

EXHIBIT 2
LEGAL TERMS

1. **Definitions.** Unless otherwise defined below, capitalized terms used herein have the meanings set forth in **Exhibit 1 (Definitions)**.
2. **References.** Except where otherwise indicated, all references in this Exhibit to Sections or Attachments are to Sections of or Attachments to this Exhibit.
3. **Term; Termination; Remediating Underperformance.**
 - 3.1 *Term.* The term of the Agreement will commence on the Effective Date and, unless earlier terminated in accordance with this Section [X], shall continue in effect through December 31, 2019.
 - 3.2 *Termination.*
 - 3.2.1. The Agreement will automatically terminate in the event of the termination of the DSRIP Agreement between the State and SBH.
 - 3.2.2. Participant may terminate the Agreement on 60 days' written notice to SBH in the event that (i) Participant determines, in its sole discretion, that an amendment pursuant to Section 11.2 is unacceptable or (ii) a change to the Processes and Guidelines will have a material adverse impact on Participant's performance of DSRIP-related activities under the Agreement.
 - 3.2.3. SBH may terminate the Agreement in the event Participant: (i) files a voluntary petition in bankruptcy or is adjudicated as bankrupt or insolvent; or (ii) materially breaches any term of the Agreement (including by failing to comply with a Corrective Action Plan, as described in Section [X]), and fails to cure such breach within a time specified by SBH or its designee, which shall be commercially reasonable in the context of the breach.
 - 3.3 *Remediating Underperformance.* SBH or its designee will regularly monitor participation by Participant in the Projects.
 - 3.3.1. In the event that SBH or its designee, in its sole discretion, determines that Participant is not performing adequately with respect to the requirements set forth in the Agreement, SBH or its designee, through the Executive Committee, will issue to Participant (a) a written warning describing the underperformance and (b) if warranted, a demand for a Corrective Action Plan.
 - 3.3.2. Within 30 days after receipt of a demand for a Corrective Action Plan, Participant will provide to the Executive Committee for review and approval by the Executive Committee a draft Corrective Action Plan. The Corrective Action Plan will set forth (a) milestones to be completed by Participant, (b) dates by which each such milestone must be completed, (c) metrics for determining whether

Participant has corrected its underperformance and (d) such other Participant obligations as may be determined by the Executive Committee.

3.3.3. Once the Executive Committee approves the Corrective Action Plan, Participant will be responsible for implementation of the Corrective Action Plan.

3.3.4. Participant will submit to SBH or its designee reports describing the status of compliance with the Corrective Action Plan, including, attestations that Participant has completed each milestone by the milestone completion date, as applicable.

3.3.5. Failure to submit, implement or comply with the Corrective Action Plan shall constitute a breach of the Agreement.

3.4 *Effect of Termination.* In the event that the Agreement is terminated for any reason, Participant will not be entitled to any DSRIP Partner Payments after the effective date of termination, except to the extent any PSO Fund Payments directly relate to Participant's performance prior to the effective date of termination.

4. Representations, Warranties, and Covenants of the Parties

4.1 *Covenant with Respect to Excluded Parties; Investigations.* Participant warrants and represents that at the time of entering into this Agreement, neither it nor any of its employees, contractors, subcontractors or agents are ineligible persons identified on the General Services Administrations' List of Parties Excluded from Federal Programs (available through the internet at <http://www.epls.gov/> or its successor) and the HHS/OIG List of Excluded Individuals/Entities (available through the internet at <http://www.oig.hhs.gov/fraud/exclusions.asp> or its successor), or as otherwise designated by the Federal government. Participant shall screen its employees, contractors, subcontractors, and agents against such lists on a monthly basis. Participant shall have an obligation to (1) immediately notify SBH of such ineligible person status and (2) within ten (10) days of such notice, remove such individual from responsibility for, or involvement with, SBH's business operations related to this Agreement. Participant further warrants and represents that at the time of entering into this Agreement, to the best of its knowledge, neither it nor any of its employees, contractors, subcontractors, or agents are currently the subject of any investigation by the HHS/OIG, the New York State Office of the Medicaid Inspector General, or a similar investigative body with regard to any action that could lead to any of the foregoing being made ineligible to participate in federal or state health care programs. Participant shall screen its employees, contractors, subcontractors, and agents against such lists on a monthly basis.. Throughout the Term, Participant shall have an obligation to immediately notify SBH of any such investigation.

