

## SETTLEMENT AGREEMENT

THIS SETTLEMENT AGREEMENT (“Agreement”) is made by and between the Washington State Health Care Authority (“HCA”) and the National Association of Chain Drug Stores, the Washington State Pharmacy Association, and the National Community Pharmacists Association (collectively, “Associations”). Together, HCA and the Associations are the “Parties.”

### RECITALS

1. The Associations filed a Petition for Declaratory Relief and Emergency Stay in Thurston County Superior Court (Cause No. 17-2-01489-34) on March 29, 2017 (“Lawsuit”). The Lawsuit named HCA and HCA’s Director, in her official capacity, as respondents. Among other things, the Associations alleged that the level of HCA’s professional dispensing fees (a) violated federal Medicaid law and (b) was insufficient to cover their respective members’ costs of serving Medicaid clients in the fee-for-service program.

2. The Lawsuit is now pending at the Court of Appeals, Division II (Case No. 51489-3-II). The matter has been stayed pursuant to orders dated May 3, 2021, and August 16, 2022.

3. The Parties desire to enter into this Agreement in order to provide for certain payment and other actions by HCA in full settlement and discharge of all claims that were or could have been asserted in the Lawsuit, upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual promises and undertakings set forth below, and for other good and valuable consideration, the Parties agree as follows:

### AGREEMENT

1. **Recitals.** The Recitals above are incorporated by reference into this Agreement.

2. **Purpose.** The purpose of this Agreement is to compromise and definitively resolve all claims, cross-claims, and controversies whatsoever by and between the Parties arising from, or related to, the Lawsuit.

3. **Definitions.** For purposes of this Agreement, the following definitions apply:

(a) The term “Retroactive Time Period” means the period beginning April 1, 2017, and ending June 30, 2023.

(b) The term “Current Time Period” means the period beginning July 1, 2023, and moving forward until such time as a new professional dispensing fee may be adopted pursuant to Section 5(d) or otherwise, as permitted by law.

#### 4. **Payments.**

(a) For and in consideration of the covenants, promises, warranties, and agreements made in this Agreement, HCA has determined that it will adopt the professional dispensing fee levels specified in Section 5.

(b) HCA shall use claims data in its ProviderOne system to determine the claims that are eligible for the increased professional dispensing fee for the Retroactive Time Period (“Eligible Claims”). The Eligible Claims are fee-for-service pharmacy claims that were (i) submitted by pharmacies to HCA for services provided during the Retroactive Time Period (“Participating Pharmacies”) and (ii) paid to Participating Pharmacies by HCA at the fee level specified in Section 5(b)(i). HCA will confer with the Associations during this process to resolve any questions or disputes (e.g., pharmacies that are out of business), and the Associations will cooperate in good faith. HCA will retain the final decision-making authority regarding any issues related to the Eligible Claims.

(c) HCA shall begin the process to make the Retroactive Time Period payments within 15 calendar days after the appropriate court issues an order dismissing the Lawsuit, pursuant to the actions the Associations will take under Section 9 of this Agreement. HCA will use its best efforts to attempt to complete the process by December 31, 2023.

(d) The payments specified in this Section 4 for the Retroactive Time Period payments, which shall be in an aggregate amount of not less than \$60,562,287.00, represent the grand total of the increased level of the professional dispensing fees that HCA will pay to Participating Pharmacies for the Retroactive Time Period.

#### 5. **Professional Dispensing Fee Levels.**

(a) HCA shall adopt the payment levels outlined below, which the Associations acknowledge are being adopted for the sole purpose of resolving litigation and which are contingent on dismissal of the Lawsuit by the Associations pursuant to Section 9 of this Agreement.

