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**AFFILIATE AGREEMENT**

This Affiliate Agreement (Agreement), effective \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, is made between the Brain Injury Association of America, a Massachusetts corporation with offices at 1608 Spring Hill Road, Vienna, VA 22182, (BIAA), and the Brain Injury Association of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ , with offices at \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, (Affiliate).

WHEREAS, BIAA is nonprofit organization, tax-exempt under Section 501c3 of the Internal Revenue Code, whose purposes are to advance brain injury prevention, research, treatment, and education and to improve the quality of life for individuals with brain injury, caregivers and professionals; and

WHEREAS, Affiliate is a nonprofit organization, tax-exempt under Section 501c3 of the Internal Revenue Code, that has applied to BIAA for status as a Chartered Affiliate;

NOW, THEREFORE, in furtherance of the mutual promises and consideration in this Agreement, the parties agree as follows:

**ARTICLE I GRANT OF CHARTER**

Section 1 Charter

BIAA hereby grants a non-exclusive charter to Affiliate authorizing use of the designation, “Chartered Affiliate of the Brain Injury Association of America,” subject to the terms and conditions contained in this Agreement. This agreement shall remain in effect until revoked or surrendered in accordance with Article VIII or until amended in writing by the Brain Injury Association of America.

Section 2 Territory

Affiliate shall conduct information, education, advocacy, and fundraising programs in the following area: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Territory) as the sole Chartered Affiliate in the Territory and shall be notified whenever BIAA intends to sponsor programs or conduct activities within the Territory that are independent of the Affiliate.

Section 3 Intellectual Property

Affiliate shall have a limited right to use certain intellectual property of BIAA, such as trademarks or copyrights, subject to the terms and conditions in this Agreement and the technical specifications described in BIAA’s Creative Standards Manual.

**ARTICLE II OBLIGATIONS OF BIAA**

Section 1 Information & Resources

BIAA shall operate the National Brain Injury Information Center (NBIIC) as a nationwide information and resource center using a single toll-free telephone number (800-444-6443) and shall provide to Affiliate training, resources, materials, data maintenance and statistical reporting as specified in the NBIIC Collaboration Manual.

Section 2 Training

BIAA shall arrange and conduct an annual training conference for affiliate leaders and shall provide ninety (90) days notice to Affiliate of the time and place of the conference.

Section 3 Networking

BIAA shall host a password-protected Intranet to circulate news, announcements, templates and other materials pertaining to and for specific use by Affiliate.

Section 4 Reporting

BIAA shall annually report its accomplishments and goals in print and electronic formats for distribution by Affiliate to its staff, volunteers, members and other constituents.

**ARTICLE III OBLIGATIONS OF AFFILIATE**

Section 1 Information & Resources

Affiliate shall accept the automatic transfer of National Brain Injury Information Center (NBIIC) calls from all area codes within its Territory and shall comply with the policies and procedures set forth in the NBIIC Collaboration Manual.

Section 2 Training

Affiliate shall send one or more representatives to BIAA’s annual training conference. The first representative shall be registered free; all other representatives shall pay a registration fee established by BIAA.

Section 3 Networking

Affiliate shall enroll one or more representatives in BIAA’s password-protected Intranet, who shall be responsible for responding to news and announcements posted by BIAA, including circulating appropriate information to Affiliate staff, volunteers and members and shall, as appropriate, contribute content for sharing with other affiliates through the site.

Section 4 Reporting

Affiliate shall annually report its accomplishments and goals, business metrics and the names and contact information of its governing Board in an approved form/format and shall advise BIAA whenever Affiliate intends to communicate with a federal policymaker independent of BIAA.

**ARTICLE IV OPTIONAL PROGRAMS**

BIAA may establish and operate one or more awareness or education programs, fundraising projects or other initiatives suitable for participation by Affiliate. Such programs and services shall be negotiated under separate agreement(s) and conducted on a fee-for-participation or other basis as determined by BIAA. Affiliate shall have the first right of refusal to participate and shall advise BIAA of its intent to participate within thirty (30) days from the date of announcement of the program, project or initiative. In the event Affiliate waives its right to participate or fails to act in a timely manner, BIAA shall have the right to conduct the program, service or project in Affiliate’s Territory independently or in collaboration with other individuals or entities and Affiliate shall agree not to conduct a program, project or other initiative of similar format or purpose without express written permission from BIAA. Nothing in this Agreement shall require BIAA to conduct any optional program or project. Further, Affiliate shall not conduct any program similar to or competitive with a major program of BIAA or its affiliates, including but not limited to Bowling for Brain Injury, certification of brain injury specialists, or other BIAA programs, projects, or initiatives, without express written permission from BIAA.

**ARTICLE V AFFILIATION FEES**

Affiliate shall pay an annual affiliation fee as set forth in Exhibit A. The fee shall be payable in monthly increments as invoiced by BIAA unless another payment schedule is proposed by Affiliate and accepted in writing by BIAA. After 30 days, any unpaid invoice shall accrue interest at the rate of one-half (.05) percent per month until paid in full. Failure to pay invoices after ninety (90) days shall result in automatic suspension of Affiliate’s rights and privileges under this Agreement.