4.2 *Representations and Warranties by SBH.* SBH hereby represents and warrants to Participant:

- 4.2.1. that (i) it has all requisite corporate power and authority to execute and deliver the Agreement, to consummate the transactions contemplated hereby and thereby, to grant any rights it purports to grant hereunder, and to perform its obligations hereunder in accordance with the terms hereof and (ii) all necessary action required to have been taken by it or on its behalf has been taken to authorize the execution and delivery of the Agreement and the other agreements contemplated hereby, the consummation of the transactions contemplated hereby and thereby, the granting of any rights it purports to grant hereunder and thereunder, and the performance of its obligations hereunder and thereunder.
- 4.2.2. that the execution, delivery and performance of its obligations under the Agreement does not and will not (a) violate or conflict with any provision of its respective articles of incorporation or bylaws, (b) violate any laws or other requirements of the State or any other state or federal regulatory body with jurisdiction over the Agreement, or (c) conflict with, result in a breach of, constitute a default under or require the consent of any counterparty (which consent has not been obtained) to any agreement to which it is a party or by which it is bound.
- 4.3 *Representations and Warranties by Participant.* Participant hereby represents and warrants to SBH:
- 4.3.1. that (i) it has all requisite corporate power and authority to execute and deliver the Agreement, to consummate the transactions contemplated hereby and thereby, to grant any rights it purports to grant hereunder, and to perform its obligations hereunder in accordance with the terms hereof and (ii) all necessary action required to have been taken by it or on its behalf has been taken to authorize the execution and delivery of the Agreement and the other agreements contemplated hereby, the consummation of the transactions contemplated hereby and thereby, the granting of any rights it purports to grant hereunder and thereunder, and the performance of its obligations hereunder and thereunder.
- 4.3.2. that the execution, delivery and performance of its obligations under the Agreement does not and will not (a) violate or conflict with any provision of its respective articles of incorporation or bylaws, (b) violate the any laws or other requirements of the State or any other state or federal regulatory body with jurisdiction over the Agreement, or (c) conflict with, result in a breach of, constitute a default under or require the consent of any counterparty (which consent has not been obtained) to any agreement to which it is a party or by which it is bound.

5. Record Retention, Audits & Reports

- 5.1 *Record Retention.* Both Parties shall retain records related to the subject matter of the Agreement (“Retained Records”) in accordance with all applicable Legal Requirements. To the extent not in violation of privacy rights of third parties and provided that neither Party shall have an obligation to waive applicable attorney-client,

auditor-client or other legal privilege, each Party shall at all times during the Term, and thereafter, make the Retained Records available, or cause the Retained Records to be made available, to the other Party for inspection by its authorized representatives during regular business hours, at the place where such Retained Records are located. The requesting Party shall give the other Party ten (10) days' prior written notice of its need for any such records, and any such inspection shall be conducted without material interference with the operations of such other Party.