##### (b) **Retroactive Time Period.**

(i) During the entirety of the Retroactive Time Period, HCA’s professional dispensing fees to Participating Pharmacies were as follows:

<b>FEE STRUCTURE</b>	<b>HIGH VOLUME</b>	<b>MIDDLE VOLUME</b>	<b>LOW VOLUME</b>
HCA’s Fees	\$4.24	\$4.56	\$5.25

(ii) HCA shall increase the professional dispensing fees so that each prescription that had been filled for a fee-for-service Medicaid client by Participating Pharmacies during the Retroactive Time Period will be paid at the following levels:

<b>FEE STRUCTURE</b>	<b>HIGH VOLUME</b>	<b>MIDDLE VOLUME</b>	<b>LOW VOLUME</b>
Fees for Retroactive Time Period	\$9.80	\$11.91	\$14.30

(iii) The professional dispensing fees specified in Section 5(b)(ii) are the same as the fees that the State of Oregon paid pharmacies for their services to Medicaid clients during the Retroactive Time Period.

(iv) As a result of the use of the professional dispensing fees outlined in Section 5(b)(ii), the increase in the fees from the levels outlined in Section 5(b)(i) is as follows:

<b>FEE STRUCTURE</b>	<b>HIGH VOLUME</b>	<b>MIDDLE VOLUME</b>	<b>LOW VOLUME</b>
Increase in Fees for Retroactive Time Period	\$5.56	\$7.35	\$9.05

(v) During the Retroactive Time Period, HCA utilized a three-tier prescription-volume structure for purposes of determining the professional dispensing fee for each pharmacy (“Washington Tiers”). The Washington Tiers are specified in Washington Administrative Code § 182-530-7100(5) and are as follows:

<b>HIGH VOLUME</b>	<b>MIDDLE VOLUME</b>	<b>LOW VOLUME</b>
35,001 or more claims per year	Between 15,001 and 35,000 claims per year	15,000 claims or fewer per year

(vi) HCA shall utilize the Washington Tiers when determining the increased levels of professional dispensing fees to be paid to Participating Pharmacies for the Retroactive Time Period.

(c) Current Time Period.

(i) The level of the professional dispensing fees for the Current Time Period shall be the same as the level of the fees for the Retroactive Time Period, as specified in Section 5(b)(ii), until such time as a new professional dispensing fee may be adopted pursuant to Section 5(d) or otherwise, as permitted by law.

(ii) For the Current Time Period, HCA shall utilize the three-tier prescription-volume structure that the State of Oregon utilized for its fee-for-service Medicaid program as of September 4, 2023 (“Oregon Tiers”). The Oregon Tiers are as follows:

<b>HIGH VOLUME</b>	<b>MIDDLE VOLUME</b>	<b>LOW VOLUME</b>
70,000 or more claims per year	Between 30,000 and 69,999 claims per year	Less than 30,000 claims per year

(d) Cost Study.

(i) HCA shall perform or procure a study of the costs that pharmacies in the State of Washington incur in dispensing pharmaceutical services to Medicaid fee-for-service clients (“Cost Study”). HCA shall retain the sole and final decision-making authority as to whether to perform the Cost Study itself or, instead, procure an outside party.

(ii) HCA shall confer with the Associations on the content and timing of the Cost Study (but not, for the avoidance of doubt, the results of such Cost Study), including but not limited to (A) the time period of the costs to be studied; (B) the timing of performing the study; and (C) the choice of an outside party to perform the Cost Study, if HCA decides to choose an outside party. HCA shall comply with all applicable state procurement laws and shall retain the final decision-making authority on the choice of any outside party.

(iii) The results of the Cost Study will inform the Governor's office, the Legislature, and HCA on potential adjustments to the professional dispensing fees. The Associations understand and agree that any potential adjustments to the professional dispensing fees are independently and unilaterally determined by HCA (and not with any approval, express or implied, by the Associations) and are subject to (A) legislative approval and appropriations and (B) approval by the Centers for Medicare and Medicaid Services ("CMS").

6. **Release and Discharge.** In consideration of the actions to be taken by HCA as called for herein and dismissal of the Lawsuit with prejudice by the Associations, each Party hereby releases and forever unconditionally and irrevocably discharges the other Parties of and from any and all claims, actions, demands, causes of action, complaints, agreements, promises (express or implied), contracts, undertakings, covenants, guarantees, grievances, damages (including, without limitation, actual, compensatory, consequential, exemplary, treble, punitive, or otherwise), attorneys' fees and legal costs, injunctive relief and declaratory relief, whether known or unknown, of whatsoever kind or nature that each had, now has, or hereafter can, shall, or may have related to or arising out of the issues raised in the Lawsuit. For the avoidance of doubt, this Release and Discharge shall not prevent or preclude the Associations from asserting any legal defense, challenge, action, complaint, or other exercise of legal rights to challenge future rates (not related to or arising out of the Lawsuit) identified or promulgated by HCA.