**ARTICLE VI USE OF TRADEMARK AND COPYRIGHTED MATERIALS**

Section 1 Limited License

Affiliate shall not use, or cause or permit to be used by any person, BIAA’s logos, trademarks, service marks, trade names, or copyrighted materials without BIAA’s prior written consent, other than the limited use of such logos, marks, names, or copyrighted materials in connection with performance of the specific activities authorized under this Agreement. Any use of BIAA’s logo, mark, or name shall be the logo, mark, or name approved by BIAA. In addition, Affiliate shall not make or cause to make any copies of BIAA’s educational materials or publications, or resell any of same, without BIAA’s prior written consent. With respect to any use of BIAA’s logo, mark, name, or copyrighted materials, Affiliate shall ensure that the applicable copyright or trademark notice is made, pursuant to requirements of U.S. law, the laws of the Territory, and any other guidelines that BIAA shall prescribe. In any event, upon expiration or termination of this Agreement, all use by Affiliate of BIAA’s proprietary property, such as logos, marks, names, or copyrights, shall end immediately. Affiliate's obligations to protect BIAA’s property under this section shall survive the expiration or termination of this Agreement.

Section 2 Confidential Information

Affiliate shall, during the term of this Agreement and thereafter, maintain the confidentiality of any or all of BIAA’s confidential or proprietary information or data (collectively, "Confidential Information"). Such Confidential Information shall at all times remain the property of BIAA and shall be deemed to be furnished to Affiliate in confidence and solely in connection with Affiliate's obligation under this Agreement. Upon termination of this Agreement for any reason, Affiliate shall immediately deliver to BIAA all written documentation, including copies, of or concerning such Confidential Information, shall make no further use thereof, and shall make reasonable efforts to ensure that no further use is made by Affiliate or its employees, agents, or contractors. Affiliate's confidentiality obligations under this section shall survive the expiration or termination of this Agreement.

**ARTICLE VII SEPARATE ENTITIES; INDEMNIFICATION**

Section 1 Separate Entities

BIAA and Affiliate expressly acknowledge and agree that they are, and shall remain, separate entities and that no partnership or agency is created by virtue of this Agreement. As such, neither party shall be authorized to incur any liability, obligation, or expense on behalf of the other.

Section 2 Indemnification

In furtherance of the above intention and agreement, BIAA and Affiliate each hereby agrees to indemnify and hold harmless the other party, its officers, directors, agents, members, and employees, from and against any action, suit, proceeding, claim, damage, liability, obligation, cost or expense which may arise by reason of any act or omission by the indemnifying party or its agents or employees.

**ARTICLE VIII REVOCATION OR SURRENDER OF CHARTER**

Section 1 Revocation

BIAA may revoke Affiliate’s charter by delivering notice of its intention to do so at least ninety (90) days in advance of the effective date of such action.

Section 2 Surrender of Charter

Affiliate may surrender its charter by delivering notice of its intention to do so at least ninety (90) days in advance of the effective date of such action.

Section 3 Rights after Revocation or Surrender

After any such revocation or surrender of Affiliate's charter, BIAA shall have the right to notify each member of Affiliate in the Territory of the facts of such revocation or surrender and shall have authority to organize a new affiliate in the designated Territory. In no event shall either party continue to represent any affiliation with the other party.

**ARTICLE IX WARRANTY; LIMITATION OF LIABILITY**

Section 1 Warranty

BIAA makes no representation or warranty, express or implied (including implied warranties of merchantability and fitness for a particular purpose) concerning any materials, programs or services provided to Affiliate hereunder. All guarantees, warranties, conditions and representations, either express or implied, whether arising under any statute, law, commercial use or otherwise, are hereby excluded.

Section 2 Limitations of Liability

In no event shall either party be liable to any person for loss of profits, loss of use, loss of production, loss of goodwill, or incidental, indirect, consequential, or special damages of any kind.

**ARTICLE X MISCELLANEOUS**

Section 1 Entire Agreement

This Agreement (together with any exhibits hereto) constitutes the entire Agreement between BIAA and Affiliate with respect to the subject matter hereof. This Agreement may be amended only by a writing executed by both parties.

Section 2 Controlling Law

This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia and any disputes arising in connection with this Agreement will be resolved only by binding arbitration or litigation in the Commonwealth of Virginia.

Section 3 Waiver

Any waiver by either party to this Agreement of any provision shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstance, whether past, present, or future.

Section 4 Severability

If any provision of this Agreement is determined to be invalid or unenforceable in whole or in part, the remaining provisions shall be enforceable to the maximum extent possible.

Section 5 Successors and Assigns

This Agreement shall inure to the benefit of BIAA, its successors and assigns, and BIAA may assign all or any portion of this Agreement and its duties hereunder upon written notice of any such assignment. Affiliate may not sublicense or assign any of its rights or obligations under this Agreement without the prior written consent of BIAA.

Section 6 Force Majeure

Neither BIAA nor Affiliate shall be liable for its failure to perform its obligations under this Agreement due to events beyond its reasonable control including, but not limited to, strikes, riots, wars, fire, acts of God, and acts in compliance with any applicable law, regulation, or order (whether valid or invalid) of any governmental body.

Section 7 Notices

Any notice contemplated by, or made pursuant to, this Agreement shall be in writing and made by courier or mail (postage prepaid) addressed or directed to BIAA or Affiliate, as the case may be, at the address shown at the beginning of this Agreement, or such other address as shall be designated by at least ten (10) days prior written notice.

 IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized representatives, effective as of the date first written above.

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Susan H. Connors Signature of Authorized Representative

President/CEO

Brain Injury Association of America

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Printed Name

 \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Title

 Brain Injury Association of \_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Affiliate Name

**EXHIBIT A – AFFILIATION FEE SCHEDULE**

The annual affiliation fee shall be $1,500.00 plus 1.5% of the affiliate’s total revenue as reported by the affiliate to the Internal Revenue Service on Line 12 of Form 990 (or corresponding lines on Forms 990-EZ or 990-N). The fee shall be capped at $15,000 per year.