- 5.2 *Regulatory Audits.* In the case of an audit (a "Regulatory Audit") performed by or on behalf of any state or federal regulatory body, each Party will provide to the regulatory body or to the other Party for delivery to the regulatory body the Retained Records and access to such Party's facilities to the extent required by such regulatory body.
- 5.3 *Performance Audit.* Participant shall be subject to audit by SBH (or a third party engaged by SBH for such purposes) from time to time to confirm compliance with the Agreement. Upon SBH's request, Participant will provide to SBH or to such third party information reasonably requested by SBH or such third party and access to Participant's facilities to the extent reasonably required by SBH or such third party, in each case in connection with such audit. All such audits will be conducted during regular business hours, and SBH will provide reasonable prior notice of such audits.
- 5.4 *Reports.* Participant shall submit all reports listed on **Schedule A (Projects)** in the timeframes specified therein. Participant shall submit any reports and additional information related to the DSRIP Program reasonably requested by SBH or its designee, the Executive Committee, or any Sub-Committee within the timeframes specified in such requests.
- 5.5 *DSRIP Agreement Reporting.* Participant shall provide to SBH information to the extent necessary for SBH to fulfill its obligations (including its reporting, audit and investigation obligations) under the DSRIP Agreement.

6. Confidential Information

- 6.1 *Definition of Confidential Information.* "Confidential Information" of a Party means information (and documentation) which (1) is identified in writing as confidential, restricted, proprietary or in any similar manner or (2) based upon the nature of the information (or documentation) or the circumstances under which it was disclosed, accessed, or learned, a reasonable person would understand is confidential, including, for example: (a) intellectual property (including, but not limited to Patents, Trademarks and Copyrights), in each case, of a Party, its affiliates or its customers, suppliers (including contractors) and other third parties doing business with such Party; (b) financial and business plans and data of a Party; (c) personal data, information (and documentation) relating to human resource operations, policies and procedures of a Party; (d) statistical information of a Party; and (e) anything developed by reference to the information described in this definition, in each case except to the extent any such information is required by applicable laws to be made publicly available.

- 6.2 *Use of Confidential Information.* A Party receiving Confidential Information from the other Party (the “Receiving Party”) shall not: (a) use the Confidential Information of the Party making a disclosure of Confidential Information to the Receiving Party (the “Disclosing Party”) except as necessary to perform its obligations or exercise its rights hereunder; or (b) disclose or otherwise allow access to the Confidential Information of the Disclosing Party to any individuals or third parties except as provided in Section [X] and Section [X]. In addition, the Receiving Party shall protect the Confidential Information of the Disclosing Party with at least the same level of care as it protects its own confidential information of similar nature, but not less than a reasonable level of care.
- 6.3 *Permitted Disclosure.* The Receiving Party may disclose relevant aspects of the Disclosing Party’s Confidential Information to the Receiving Party’s officers, directors, employees, professional advisors (including accountants), contractors, service providers and other agents and representatives to the extent such disclosure is necessary for the current or future performance of their obligations or exercise of rights with respect to the Receiving Party under the Agreement; provided, however, that the Receiving Party shall cause such Confidential Information to be (through legally binding obligations of confidentiality and non-disclosure) held in confidence by the recipient to substantially the same extent and in substantially the same manner as required under the Agreement.
- 6.4 *Disclosure Required by Law.* If a Receiving Party is requested by a state or federal regulatory body to disclose Confidential Information in any legal or administrative proceeding or determines that a disclosure is required by applicable laws, the Receiving Party shall promptly notify the Disclosing Party of such request or determination so that the Disclosing Party may take, at its expense, such steps as are necessary to protect the Confidential Information. If the Receiving Party is thereafter required to disclose the Confidential Information to the regulatory body compelling such disclosure or to which such disclosure is required to be made, only the part of such information as is required by applicable laws or for compliance with applicable laws to be disclosed shall be disclosed.
- 6.5 *Exceptions.* The obligations of confidentiality and restrictions on use as set forth in the Agreement shall not apply to any Confidential Information that: (a) is in the public domain or is otherwise publicly known, without any breach hereof; (b) was previously known prior to disclosure by the Disclosing Party hereunder to the Receiving Party free of any obligation to keep it confidential; (c) was rightfully received by the Receiving Party from a third party whose disclosure would not violate a confidentiality obligation owed by such third party to the Disclosing Party and which disclosure was not in breach of the Agreement; (d) was subsequently and independently developed by officers, directors, employees, professional advisors (including accountants), contractors and other agents of the Receiving Party without reference to such Confidential Information disclosed under the Agreement; or (e) was expressly approved for release by the written authorization of the Disclosing Party.

