

**HACKENSACK MERIDIAN HEALTH PARTNERS**  
**PARTICIPATING PHYSICIAN PRACTICE AGREEMENT**

This Participating Physician Practice Agreement and all Schedules and Exhibits attached hereto (collectively, this “**Agreement**”) is entered into by and between Hackensack Meridian Health Partners (“**HMHP**”) and the practice identified on the signature page hereof (the “**Practice**”). HMHP and the Practice are referred to herein individually as a “**Party**” and, collectively, as the “**Parties.**”

**BACKGROUND**

WHEREAS, “**Clinical Integration**” is defined by the federal antitrust agencies as an active and ongoing program to evaluate and modify the clinical practice patterns of the health care providers who participate in a network so as to create a high degree of interdependence and cooperation among the network’s participants to control costs and ensure quality;

WHEREAS, a network that undertakes a program of Clinical Integration (a “**Clinically Integrated Network**”) may include one or more of the following features: (i) methods for collecting and analyzing performance, based on utilization, cost, and/or quality on an individual and aggregate basis; (ii) the development and use of performance standards along with a system to enforce such standards; (iii) use of an electronic health record system and health information technology to facilitate exchange of health information across the network of providers; and (iv) use of evidence-based protocols to establish evidence-based guidelines for support of clinical decision-making and treatment;

WHEREAS, HMHP has been created to develop and implement a Clinical Integration program and to become a Clinically Integrated Network that supports and encourages the delivery of quality health care services in the community including by providing Clinical Integration support services to providers participating in HMHP;

WHEREAS, Practice and its Participating Physicians desire to be a part of HMHP’s Clinically Integrated Network; and

WHEREAS, for and on behalf of itself and its Participating Physicians, Practice wishes to enter into this Agreement with HMHP in order to achieve the foregoing.

NOW, THEREFORE, in consideration of the premises and mutual covenants herein contained and other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties hereby agree as follows:

**Article 1 - Definitions**

- 1.1 “**HMHP Provider**” means any physician, physician practice, hospital, or other health care services provider that has entered into a written contract with HMHP to participate in the Clinical Integration program and to be part of the Clinically Integrated Network and any health care services provider who is an employee, partner, member or shareholder of an entity that has entered into a written contract with HMHP, including the Participating Physicians.
- 1.2 “**Covered Services**” means those medical, surgical and related health care services which Practice and Participating Physicians provide to, or arrange for, Enrollees pursuant to a Health Benefit Plan and this Agreement.

- 1.3 “**Enrollee**” means an individual who by agreement with a Payor, or by law, is entitled to receive Covered Services.
- 1.4 “**Excluded Individual**” means an individual or entity that is excluded under the U.S. Department of Health and Human Services (“HHS”) Office of Inspector General’s (“OIG”) List of Excluded Individuals/Entities, the U.S. General Services Administration’s Excluded Parties List System, or otherwise excluded from participation in Medicare or other Federal Health Care Programs, or is debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal or state department or agency.
- 1.5 “**Health Benefit Plan**” means an agreement between a Payor and an employer, association, governmental body or individual specifying the terms and conditions under which Covered Services are to be provided to Enrollees.
- 1.6 “**HIPAA**” means the Federal Health Insurance Portability and Accountability Act of 1996, 42 USC § 201 et seq. (42 U.S.C. 1320d-2), and the HIPAA Privacy and Security Regulations at Parts 160, 162 and 164 of Title 45 of the Code of Federal Regulations, as amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act enacted as a part of the American Recovery and Reinvestment Act of 2009.
- 1.7 “**PCP**” means a primary care physician, which is a physician who has a primary specialty designation of internal medicine, family practice, pediatrics or obstetrics/gynecology.
- 1.8 “**Payor**” means an insurance carrier, health maintenance organization, pre-paid plan, third party administrator, trust fund employer, employee welfare benefit plan, state or federal governmental agency or program, or any other party responsible for providing payment or reimbursement for Health Care Services provided to Enrollees.
- 1.9 “**Payor Contract**” means any contract executed by HMHP with a Payor pursuant to which HMHP Providers will provide Covered Services to Enrollees in accordance with Health Benefit Plans.
- 1.10 “**Policies and Procedures**” means any and all of HMHP’s standards, policies, protocols, programs, regulations and procedures as adopted by the HMHP Board and set forth in writing and made available to Practice and Participating Physicians during the term of this Agreement, including, but not limited to, any case management, care coordination, referral guidelines, access to care, quality assurance, quality improvement, medical records, and clinical integration policies and programs, including those processes adopted by HMHP to promote evidence-based patient-centeredness medicine; promote patient engagement; enable Practice to provide feedback on quality and cost metrics; and coordinate care among PCPs, specialists, and acute and post-acute providers.
- 1.11 “**Protected Health Information**” shall have the same meaning given to that term in 45 C.F.R. § 160.103.

## **Article 2 - Practice Representations and Obligations**

- 2.1 **General.** Practice and the Participating Physicians agree to participate in HMHP as contemplated in, and subject to the terms and conditions of, this Agreement. Practice and the Participating Physicians agree to abide by HMHP’s Policies and Procedures. HMHP may

amend the Policies and Procedures at any time, but will use reasonable efforts to provide notice of such amendments at least thirty (30) days prior to their effective date. The Parties agree that any Policies and Procedures necessary to comply with laws and regulations do not require thirty (30) days prior notice and shall be effective as stated in such notice. Practice and the Participating Physicians agree to abide by the determinations of HMHP's Board in all matters related to Practice's and the Participating Physicians' compliance with the Policies and Procedures and this Agreement.

