

**JARALL MEDICAL MANAGEMENT, LLC  
MASTER TERMS OF SERVICE**

These **MASTER TERMS OF SERVICE**, together with any applicable Service Order and the Business Associate Addendum attached hereto as Exhibit A (collectively, this "**Agreement**"), are a legally binding agreement between JARALL Medical Management, LLC ("**JMM**") and the individual or entity identified as "**CLIENT**" in a Service Order ("**CLIENT**"). This Agreement governs CLIENT's engagement of JMM, as an independent contractor, to provide services, which may include billing, credentialing, and consulting (collectively, the "**JARALL Services**"), all as further described in the applicable Service Order and associated Responsibility Matrix.

This Agreement is effective as of the date on which both of the following have occurred: (a) JMM accepts CLIENT's initial order and sends CLIENT a corresponding Service Order; and (b) CLIENT manifests consent to the terms of this Agreement by executing the Service Order or otherwise indicating acceptance of this Agreement (the "**Effective Date**").

All Schedules and Exhibits referenced herein are attached to, or referenced in, the applicable Service Order (including any applicable Responsibility Matrix) and are incorporated into and made a part of this Agreement.

**1. DEFINITIONS**

"**Healthcare Laws**" means all applicable federal and state laws, rules, regulations, and regulatory guidance relating to the provision, administration, and payment for healthcare services, items, and supplies, including but not limited to: (i) the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b(b)); (ii) the federal physician self-referral prohibition (Stark Law) (42 U.S.C. § 1395nn); (iii) the federal False Claims Act (31 U.S.C. §§ 3729-3733); (iv) state anti-kickback, self-referral, and false claims laws; (v) federal and state fee-splitting prohibitions; (vi) state medical practice acts and corporate practice of medicine doctrines; (vii) federal and state billing, coding, documentation, and reimbursement requirements; (viii) Medicare, Medicaid, and other government healthcare program requirements; and (ix) any other laws or regulations that may affect the submission of claims for payment or reimbursement for healthcare services, items, or supplies.

"**HIPAA**" means collectively the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009, and the regulations and guidance promulgated or issued thereunder now or in the future.

"**Responsibility Matrix**" means the document attached to or referenced in a Service Order that details the specific duties, obligations, and deliverables assigned to each party in connection with the JARALL Services described in the applicable Service Order.

"**Service Order**" means the ordering document executed by both parties that specifies the JARALL Services to be provided by JMM to CLIENT, including any applicable fees, term length, and other engagement-specific details.

**2. CHANGES TO THIS AGREEMENT**

JMM may, in its sole and exclusive discretion, revise, amend, or otherwise update this Agreement from time to time by posting the revised Agreement on the Website. Any such revised Agreement will become effective upon posting, unless a later effective date is stated in the posting. CLIENT's continued use of the JMM services or continued engagement of JMM after such posting constitutes CLIENT's acceptance of the revised Agreement. If CLIENT does not agree to any revised Agreement, CLIENT's sole remedy is to cease using the JMM services and terminate its engagement in accordance with this Agreement and the applicable Service Order. Notwithstanding anything to the contrary in this Agreement, the update mechanism set forth in this Section controls with respect to revisions to this Agreement; provided, however, that a signed Service Order may override a specific provision of this Agreement only if the Service Order expressly identifies the specific provision being overridden and states the replacement term.

### **3. ENGAGEMENT OF JMM SERVICES**

CLIENT hereby engages JMM, as an independent contractor, to provide the JARALL Services described in one or more Service Orders executed by CLIENT. The scope of work, deliverables, and mutual responsibilities for each engagement will be set forth in the applicable Service Order and associated Responsibility Matrix.

### **4. JMM DUTIES AND RESPONSIBILITIES**

**4.1 Standards.** JMM shall perform all its obligations under this Agreement in such a manner as to provide the JARALL Services in a competent and professional manner consistent with the standards generally observed by similarly situated medical management service providers.

**4.2 Compliance.** In performing its obligations hereunder, JMM shall comply with applicable laws, regulations, rules, directives, and other requirements of local, state, and federal governmental authorities, and authorized agents thereof (including, without limitation, applicable healthcare, privacy, and data security requirements) ("Applicable Law"). JMM shall maintain in effect any permits and authorizations of local, state, and federal governmental authorities that are required to perform its obligations hereunder.

**4.3 Maintenance of Records.** JMM, in the name of, on behalf of, and as agent for, and as directed by, CLIENT, shall maintain records and documentation systems relating to the JARALL Services as necessary for JMM to perform the JARALL Services and to comply with Applicable Law (including applicable record-retention requirements). Except for CLIENT records, patient records, and other materials furnished by or on behalf of CLIENT, all JMM records pertaining to JMM's accounts, operations, workflows, processes, forms, templates, systems, and methodologies used in performing the JARALL Services shall remain the sole and exclusive property of JMM. Upon CLIENT's written request, JMM shall provide copies of CLIENT-accessible records within a reasonable time, not to exceed forty-five (45) days, at CLIENT's expense based on JMM's then-current rates for record reproduction, retrieval, and handling. To the fullest extent permitted by Applicable Law, JMM may withhold release of non-patient-facing records, work product, and deliverables if CLIENT has any outstanding unpaid balances.

**4.4 JMM Personnel.** JMM shall employ or engage such personnel as it, in its sole discretion, deems necessary or desirable in order to perform its obligations hereunder (the "JMM Personnel"), either as employees, independent contractors or otherwise. JMM Personnel shall be compensated by JMM and shall not be, or be deemed or considered to be, employees or independent contractors of CLIENT or joint employees of CLIENT and JMM, for any purpose.

**4.5 Services Provided by JMM.** JMM shall provide the JARALL Services for CLIENT as described in the applicable Service Order and associated Responsibility Matrix. JMM will not provide any services other than those explicitly set forth in the applicable Service Order and associated Responsibility Matrix.

### **5. CLIENT OBLIGATIONS & REPRESENTATIONS**

**5.1 Documentation.** CLIENT shall provide accurate, complete, and sufficient information, documentation, access, and authorizations reasonably necessary for JMM to perform the Services, as specified in the applicable Service Order and Responsibility Matrix. CLIENT will maintain and provide all documentation reasonably required to support the Services, including any records necessary for compliance with applicable laws and third-party requirements, as specified in the applicable Service Order and Responsibility Matrix. JMM may return or hold work pending receipt of sufficient documentation.