- 6.6 *Return Upon End of Term.* Following expiration or termination of the Agreement for any reason, each Party, except as set forth in the next sentence, thereafter: (a) shall not use, recreate or reproduce, and shall cause its officers, directors, employees, professional advisors (including accountants), contractors and other agents and representatives to not thereafter use, recreate or reproduce, Confidential Information of the other Party or (b) shall not disclose, or permit its officers, directors, employees, professional advisors (including accountants), contractors and other agents and representatives to disclose, Confidential Information of the other Party to any third party. Upon expiration or termination of the Agreement for any reason, each Party shall promptly return, or destroy in a secure manner, any Confidential Information of the other Party and shall retain no copies thereof; provided, however, that each Party shall retain or cause to be retained copies of Confidential Information of the other Party to the extent required by law, and may use Confidential Information of the other Party, subject to this Section [X], to verify or document the performance under the Agreement and financial information relating thereto, for audit purposes, and to enforce its rights and defend itself from any claims or causes of action related to the Agreement or the other Party.
- 6.7 *Remedies.* Each Party recognizes and agrees that the covenants set forth in this Section [X] are reasonable and properly required for the protection of the information, activities and business of the other Party. Each Party agrees that the violation of the covenants or agreements in this Section [X] would cause irreparable harm to the other Party, that the remedy at law for any violation or threatened violation thereof would be inadequate and that, in addition to any other remedies available at law or in equity, the Party seeking enforcement of the covenants set forth in this Section [X] may seek temporary and permanent injunctive or other equitable relief.

7. Compliance

- 7.1 *Compliance with Laws, Regulations and Guidance.* In carrying out the terms of the Agreement, both Parties shall comply with all applicable laws and regulations, as well as any instructions or guidance from the State or the Centers for Medicare and Medicaid Services.
- 7.2 *Compliance with DSRIP Agreement.* In carrying out the terms of the Agreement, both Parties shall comply with all applicable terms in the DSRIP Agreement. Participant shall take such actions as may be reasonably requested by SBH to the extent necessary for SBH to comply with the DSRIP Agreement. Participant acknowledges that it is fully familiar with the DSRIP Agreement.
- 7.3 *Compliance with HIPAA.* To the extent that the Parties share protected health information, as such term is defined under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), both Parties shall comply with HIPAA. **[Need to think through any potential business associate relationships.]**
- 7.4 *Compliance with Policies and Procedures.* In carrying out the terms of the Agreement, both Parties shall comply with all Policies and Procedures and other instructions, methodologies or guidance established by the Executive Committee or a Sub-

Committee in accordance with the Governance Process, including without limitation (a) all Care Processes and Guidelines and any other clinical and IT protocols related to the Projects, (b) data sharing policies and privacy and security requirements applicable to the Participant, (c) the compliance plan, and (d) any SBH policies adopted by the Executive Committee or a Sub-Committee in accordance with the Governance Process.

- 7.5 *Compliance with Procurement Policies and Procedures.* Participant will disburse any DSRIP Funds received and will use any other funds available to carry out DSRIP-related activities only in accordance with Policies and Procedures established through the Governance Process. In the absence of any Policies and Procedures established with regard to the expenditure of any such funds, Participant shall endeavor to obtain the best possible prices and the most favorable terms for Participant, protect against corruption, self-dealing, fraud, and abuse, and safeguard the integrity of its procurement system and its fairness to contractors and vendors. In all events, Participant shall expend such funds only in accordance with the Legal Requirements.