7. **Further Assurances.** The Parties will in good faith promptly execute and deliver such other documents and take such other actions as may be necessary to consummate the subject matter and purpose of this Agreement, including but not limited to any request by HCA to CMS for federal financial participation with respect to the payments specified in Section 4.

8. **No Admission of Liability.** The Parties understand and agree that this Agreement embodies a compromise and settlement of disputed claims and that nothing herein shall be deemed to constitute an admission of any wrongdoing by any Party. Neither the fact nor the terms of this Agreement shall be offered or received in evidence in any action or proceeding for any purpose, except in an action or proceeding to enforce this Agreement or arising out of or relating to a request from HCA for federal financial participation relating to the subject matter hereof.

9. **Dismissal of Lawsuit.** The Associations shall dismiss the Lawsuit with prejudice promptly after the execution of this Agreement. The Parties will cooperate in filing any necessary documents with any appropriate tribunal or agency.

10. **Attorneys' Fees and Costs.** Within three business days after the dismissal of the Lawsuit pursuant to Section 9, and upon receiving the necessary financial information, HCA shall pay attorneys' fees to the Associations in the amount of two hundred twenty-five thousand dollars (\$225,000.00). HCA will make the payment in the manner directed to HCA's counsel by the Associations' counsel. HCA shall not make any other payment to the Associations with respect to attorneys' fees or costs in connection with the Lawsuit, including fees or costs arising from preparation and execution of this Agreement, the filing for the dismissal of the Lawsuit, and any related matters.

11. **Effective Date.** This Agreement shall become effective immediately upon execution by each of the Parties.

12. **Binding Effect.** This Agreement binds and inures to the benefit of the Parties and to their assigns, heirs, administrators, executors, and successors-in-interest, affiliates, benefit plans, predecessors, and transferees, and their past and present agents and employees.

13. **Representations and Warranties.** Each of the Parties represents and warrants that (i) it has full right, power, and authority to enter into this Agreement; (ii) it owns or has the right to release each and all of the claims that it purports to release; (iii) it has not transferred any interest in any of these claims to any third party; (iv) it is voluntarily entering into this Agreement as a result of arm's-length negotiations; (v) in executing this Agreement, it is relying upon its own judgment, belief, and knowledge, and the advice and recommendations of its own counsel, concerning the nature, extent, and duration of their rights and claims hereunder and regarding all matters that relate in any way to the subject matter hereof; (vi) it has carefully read the contents of this Agreement; (vii) it has made such investigation of the facts pertaining to this Agreement and all of the matters pertaining thereto as it deems necessary; and (viii) this Agreement is signed freely by each person executing this Agreement on the Party's behalf.

14. **Authority to Execute:** Each individual executing this Agreement in a representative capacity represents and warrants that he or she has the full right, power, and authority to bind his or her organization to the terms of this Agreement.

15. **Entire Agreement.** This Agreement contains the entire agreement among the Parties relating to the subject matter hereof. No agreements, representations, oral statements, understandings, or courses of conduct that are not expressly set forth in this Agreement shall be implied or will be binding on the Parties unless made in writing and signed by all of the Parties.

16. **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the laws of the United States and the State of Washington. Jurisdiction related in any way to this Agreement shall be in the Superior Court of the State of Washington, and venue shall be in Thurston County. In the event of a conflict of law regarding contractual interpretation, Washington law shall govern.

17. **Severability.** The provisions of this Agreement are not severable. If any part of this Agreement shall be determined to be illegal, invalid, or unenforceable by a court of competent jurisdiction, then the remaining parts shall not be affected thereby, and the illegal, invalid, or unenforceable parts shall be deemed not to be a part of this Agreement.