2.2 **Eligibility Criteria.** The Practice and the Participating Physicians represent and warrant that, at all times during the Term of this Agreement:

- (a) The Practice is authorized to act on behalf of and bind its Participating Physicians and other health care services providers who are employees or independent contractors of Practice (see **Exhibit A** for a list of Participating Physicians and Practitioners);
- (b) The Practice and each Participating Physician is currently, and for the duration of this Agreement shall remain, participants in the Medicare fee-for-service program, unless Medicare does not generally offer coverage for the Participating Physician's specialty (e.g., pediatrics and obstetrics);
- (c) Neither the Practice nor any Participating Physician is an Excluded Individual and Practice does not employ, obtain services from or contract with any Excluded Individuals;
- (d) Each Participating Physician is a member in good standing of the organized medical staff of a Hackensack Meridian Health hospital (unless the Clinical Performance and Credentials Committee of HMHP has approved an exemption from this requirement);
- (e) Practice agrees to comply, and ensure that Participating Physicians comply, with HMHP's Policies and Procedures;
- (f) Practice meets HMHP requirements for electronic connectivity, including high speed Internet access and participation in the Hackensack Meridian Health information exchange, to facilitate sharing of information; and
- (g) Each Participating Physician who provides Covered Services meets such other criteria as the HMHP governing board may from time to time require or as otherwise set forth herein; provided, however, that the Practice has first been given prior written notice of those criteria.

If, during the term of this Agreement, any of the representations above are determined to be untrue or shall become untrue, Practice will immediately notify HMHP in writing and HMHP will have the right to terminate this Agreement immediately upon written notice.

2.3 **Notice of Disciplinary Actions.** Subject to any limitations or restrictions imposed by law, Practice shall notify HMHP within five (5) business days of Practice's actual knowledge of any of the following matters:

- (a) any action taken by any governmental authority to restrict, suspend or revoke any Participating Physician's license, certification or other approvals necessary to provide the Covered Services contemplated by this Agreement;
- (b) any disciplinary action involving Practice or any Participating Physician by any administrative agency or accreditation body which directly relates to the provision of Covered Services;
- (c) the permanent suspension, revocation, or involuntary modification, restriction, or reduction of the medical staff privileges of a Participating Physician at any hospital or other institutional health care provider;
- (d) a determination made that Practice or any Participating Physician has committed fraud;
- (e) the imposition of any final sanctions against Practice or any Participating Physician under the Medicare or Medicaid program or any other governmental health benefit program;
- (f) any criminal action against a Participating Physician relating to the individual's professional practice; or
- (g) any other act, occurrence, condition or situation which might materially affect any Participating Physician's ability to provide Covered Services under this Agreement.

2.4 **Notice of Changes.** Practice shall notify HMHP within thirty (30) days of any change:

- (a) of Practice's address(es), phone number(s), business hours, or taxpayer identification number ("TIN");
- (b) in Practice's roster of Participating Physicians, including the termination or retirement of any Participating Physician; or
- (c) of Practice's or any Participating Physician's national provider identifier.

2.5 **Clinical Integration.** Practice and each Participating Physician agrees to use commercially reasonable efforts to assist HMHP in implementing its Clinical Integration program, which includes, but is not limited to, the promotion of evidence-based medicine, the promotion of patient engagement, and the development of an infrastructure for the HMHP Providers to internally report on quality and cost metrics that will enable HMHP to monitor, provide feedback, and evaluate its HMHP Providers' performance and to use these results to provide quality care for patients, improved outcomes, improved health for populations and lower per capita growth in expenditures for Enrollees. Practice and the Participating Physicians understand that Clinical Integration and the success of HMHP as a Clinically Integrated Network require Practice's and the Participating Physicians' active and ongoing participation. Practice, therefore, agrees that it and its Participating Physicians shall cooperate in the development and implementation of HMHP's Clinical Integration program.

2.5.1 **Compliance with Policies and Procedures.** Practice and each Participating Physician agrees to actively participate in HMHP's clinical quality improvement program and utilization management program, including the development and implementation of Policies and Procedures developed by the Quality Committee ("**Quality**

**Committee”**), with the involvement and feedback of Participating Physicians and other HMHP Providers, and adopted by the Board. The Practice and each Participating Physician agree to comply with HMHP guidelines and protocols, within the time frame set by the HMHP Board, and to comply with the Hackensack Meridian Health hospital(s) evidence-based protocols and guidelines. Practice and the Participating Physicians understand that the Quality Committee will monitor compliance of the Practice and the Participating Physicians with the Policies and Procedures, and Practice and the Participating Physicians agree to work in good faith with the Quality Committee to improve performance and address any deficiencies in performance and to comply with all policies and procedures relating to patient grievances and complaints.

- 2.5.2 **Exchange of Protected Health Information.** Practice and the Participating Physicians shall participate in the Hackensack Meridian Health Information Exchange (“Hackensack Meridian HIE”). The current Hackensack Meridian HIE is Jersey Health Connect. Practice shall obtain from each patient all consents, authorizations, or other permissions required by HIPAA and other state or federal laws or regulations to facilitate the exchange of clinical information, including Protected Health Information, by it and the Participating Physicians with the Meridian HIE and other HMHP Providers who have a treatment relationship with Practice’s patients.
- 2.5.3 **Health Information Technology.** Each Participating Physician shall use the computerized physician order entry (“CPOE”) system and electronic signature at Hackensack Meridian Health hospitals and designated partner companies to facilitate the collection of information and data. If HMHP deems it necessary that Practice and the Participating Physicians use other health information technology (e.g., web-based solutions and portals that facilitate data exchange, process referrals, create patient registries, or track clinical performance) to enable the Parties to meet their respective obligations under this Agreement or any Payor Contract, Practice and the Participating Physicians agree to implement the specific technology and agree to attend, and require Practice staff to attend, technology training sessions scheduled by HMHP or its agents.
- 2.5.4 **Participation in HMHP Activities.** If the HMHP Board requests that Practice designate a Participating Physician to serve on the Quality Committee or another committee of HMHP, Practice will consider the request in good faith and identify a Participating Physician, mutually agreeable to HMHP and to Practice, to so serve. If Practice determines that serving on the Quality Committee or any other HMHP committee will constitute a serious hardship or undue burden to Practice such that no Participating Physician is able or willing to serve, Practice will provide an explanation to the HMHP Board or its designated representative, which will promptly consider Practice’s circumstances. The HMHP Board will not unreasonably withhold its consent to Practice’s request that it not provide a Participating Physician to serve on the Quality Committee or other HMHP committee. Practice shall also cooperate with HMHP in supplying Participating Physicians for the following Clinical Integration activities:
- (a) leading a training session regarding a guideline or protocol;
  - (b) developing, reviewing, or providing feedback on Policies and Procedures;