8. Dispute Resolution

- 8.1 *Informal Dispute Resolution.* The Parties shall attempt to resolve all disputes between SBH and Participant arising out of or in any way connected with the execution, interpretation or performance of the Agreement first through an informal dispute resolution process. Specifically, one Party will send a notice to the other Party containing a detailed description of the issue under dispute, the good faith basis for the dispute and a recommendation for resolution. Within 15 days after receipt of such notice, the Parties will meet and confer in good faith at a mutually agreeable location to attempt to resolve the dispute promptly.
- 8.2 *Arbitration.* The Parties may resolve any dispute between SBH and Participant which cannot be resolved in accordance with Section [X] by agreeing to submit the dispute to binding arbitration. Such voluntary arbitration shall be conducted in accordance with this Section. Binding arbitration will be conducted by a single, neutral and impartial arbitrator, mutually acceptable to the Parties, who is an attorney with reasonable experience in the health care industry. Any such arbitration shall be conducted in New York, New York and in accordance with the then-current rules of arbitration established by the American Health Lawyers Association.
- 8.2.1. One Party will send a notice to the other Party with a dated, written statement (the "Arbitration Notice") indicating (A) the nature, with reasonable detail, of the dispute and (B) without limiting such Party's rights, the remedy or remedies such Party will seek;
- 8.2.2. Each Party will provide the other Party with production of all Retained Records reasonably related to the dispute in a manner that will minimize the expense and inconvenience of both Parties. Discovery will not include depositions or interrogatories except as the arbitrator expressly allows on a showing of need;
- 8.2.3. Arbitration hearings will commence no later than 60 days following the date of the Arbitration Notice;

- 8.2.4. The arbitrator will issue a final decision no later than 120 days following the date of the Arbitration Notice that, in his or her judgment, is consistent with the terms of the Agreement the intent of the Parties, and applicable Laws, as supported by evidence presented by the Parties in the arbitration proceeding;
- 8.2.5. The arbitrator shall not have authority to award any of the types of damages except those damages permitted under the Agreement;
- 8.2.6. To the fullest extent permitted by applicable laws, any arbitration proceeding and the arbitration award shall be maintained in confidence by the Parties;
- 8.2.7. The arbitration award shall be final and shall not be subject to judicial review;
- 8.2.8. Judgment on the arbitration award may be entered and enforced in any court having jurisdiction over the Parties or their assets.
- 8.2.9. It is the intent of the Parties that the arbitration provisions hereof be enforced to the fullest extent permitted by applicable laws, including the Federal Arbitration Act, 9 U.S.C. § 2.

9. Insurance

- 9.1 *Participant Obligation To Retain Insurance.* Participant, at its sole cost and expense, shall have in effect liability insurance coverage of such types and in such amounts as are customary for a business performing the obligations hereunder, or as otherwise reasonably required by SBH, including but not limited to commercial general liability, workers compensation and errors and omissions coverage. Participant shall provide SBH with a copy of such policies at SBH's request.

10. Indemnification and Limitation of Liability

10.1 *Indemnification.*

- 10.1.1. SBH shall indemnify, defend and hold harmless Participant, and Participant's directors, officers, employees, agents and subsidiaries, from and against any and all losses, claims, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and costs) arising from third party claims resulting from (a) SBH's failure to perform its obligations under the Agreement; (b) the gross negligence of SBH in connection with the Agreement; and/or (c) SBH's violation of any law, statute, ordinance, order, standard of care, rule or regulation.
- 10.1.2. Participant shall indemnify, defend and hold harmless SBH, and SBH's directors, officers, employees, agents and subsidiaries, from and against any and all losses, claims, damages, liabilities, costs and expenses (including without limitation, reasonable attorneys' fees and costs) arising from third party claims resulting from (a) Participant's failure to perform its obligations under the Agreement; (b) the gross negligence of Participant in connection with the Agreement; and/or

(c) Participant's violation of any law, statute, ordinance, order, standard of care, rule or regulation.