18. **Amendment.** Both before and after the entry of an order dismissing the Lawsuit, this Agreement may be modified or amended only by written agreement signed by or on behalf of all Parties.

19. **Waiver.** The provisions of this Agreement may be waived only by an instrument in writing executed by the waiving Party. The waiver by any Party of any breach of this Agreement shall not be deemed to be or construed as a waiver of any other breach (whether prior, subsequent, or contemporaneous) of this Agreement.

20. **Construction.** None of the Parties shall be considered to be the drafter of this Agreement or any provision thereof for the purpose of any statute, regulation, case law, or rule of interpretation or construction that would or might cause the provision to be construed against the drafter thereof.

21. **Survival.** All representations, warranties, and covenants set forth herein shall be deemed continuing and shall survive the effective date of this Agreement.

22. **Signatures and Counterparts.** This Agreement may be executed by electronic exchange of signature pages (whether faxed, emailed, utilizing a secure file transfer protocol site, DocuSign, or other equivalent means), and any signature transmitted in such a manner shall be deemed an original signature. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which, when taken together, shall constitute one and the same instrument.

23. **Dispute Resolution.** The Parties will cooperate in good faith to attempt to resolve any dispute regarding the terms, conditions, releases, enforcement, or termination of this Agreement.

24. **Notices.**

(a) Any notice given pursuant to this Agreement shall be in writing and, except as otherwise expressly provided herein, shall be deemed to have been duly delivered if delivered (i) in person; (ii) by email, with proof of delivery and receipt; or (iii) by certified, registered, or overnight mail, postage prepaid.

(b) If given or rendered to HCA, the notice must be addressed to:

Health Care Authority  
c/o Office of the Washington Attorney General  
Attention: William T. Stephens  
Senior Counsel  
7141 Cleanwater Drive  
Box 40124  
Olympia, WA 98504  
Bill.Stephens@atg.wa.gov

(c) If given or rendered to the Associations, the notice must be addressed to:

Mark W. Bina  
QUARLES & BRADY LLP  
300 N. LaSalle Street, Suite 4000  
Chicago, Illinois 60654  
Mark.Bina@Quarles.com

25. **Public Disclosure.** The Associations acknowledge that HCA is subject to the Public Records Act (RCW 42.56) and that this Agreement is a “public record” as defined in RCW 42.56.010.

**WASHINGTON STATE  
HEALTH CARE AUTHORITY**

DocuSigned by:

Sue Birch - State of Washington

78C67E5616CF468...

By: Sue Birch - State of Washington

Its: Director

Date: 9/13/2023

**NATIONAL ASSOCIATION OF  
CHAIN DRUG STORES**

DocuSigned by:

Dave Fitzsimmons

330A4B33AA23450...

By: Dave Fitzsimmons - NACDS

Its: SVP, Finance and Admin.

Date: 9/13/2023

**WASHINGTON STATE  
PHARMACY ASSOCIATION**

DocuSigned by:

*Jenny Arnold - WSPA*

83ED09B7DE26485...

By: Jenny Arnold - WSPA

Its: CEO

Date: 9/13/2023

**NATIONAL COMMUNITY  
PHARMACISTS ASSOCIATION**

DocuSigned by:

*B. Douglas Hoey - NCPA*

44140646889343F...

By: B. Douglas Hoey - NCPA

Its: CEO

Date: 9/13/2023

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## Certificate Of Completion

Envelope Id: 48A90D3BB3AB487A99D4D89B46122261

Status: Completed

Subject: Complete with DocuSign: PharmacyAgreement090823.pdf

Source Envelope:

Document Pages: 8

Signatures: 4

Certificate Pages: 5

Initials: 0

AutoNav: Enabled

Enveloped Stamping: Enabled

Time Zone: (UTC-06:00) Central Time (US &amp; Canada)

Envelope Originator:

Mark Bina

411 E. Wisconsin Ave.

Milwaukee, WI 53202

Mark.Bina@quarles.com

IP Address: 8.45.141.254

## Record Tracking

Status: Original

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Holder: Mark Bina

Mark.Bina@quarles.com

Location: DocuSign

## Signer Events

Sue Birch - State of Washington

Sue.Birch@hca.wa.gov

Director

Security Level: Email, Account Authentication  
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## Signature

DocuSigned by:



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Signed: 9/13/2023 10:34:07 AM

## Electronic Record and Signature Disclosure:

Accepted: 9/13/2023 10:29:54 AM

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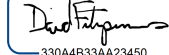
Dave Fitzsimmons - NACDS

dfitzsimmons@nacds.org

SVP, Finance and Admin.