**5.2 Compliance.** CLIENT will not request that JMM perform any Services in a manner that violates Healthcare Laws. If JMM learns that CLIENT has engaged in any violation of Healthcare Laws, such conduct shall be grounds for immediate termination by JMM under Section 7.4.

**5.3 Information.** CLIENT shall maintain and convey to JMM, upon request, all information and

documentation reasonably necessary for JMM to perform the Services, including applicable contracts and amendments, fee schedules, policies, procedures, and plan documents, as well as correspondence, profile information, audit requests, subpoenas, and summonses directed to CLIENT that pertain to the Services performed under this Agreement (the "Documents"). CLIENT shall notify JMM within five (5) business days of receipt of updated Documents or renewals of such Documents. CLIENT shall maintain such Documents on the premises and allow JMM access to such Documents at all times during normal business hours. The scope and categories of Documents required for any engagement will be as set forth in the applicable Service Order and Responsibility Matrix.

**5.4 Third-Party Contracts and Forms.** CLIENT shall provide to JMM, upon request, and make available at all times during normal business hours all Documents reasonably necessary to facilitate the Services. The specific documents and forms required for any engagement will be as identified in the applicable Service Order and Responsibility Matrix.

**5.5 Provider Numbers.** CLIENT shall affix or provide appropriate identification, demographic information, and required provider/supplier identifiers to documentation submitted to JMM to facilitate the Services contemplated by this Agreement.

**5.6 Marketing.** It is the express understanding of CLIENT that JMM is not responsible for, and will not undertake, any marketing of CLIENT's services.

**5.7 Licenses.** CLIENT shall ensure that it obtains and maintains at all times in full force and effect all licenses, permits, certificates, and accreditations required to operate CLIENT's business. CLIENT shall provide to JMM, upon request, current copies of licenses, permits, certificates, and accreditations to enable JMM to respond to inquiries from applicable payors, governmental authorities, or other third parties in connection with the Services.

**5.8 Freedom to Contract.** CLIENT attests that it is not a party to any agreement or commitment, and is not subject to any restriction or agreement containing confidentiality or non-compete covenants, that would impede or prohibit CLIENT from performing its duties under this Agreement; or, if CLIENT is subject to any such restriction, CLIENT has obtained written consent to perform the services described in this Agreement and shall provide a copy of such consent prior to the Effective Date. CLIENT further represents and warrants that there is no judgment, action, claim, suit, proceeding, administrative disciplinary action, inquiry, or investigation pending or threatened against CLIENT, and CLIENT is not aware of any facts or circumstances that could serve as a basis for any such matter, that would impede or prohibit CLIENT's ability to perform under this Agreement. CLIENT shall promptly notify JMM in writing upon becoming aware of any such matter during the Term.

**5.9 Restrictive Covenants.**

(a) Non-Solicitation. During the period that JMM is engaged by CLIENT and for a period of two (2) years following the termination or expiration of JMM's contractual relationship or engagement with CLIENT, regardless of the reason for such termination or expiration, CLIENT shall not, directly or indirectly, employ, engage, contract with, solicit for employment or engagement, or assist any other person or entity in employing or engaging, any individual who was employed by or engaged as an independent contractor of JMM at any time during the six (6) month period immediately preceding the termination or expiration of this Agreement or JMM's engagement.

(b) Non-Disclosure of JMM's Confidential Information. CLIENT acknowledges and agrees that the compilation of information, including medical and business office records and all information and data connected with or related to JMM, including, without limitation, all techniques, methods, methodologies, systems, facts, or other information, of whatever kind and whatever form concerning JMM's business, including, without limitation, CLIENT lists, telephone contacts, computer data, knowledge of fees and alternate fee arrangements, and managed care contracts (collectively, "JMM's Confidential Information"), are JMM's valuable, special, and unique assets, and CLIENT shall not disclose JMM's Confidential Information, or any part thereof, to any person, association, partnership, corporation, or other entity, except

as required for rendering the Services or for invoicing, collections, or administration in connection with the Services. This Section 5.9(b) shall apply during the Term and shall survive the expiration or termination of the Agreement, for any reason, for a period of ten (10) years.

(c) Reasonableness of Restrictive Covenants & Irreparable Injury. CLIENT acknowledges and agrees that the restrictive covenants contained in this Section are reasonable with respect to duration, scope, and their effects on JMM and public health, safety, and welfare, and (i) that the restrictive covenants contained herein are necessary to protect the legitimate business interests of JMM, including, without limitation, trade secrets and other valuable confidential business and professional information, substantial relationships with specific prospective or existing payors or CLIENTs, goodwill associated with an ongoing professional practice by way of trade name, trademark, service mark, "trade dress," and specific geographic location, marketing, or trade area, together with extraordinary or specialized training provided to JMM's employees, and that a violation by CLIENT of these restrictive covenants would cause irreparable injury and loss to JMM.

(d) Remedies. If there is a breach or threatened breach by CLIENT of CLIENT's obligations pursuant to this Section 5, CLIENT hereby acknowledges and stipulates that JMM shall not have an adequate remedy at law and shall suffer irreparable harm. Accordingly, in addition to any other remedies at law, in equity, or under this Agreement, JMM shall be entitled to obtain from any court of competent jurisdiction temporary, preliminary, and permanent injunctive relief restraining CLIENT from any further breach or threatened breach of such provisions, without the necessity of posting bond except to the extent required by Applicable Law. CLIENT shall reimburse JMM for all attorneys' fees, costs, and expenses incurred, including interest and fees incurred at all levels of pre-litigation, trial, arbitration, and appeal, as a result of such breach or threatened breach. JMM may also withhold and apply any payments otherwise due from JMM to CLIENT, if any, toward reimbursement of such amounts.

(e) Production of Documents. If, at any time, CLIENT becomes legally compelled (by deposition, interrogatory, request for documents, subpoena, civil investigative demand, or similar process) to disclose any of JMM's Confidential Information, CLIENT shall, to the extent legally permitted, promptly provide JMM with prior written notice of such requirement so that JMM may seek a protective order or other appropriate remedy and/or waive compliance with the terms of this Agreement. In the event that such protective order or other remedy is not obtained, or that JMM waives compliance with the provisions hereof, CLIENT agrees to furnish only that portion of JMM's Confidential Information that CLIENT is advised by legal counsel is legally required to be furnished, and to exercise best efforts to obtain assurance that confidential treatment will be afforded to JMM's Confidential Information. CLIENT shall not oppose any action by JMM to obtain an appropriate protective order or other reliable assurance that confidential treatment will be afforded to JMM's Confidential Information.