- (c) reviewing patient records of a HMHP Provider and making recommendations for improvement; or
- (d) mentoring a HMHP Provider for reasonable periods of time as determined by the Quality Committee.

2.5.5 **Referrals.** As required by a Payor Contract and to ensure the success of the HMHP's Clinical Integration program to achieve quality and cost efficiencies in the delivery of Covered Services, Practice and the Participating Physicians shall refer Enrollees, when medically appropriate, only to other HMHP Providers. Notwithstanding the foregoing, Participating Physicians may refer Enrollees to a non HMHP Provider where: (i) the Enrollee exercises his or her choice for admission to, or services or treatment from, such facility or provider; (ii) the Enrollee's benefit plan permits the Enrollee to make such election; and (iii) the Participating Physician obtains authorization from HMHP's medical director in advance of such referral.

2.5.6 **Access and Availability.** Practice and each Participating Physician agree to HMHP standards of access and availability, as set by the HMHP Board which shall include (i) making Covered Services available to Enrollees during normal business hours, and (ii) being available, directly or through a coverage arrangement, to provide emergency Covered Services on a twenty-four (24) hour, seven (7) day per week basis.

## 2.6 **Participation in Payor Contracts.**

2.6.1 **Non-exclusive Agent.** Practice hereby appoints HMHP as its true and lawful attorney-in-fact for the limited purposes of negotiating and executing Payor Contracts. Practice shall execute any agreements, and/or cause the Participating Physicians to execute any agreements, determined by any state or federal regulatory body or agency to be necessary for the regulatory approval and full implementation of any Health Benefit Plan or Payor Contract.

2.6.2 **Panels.** It is the intention of HMHP to include Practice in all Payor Contracts. Practice understands, however, that participation in a Payor Contract may be limited based on the unique needs and requirements of a Payor, and, thus, Practice agrees that nothing herein guarantees Practice's or Participating Physicians' right to participate in any Payor Contract.

2.6.3 **Performance Incentive Arrangements and Shared Savings Arrangements.** HMHP may enter into Payor contracts under which HMHP Providers are paid for Covered Services under their existing, direct contracts with Payors, but are eligible to receive a financial incentive from the Payor through HMHP for meeting certain quality and utilization metrics ("**Performance Incentive Arrangements**"). HMHP may also enter into Payor contracts under which HMHP Providers are paid for Covered Services under their existing, direct contracts with Payors, but are eligible to share with other HMHP Providers any savings achieved by HMHP for the efficient delivery of care ("**Shared Savings Arrangements**"). The Practice and Participating Physicians hereby agree to participate in any and all performance incentive arrangements or shared savings arrangements (hereafter, "**Incentive Arrangements**") HMHP may negotiate with Payors. Under these Incentive Arrangements, HMHP Providers shall not be

guaranteed payments, but also shall not be required to make any payments in the event quality, utilization or cost metrics are not achieved. HMHP will adopt specific Policies and Procedures regarding the requirements Practice and Participating Physicians must meet to be eligible to receive payments under the Incentive Arrangements. The Practice and Participating Physicians understand that such Incentive Arrangements are intended to encourage Practice and the Participating Physicians to adhere to HMHP's quality improvement and utilization management programs.

2.6.3.1 **Direct Contracts**. Practice understands and agrees that if an Incentive Arrangement requires Practice to have a direct contract with the Payor and:

- (a) Practice does not have a direct contract with that Payor, Practice will be ineligible to participate in that Incentive Arrangement; or
- (b) Practice does not have a direct contract with that Payor and Practice later enters into a contract with that Payor, Practice's participation in the Incentive Arrangement shall be at the discretion of HMHP; or
- (c) Practice's direct contract terminates prior to the end of the Incentive Arrangement, Practice shall give HMHP written notice promptly and Practice's participation in that Incentive Arrangement shall terminate.

2.6.4 **Clinical Integration Payor Contracts**. At such time as HMHP implements its Clinical Integration program as a Clinically Integrated Network, HMHP may negotiate and enter into contracts with Payors that include all terms related to the delivery of Covered Services, including price and other terms related to payment ("**CI Payor Contracts**"). CI Payor Contracts will be presented to the Practice, and Practice will have a reasonable time to decline to participate ("**Opt Out Election**"). Participating Physicians shall participate in and faithfully perform the conditions of CI Payor Contracts in which the Practice participates. If Practice does not provide an Opt Out Election for a CI Payor Contract, any agreement between Practice and that Payor for the same Health Benefit Plans shall be superseded by HMHP's Payor Contract, unless otherwise agreed by HMHP and the Payor.

