FTL shall provide access to the Individual to PHI in a Designated Record Set within thirty (30) days in order to meet the requirements under 45 C.F.R. § 164.524.

(i) *Amendment.* Within sixty (60) days of a request by Provider or subject Individual, FTL agrees to make any appropriate amendment(s) to PHI in a Designated Record Set that Provider directs or agrees to pursuant to 45 C.F.R. § 164.526.

(j) *Accounting.* Within thirty (30) days of a proper request by Provider, FTL agrees to document and make available to Provider, for a reasonable cost-based fee (under conditions permitted by HIPAA if an Individual requests an accounting more than once during a twelve month period), such disclosures of PHI and information related to such disclosures necessary to respond to such request for an accounting of disclosures of PHI, in accordance with 45 C.F.R. § 164.528. Within sixty (60) days of proper request by subject Individual, FTL agrees to make available to the Individual the information described above. FTL shall retain copies of any accountings for a period of six (6) years from the date the accounting was created.

(k) *Restrictions on Use or Disclosure.* Within fifteen (15) business days of a request of Provider, FTL agrees to consider restrictions on the use or disclosure of PHI agreed to by Provider on behalf of an Individual in accordance with 45 C.F.R. § 164.522.

(l) *Audit and Inspection.* FTL agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by FTL on behalf of Provider, available to Provider within ten (10) business days, or at the request of Provider or the Secretary, to the Secretary in a time and manner directed by the Secretary, for purposes of the

Secretary determining Provider's compliance with the HIPAA Rules. Any release of information regarding FTL's practices, books and records is proprietary to FTL and shall be treated as confidential and shall not be further disclosed without the written permission of FTL, except as necessary to comply with the HIPAA Rules.

(m) *Privacy of Individually Identifiable Health Information.* To the extent FTL is to carry out one or more of Provider's obligations under Subpart E of 45 C.F.R. Part 164, FTL agrees to comply with the requirements of subpart E that apply to the covered entity in the performance of such obligations.

3. Provider Obligations.

(a) Provider shall notify FTL of any limitation(s) in the notice of privacy practices of Provider in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect FTL's use or disclosure of PHI.

(b) Provider shall notify FTL of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect FTL's use or disclosure of PHI.

(c) Provider shall notify FTL of any restriction to the use or disclosure of PHI that Provider has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect FTL's use or disclosure of PHI.

(d) Provider shall not request that FTL use or disclose PHI in any manner that would exceed that which is minimally necessary under the HIPAA Rules or that would not be permitted by a Covered Entity.

(e) Provider agrees that it will have entered into "Business Associate Agreements" with any third parties (e.g., case managers, brokers or third party administrators) to which Provider directs and authorizes FTL to disclose PHI.

4. Transactions Standards. The HIPAA Rules provide for certain Transactions Standards for transfer of data between trading partners. Each party hereby agrees that it shall not change any definition, data condition or use of a data element or segment in a standard, add any data elements or segment to the maximum defined data set, use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the implementation specification, or change the meaning or intent of the implementation specification.

5. Material Breach of Business Associate Agreement; Termination.

(a) Without limiting the termination rights of the parties pursuant to the Provider Agreement, upon either party's knowledge of a material breach by the other of this Business Associate Agreement, the non-breaching party shall notify the breaching party of such material breach and the breaching party shall have thirty (30) days to cure such material breach. In the event the breach is not cured, or cure is infeasible, the non-breaching party shall have the right to immediately terminate this Business Associate Agreement and the Provider Agreement or if cure of the material breach is infeasible, report the violation to the Secretary.

(b) To the extent feasible, upon termination of the Provider Agreement for any reason, FTL shall, and shall cause any subcontractors and agents to, return or destroy and retain no copies of

all PHI received from, or created or received by FTL on behalf of, Provider. If FTL determines, in its sole discretion, that return or destruction of such information is not feasible, FTL shall continue to limit the use or disclosure of such information as set forth in this Agreement as if the Provider Agreement had not been terminated.

6. Indemnification. Each party (the “Indemnifying Party”) shall indemnify and hold the other party and its officers, directors, employees and agents (each an “Indemnified Party”) harmless from and against any claim, cause of action, liability, damage, cost or expense (“Liabilities”) to which the Indemnified Party becomes subject to as a result of third party claims (including reasonable attorneys’ fees and court or proceeding costs) brought against the Indemnified Party, which arise as a result of: (i) the material breach of this Business Associate Agreement by the Indemnifying Party; or (ii) the gross negligence or willful misconduct of the Indemnifying Party, except to the extent such Liabilities were caused by the Indemnified Party. A party entitled to indemnification under this Section 6 shall give prompt written notification to the Indemnifying Party of the commencement of any action, suit or proceeding relating to a third party claim for which indemnification is sought, subject to applicable confidentiality constraints. The Indemnifying Party shall be entitled to assume control of the defense of such action, suit, proceeding or claim with competent counsel of its choosing. Indemnification shall not be required if any claim is settled without the Indemnifying Party’s consent, which such consent shall not be unreasonably withheld. NOTWITHSTANDING THE FOREGOING PROVISIONS OF THIS SECTION 6, IN NO EVENT WILL AN INDEMNIFYING PARTY BE LIABLE TO AN INDEMNIFIED PARTY UNDER CONTRACT, TORT, OR ANY OTHER LEGAL THEORY FOR INCIDENTAL, CONSEQUENTIAL, INDIRECT, PUNITIVE, OR SPECIAL LOSSES OR DAMAGES OF ANY KIND.

7. Miscellaneous.

(a) **Amendment.** The parties acknowledge that the foregoing provisions are designed to comply with the mandates of the HIPAA Rules. FTL shall provide written notice to Provider to the extent that any regulation or amendment to regulations promulgated by the Secretary requires changes to this Business Associate Agreement. Such written notice shall include any additional amendment required by any such final regulation and the Business Associate Agreement shall be automatically amended to incorporate the changes set forth in such amendment provided by FTL to Provider, unless Provider objects to such amendment in writing within fifteen (15) days of receipt of such written notice. In the event that Provider objects timely to such amendment, the parties shall work in good faith to reach agreement on an amendment to the Business Associate Agreement that complies with the final regulations. If the parties are unable to reach agreement regarding an amendment to the Business Associate Agreement within thirty (30) days of the date that FTL receives any written objection from Provider, either FTL or Provider may terminate this Business Associate Agreement upon ninety (90) days written notice to the other party. Any other amendment to this Business Associate Agreement unrelated to compliance with applicable law and regulations shall be effective only upon execution of a written agreement between the parties.

(b) **Effect on Provider Agreement.** Except as relates to the use, security and disclosure of PHI and electronic transactions, this Business Associate Agreement is not intended to change the terms and conditions of, or the rights and obligations of the parties under, the Provider Agreement.

(c) **No Third-Party Beneficiaries.** Nothing express or implied in the Provider Agreement or in this Business Associate Agreement is intended to confer, nor shall anything herein confer,

upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations or liabilities whatsoever.

(d) **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits both parties to comply with the HIPAA Rules.

(e) **Effective Date.** This Business Associate Agreement shall be effective as of the effective date of the Provider Agreement.

IN WITNESS WHEREOF, the undersigned have executed this Business Associate Agreement as of the day and year first set forth above.

FTL.
FTL Finance, LLC

Provider

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____