**5.10 No Exclusion.** CLIENT certifies that neither CLIENT, nor any of CLIENT's employees or agents who have performed services in connection with this Agreement, (1) is currently debarred, excluded, suspended, or otherwise ineligible to participate in federal or state health care programs or in federal procurement and nonprocurement programs; or has been convicted of a criminal offense within the ambit of 42 U.S.C. §1320a-7(a), the False Claims Act, or any similar federal or state health care fraud, abuse, or false claims statute but has not yet been excluded, debarred, suspended, or otherwise declared ineligible for participation in federal or state health care programs.

**5.11 Authority.** CLIENT represents and warrants that this Agreement and any and all agreements entered into in connection herewith, including Schedules and Exhibits attached to any Service Order(s), to which CLIENT is a party have been duly executed and delivered by CLIENT, and CLIENT has all requisite power to execute and deliver this Agreement and any and all agreements executed and delivered or to be executed and delivered in connection with the transactions provided for hereby, to consummate the transactions contemplated hereby, and to perform its obligations hereunder. The execution, delivery and performance of this Agreement and any Ancillary Agreements, and the consummation by CLIENT of the transactions contemplated hereby and thereby have been duly and validly authorized and approved by all necessary corporate action on the part of CLIENT and no other proceedings on the part of CLIENT are necessary to authorize this Agreement or to consummate the transactions contemplated hereby. This

Agreement and each Ancillary Agreement, if any, to which CLIENT is a party constitutes, or upon execution and delivery will constitute, the legal, valid and binding obligation of CLIENT, enforceable in accordance with its terms.

**5.12 Representations and Warranties.** CLIENT hereby represents and warrants that all information, materials, data, and documentation furnished to JMM in connection with the Services provided under this Agreement shall be complete, accurate, current, and not misleading. CLIENT shall promptly notify JMM of any material changes, disputes, or developments relevant to the performance of the Services, and shall provide such additional information as may be reasonably requested by JMM to perform the Services in accordance with this Agreement and Applicable Law.

## **6 PRIVACY, SECURITY & HIPAA**

**6.1** During the Term of this Agreement the parties hereto agree to: (a) comply with all applicable federal and state laws and regulations governing the privacy and security of protected health information, including the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**") and its implementing regulations as modified and amended from time to time, and any other applicable privacy or data security laws; and (b) execute and maintain a Business Associate Agreement ("**BAA**") in the form attached as Exhibit A. The provisions of this Section 6 and the BAA shall survive the expiration or termination of this Agreement.

**6.2 Business Associate Agreement.** The Business Associate Agreement (Exhibit A) sets forth JMM's obligations with respect to Protected Health Information. To the extent of any conflict between this Agreement and the BAA with respect to Protected Health Information, the terms and conditions of the BAA will control.

**6.3 CLIENT's Privacy Obligations.** CLIENT represents and warrants that it is a "covered entity" under HIPAA and will: (a) not request JMM to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA if done by CLIENT unless specifically permitted for a business associate under HIPAA; (b) comply with the minimum necessary requirements under HIPAA with respect to communications with JMM; and (c) ensure all electronic Protected Health Information transmitted to JMM is encrypted in accordance with HIPAA standards.

## **7 TERMS AND TERMINATION**

**7.1 Term.** Unless otherwise stated in the applicable Service Order, this Agreement will be effective for an initial term of one (1) year from the Effective Date and will automatically renew for successive one (1) year renewal terms unless: (a) CLIENT gives JMM notice of its election not to renew this Agreement at least one hundred twenty (120) days prior to the end of the then-current term, or JMM gives CLIENT notice of its election not to renew this Agreement at least sixty (60) days prior to the end of the then-current term; or (b) this Agreement is terminated by either party for cause as set forth in Section 7.2.

**7.2 Termination for Cause: Breach.** Either party may terminate this Agreement upon written notice for a material breach if the other party fails to cure such material breach within thirty (30) days following written notice from the non-breaching party; provided, however, that JMM shall have the right to terminate this Agreement upon written notice for non-payment if CLIENT fails to cure such non-payment within five (5) business days following written notice from JMM. Notwithstanding anything to the contrary in this Agreement, JMM may terminate this Agreement immediately upon written notice to CLIENT if CLIENT or any authorized user: (a) breaches any material obligation stated in this Agreement or any Service Order and such breach is not curable or, if curable, is not cured within the applicable notice period; (b) breaches CLIENT's confidentiality obligations under this Agreement; or (c) threatens the integrity, security, or operation of JMM systems, data, or services.

### **7.3 Terms of Payment.**

(a) In consideration for the Services to be performed by JMM, CLIENT agrees to pay JMM the fees, charges, and expenses set forth in the applicable Service Order.

(b) If the fee for Services rendered is a contingency-based, percentage-based, or other performance-based fee, then CLIENT shall pay such amounts to JMM no later than the due date stated on the applicable invoice, which invoice may be issued following the applicable triggering event as set forth in the Service Order. If CLIENT cancels, pauses, withdraws, or terminates a requested Service or this Agreement for any reason after JMM has commenced performance, then JMM shall remain entitled to all fees earned through the effective date of such cancellation, pause, withdrawal, or termination, including any applicable percentage-based fee on amounts collected, recovered, enrolled, or otherwise realized as a result of JMM's Services.

(c) CLIENT shall have ten (10) days from receipt of an invoice to deliver to JMM a written dispute describing in reasonable detail any specific fee, charge, or cost disputed on such invoice. Any undisputed portion of the invoice shall remain due and payable in accordance with this Agreement. If CLIENT does not timely object to an invoice within such ten (10) day period, then the invoice shall be deemed accepted, approved, and no longer subject to dispute, except in the case of a manifest mathematical or clerical error.

(d) Unless otherwise stated in the applicable Service Order, JMM may send CLIENT an invoice on or after the first (1<sup>st</sup>) day of the month for Services performed in the preceding month, and such invoice shall be due and payable within ten (10) days after the invoice date. CLIENT shall pay all amounts due via ACH, check, or credit card, or by any other payment method approved by JMM. Late payments will incur interest at the rate of two percent (2%) per month or the maximum rate permitted by law, whichever is less, accruing from the due date until paid in full. All charges to a credit card will incur a 3.5% service fee based on the amount charged.

(e) If CLIENT does not remit payment in full by the due date, JMM reserves the right, in addition to all other rights and remedies, to charge the unpaid amount to any credit card or other payment method maintained by JMM on file for CLIENT, together with the applicable 3.5% service fee on the amount charged.