2.6.5 **Financial Risk-Sharing Contracts**. To the extent permitted by state law, HMHP may enter into a Payor Contract under which HMHP and its Providers will accept financial risk for the delivery of Covered Services ("**Risk Payor Contracts**"). Risk Payor Contracts will be presented to the Practice, and Practice will have an Opt Out Election for each Risk Payor Contract. Participating Physicians shall participate in and faithfully perform the conditions of Risk Payor Contracts in which the Practice participates. If Practice does not provide an Opt Out Election for a Risk Payor Contract, any agreement between Practice and that Payor for the same Health Benefit Plans shall be superseded by HMHP's Payor Contract, unless otherwise agreed by HMHP and the Payor.

2.6.6 **Opt Out Election**. HMHP shall provide Practice notice of each new CI Payor Contract and Risk Payor Contract. If Practice chooses to exercise an Opt Out Election, Practice shall have thirty (30) days from receipt of notice from HMHP regarding the proposed new CI Payor Contract or Risk Payor Contract to provide an Opt Out Election for the new Payor Contract. If HMHP does not receive such notice post-marked within such thirty (30) day period, the new Payor Contract shall be deemed accepted by, and shall

be binding upon, Practice and the Participating Physicians. Notwithstanding anything to the contrary herein, any decision by Practice to provide an Opt Out Election for any CI Payor Contract or Risk Payor Contract shall not affect the status of Practice in all other Payor Contracts referenced herein and shall not be deemed a termination of this Agreement.

**2.6.7 General Payment Provisions for CI Payor Contracts and Risk Payor Contracts.**

All payment terms for CI Payor Contracts and Risk Payor Contracts will be provided to the Practice as set forth in subsections 2.6.4 and 2.6.5 above. General terms applicable to CI Payor Contracts and Risk Payor Contracts are described in **Schedule 2.6.7**. The terms of CI Payor Contracts and Risk Payor Contracts may be amended at any time and shall be binding upon the Practice subject to the following: (i) the Practice shall be provided with written notice of the amendment and shall have thirty (30) days after receipt of the written notice to advise HMHP that it objects to the amendment and is electing to terminate participation in the Payor Contract that is the subject of the amendment as of the effective date of the amendment; and (ii) in the event the Practice does not provide notice as required in (i) above, the Practice shall be deemed to have accepted and agreed to the amendment as of the stated effective date.

**2.6.8 Participation is Non-Exclusive.**

- (a) Nothing in this Agreement shall be construed to restrict Practice from providing, or entering into other contracts or agreements to provide, Covered Services to individuals who are not Enrollees or to enter into agreements with Payors for products not covered by HMHP's Payor Contracts, provided that such activities do not hinder or conflict with Practice's and the Participating Physicians' ability to perform their respective duties and obligations under this Agreement.
- (b) Nothing herein is intended to prohibit Practice's or Participating Physicians' participation in other physician-hospital organizations, independent practice associations, preferred provider organizations, accountable care organizations or other networks, HMOs or other managed care plans; provided, however, that Practice may not participate in a payor contract through any other network or provider organization that would inhibit Practice's ability to participate in HMHP's Payor Contracts.

**2.7 Credentialing.** Practice shall cooperate, and shall ensure that Participating Physicians cooperate, with the credentialing process implemented by HMHP or any Payor with which HMHP contracts ("**Credentialing**"). Practice and each Participating Physician understands that HMHP and Payors will rely on the Credentialing forms Practice completes, including but not limited to the location where Covered Services may be offered, and Practice agrees to notify HMHP or the Payor immediately of any material change in any information provided in a Credentialing form. Practice acknowledges that any material misstatement or omission on the Credentialing forms may constitute cause for a Participating Physician's termination from participation under this Agreement by HMHP.

2.8 **Records.**

- (a) Practice and the Participating Physicians shall maintain medical records regarding Covered Services rendered to Enrollees for the period of years and in a format that complies with state and federal law, rules and regulations, Policies and Procedures, and Payor Contracts. These records must be adequate to permit assessment of all Covered Services rendered. This obligation shall survive termination of this Agreement.
- (b) All records, books, and papers of Practice pertaining to Enrollees of Payors shall be open to inspection upon reasonable notice and during normal business hours by HMHP, the respective Payor, and authorized state and federal authorities, for purposes of quality improvement and utilization management and as otherwise required by state and federal laws. Such disclosure shall be subject to, and limited by, HIPAA and all applicable state and federal laws relating to confidentiality and privacy of patient records. Practice shall make records available without charge upon request of HMHP or any state or federal agency. The cost of preparing copies of records requested by Payors shall be paid by the party or parties requesting said records, unless otherwise specified in the Payor Contract. In calculating such cost, Practice shall comply with applicable laws regarding charges for copies of records. Practice will provide such records directly to the applicable requestor (i.e., Payor or authorized state and/or federal authorities), unless otherwise directed by HMHP.

2.9 **Compliance with Law.** The Practice and the Participating Physicians shall comply with any and all applicable federal and state laws, regulations and rules, CMS instructions and guidance, including, without limitation, (a) federal criminal law; (b) the False Claims Act (31 USC 3729 et seq.); (c) the anti-kickback statute (42 USC 1320a-7b(b)); (d) the civil monetary penalties law (42 USC 1320a-7a); (e) the physician self-referral law (42 USC 1395nn); and (f) those requirements specified in each Payor Contract.

2.10 **Non-Discrimination.** Practice and Participating Physicians will not discriminate in the delivery of Covered Services based on race, color, creed, national origin, ancestry, religion, health status, sex, sexual orientation, disability, marital status, age, source of payment or legally prohibited factor.

### **Article 3 – HMHP Obligations**

3.1 **Quality Improvement and Utilization Management Activities.** As a Clinically Integrated Network, HMHP shall administer quality improvement and utilization management activities, including, but not limited to, development and implementation of Policies and Procedures and monitoring Practice's and Participating Providers' compliance. The Parties acknowledge and agree that such activities will cover only Enrollees covered by Payor Contracts and that HMHP will use clinical data relating solely to Enrollees covered by Payor Contracts for this purpose.

