



HIPAA BUSINESS ASSOCIATE ADDENDUM

This HIPAA Business Associate Addendum (“Addendum”) supplements and is made a part of the Provider Participation Agreement (“Agreement”) by and between Jefferson Physician Group, P.A. as a Business Associate (“Associate”) and _____ as a Covered Entity (“CE”), and is effective as of May 22, 2017 (the “Addendum Effective Date”).

RECITALS

WHEREAS, Covered Entity possesses Protected Health Information (“PHI”) that is protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health (“HITECH”) Act of 2009, Texas privacy laws, including, but not limited to the Texas Health and Safety Code sections 181 and 182 as amended by House Bill 300 (82nd Legislature), and the rules and regulations issued pursuant to these laws, (collectively, the “Privacy and Security Laws”);

WHEREAS, Covered Entity wishes to enter into a business relationship with Business Associate to perform services (the “Services”) on behalf of Covered Entity pursuant to an underlying agreement for Services (“Underlying Agreement”);

WHEREAS, in order to provide the Services, Business Associate will access, receive, maintain, create and/or transmit PHI on behalf of Covered Entity; and

WHEREAS, Covered Entity and Business Associate wish to enter into this Agreement to set forth the terms and conditions applicable to the use and disclosure of such PHI in compliance with the Privacy and Security Laws.

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions. The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time under the the Privacy and Security Laws. All capitalized terms used in this Agreement but not defined below shall have the meaning assigned to them under the HIPAA Regulations.

- a. **“HIPAA”** means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. **“HIPAA Regulations”** means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164 subparts A and E (“The Privacy Rule”) and the Security Standards as they may be amended from time to time, 45 C.F.R. Parts 160, 162 and 164, Subpart C (“The Security Rule”).
- c. **“HITECH Act”** means the provisions of Division A, Title XIII of the American Recovery and Reinvestment Act of 2009 (“ARRA”), known as The Health Information Technology for Economic and Clinical Health, Act 42 U.S.C. §3000 et. seq., and rules, regulations and guidance issued pursuant thereto.

d. “Texas Privacy Laws” shall mean Texas privacy laws, including, but not limited to, the Texas Health and Safety Code sections 181 and 182 as amended by House Bill 300 (82nd Legislature) and any rules and regulations issued pursuant to these laws;

e. “Privacy and Security Laws” for purposes of this Agreement, HIPAA, the HITECH Act and all regulations, rules, and guidance issued pursuant to HIPAA, the HITECH Act, and the Texas Privacy Laws are collectively referred to as the Privacy and Security Laws.

f. “Business Associate” means,

(1) With respect to a Covered Entity, a person who:

(a) On behalf of such covered entity or of an organized health care arrangement (as defined in this Section) in which the covered entity participates, but other than in the capacity of a member of the workforce of such covered entity or arrangement, creates, receives, maintains, or transmits PHI for a function or activity regulated by the Privacy and Security Laws, including claims processing or administration, data analysis, processing or administration, utilization review, quality assurance, patient safety activities listed at 42 C.F.R. 3.20, billing, benefit management, practice management, and repricing; or

(b) Provides, other than in the capacity of a member of the workforce of such covered entity, legal, actuarial, accounting, consulting, data aggregation (as defined in 45 C.F.R. 164.501), management, administrative, accreditation, or financial services to or for such covered entity, or to or for an organized health care arrangement in which the covered entity participates, where the provision of the service involves the disclosure of PHI from such covered entity or arrangement, or from another business associate of such covered entity or arrangement, to the person.

(2) A covered entity may be a business associate of another covered entity.

(3) Business associate also includes a Health Information Organization, E-prescribing Gateway, or other person that provides data transmission services with respect to PHI to a covered entity and that requires access on a routine basis to such PHI; a person that offers a personal health record to one or more individuals on behalf of a covered entity; and a subcontractor that creates, receives, maintains, or transmits PHI on behalf of the business associate.

g. “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and;

(1) Is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) Relates to past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(a) That identifies the individual; or

(b) With respect to which there is a reasonable cause to believe the information can be used to identify the individual.

h. “Protected Health Information” or “PHI” means individually identifiable health information that is: transmitted by electronic media, maintained in electronic media, or transmitted or maintained in any other form or medium. PHI does not include individually identifiable health information that is included in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g, records described at 20 U.S.C. 1232g(a)(4)(B)(iv), or employment records held by a covered entity in its role as employer, and it does not include information regarding a person who has been deceased for more than 50 years.

i. “Data Aggregation” means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

j. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

k. “Unsecured PHI” means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified in the guidance issued under Section 13402(h)(2) of the HITECH Act on the HHS Web site.

l. “Breach” shall have the meaning given such terms under 45 C.F.R. 164.402 as such regulation is revised from time to time.

m. “Required by Law” shall have the meaning set forth in 45 C.F.R. 164.512.