(f) CLIENT's obligation to pay JMM as set forth herein shall survive any termination or expiration of this Agreement.

(g) Remedies for Non-Payment. If CLIENT fails to pay any fees, charges, costs, or expenses due hereunder by the applicable due date, then, in addition to all other remedies available under this Agreement, at law, or in equity, JMM may: (i) assess and collect late charges and interest as provided in Section 7.3(d); (ii) recover from CLIENT all costs of collection, enforcement, and recovery, including reasonable attorneys' fees, court costs, arbitration fees, expert fees, collection-agency fees, tracing fees, and other out-of-pocket expenses, whether or not suit or arbitration is commenced; (iii) suspend or withhold Services, deliverables, access, or release of records upon two (2) business days' written notice to CLIENT, except to the extent prohibited by Applicable Law; (iv) require advance payment, a retainer, or updated payment method information as a condition to continuing Services; and/or (v) terminate this Agreement for non-payment in accordance with Section 7.2. Any suspension, withholding, or termination shall not limit JMM's right to collect all unpaid amounts and accrued interest.

**7.4 Immediate Termination.** This Agreement may be terminated immediately by JMM upon written notice to CLIENT upon the occurrence of any of the following events:

(a) CLIENT, or any of CLIENT's officers, directors, or managers, is excluded, debarred or suspended from participating in the Medicare or Medicaid programs or any other federal, state, or third-party coverage plan program; or

(b) CLIENT assigns, or attempts to assign this Agreement in violation of its terms; or

(c) CLIENT, or any of CLIENT's officers, directors, or managers, is convicted of a crime other than a misdemeanor traffic violation; or

(d) CLIENT voluntarily or involuntarily dissolves or ceases to operate; or

(e) CLIENT or any of CLIENT's officers, directors, managers, employees or contractors engage in conduct that, in the absolute and sole discretion of JMM, is, could be, or is reasonably likely to be materially injurious to JMM, its business operations, referral relationships, affiliates, successors, assigns and/or reputation; or

(f) CLIENT engages in a pattern, in the sole judgment of JMM, of providing information to JMM which is incomplete, misleading, false, or fraudulent, or otherwise violative of the Healthcare Laws.

**7.5 Termination for Insolvency.** Each party will have the right to terminate this Agreement immediately upon written notice in the event that the other party becomes insolvent, files for any form of bankruptcy, or becomes the subject of any involuntary proceeding relating to insolvency, liquidation, receivership, or composition for the benefit of creditors, if such proceeding is not dismissed within sixty (60) days of filing, makes any assignment for the benefit of creditors, has a receiver, administrative receiver, or officer appointed over the whole or a substantial part of its assets, or ceases to conduct business, or an equivalent act to any of the above occurs under the laws of the jurisdiction of such party.

**7.6 Termination Due to Legislature/Regulatory Modification.** This Agreement will terminate upon prior written notice by either party to the other, if, after good faith negotiations, the parties fail to amend the Agreement as required pursuant to Section 8.

**7.7 Consequences of Termination.** JMM will continue to perform the Services through the effective date of termination, unless JMM is entitled to suspend or cease performance earlier under this Agreement or Applicable Law; provided that JMM's obligation to continue performing during any wind-down period is expressly conditioned on CLIENT remaining current on all payment obligations throughout such period. CLIENT shall compensate JMM for all Services performed, fees earned, costs incurred, and amounts otherwise payable through the effective date of termination in accordance with Section 7.3 and the applicable Service Order. The expiration or termination of this Agreement will not affect either party's right to seek damages incurred as the result of the other party's actions or inactions during the term hereof. Transition assistance, deliverables, and wind-down activities, if any, will be governed by the applicable Service Order and Responsibility Matrix and, unless expressly stated otherwise in the Service Order, shall be billable at JMM's then-current rates. This Section shall survive the expiration or termination of this Agreement for any reason.

**7.8 Limitation of Liability.** The parties acknowledge that occasional errors or delays may occur despite the best efforts of the parties. JMM's sole obligation with respect to any nonconforming Services timely reported by CLIENT in writing within fifteen (15) days after the occurrence giving rise to the claim shall be limited, at JMM's option, to correcting, re-performing, or crediting the affected Services. JMM shall in no event be liable to CLIENT for any special, consequential, incidental, punitive, exemplary, or indirect damages, or for lost profits, lost revenues, loss of business opportunity, loss of goodwill, or loss of data, whether foreseeable or not. The parties further acknowledge that certain laws, regulations, accreditation requirements, payor or third-party requirements, and industry standards may impose deadlines or prerequisites for the performance or acceptance of Services or deliverables. JMM shall have no responsibility to perform, re-perform, contest, appeal, or otherwise address matters that are untimely, noncompliant, incomplete, inaccurate, or outside of JMM's reasonable control, including where resulting from CLIENT's acts or omissions. Nothing in this Section 7.8 limits CLIENT's payment obligations or CLIENT's liability for indemnification obligations, breaches of confidentiality, misuse of JMM confidential information, or violations of Section 5.9.

**8. LEGISLATIVE/REGULATORY MODIFICATION.** If any applicable law, rule, regulation or payment policy of any governmental authority or payor (including, without limitation, Medicare or Medicaid), or any interpretation thereof at any time during the term of this Agreement is modified, implemented, proposed to be implemented, or determined to prohibit, restrict, or in any way materially change, the terms of this Agreement or the provision of any Services, or, by virtue of the existence of this Agreement, has or will have a material adverse effect on the ability of either party to this Agreement to fulfill its duties and

obligations and conduct its business as set forth in this Agreement (each of the foregoing being referred to herein as a "Change"), then the parties to this Agreement shall negotiate in good faith to amend this Agreement to comply with such Change to preserve as closely as possible the economic arrangement between the parties. In the event of such a Change, either party shall notify the other within thirty (30) calendar days of receipt of notice of the Change and commence negotiations to amend the Agreement. In the event the parties fail to amend this Agreement to address the Change to enable the parties to continue to perform under this Agreement in compliance with applicable law, either party may terminate the Agreement upon thirty (30) days advance written notice to the other party; provided, however, such time periods shall be reduced as necessary to avoid a violation of law.