3.2 **Patient Relationship.** As a Clinically Integrated Network, HMHP may define processes to promote patient engagement, and Practice and each Participating Physician shall adopt such processes. Practice and the Participating Physicians acknowledge and agree that nothing in this Agreement shall be construed to materially alter or adversely affect any Participating Physician's relationship with his or her patients. The final decision to provide, or withhold, services is to be made by each Participating Physician with the active and informed

participation of his or her patient and/or the patient's family or appointed medical-decision representative.

- 3.3 **Business Associate Relationship.** Practice and each Participating Physician understands that, to measure individual and group performance on the Policies and Procedures and to facilitate collaboration in patient care, HMHP will collect data and information related to the delivery of Covered Services. Practice and each Participating Physician agrees that HMHP, acting in its capacity as Practice's and each Participating Physician's business associate under the Business Associate Agreement attached hereto as **Exhibit B**, may request and receive clinical and administrative data from Practice, Payors, and other data sources pertaining to services a Participating Physician provided, or requested, on behalf of an Enrollee. Practice and each Participating Physician acknowledges and agrees that HMHP may also contact Enrollees directly to conduct patient satisfaction surveys or other efforts to obtain patient feedback. The HMHP Board shall adopt policies related to the collection, transmission, storage and use of data and information regarding the Covered Services provided by Participating Physicians. Each Party to this Agreement shall ensure that it and all personnel maintain confidentiality of all patient records, charts and other Protected Health Information in accordance with HIPAA and other state and federal laws, rules and regulations.
- 3.4 **Care Management.** HMHP may contract with Payors for HMHP to administer care management, utilization management and quality assurance programs for Payors. The Parties acknowledge and agree that such Payor programs will solely cover such Payors' respective Enrollees and that HMHP will use clinical data relating solely to those Enrollees for this purpose.
- 3.5 **Periodic Reports.** HMHP will generate, and Practice will receive, regular reports of group and individual Participating Physician performance relative to HMHP's quality improvement and utilization management programs, which Practice shall distribute to Participating Physicians. It is the intention of HMHP to provide electronic reports to Practice and the Participating Physicians via the Internet or HMHP portal.
- 3.6 **Audits and Fraud, Waste, and Abuse.** Consistent with federal regulations, Practice and the Participating Physicians shall fully cooperate with HMHP's initiatives, policies, procedures, processes, and programs relating to: (a) HMHP's auditing and oversight obligations; and (b) the identification of and remediation of identified instances or patterns of fraud, waste, and abuse (collectively "**FWA Program**"). Practice and the Participating Physicians acknowledge and agree that HMHP's FWA Program may include any process, procedure, or program that has been adopted by or contemplated by CMS or its designees.
- 3.7 **Licenses and Permits.** HMHP will, at its sole cost and expense, obtain and keep in full force and effect throughout the term of this Agreement any necessary licenses and permits with respect to the operation of HMHP.

#### **Article 4 – Term and Termination**

- 4.1 **Term.** The term of the Agreement shall commence on the Effective Date set forth on the signature page and continue for successive one year terms unless otherwise terminated in accordance with Section 4.2 below (the "Term").

## 4.2 **Termination.**

4.2.1 **Termination without Cause.** Either Party may terminate this Agreement without cause at any time upon ninety (90) days prior written notice to the other Party. Practice and its Participating Physicians shall not be eligible for any payments under Incentive Arrangements unless this Agreement was in effect through the end of the applicable contract year of the Payor Contract.

### 4.2.2 **Termination for Cause.**

- (a) **Immediate Termination of a Participating Physician by HMHP.** In the following cases, HMHP shall have the right to immediately terminate the participation of a Participating Physician under this Agreement:
- (i) imminent harm to Enrollees or others;
  - (ii) in the event that the Participating Physician pleads guilty to, or is convicted of, a felony or a crime related, directly or indirectly, to the provision of Covered Services, including fraud; or
  - (iii) suspension, revocation, or restriction of the Participating Physician's license, registration by a state licensing board or other governmental agency, or medical staff privileges.
- (b) **Termination for Breach.** Either HMHP or Practice may terminate this Agreement immediately upon written notice in the event the other Party materially breaches any of the provisions contained herein; provided, however, the breaching Party shall have been given written notice of such breach and has failed to cure such breach within thirty (30) days of receipt of such notice. The written notice shall set forth the nature and details of the breach with sufficient specificity as to fully describe the nature of the alleged breach.
- (c) **Termination for Insolvency.** Either HMHP or Practice may terminate this Agreement upon the bankruptcy, dissolution, insolvency, reorganization, liquidation, or assignment for the benefit of creditors of a Party, or the filing of a petition for bankruptcy by or against a Party which is not dismissed within sixty (60) days of the filing thereof, or a Party becoming subject to the administration of its assets in any voluntary or involuntary creditors proceeding and any such proceeding is not dismissed within sixty (60) days of the filing thereof.

## **Article 5 – General**

5.1 **Notice.** All notices that may be or are required to be given, served or sent by any Party to any other Party pursuant to this Agreement shall be in writing and shall be sent by overnight courier service; mailed by certified mail, return receipt requested, postage prepaid; or transmitted by facsimile, addressed to the address set forth on the signature page. Each notice or communication shall be deemed received and effective at the time shown on the delivery receipt, if delivered by courier service; three days after being mailed if sent by certified mail; or upon successful transmission, if sent by facsimile.