{Replace Section 10.1.2 with the following if Participant is a governmental agency or organization: Subject to the availability of lawful appropriations (as required by Section 41 of New York State Finance Law) and consistent with Section 8 of the New York State Court of Claims Act, Participant will hold SBH harmless from and indemnify SBH for any final judgment of a court of competent jurisdiction to the extent attributable to the negligence of Participant or its employees when acting within the course and scope of their employment.}

- 10.2 *Indemnification Procedure.* If any claim is commenced against a party entitled to indemnification under Section 10.1, prompt notice thereof shall be given by the indemnified party to the indemnifying party. The indemnified party shall allow the indemnifying party to control the defense and settlement of such claim; provided however that the indemnifying party agrees not to enter into any settlement or compromise of any claim or action in a manner where the settlement involves a remedy other than the payment of money that admits fault or imposes any restrictions or obligations on an indemnified party without that indemnified party's prior written consent, which will not be unreasonably withheld; provided further that if the indemnifying party does not assume control over the defense within 15 days after receipt of notice of such claim, the indemnified party may defend such claim in such manner as it may deem appropriate, at the cost and expense of the indemnifying party. If the indemnifying party assumes control over the defense of a claim as provided in this Section, the indemnified party shall cooperate with the indemnifying party (and its attorneys) in connection with such defense and settlement.
- 10.3 *Limitation of Liability.* Regardless of whether there is a total and fundamental breach of the Agreement or whether any remedy provided in the Agreement fails of its essential purpose, in no event shall either of the parties hereto be liable for any amounts representing loss of revenues, loss of profits, loss of business, the multiple portion of any multiplied damage award, or incidental, indirect, consequential, special or punitive damages, whether arising in contract, tort (including negligence), or otherwise regardless of whether the parties have been advised of the possibility of such damages, arising in any way out of or relating to the Agreement.

11. Amendments

- 11.1 *Generally.* Subject to Section 11.2, the Agreement may be amended only in writing and signed by both parties. Notwithstanding the foregoing, SBH retains the right to amend the Agreement, including any Exhibits and Schedules, to comply with applicable laws, regulations, guidance, or the DSRIP Agreement by providing advance written notice to Participant.
- 11.2 *Certain Amendments.* Notwithstanding Section 11.1, SBH, with the approval of the Executive Committee, retains the right to amend **Exhibit 3 (Governance Process)** upon 90 days' notice to Participant.

- 11.3 *Amendment of DSRIP Agreement.* SBH shall use reasonable efforts to provide notice to Participant of any amendment to the DSRIP Agreement in advance of the effective date of such amendment.

12. Miscellaneous

- 12.1 *Successors and Assigns.* The Agreement is binding upon, inures to the benefit of, and is enforceable by the Parties and their respective successors and assigns.
- 12.2 *Third-Party Beneficiaries.* Except as otherwise expressly provided in the Agreement, the terms and provisions of the Agreement are intended solely for the benefit of each Party and its respective successors or permitted assigns, and it is not the intention of the Parties to confer third-party beneficiary rights upon any other person.
- 12.3 *Entire Agreement; Interpretation.* The Agreement constitutes the entire agreement and understanding between the Parties with respect to the subject matter hereof and supersedes all prior agreements and understandings relating to the subject matter. Unless otherwise specified, in the event of any conflicts of provisions among documents, the provisions in the following documents shall take precedence: (1) Business Associate Agreement and Confidentiality Addendum; (2) **Schedule A (Projects)**; (3) the Agreement (including the Exhibits other than the Business Associate Agreement and the Confidentiality Addendum); and (4) the Policies and Procedures.
- 12.4 *Trademarks and Trade Names.* Each Party to the Agreement retains control of its trademarks presently existing or hereafter established with respect to it. Neither Party will use the trademarks of the other Party in advertising or promotional materials or otherwise, without the prior written consent of the other party. Each Party shall comply on an ongoing basis with the standards set by the other Party with respect to the use of such Party's trademarks, and each Party shall have the right to demand the other Party's prompt compliance with such standards at any time. Each Party will cease any permitted usage with respect to the other Party's trademarks immediately upon termination of the Agreement or at the request of such other Party. Each Party hereby assigns to the other Party any goodwill or reputation in any of such other Party's trademarks that may arise in the course of performance hereunder, effective as of when such goodwill or reputation arises, without any payment or consideration. Each Party expressly reserves and retains all intellectual property rights in and to its trademarks, and no implied license to or rights in or to any of the trademarks shall arise as a result of or in connection with the Agreement. For purposes of this Section, the trademarks of the subcontractors of each Party shall, as between the Parties, be deemed the trademarks of such Party.
- 12.5 *Governing Law and Jurisdiction.* The Agreement shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts executed and performed in that state, without giving effect to choice-of-laws principles. With respect to any legal action, suit or proceeding by a Party arising out of the Agreement, each Party consents to the exclusive jurisdiction and venue in Bronx County in the State of New York.