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



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Signed: 9/13/2023 11:00:04 AM

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Accepted: 9/13/2023 10:58:14 AM

ID: 8ca925cf-9b40-43eb-a65f-1fc8b470e36e

Jenny Arnold - WSPA

jenny@wsparx.org

CEO

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style  
Using IP Address: 174.164.88.152

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Viewed: 9/13/2023 11:15:46 AM

Signed: 9/13/2023 12:13:43 PM

## Electronic Record and Signature Disclosure:

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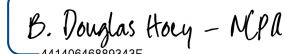
B. Douglas Hoey - NCPA

doug.hoey@ncpa.org

CEO

Security Level: Email, Account Authentication  
(None)

DocuSigned by:



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Signature Adoption: Pre-selected Style  
Using IP Address: 208.208.6.210

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Viewed: 9/13/2023 1:28:22 PM

Signed: 9/13/2023 1:31:42 PM

## Electronic Record and Signature Disclosure:

Accepted: 9/13/2023 1:28:22 PM

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In Person Signer Events	Signature	Timestamp
Editor Delivery Events	Status	Timestamp
Agent Delivery Events	Status	Timestamp
Intermediary Delivery Events	Status	Timestamp
Certified Delivery Events	Status	Timestamp
Carbon Copy Events	Status	Timestamp
Mark Bina mark.bina@quarles.com 2023 Quarles & Brady LLP Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 9/13/2023 1:31:43 PM
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Matt Seiler matt.seiler@ncpa.org Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 9/13/2023 1:31:44 PM
Bill Stephens - WA AG's Office bill.stephens@atg.wa.gov Security Level: Email, Account Authentication (None) <b>Electronic Record and Signature Disclosure:</b> Not Offered via DocuSign	COPIED	Sent: 9/13/2023 1:31:45 PM
Witness Events	Signature	Timestamp
Notary Events	Signature	Timestamp
Envelope Summary Events	Status	Timestamps
Envelope Sent	Hashed/Encrypted	9/13/2023 10:26:38 AM
Certified Delivered	Security Checked	9/13/2023 1:28:22 PM
Signing Complete	Security Checked	9/13/2023 1:31:42 PM
Completed	Security Checked	9/13/2023 1:31:45 PM
Payment Events	Status	Timestamps
Electronic Record and Signature Disclosure		

## **ELECTRONIC RECORD AND SIGNATURE DISCLOSURE**

From time to time, Quarles & Brady LLP (we, us or Company) may be required by law to provide to you certain written notices or disclosures. Described below are the terms and conditions for providing to you such notices and disclosures electronically through the DocuSign system. Please read the information below carefully and thoroughly, and if you can access this information electronically to your satisfaction and agree to this Electronic Record and Signature Disclosure (ERSD), please confirm your agreement by selecting the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

### **Getting paper copies**

At any time, you may request from us a paper copy of any record provided or made available electronically to you by us. You will have the ability to download and print documents we send to you through the DocuSign system during and immediately after the signing session and, if you elect to create a DocuSign account, you may access the documents for a limited period of time (usually 30 days) after such documents are first sent to you. After such time, if you wish for us to send you paper copies of any such documents from our office to you, you will be charged a \$0.00 per-page fee. You may request delivery of such paper copies from us by following the procedure described below.

### **Withdrawing your consent**

If you decide to receive notices and disclosures from us electronically, you may at any time change your mind and tell us that thereafter you want to receive required notices and disclosures only in paper format. How you must inform us of your decision to receive future notices and disclosure in paper format and withdraw your consent to receive notices and disclosures electronically is described below.