- 5.2 **Dispute Resolution.** In the event of any dispute under this Agreement, the Parties agree that they will initially attempt to resolve the dispute informally by meeting during a thirty (30) day period in an attempt to resolve the dispute. In the event a good faith effort to resolve the dispute has not produced a mutually agreeable resolution during the thirty (30) day period, the Parties may mutually agree to extend the time period in which to settle their dispute, and, if no such extension is agreed upon, either Party may pursue its rights in a judicial proceeding.
- 5.3 **Assignment.** No assignment of rights or delegation of obligations hereunder shall be valid without the specific written consent of the Parties hereto. Notwithstanding the foregoing, HMHP may assign or transfer, by operation of law or otherwise, any or all of its rights or delegate any or all of its obligations under this Agreement to Hackensack Meridian Health, Inc. (“**Hackensack Meridian Health**”) or an affiliated entity (corporation or limited liability company) of Hackensack Meridian Health on the same terms provided in this Agreement upon written notice to Practice.
- 5.4 **Amendment.** This Agreement may be amended or modified in writing as mutually agreed upon by the Parties. Additionally, the following provisions shall govern amendments to the Agreement: (i) Amendments necessary to effect compliance with laws, regulations, accreditation standards, or a court order do not require the consent of Practice and shall be effective as stated in HMHP’s notice of amendment; and (ii) Except as otherwise set forth in Section 2.6.7 relating to amendment of CI Payor Contracts and Risk Payor Contracts, Practice shall be provided with written notice of an amendment to this Agreement by HMHP and shall have thirty (30) days after receipt of the written notice to advise HMHP that it objects to the amendment and is electing to terminate this Agreement as of the effective date of the amendment. In the event Practice does not provide notice as required in (ii) above, the Practice shall be deemed to have accepted and agreed to the amendment as of the stated effective date.
- 5.5 **Confidentiality.** This Agreement is confidential between the Parties, and the Parties shall not release information concerning this Agreement or any activities undertaken in compliance therewith (including but not limited to the terms of any Payor Contracts) (collectively, “**Confidential Information**”), to any person without the consent of the other Party. Notwithstanding the foregoing, each Party may disclose Confidential Information (a) to its directors, trustees, managers, officers, employees, consultants, advisors, affiliates, counsel, and accountants on an as-needed basis to the extent such party agrees to keep such information confidential, and (b) as required by applicable law. In addition, HMHP may release information concerning this Agreement to HMHP’s governing board, Hackensack Meridian Health’s governing board and those agencies having jurisdiction over the operations of Hackensack Meridian Health and its affiliates.
- 5.6 **Third Party Beneficiaries.** This Agreement is entered into by and between HMHP and Practice, for itself and on behalf of its Participating Physicians for HMHP’s and Practice’s benefit. Participating Physicians shall have no individual right to bring an action or claim against HMHP and shall address all issues (including payment) with the Practice. Except as specifically provided herein, no third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement.
- 5.7 **Waiver.** No waiver may be deemed to have been made unless made expressly in writing and signed by the waiving Party. The waiver by either Party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any

subsequent breach of the same or other provision hereof. No failure by either Party to insist upon the strict performance of any provision of this Agreement may be construed as depriving that Party of the right to insist on strict performance of that provision or of any other provision in the future.

- 5.8 **Independent Contractor Relationship.** This Agreement is not intended to create nor shall be construed to create any relationship between HMHP and Practice other than that of independent entities contracting for the purpose of effecting provisions of this Agreement.
- 5.9 **Entire Agreement.** This Agreement, including all exhibits and attachments hereto, constitutes the entire agreement of the Parties hereto with respect to the subject matter hereof and supersedes any prior or contemporaneous oral and written understandings or agreements.
- 5.10 **Jurisdiction.** This Agreement and any claim of any kind under any theory of law will be governed by and construed in accordance with the laws of the State of New Jersey, including all matters of construction, validity, performance and enforcement and without giving effect to contrary principles of conflict of laws.
- 5.11 **Counterparts.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. Signatures to this Agreement that are distributed to the Parties via facsimile or other electronic means (including PDF) shall have the same effect as if distributed in original form to all Parties.
- 5.12 **Severability.** Each provision of this Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, such illegality or invalidity shall not affect the validity of the remainder of this Agreement.
- 5.13 **Liability.** HMHP shall not exercise control over any Participating Physician's exercise of medical judgment and shall not, by entering into and performing its obligations under this Agreement, become liable for any of the liabilities, claims, actions or losses of Practice or any Participating Physician including, without limitation, any and all liability, claims, and causes of action arising out of or related to any loss, damage, or injury claimed by an Enrollee or other third party in connection with the delivery of Covered Services. Neither party shall have any liability whatsoever for damages suffered on account of the acts or omissions of any employee, agent or independent contractor of the other party.

(SIGNATURE PAGE FOLLOWS)

The Practice and HMHP have executed this Agreement as of the Effective Date.

**PRACTICE NAME:**

**HMHP:**

\_\_\_\_\_  
(Print Name of Practice)

**HACKENSACK MERIDIAN HEALTH PARTNERS, LLC**

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Name (Print): \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: **Medical Director**