2. Permitted Uses and Disclosures.

Business Associate shall not use or disclose PHI it receives from, maintains, or creates on behalf of the Covered Entity except as permitted or required under this Agreement or as Required by Law.

a. Performance of Services. Business Associate may use and disclose PHI received from, or created or received on behalf of, Covered Entity in connection with the performance of the Services contracted for in the Underlying Agreement provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity.

b. Proper Management and Administration of Business Associate. Business Associate may use PHI received by Business Associate in its capacity as Business Associate of Covered Entity for the proper management and administration of Business Associate in connection with the performance of Services in the Underlying Agreement and as otherwise permitted by this Agreement.

Business Associate may disclose PHI for such proper management and administration of Business Associate, to carry out the legal responsibilities of Business Associate, and as otherwise permitted by this Agreement if such disclosure is either: (1) Required by Law, or (2) Business Associate obtains reasonable assurances, in writing, from the person to whom the PHI is disclosed that: (i) the PHI will be held confidentially, used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; (ii) the person otherwise agrees to the same

restrictions and conditions that apply to Business Associate with respect to such PHI; and (iii) the person will notify Business Associate of any instances of which the person becomes aware in which the confidentiality of the PHI has been breached.

c. Data Aggregation. Business Associate may use and disclose PHI received by Business Associate in its capacity as Business Associate of Covered Entity to provide Data Aggregation services relating to the health care operations of Covered Entity.

d. Disclosures Required By Law. Business Associate may make such disclosures as are required by Law. To the extent permitted by law, Business Associate will promptly notify Covered Entity of disclosure of PHI made by Business Associate under this Section 2(d).

3. Prohibited Uses and Disclosures.

a. Restrictions Agreed to by Covered Entity. If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of Covered Entity's PHI pursuant to the 42 C.F.R. 502(c), Business Associate shall, upon written notice, be bound by such additional restrictions and shall not disclose Covered Entity's PHI in violation of such additional restrictions.

b. Remuneration for PHI. Business Associate may not disclose PHI if Business Associate receives remuneration, directly or indirectly, from or on behalf of the recipient of the PHI in exchange for the PHI unless such remuneration complies with the provisions of 45 C.F.R. 164.502(a)(5)(ii).

c. Other Restrictions. Business Associate may not use genetic information for underwriting purposes or engage in any other restricted uses or disclosures set forth under 45 C.F.R. 164.502.

4. Limited Data Sets. Covered Entity and Business Associate agree to limit, to the extent practical and except as permitted by 45 C.F.R. 164.502(b)(2), its uses, disclosures and requests of PHI under this Agreement to a Limited Data Set (as defined in 45 C.F.R. 164.514(e)(2)) or, if needed by Covered Entity or Business Associate, to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request.

5. Safeguards, Reporting, Mitigation and Enforcement. Business Associate shall comply with: (1) administrative safeguards contained in 45 C.F.R. 164.308, (2) the physical safeguards contained in 45 C.F.R. 164.310, (3) the technical safeguards contained in 45 C.F.R. 164.312, and (4) the policies, procedures and documentation requirements contained in 45 C.F.R. 164.316.

a. Safeguards. Business Associate shall maintain a comprehensive written information privacy and security program that includes administrative, technical and physical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any electronic PHI it creates, receives, maintains or transmits on behalf of Covered Entity. In addition to any safeguards specifically set forth in this Agreement, Business Associate shall use reasonable and appropriate safeguards to prevent use or disclosure of Covered Entity's PHI other than as permitted by this Agreement.

b. Business Associate's Agents. Business Associate shall ensure that any agents, including subcontractors, to whom it provides PHI received from, or created or received by Business Associate for on behalf of, Business Associate agree to be bound by the same restrictions and

conditions that apply to Business Associate under this Agreement, including implementation of reasonable and appropriate safeguards to protect such PHI.

c. Reporting. Business Associate shall report in writing any Security Incident, use or disclosure of Covered Entity's PHI in violation of this Agreement as soon as practical but not more than fifteen (15) business days after becoming aware of such Security Incident, use or disclosure.