**9. SOCIAL SECURITY ACT REQUIREMENTS.** To the extent applicable to the Services, and only if required by law, including the Medicare and Medicaid requirements under Section 952 of the Omnibus Budget Reconciliation Act of 1980 (P.L. 96-499) and such final regulations relating thereto as may be promulgated by the Secretary of the U.S. Department of Health and Human Services (the "Secretary"), JMM shall, while this Agreement is effective and until expiration of four (4) years after furnishing of any Services hereunder, make available, upon written request to the Secretary, or the Comptroller General of the United States (the "Comptroller General"), or to any of their duly authorized representatives, a copy of this Agreement and such books, documents and records of JMM as are necessary to certify the nature and extent of the costs incurred by JMM (on behalf of the CLIENT) with respect to any Services furnished hereunder. To the extent required by such Medicare and Medicaid requirements, if JMM carries out any of the duties hereunder through a subcontract, with a value or cost of Ten Thousand Dollars (\$10,000.00) or more over a twelve (12) month period, such subcontract shall contain a clause identical to the foregoing concerning the maintenance of records and their availability to the Secretary, the Comptroller General, and their designated representatives.

**10. INDEMNIFICATION.** CLIENT agrees to indemnify, defend, and hold harmless JMM and its affiliates, subsidiaries, successors, assigns, and its managers, members, directors, officers, employees, agents, and contractors from and against any and all taxes, losses, damages, liabilities, costs, and expenses, including reasonable attorneys' fees and other legal expenses, arising directly or indirectly from or in connection with: (i) any negligent, reckless, unlawful, or intentionally wrongful act or omission of CLIENT or CLIENT's managers, members, directors, officers, assistants, employees, agents, contractors, or similar persons in connection with this Agreement; (ii) any breach by CLIENT of any representation, warranty, covenant, or obligation contained in this Agreement, any Service Order, or the BAA; (iii) any failure of CLIENT or CLIENT's managers, members, directors, officers, assistants, employees, agents, contractors, or similar persons to operate CLIENT's business or perform their responsibilities in accordance with Applicable Law; (iv) any errors or omissions in the information, data, or materials furnished to JMM by or on behalf of CLIENT (including, without limitation, patient, payor, credentialing, billing, coding, documentation, or financial information) that JMM uses or relies upon in performing the Services; and (v) any claim relating to the medical care, treatment, diagnosis, coding support inputs supplied by CLIENT, documentation, supervision, licensure, enrollment, or professional services of CLIENT or its personnel. JMM shall have the right to participate in the defense with counsel of its choosing at its own expense, and CLIENT shall not settle any claim in a manner that imposes liability or obligations on any JMM indemnified party without JMM's prior written consent. This Section shall survive the expiration or termination of this Agreement for any reason.

**11. MISCELLANEOUS**

**11.1 Professional Responsibility.** JMM DOES NOT GIVE MEDICAL ADVICE, PROVIDE MEDICAL OR DIAGNOSTIC SERVICES, OR PRESCRIBE MEDICATION. USE OF THE SERVICES IS NOT A SUBSTITUTE FOR THE PROFESSIONAL JUDGMENT OF HEALTH CARE PROVIDERS IN DIAGNOSING AND TREATING PATIENTS. CLIENT ACKNOWLEDGES THAT CLIENT IS SOLELY RESPONSIBLE FOR VERIFYING THE ACCURACY OF PATIENT INFORMATION (INCLUDING, WITHOUT LIMITATION, BY OBTAINING ALL APPLICABLE PATIENTS' MEDICAL AND MEDICATION HISTORY AND ALLERGIES) AND ANY INFORMATION PROVIDED TO A PATIENT, AND FOR ALL MEDICAL DECISIONS OR ACTIONS WITH RESPECT TO THE MEDICAL CARE, TREATMENT AND WELLBEING OF CLIENT'S PATIENTS, INCLUDING, WITHOUT LIMITATION, ALL OF CLIENT'S ACTS

OR OMISSIONS IN TREATING THE APPLICABLE PATIENT. ANY USE OR RELIANCE BY CLIENT UPON THE SERVICES WILL NOT DIMINISH THAT RESPONSIBILITY. CLIENT ASSUMES ALL RISKS ASSOCIATED WITH CLIENT'S CLINICAL TREATMENT OF PATIENTS.

**11.2 Limitations of Damages and Liability.** IN NO EVENT WILL JMM, OR ANY JMM AFFILIATE, AGENT, CONTRACTOR, OR LICENSOR, BE LIABLE TO CLIENT OR TO ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, OR PUNITIVE DAMAGES UNDER THIS AGREEMENT OR IN CONNECTION WITH THE SERVICES, INCLUDING DAMAGES FOR LOSS OF BUSINESS PROFITS, BUSINESS INTERRUPTION, LOSS OF DATA OR BUSINESS INFORMATION, OR OTHER PECUNIARY LOSS, EVEN IF JMM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE. FURTHER, IN NO EVENT WILL JMM'S AGGREGATE LIABILITY TO CLIENT OR ANY THIRD PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT EXCEED THE SERVICE FEES ACTUALLY PAID BY CLIENT TO JMM UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD IMMEDIATELY PRECEDING THE DATE THE APPLICABLE CAUSE OF ACTION AROSE, AND JMM'S LICENSORS, AFFILIATES, AND AGENTS SHALL NOT BE LIABLE TO CLIENT OR ANY THIRD PARTY FOR ANY CLAIM ARISING UNDER THIS AGREEMENT. The foregoing limitations shall not apply to the extent prohibited by Applicable Law. For the avoidance of doubt, nothing in this Section limits CLIENT's obligation to pay all amounts due under this Agreement or limits CLIENT's liability for indemnification obligations, breaches of confidentiality, misuse of JMM confidential information, violations of Section 5.9, or collection costs and attorneys' fees payable to JMM under this Agreement.

**11.3 Anti-Fraud and Abuse.** The parties certify that they do not refer patients to each other for services that are payable by Medicare, Medicaid, or any other third-party coverage plan. Nothing in this Agreement shall be construed as an offer or payment by any party to any other party or any affiliate of any party of any cash or other remuneration, whether directly or indirectly, overtly, or covertly, specifically for patient referrals or for recommending or arranging the purchase, lease or order of any item or service. No amount paid or to be paid hereunder is intended to be, nor shall it be construed to be, an inducement or payment of the referral of patients by JMM, to the CLIENT or by the CLIENT to JMM or any affiliates to JMM. In addition, no amount paid or advanced hereunder includes any discount, rebate, kickback, or other reduction in charge in exchange for patient referrals or for business generated by one party or the other that they are independent contractors for the purposes described in this Agreement.