- 12.6 *Fair Construction.* The language in all parts of the Agreement shall be construed, in all cases, according to its fair meaning. The Parties acknowledge that each Party and its counsel have reviewed and revised the Agreement and that any rule of construction to the effect that any ambiguities are to be resolved against the drafting Party shall not be employed in the interpretation of the Agreement.
- 12.7 *Independent Contractors.* Notwithstanding any provision contained herein to the contrary, each of SBH and Participant understand and agree that the Parties hereto intend to act and perform as independent contractors and that therefore neither SBH nor Participant is an employee, partner, joint venturer, of the other. Nothing in the Agreement shall be construed as placing the Parties in a relationship of employer-employee, partners or joint venturers. Neither Party shall have the right to make any promises, warranties or representations, or to assume or create any obligations, on behalf of the other Party, except as otherwise expressly provided herein. SBH and Participant agree to be solely and entirely responsible for their respective acts and, to the extent provided under the applicable laws, for the acts of any of their respective officers, directors, employees, professional advisors (including accountants), contractors and other agents, except as otherwise expressly provided herein.
- 12.8 *Force Majeure.* SBH and Participant shall not be liable to each other for any failure or delay in performance of the Agreement to the extent such failure or delay arises out of a cause beyond the reasonable control of such Party. Such causes may include, but shall not be limited to, acts of God, acts of a public enemy, acts of a civil or military authority, fires or other catastrophes, labor disputes, strikes, delays in transportation or third-party delivery services, outages of a non-proprietary electrical or telecommunications network, riots or war, and terrorism, (a “Force Majeure Event”). Notwithstanding the occurrence of a Force Majeure Event, a Party shall implement its business continuity and disaster recovery plans, except to the extent such implementation is affected by a Force Majeure Event.
- 12.9 *No Warranties.* THE WARRANTIES EXPRESSLY INCLUDED HEREIN ARE IN LIEU OF, AND EACH PARTY HERETO HEREBY DISCLAIMS, ALL OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING WITHOUT LIMITATION, ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.
- 12.10 *Notices.* Any notice, demand or communication required, permitted, or desired to be given hereunder, unless otherwise stated, shall be deemed effectively given when personally received by the intended recipient, and shall be sent by (a) email or facsimile transmission with non-automatic acknowledgment (which need not satisfy the requirements of this Section) from the recipient indicating receipt; (b) express or overnight courier with proof of delivery; or (c) United States Postal Service, certified or registered mail with signed return receipt, addressed to the person or persons identified herein. Notwithstanding the foregoing, any notice of breach or termination must be sent by the method specified in clause (b) or (c) of this Section [X]. Either Party may change the person and address to which notices or other communications are

to be sent to it by giving written notice of any such change in the manner provided herein. The initial notification information is:

SBH Addresses for Notice:

[TBD]
[TBD]
Attn: [TBD]
E-mail: [TBD]
Fax: [TBD]

with a copy to:

[TBD]
[TBD]
Attn: [TBD]
Email: [TBD]
Fax: [TBD]

Participant Addresses for Notice:

[TBD]
[TBD]
Attn: [TBD]
E-mail: [TBD]
Fax: [TBD]

with a copy to:

[TBD]
[TBD]
Attn: [TBD]
E-mail: [TBD]
Fax: [TBD]

12.11 *Execution in Counterparts.* The Agreement may be executed in one or more counterparts, all of which, when taken together, shall constitute one and the same instrument. Delivery of an executed counterpart of a signature page to the Agreement by facsimile or electronic delivery in pdf format shall be as effective as delivery of a manually executed counterpart of the Agreement and shall be sufficient to bind the Parties to the terms and conditions hereof.

12.12 *Survival.* The provisions of Section [X], Section [X], Section [X], Section [X], and any other Section which by its nature or terms would be reasonably understood to have been intended to survive shall survive any termination or expiration of the Agreement.

12.13 *Severability.* If any provision of the Agreement is determined by competent judicial authority to be invalid or unenforceable, that provision shall be deemed stricken herefrom and the remainder of the Agreement shall continue in full force and effect insofar as it remains a workable instrument to accomplish the intent and purposes of the Parties, as evidenced herein. In such an event, the Parties shall promptly replace the severed provision with the provision that will come closest to reflecting the intention of the Parties underlying the severed provision, but that is valid, legal, and enforceable.

12.14 *No Waiver.* Waiver by a Party of any term or condition of the Agreement, or of any breach or default by the other Party hereunder, shall be effective only if made in writing and signed by an authorized representative of the Party waiving compliance herewith. Any such waiver so signed shall be effective only in the specific instance, and for the specific purpose, stated in such writing, and no waiver shall be deemed a waiver of any other term, condition, breach, or default, irrespective of whether similar to that waived. No failure to exercise, and no delay in exercising, on the part of either

Party, any right, power, or privilege hereunder shall constitute a waiver thereof, nor will either Party's exercise of any right, power, or privilege hereunder preclude further exercise of the same right, power, or privilege, or the exercise of any other right, power, or privilege, hereunder.

12.15 *Assignment*. Participant shall not assign the Agreement without the prior written consent of SBH. SBH retains the right to assign the Agreement upon 30 days' notice to the Participant. The Agreement shall be binding upon the successors and permitted assigns of the Parties.

12.16 *Exclusivity*. Participant shall have the right to participate in a PPS other than the SBH-led PPS. Participant shall disclose such participation to SBH prior to executing an agreement for participation in such other PPS. SBH shall have the right to adjust the distribution to Participant of Participant Service Obligation Funds and Community Good Pool Funds to the extent Participant receives similar funds from such other PPS to avoid duplication of payment.

12.17 *References*.

12.17.1. Except where otherwise indicated: (i) all references to the Agreement include the Agreement and the Exhibits and Schedules, including this Exhibit 2 (Legal Terms); (ii) all references to an Exhibit include any Attachments thereto, (iii) all references to a Schedule include any Attachments thereto, (iv) all references in the Agreement (exclusive of the Exhibits and Schedules) to Sections are to Sections in the Agreement (exclusive of the Exhibits and Schedules); (v) all references in any Exhibit to Sections are to Sections in such Exhibit; (vi) all references in any Schedule to Sections are to Sections in such Schedule; and (vii) all references in the Agreement to Exhibits or Schedules are to Exhibits or Schedules to the Agreement.

12.17.2. All references in the Agreement to and mentions of the word "include", "including" or the phrases "e.g." or "such as" shall mean "including, without limitation."

12.17.3. All references to "day", "week", "month", "quarter" or "year" refer to a calendar day, week, month, quarter or year, respectively, unless otherwise indicated.

12.17.4. All references in the Agreement to any law shall include such law in changed, supplemented or newly adopted form.

12.18 *Subcontracting*. SBH shall have the right to subcontract or delegate the performance of SBH's obligations under this Agreement without providing notice to or obtaining the consent of Participant.