### **Consequences of changing your mind**

If you elect to receive required notices and disclosures only in paper format, it will slow the speed at which we can complete certain steps in transactions with you and delivering services to you because we will need first to send the required notices or disclosures to you in paper format, and then wait until we receive back from you your acknowledgment of your receipt of such paper notices or disclosures. Further, you will no longer be able to use the DocuSign system to receive required notices and consents electronically from us or to sign electronically documents from us.

### **All notices and disclosures will be sent to you electronically**

Unless you tell us otherwise in accordance with the procedures described herein, we will provide electronically to you through the DocuSign system all required notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you during the course of our relationship with you. To reduce the chance of you inadvertently not receiving any notice or disclosure, we prefer to provide all of the required notices and disclosures to you by the same method and to the same address that you have given us. Thus, you can receive all the disclosures and notices electronically or in paper format through the paper mail delivery system. If you do not agree with this process, please let us know as described below. Please also see the paragraph immediately above that describes the consequences of your electing not to receive delivery of the notices and disclosures electronically from us.

#### **How to contact Quarles & Brady LLP:**

You may contact us to let us know of your changes as to how we may contact you electronically, to request paper copies of certain information from us, and to withdraw your prior consent to receive notices and disclosures electronically as follows:

To contact us by email send messages to: [daniel.miller@quarles.com](mailto:daniel.miller@quarles.com)

#### **To advise Quarles & Brady LLP of your new email address**

To let us know of a change in your email address where we should send notices and disclosures electronically to you, you must send an email message to us at [daniel.miller@quarles.com](mailto:daniel.miller@quarles.com) and in the body of such request you must state: your previous email address, your new email address. We do not require any other information from you to change your email address.

If you created a DocuSign account, you may update it with your new email address through your account preferences.

#### **To request paper copies from Quarles & Brady LLP**

To request delivery from us of paper copies of the notices and disclosures previously provided by us to you electronically, you must send us an email to [daniel.miller@quarles.com](mailto:daniel.miller@quarles.com) and in the body of such request you must state your email address, full name, mailing address, and telephone number. We will bill you for any fees at that time, if any.

#### **To withdraw your consent with Quarles & Brady LLP**

To inform us that you no longer wish to receive future notices and disclosures in electronic format you may:

- i. decline to sign a document from within your signing session, and on the subsequent page, select the check-box indicating you wish to withdraw your consent, or you may;
- ii. send us an email to [daniel.miller@quarles.com](mailto:daniel.miller@quarles.com) and in the body of such request you must state your email, full name, mailing address, and telephone number. We do not need any other information from you to withdraw consent.. The consequences of your withdrawing consent for online documents will be that transactions may take a longer time to process..

### **Required hardware and software**

The minimum system requirements for using the DocuSign system may change over time. The current system requirements are found here: <https://support.docusign.com/guides/signer-guide-signing-system-requirements>.

### **Acknowledging your access and consent to receive and sign documents electronically**

To confirm to us that you can access this information electronically, which will be similar to other electronic notices and disclosures that we will provide to you, please confirm that you have read this ERSD, and (i) that you are able to print on paper or electronically save this ERSD for your future reference and access; or (ii) that you are able to email this ERSD to an email address where you will be able to print on paper or save it for your future reference and access. Further, if you consent to receiving notices and disclosures exclusively in electronic format as described herein, then select the check-box next to 'I agree to use electronic records and signatures' before clicking 'CONTINUE' within the DocuSign system.

By selecting the check-box next to 'I agree to use electronic records and signatures', you confirm that:

- You can access and read this Electronic Record and Signature Disclosure; and
- You can print on paper this Electronic Record and Signature Disclosure, or save or send this Electronic Record and Disclosure to a location where you can print it, for future reference and access; and
- Until or unless you notify Quarles & Brady LLP as described above, you consent to receive exclusively through electronic means all notices, disclosures, authorizations, acknowledgements, and other documents that are required to be provided or made available to you by Quarles & Brady LLP during the course of your relationship with Quarles & Brady LLP.