**11.4 Non-discrimination.** The parties agree that there shall be no discrimination in the performance of this Agreement against any employee, independent contractor, patient, or other person as the result of that individual's race, color, disability, religion, sex, sexual preference, age or national origin or in violation of applicable federal, state or local law and regulation.

**11.5 Independent Contractor.** It is expressly understood and agreed by the parties that nothing contained in this Agreement shall be construed to create a joint venture, partnership, association, or other affiliation or like relationship between the parties, or a relationship of landlord and tenant, it being specifically agreed that the relationship of JMM and CLIENT is and shall remain that of independent parties to a contractual relationship as set forth in this Agreement.

**11.6 Notice.** All notices, demands, consents, approvals, and other communications hereunder shall be in writing and shall be delivered personally, by nationally recognized overnight courier, or by e-mail, in each case to the addresses or contact information set forth in the applicable Service Order or as otherwise designated by notice under this Section. Notices shall be deemed given: (a) when delivered personally; (b) one (1) business day after deposit with a nationally recognized overnight courier, with tracking; or (c) upon transmission by e-mail, provided that no notice of delivery failure or undeliverability is received by the sending party. Routine operational communications may be sent by e-mail. Any party may change its address or contact information by giving notice in writing to the other party in accordance with this Section.

**11.7 Waiver.** No waiver by any party of any breach or default in performance by any other party, and no failure, refusal or neglect to exercise any right, power or remedy given to any party hereunder or to insist upon strict compliance with or performance of all obligations under this Agreement, shall constitute a waiver

of the provisions of this Agreement with respect to any subsequent breach or a waiver by such party of its right at any time thereafter to require exact and strict compliance with the provisions of this Agreement.

**11.8 Severability.** The invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof, and this Agreement shall be construed in all respects as if such invalid or unenforceable provisions were not a part hereof.

**11.9 Advice of Legal Counsel.** Each party acknowledges that, in executing this Agreement, it has had the opportunity to seek advice from legal counsel and that the person consenting on its behalf has read and understood all of the terms and provisions of this Agreement. This Agreement will not be construed against any party by reason of the drafting or preparation thereof.

**11.10 Governing Law.** This Agreement, the Service Orders, and amendments hereto, will be governed by and construed under the laws of the State of New Jersey exclusively, without regard to conflicts of laws principles.

**11.11 Arbitration; Exclusive Forum and Venue.** EXCEPT FOR ACTIONS BY JMM SEEKING TEMPORARY, PRELIMINARY, OR PERMANENT INJUNCTIVE RELIEF OR OTHER EQUITABLE RELIEF, ACTIONS BY JMM TO CONFIRM, ENFORCE, OR COLLECT AN ARBITRATION AWARD, AND COLLECTION ACTIONS COMMENCED BY JMM TO RECOVER UNPAID FEES, CHARGES, COSTS, EXPENSES, INTEREST, ATTORNEYS' FEES, OR OTHER COLLECTION COSTS OR ENFORCEMENT AMOUNTS OWED UNDER THIS AGREEMENT OR ANY SERVICE ORDER, ANY AND ALL DISPUTES, CLAIMS, OR CONTROVERSIES ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY SERVICE ORDER, ANY AMENDMENT, OR CLIENT'S USE OF THE SERVICES, WHETHER IN CONTRACT, TORT, STATUTE, OR OTHERWISE, SHALL BE RESOLVED SOLELY AND EXCLUSIVELY BY FINAL AND BINDING ARBITRATION administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. Any such arbitration shall be conducted exclusively in Monmouth County, New Jersey, and each party irrevocably submits to such venue and waives any objection based on inconvenient forum or improper venue. The arbitrator shall have authority to award any remedy available at law or in equity that is not expressly waived or limited by this Agreement, including temporary or permanent equitable relief, and shall apply the limitations of liability and other substantive provisions of this Agreement. Any collection action described above may be brought solely and exclusively by JMM in the Superior Court of New Jersey, Monmouth County, including, where the amount in controversy falls within the applicable jurisdictional limits, the Special Civil Part, and otherwise in the Law Division, and CLIENT irrevocably consents to the personal jurisdiction and venue of such courts and waives any objection based on lack of personal jurisdiction, improper venue, or forum non conveniens. CLIENT further agrees that, in any such collection action, service of process may be made by any method permitted under applicable court rules or by certified mail, return receipt requested, overnight courier with tracking, or personal service at the addresses for notice set forth in the applicable Service Order or otherwise designated by notice under Section 11.6, and CLIENT waives any claim that any such service effected in accordance with this sentence is ineffective to the fullest extent permitted by Applicable Law. The arbitration award shall be final and binding, and judgment on the award may be entered, confirmed, and enforced in any court of competent jurisdiction, including the state or federal courts located in or serving Monmouth County, New Jersey, and each party irrevocably consents to the jurisdiction of such courts for that purpose. The prevailing party in any arbitration or court proceeding to compel arbitration, enforce this Section, confirm or enforce an award, obtain injunctive relief, or pursue or defend a collection action or otherwise collect amounts due under this Agreement shall be entitled to recover its reasonable attorneys' fees, arbitration fees, court costs, expert fees, and other enforcement costs. THE PARTIES EXPRESSLY WAIVE AND FOREGO ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATED TO THIS AGREEMENT, ANY SERVICE ORDER, ANY AMENDMENT, OR THE SERVICES.

**11.12 Attorney's Fees.** Without limiting any more specific fee-shifting or cost-recovery right in this Agreement, in the event of any arbitration, litigation, collection action, injunction proceeding, award-enforcement proceeding, or other dispute related to or arising out of the performance, enforcement, or interpretation of this Agreement, the prevailing party shall be entitled to recover from the other party its

reasonable attorneys' fees, costs, and expenses incurred at all levels of pre-dispute enforcement, arbitration, trial, and appeal, including in any collection action filed by JMM pursuant to Section 11.11.

**11.13 Construction; Counterparts; Consents.** The headings used herein are for convenience and reference only and shall not be construed to be part of this Agreement or used in determining the meaning or interpretation of this Agreement. Unless the context otherwise requires, whenever used in this Agreement the singular shall include the plural, the plural shall include the singular, and the masculine gender shall include the neuter or feminine gender and vice versa. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which taken together shall constitute one and the same instrument. Whenever in this Agreement an approval or consent is required of CLIENT, the same shall not be unreasonably withheld.