d. Breach of Unsecured PHI. With the exception of law enforcement delays that satisfy the requirements under 45 C.F.R. 164.412 or as otherwise required by applicable State law, Business Associate shall notify Covered Entity in writing of a Breach of Covered Entity's Unsecured PHI within fifteen (15) days of discovery of such Breach. Such report must include, to the extent possible, the name of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed in a manner that is not permitted under this Agreement. Business Associate shall also provide, to the extent possible, any other information required by Covered Entity to provide notice to individuals under 45 C.F.R. 164.404(c), to the media under 45 C.F.R. 164.406, and to the Secretary of the United States Department of Health and Human Services ("Secretary") under 45 C.F.R. 164.408. To the extent that such information is not available at the time Business Associate reports the Breach to Covered Entity, Business Associate will provide such information to Covered Entity as it becomes available. For purposes of this Agreement, a Breach of Unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to Business Associate (including any person, other than the individual committing the breach) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.

e. Mitigation. Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from Business Associate's use or disclosure of Covered Entity's PHI in violation of this Agreement, the Privacy and Security Laws, or other applicable privacy laws.

f. Sanctions. Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses Covered Entity's PHI in violation of this Agreement, the Privacy and Security Laws or other applicable law.

g. Covered Entity's Rights of Access and Inspection. From time to time, upon reasonable notice, or upon Covered Entity's reasonable determination that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement,

h. United States Department of Health and Human Services. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's and/or Business Associate's compliance with the Privacy and Security Laws. Business Associate shall provide Covered Entity notice of Business Associate's receipt of such request for access unless otherwise prohibited by law.

6. Obligation to Provide Access, Amendment and Accounting of PHI.

a. Access to PHI. Business Associate shall make available to Covered Entity, in the format agreed upon by the Business Associate and the Covered Entity, PHI contained in a Designated

Record Set held by Business Associate to allow Covered Entity to fulfill Covered Entity's obligations to provide an individual access to, and copies of, the individual's PHI under the Privacy and Security Laws. The Business Associate shall provide such information in the agreed upon format within ten (10) business days of the Covered Entity's request. In the event that any individual submits a request for access to PHI directly to the Business Associate, the Business Associate shall notify Covered Entity within two (2) business days of such request.

b. Amendment of PHI. Business Associate shall make available to Covered Entity PHI contained in a Designated Record Set held by Business Associate as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with the Privacy and Security Laws. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into applicable records maintained by Business Associate within thirty (30) business days of Business Associates receipt of request. In the event that an individual submits a request for amendment directly to the Business Associate, the Business Associate shall notify Covered Entity within five (5) business days of such request.

c. Accounting of Disclosures of PHI.

(1) Record of Disclosures. Business Associate shall maintain a record of all disclosures of PHI received from, or created or received by Business Associate on behalf of, Covered Entity in accordance with 45 C.F.R. 164.528. Business Associate shall make this record available to Covered Entity within thirty (30) business days of the Covered Entity's request.

In the event that any individual submits a request for an accounting directly to the Business Associate, the Business Associate shall notify Covered Entity within five (5) business days of such request.

(2) Certain Disclosures Need Not Be Recorded. The following disclosures need not be recorded as part of an accounting of disclosures:

(a) disclosures to carry out Covered Entity's treatment, payment and health care operations as those terms are defined under the HIPAA Regulations. However, to the extent that such PHI is maintained in an electronic health record, all disclosures made for treatment, payment or healthcare operations shall be recorded as a disclosure to the extent required by the Privacy and Security Laws;

(b) disclosures to individuals of PHI about them as provided by the HIPAA Regulations;

(c) disclosures for Covered Entity's facility's directory, to persons involved in the individual's care, or for other notification purposes as provided by the HIPAA Regulations;

(d) disclosures for national security or intelligence purposes as provided by the HIPAA Regulations;

(e) disclosures to correctional institutions or law enforcement officials as provided by the HIPAA Regulations;

(f) disclosures that occurred prior to the later of (i) the effective date of this Agreement or (ii) the date that Covered Entity is required to comply with HIPAA and the HIPAA Regulations;

(g) disclosures pursuant to an individual's authorization in accordance with HIPAA and the HIPAA Regulations; and

(h) any other disclosures excepted from the right to an accounting by the HIPAA Regulations.

d. Responding to Other Requests From Individuals. If Covered Entity notifies Business Associate in writing that it requires information from Business Associate in order to respond to any other individual request, Business Associate shall make available to Covered Entity such information within thirty (30) business days from the date of the Covered Entity's request.