**11.14 Entire Agreement; Modifications.** This Agreement, together with the applicable Service Order, Responsibility Matrix, and all attached exhibits and schedules, constitutes the entire understanding of the parties and supersedes any and all other agreements, whether written or oral, between the parties with respect to the subject matter hereof. Except as expressly set forth in Section 2 with respect to revisions to these Terms of Service, no modification, amendment, or waiver of this Agreement or any Service Order shall be effective unless in writing and executed by both parties; provided, however, that a signed Service Order may override a specific provision of these Terms of Service only if the Service Order expressly identifies the specific provision being overridden and states the replacement term, in which case the Service Order shall control solely as to that specific provision.

**11.15 Assignment.** JMM may assign this Agreement and any rights or obligations hereunder, in whole or in part, without restriction and without CLIENT's consent, including to any affiliate or to any entity that is majority-owned, directly or indirectly, by JMM, or in connection with a merger, acquisition, corporate reorganization, financing transaction, or sale of all or substantially all of JMM's assets. Except as otherwise provided in this Section 11 or Exhibit A, CLIENT may not assign this Agreement or any rights or obligations hereunder without the prior written consent of JMM. Any purported assignment in violation of this Section shall be null and void.

**11.16 Survival.** The following provisions shall survive the termination or expiration of this Agreement for any reason: Section 5.9 (Restrictive Covenants), Section 7.3 (Terms of Payment), Section 7.7 (Consequences of Termination), Section 7.8 (Limitation of Liability), Section 10 (Indemnification), Section 11.2 (Limitations of Damages and Liability), Section 11.11 (Arbitration; Exclusive Forum and Venue), Section 11.12 (Attorney's Fees), Section 11.13 (Construction), Section 11.14 (Entire Agreement), Section 11.16 (Survival), Section 11.17 (Binding Agreement), and any other provision that by its express terms survives or that is necessary to give effect to the parties' rights and obligations arising prior to termination.

**11.17 Binding Agreement.** This Agreement shall inure to the benefit of and be binding on CLIENT and JMM and their respective successors and permitted assigns.

**11.18 Force Majeure.** Notwithstanding any other provision of this Agreement, any failure of JMM to perform or delay in the performance of its obligations under this Agreement due to any cause or event not reasonably within JMM's control, including but not limited to casualty, labor disputes, failure of equipment or carriers or utilities, compliance with governmental authority, pandemic, epidemic, cyber attack, telecommunications or internet failures, Act of God, war, terrorism, civil unrest, changes in law or regulations, or any other circumstances beyond JMM's reasonable control, will not constitute a breach of this Agreement, and JMM's performance will be excused during such period of delay and for a reasonable time thereafter as needed to resume normal operations. For the avoidance of doubt, a force majeure event shall not excuse or defer CLIENT's obligation to pay any fees, charges, or expenses accrued or earned prior to or during such event.

**11.19 Cumulative Remedies.** The rights and remedies set forth in this Agreement shall be cumulative and in addition to all other rights and remedies available to the parties at law or in equity. The exercise of one or more such rights or remedies shall not impair the rights of either party to exercise any other right or remedy at law or in equity.

## EXHIBIT A

### **BUSINESS ASSOCIATE ADDENDUM**

This **BUSINESS ASSOCIATE ADDENDUM** (this “**Addendum**”), by and between JARALL Medical Management, LLC (“**Business Associate**”), and the individual or entity identified as “**CLIENT**” in the Agreement (“**Covered Entity**”) is effective as of the effective date of the Agreement (“**Effective Date**”). **Business Associate** and **Covered Entity** are referred to in this Addendum individually as a “**Party**” and collectively as the “**Parties**.”

**WHEREAS**, **Covered Entity** is a covered entity under the administrative simplification provision of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information (“**Privacy Rule**”), the Security Standards for the Protection of Electronic Protected Health Information (“**Security Rule**”) (collectively, “**HIPAA**”) and the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“**HITECH Act**”);

**WHEREAS**, the Parties have entered into or contemporaneously are entering into the Agreement;

**WHEREAS**, under the Agreement, **Business Associate** performs certain functions or services on behalf of **Covered Entity** that may require, at least in part, that **Business Associate** access, create, and/or receive Protected Health Information (as defined below) from or on behalf of **Covered Entity**.

**WHEREAS**, **Business Associate** may be a “business associate,” as defined in HIPAA and the HITECH Act; and

**NOW, THEREFORE**, in consideration of the mutual promises in this Addendum and the Agreement, compliance with HIPAA and the HITECH Act, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree that this Addendum shall be incorporated into and shall modify the Agreement.

**1. Definitions.** Except as otherwise defined in this Addendum, any and all capitalized terms in this Addendum shall have the definitions set forth in HIPAA and the HITECH Act. “**Individual**” shall have the same meaning as the term “individual” in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g). “**Protected Health Information**” shall have the same meaning as the term “protected health information” in 45 CFR Section 160.103 that is created, received, maintained, or accessed by **Business Associate** from or on behalf of **Covered Entity**.

**2. Permitted Uses and Disclosures of Protected Health Information.**

2.1 Uses and Disclosures to Perform the Agreement. **Business Associate** may only use or disclose Protected Health Information as necessary to perform functions, activities or services for or on behalf of **Covered Entity** as specified in the Agreement or this Addendum, including providing training and support to **Covered Entity** which may involve accessing **Covered Entity**’s computer systems.

2.2 Use and Disclosure for Management and Administration. **Business Associate** may use Protected Health Information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.

2.3 Other Permissible Uses and Disclosures. Except as otherwise limited in this Addendum or the Agreement, **Business Associate** may use Protected Health Information to: (i) provide Data Aggregation services for **Covered Entity**’s health care operations; (ii) create Limited Data Sets; and (iii) create De-Identified Information. De-Identified Information does not constitute Protected Health Information and is not subject to the terms of this Addendum.

2.4 Minimum Disclosure Necessary. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.

2.5 Limitations on Uses and Disclosures. Notwithstanding anything to the contrary in this Addendum or the Terms of Service, Business Associate: (i) may use or disclose Protected Health Information only if such use or disclosure is in compliance with this Addendum; and (ii) shall not use or disclose Protected Health Information in a manner that would violate HIPAA or the HITECH Act if done by Covered Entity, unless such use or disclosure is permitted by HIPAA and the HITECH Act for Business Associate.

### **3. Obligations of Business Associate.**

3.1 Limitations on Uses and Disclosures. Business Associate shall not use or further disclose any Protected Health Information other than as Required by Law or as required or permitted by this Addendum.

3.2 Safeguards. Business Associate shall implement the administrative, physical, and technical safeguards required by the HIPAA Security Rule (45 CFR Part 164, Subpart C) as applicable to Business Associate, and such additional safeguards as are appropriate to Business Associate's size, complexity, and capabilities, to prevent unauthorized use or disclosure of Protected Health Information other than as provided for by this Addendum.

3.3 Reporting. Business Associate shall report to Covered Entity:

3.3.1 A use or disclosure of Protected Health Information not provided for by this Addendum of which it becomes aware, including Breaches of Unsecured Protected Health Information; and/or

3.3.2 A Security Incident of which it becomes aware that results in unauthorized access, use, disclosure, modification, or destruction of Protected Health Information; provided that unsuccessful Security Incidents that do not represent material risks to Protected Health Information need only be reported in aggregate on a semi-annual basis.

3.4 Subcontractors. Business Associate shall require any of its subcontractors or agents that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate to enter into a written agreement that contains substantially similar protections for Protected Health Information as contained in this Addendum, provided that, as between the Parties, Business Associate shall not be liable to Covered Entity for the acts or omissions of its subcontractors if Business Associate has entered into an appropriate written agreement with such subcontractor and such subcontractor acted contrary to the terms of that agreement. Nothing herein limits any liability imposed on Business Associate under applicable law.

3.5 Access. Business Associate shall make available and provide access to Protected Health Information in a designated record set to the Covered Entity to allow Covered Entity to meet its obligations under 45 CFR Section 164.524 and the HITECH Act.

3.6 Amendment. Business Associate shall make amendments to Protected Health Information in a designated record set as directed or agreed to by Covered Entity to allow Covered Entity to meet its obligations under 45 CFR Section 164.526, or take other measures necessary to satisfy Covered Entity's obligations under 45 CFR Section 164.526.

3.7 Accountings of Disclosures. Business Associate shall document such disclosures of Protected Health Information and, upon request, shall provide to Covered Entity such information necessary to permit Covered Entity to comply with its accounting of disclosures obligations in accordance with 45 CFR Section 164.528 and the HITECH Act. Unless the Parties otherwise agree, Covered Entity shall not provide Business Associate's contact information to an Individual in response to a request for an accounting of

disclosures.

3.8 Disclosure to the Secretary. Business Associate shall make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created by Business Associate on behalf of Covered Entity, available to the Secretary of the Department of Health and Human Services or his or her designee (the "Secretary"), in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA. Notwithstanding the foregoing, no legal privilege or protection shall be deemed waived by virtue of this provision.

3.9 HITECH Compliance. Business Associate shall comply with 45 CFR Sections 164.308, 164.310, 164.312, and 164.316 of the Security Rule as if Business Associate were a covered entity under HIPAA. Each privacy and security provision of the HITECH Act that is expressly applicable to business associates by statute or implementing regulation is hereby incorporated into this Addendum and shall apply to Business Associate.

#### **4. Responsibilities of Covered Entity**

4.1 Notice of Privacy Practices. Provide Business Associate with Covered Entity's notice of privacy practices, as well as any changes to such notice, to the extent such notice affects Business Associate's permitted or required uses and disclosures of Protected Health Information.

4.2 Obtain Permissions. Obtain and maintain any and all necessary authorizations, consents, and other permissions from individuals that are required for Business Associate to fulfill its obligations under the Agreement and to use or disclose Protected Health Information as permitted under this Addendum, and promptly notify Business Associate of any revocation of such permissions.

4.3 Restrictions. Notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with HIPAA or the HITECH Act.

4.4 No Impermissible Requests. Not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under HIPAA or the HITECH Act if done by Covered Entity.

4.5 Secure Transmissions. Transmit or provide Protected Health Information to Business Associate in a secure manner that complies with HIPAA Security Rule requirements and industry standard encryption protocols. Covered Entity shall be responsible for any breach or unauthorized disclosure resulting from its failure to properly secure PHI during transmission to Business Associate.

#### **5. Term and Termination**

5.1 Term. The term of this Addendum shall commence as of the Effective Date and shall terminate when the underlying Agreement is terminated or a party terminates for cause as authorized in Section 5.2 below, whichever is sooner.

5.2 Termination for Cause. Upon either Party's knowledge of a material breach or violation by the other Party of this Addendum, HIPAA or the HITECH Act, the non-breaching Party may: (i) terminate the Agreement upon notice to the breaching Party if the breaching Party does not cure the breach or end the violation within thirty (30) days from receipt of written notice specifying the breach (or such shorter period as may be required to comply with applicable HIPAA or HITECH deadlines, including any applicable breach notification obligation), or (ii) report the violation to the Secretary if neither termination of the Agreement nor cure of the material breach is feasible. The cure period may be extended by mutual written agreement of the parties.

5.3 Effect of Termination. Except as provided below, upon termination of the Agreement for any

reason, Business Associate shall return or destroy all Protected Health Information, except for any Protected Health Information that must be retained to comply with applicable law, professional standards, or legitimate business purposes related to its administrative, legal, quality assessment activities, ongoing business operations, or data backup and disaster recovery systems where immediate deletion is not technically feasible. In the event that Business Associate determines that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Addendum to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for as long as Business Associate maintains such Protected Health Information. This provision shall survive the termination or expiration of this Addendum or the Agreement for any reason.

## **6. Miscellaneous.**

6.1 Interpretation. The Parties intend that this Addendum be interpreted consistently with their intent to comply with HIPAA, the HITECH Act, and other federal and state law. Except where this Addendum conflicts with the Agreement, all other terms and conditions of the Agreement remain unchanged. The Parties agree that, in the event an inconsistency exists between the Agreement and this Addendum, the provisions of this Addendum will control.

6.2 No Third-Party Beneficiaries. Except as expressly stated in the Agreement, the Parties do not intend to create any rights in any third parties.

6.3 Amendment. This Addendum may only be amended by mutual written agreement of the Parties; provided, however, that any such amendment shall comply with state and federal law, including HIPAA and the HITECH Act.

6.4 Assignment. Business Associate may assign this Addendum without consent to an affiliate or in connection with a merger, acquisition, corporate reorganization, sale of all or substantially all of its assets, or any other business transaction. Covered Entity may not assign this Addendum without the prior written consent of Business Associate. Any purported assignment in violation of this Section shall be null and void.

6.5 Governing Law. This Addendum will be governed by the laws of the State of New Jersey, without reference to New Jersey's choice of law rules.

6.6 Waiver. No change, waiver, or discharge of any liability or obligation under this Addendum on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation or shall prohibit enforcement of any obligation, on any other occasion.