7. Material Breach, Enforcement and Termination.

a. Term. This Agreement shall become effective on the effective date of the Underlying Agreement (the "Effective Date") and shall continue unless or until the Agreement is terminated in accordance with the provisions of this Agreement, the Underlying Agreement between the parties terminates or the Business Associate has completed performance of the services in the Underlying Agreement, whichever is earlier.

b. Termination. Covered Entity may terminate this Agreement:

(1) immediately if Business Associate is named as a defendant in a criminal proceeding for a violation of any Privacy and Security Laws;

(2) immediately if a finding or stipulation that Business Associate has violated any of the Privacy and Security Laws, or other applicable laws, is made in any administrative or civil proceeding in which Business Associate has been joined;

(3) immediately upon completion of performance of the services in the Underlying Agreement; and

(4) pursuant to Sections 7(c) or 8(b) of this Agreement.

c. Remedies. Upon one party's knowledge of a material breach by the other party, the non-breaching party shall either:

(1) provide an opportunity for the breaching party to cure the breach and end the violation or terminate this Agreement and the Underlying Agreement if the breaching party does not cure the breach or end the violation within thirty (30) days of receipt of written notice from the non-breaching party; or

(2) immediately terminate this Agreement and the Underlying Agreement if, the parties agree, that the nature of the breach or violation is such that a cure is not possible.

d. Knowledge of Non-Compliance. Any non-compliance by either party with this Agreement will automatically be considered a breach or violation of a material term of this Agreement if the breaching party knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

e. Reporting to United States Department of Health and Human Services. If efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement is not feasible, Covered Entity or Business Associate, as applicable, shall report the breach or violation to the Secretary. The reporting party shall inform the non-reporting party of its intention to file a report.

f. Injunctions. Business Associate acknowledges that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law or in equity, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation of this Agreement or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

8. Miscellaneous Terms.

a. State Law. Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without written authorization from an individual who is the subject of the PHI, or written authorization from any other person, where such authorization would be required under State law for such use or disclosure.

b. Amendment. Covered Entity and Business Associate agree to enter into good faith negotiations to amend this Agreement to come into compliance with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of PHI. Covered Entity may terminate this Agreement, upon written notice to the other party, in the event that the parties are not able to reach an agreement, within thirty (30) days of beginning such negotiations, that is sufficient to ensure that the parties will be able to comply with such laws and regulations.

c. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. Ambiguities. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, Privacy and Security Laws and any rules, regulations and guidance issued pursuant thereto.

e. Primacy. To the extent that any provision of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control.

f. Destruction/Return of PHI. Business Associate agrees that, pursuant to 45 C.F.R. 164.504 (e) (2) (ii) (I), upon termination of this Agreement or the Underlying Agreement, for whatever reason,

(1) it will return or destroy all PHI, if feasible, received from or created or received by it on behalf of Covered Entity which Business Associate maintains in any form, and retain no copies of such information which for purposes of this Agreement including any backup tapes, copies or recordings. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. An authorized representative of Business Associate shall certify in writing to Covered Entity, within thirty (30) days from the date of termination or other expiration of the Underlying Agreement, that all PHI has

been returned or disposed of as provided above and that Business Associate or its subcontractors or agents no longer retain any such PHI in any form.

(2) If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify the Covered Entity in writing. The notification shall include:

(a) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination; and

(b) Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained by Business Associate after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

(3) If it is infeasible for Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

g. Minimum Necessary. Business Associate will disclose to its subcontractors, agents or other third parties the minimum PHI necessary to perform or fulfill a specific function required or permitted under this Agreement or the Underlying Agreement. Covered Entity will disclose to Business Associate the minimum PHI necessary to perform or fulfill a specific function required or permitted under this Agreement or the Underlying Agreement.

h. Integration. This Agreement embodies and constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and supersedes all prior oral or written agreements, commitments and understandings pertaining to the subject matter hereof.

i. Governing Law. This Agreement is governed by, and shall be construed in accordance with, applicable Privacy and Security Laws and the laws of the State of Texas without regard to choice of law principles.

j. Notices. Any notices to be given hereunder to a Party shall be made via certified or registered mail or express courier to such Party's address given below, and/or delivered in person. Notice shall be deemed to be delivered and received: (i) if personally delivered or delivered by courier, at the time the notice is received by the party, or (ii) if by mail, at the close of the third business day following the day the notice was placed in the mail.

Each party may change its address for the provision of notice by giving notice to the other party in the manner described above.

k. Privilege. Notwithstanding any other provision in this Agreement, this Agreement shall not be deemed to be an agreement by Business Associate to disclose information that is privileged, protected or confidential under applicable law to the extent that such privilege, protection or confidentiality (a) has not been waived or (b) is not superseded by applicable law.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Agreement effective as of the Effective Date.

COVERED ENTITY:

Name of Covered Entity: _____

By: _____

Printed Name: _____

Date: _____

BUSINESS ASSOCIATE:

JEFFERSON PHYSICIAN GROUP

By: _____

Printed Name: _____

Date: _____