Tax ID No.: \_\_\_\_\_

Effective Date: \_\_\_\_\_

**Practice National Provider Identifier (NPI):**

\_\_\_\_\_

**Practice Address for Notices:**

**HMHP Address for Notices:**

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

343 Thornall Street , 8<sup>th</sup> Floor  
Edison, New Jersey 08837  
Attn: Medical Director

**Primary Office Location:**

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

**Phone Number:** \_\_\_\_\_

**Schedule 2.6.7****General Payment Terms for CI Payor Contracts and Risk Payor Contracts**

1. **Payment.** If required in a HMHP Payor Contract, Participating Physician shall be paid the lesser of his/her regular billing rates/charges, the fee schedule or other payment arrangement in effect for the Payor Contract, as may be amended from time to time.
2. **Claims Submissions.** Practice shall submit all claims and encounter data for Covered Services provided to Enrollees by Participating Physicians in accordance with form and format requirements of HMHP or the applicable Payor.
3. **Coordination of Benefits.** Practice acknowledges that, under applicable coordination of benefits rules, payment for Covered Services furnished to some Enrollees will be primarily the responsibility of third parties. Practice and Participating Physicians agree to assist HMHP or Payor in maximizing recoveries under coordination of benefits and agree to seek payment for such services from the party with primary liability prior to billing HMHP or Payor for the difference.
4. **Enrollee Billing.** Practice shall bill and collect from Enrollee all copayments, coinsurance and deductibles as specified in the Enrollee's Health Benefit Plan. Except as permitted by this Section, neither Practice nor Participating Physicians shall bill or require Enrollee to make any payment for Covered Services other than copayments, coinsurance and deductibles, if any, as specified in the Health Benefit Plan. Practice and Participating Physicians shall not bill or collect from Enrollee the difference between the payment rates agreed to in the Payor Contract and Practice's regular billing rates.
5. **Enrollee Hold Harmless.** In no event, including but not limited to nonpayment by a Payor or HMHP (if applicable), insolvency of the Payor or HMHP or breach of the Payor Contract or this Agreement, shall Practice, or its assignees or subcontractors, bill, charge, collect a deposit from, seek compensation, remuneration, or reimbursement from, or have any recourse against an Enrollee for Covered Services provided pursuant to a Payor Contract other than as provided in Section 4 above. The requirements of this Section 5 shall survive any termination of this Agreement or applicable Payor Contract for Covered Services. This clause supersedes any oral or written agreement now existing or hereafter entered into between the Parties and the Enrollee or person acting on the Enrollee's behalf. This provision shall not prohibit the collection of payment for any non-Covered Services or amounts available through coordination of benefits in accordance with the terms of this Agreement and HMHP's Policies and Procedures. The requirements of this Section 5 shall apply to all Payor Contracts subject to NJAC 11:24B-5.2(a)(10), and to such self-insured ERISA Payor Contracts that include an analogous employee/member hold harmless provision in their plan design.

**EXHIBIT A**

**PARTICIPATING PHYSICIANS AND PRACTITIONERS**

Listed below are the Practice’s Participating Physicians and Practitioners (Nurse Practitioner, Physician Assistant, Midwife). Practice agrees to update this list as changes occur during the Term (e.g.: TIN, NPI, new hire, resignations, terminations, mergers, acquisitions, address, phone number). **All questions below must be completed.**

<u>Name of Participating Physician / Practitioner</u>	National Provider Identifier (NPI)	E-mail Address	Primary Specialty

**Does the Practice and its Physicians and Practitioners use an Electronic Medical Record (EMR)?** Yes / No

**If yes, which EMR?** \_\_\_\_\_

**Circle your EMR’s certification:** Certified Electronic Health Record Technology (CEHRT)  
 Certification Commission for Health Information Technology (CCHIT)  
 ONC Health IT Certification Program (Program)  
 None of the above

	Name	E-mail Address	Phone #
<b>Primary Practice Contact</b>			
<b>Primary Billing / Finance Contact</b>			

**EXHIBIT B**  
**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE ADDENDUM** (the “**Agreement**” or “**BAA**”) supplements and is made a part of the Participating Physician Practice Agreement (“**Underlying Agreement**”) by and between Practice (“**Covered Entity**”) and Hackensack Meridian Health Partners (“**Business Associate**”) and is effective as of the effective date of the Underlying Agreement (the “**Effective Date**”). Covered Entity and Business Associate are sometimes referred to herein as the “**Parties**,” or individually as a “**Party**.”

RECITALS

WHEREAS, Business Associate has contracted with physician practice groups, including Covered Entity, that employ physicians and other licensed health care providers who have agreed to participate in Business Associate’s Network for purposes of Business Associate’s Clinical Integration Program and Payor Contracts; and

WHEREAS, if and only to the extent that Business Associate uses and/or discloses protected health information (“**PHI**”) in connection with the Underlying Agreement, or otherwise performs a function that is subject to protection under Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”) and the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act; Business Associate will comply with the responsibilities set forth herein;

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

ARTICLE 1 - DEFINITIONS

Terms used herein, but not otherwise defined, shall have meaning ascribed by the Underlying Agreement or by 45 C.F.R. parts 160, 162, and 164. Should any term set forth in the Underlying Agreement or in 45 C.F.R Parts 160, 162 or 164 conflict with any defined term herein, the definition found in the Underlying Agreement or 45 C.F.R. Parts 160, 162 and 164 shall prevail, with the regulatory definition controlling.

ARTICLE 2 - BUSINESS ASSOCIATE OBLIGATIONS

Business Associate agrees to comply with applicable federal confidentiality and security laws, specifically the provisions of the HIPAA Rules and the HITECH Act applicable to business associates, including:

2.1 Use and Disclosure of PHI. Except as otherwise permitted by this Agreement, the HIPAA Rules, or applicable law, Business Associate shall not make any uses or disclosures of PHI except as necessary to provide services to, or on behalf of, Covered Entity as described in the Underlying Agreement, and shall not use or disclose PHI that would violate the HIPAA Rules or HITECH Act if

used or disclosed by Covered Entity; provided, however, Business Associate may use and disclose PHI as necessary for the proper management and administration of Business Associate, or to carry out its legal responsibilities, consistent with Covered Entity's minimum necessary policies and procedures. Business Associate may not use or disclose PHI which it creates, receives, maintains or transmits for or on behalf of the Covered Entity for any purpose except as otherwise provided by the Agreement and this BAA. Business Associate agrees to review and understand any state privacy and security laws to the extent that such laws are not preempted by HIPAA, as may be amended from time to time. Business Associate acknowledges that it shall comply specifically with the HIPAA Security Rule, and, to the extent that Business Associate is to carry out one or more of Covered Entity's obligations under the Privacy Rule, it shall comply with the requirements of the Privacy Rule which apply to Covered Entity in the performance of such obligation(s). Business Associate shall in such cases:

2.1.1 provide information to members of its workforce using or disclosing PHI regarding the confidentiality requirements in the HIPAA Rules and this Agreement;

2.1.2 obtain reasonable assurances, in writing from the person or entity to whom the PHI is disclosed that: (i) the PHI will be held in confidence and further used and disclosed only as required by law or for the purpose for which it was disclosed to the person or entity; and (ii) the person or entity will notify Business Associate of any instances of which it is aware in which confidentiality of the PHI has been breached; and

2.1.3 agree to notify the Privacy Officer of Covered Entity of any instances of which it is aware in which the PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules or HITECH Act.

2.2 Marketing; Sale of PHI. Business Associate may not use or disclose PHI for marketing purposes. Marketing includes any communication which would encourage the recipient to use or purchase a product or service. Business Associate may not use or disclose PHI where it has directly or indirectly received remuneration, financial or otherwise, from or on behalf of the recipient of the PHI in exchange for the PHI. "Sale" is not limited to circumstances where a transfer of ownership occurs, and would include access, license or lease agreements.

2.3 Disclosure to Agents and Subcontractors. If Business Associate discloses PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity to Agent, or another subcontractor, Business Associate shall contractually require Agent, or the subcontractor, to agree to the same restrictions and conditions as apply to Business Associate under this Agreement. Business Associate shall contractually require that Agent, or any subcontractor, agrees to implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of a subcontractor in providing the services as if they were Business Associate's own acts, failures or omissions, to the extent permitted by law. Business Associate further expressly warrants that its agents or subcontractors which will have access to Covered Entity's PHI will be specifically advised of, and will comply in all respects with, the applicable terms of this Agreement.

2.4 Safeguards. Business Associate agrees to maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. Business Associate shall comply with Subpart C of 45 CFR Part 164 of HIPAA. Business Associate shall implement, and shall contractually require that Agent and other subcontractors implement

administrative, physical and technical 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.

2.5 Individual Rights Regarding Designated Record Sets. If Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate agrees as follows:

2.6 Individual Right to Copy or Inspection. Business Associate agrees that if it maintains a Designated Record Set for Covered Entity that is not maintained by Covered Entity, it will permit an Individual to inspect or copy PHI about the Individual in that set as directed by Covered Entity to meet the requirements of 45 C.F.R. § 164.524. Under the HIPAA Rules, Covered Entities are required to take action on such requests as soon as possible, but not later than 30 days following receipt of the request. Business Associate agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information shall be provided in the form or format requested if it is readily producible in such form or format; or in summary, if the Individual has agreed in advance to accept the information in summary form. If Covered Entity maintains the requested records, it, rather than Business Associate, shall permit access according to its policies and procedures implementing the HIPAA Rules.

2.7 Individual Right to Amendment. Business Associate agrees, if it maintains PHI in a Designated Record Set, to make amendments to PHI at the request and direction of Covered Entity pursuant to 45 C.F.R. 164.526. If Business Associate maintains a record in a Designated Record Set that is not also maintained by Covered Entity, Business Associate agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to 45 C.F.R. § 164.526.

2.8 Accounting of Disclosures. Business Associate agrees to maintain documentation of the information required to provide an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and to make this information available to Covered Entity upon Covered Entity's request, in order to allow Covered Entity to respond to an Individual's request for accounting of disclosures. Such accounting is limited to disclosures that were made in the six (6) years prior to the request unless required by HITECH (not including disclosures prior to the compliance date of the HIPAA Rules) and shall be provided for as long as Business Associate maintains the PHI.

2.9 Internal Practices, Policies, and Procedures. Except as otherwise specified herein, Business Associate shall make its internal practices, books, records, policies and procedures and service, related to the use and disclosure of PHI received from or on behalf of Covered Entity available to the Secretary of the Department of Health and Human Services, or its agents or subcontractors, for the determination of the Business Associate's compliance with HIPAA. To the extent permitted by law, the Business Associate shall provide a copy of information provided to the Secretary to the Covered Entity.

2.10 Minimum Necessary. Whenever required by HITECH, Business Associate shall attempt to ensure that all uses and disclosures of PHI are subject to the principle of "minimum necessary use and disclosure," i.e., that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed.

2.11 Notice of Privacy Practices. Business Associate shall abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice shall not affect permitted uses and disclosures on which Business Associate relied prior to receiving notice of such amended Notice.

2.12 Security Incident/Unauthorized Disclosure of PHI. Business Associate shall report to Covered Entity, pursuant to the HITECH Act, any instances, including Security Incidents, of which it is aware in which PHI is used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the HIPAA Rules. Business Associate shall be considered aware of a Breach or Security Incident as of the first day on which such Breach or Security Incident is known to Business Associate; this shall include notification to Business Associate by a Subcontractor of a Breach or Security Incident. In the event that Business Associate knows of any breach of Unsecured PHI (i.e., PHI was inappropriately used, disclosed, released, or obtained), Business Associate shall notify Covered Entity in writing within five (5) calendar days of such breach. Notification shall include, to the extent known, detailed information about the breach, including, but not limited to, the nature and circumstances of such breach, the means by which PHI was or may have been breached (e.g., stolen laptop; breach of security protocols; unauthorized access to computer systems, etc.), the names and contact information of all individuals whose PHI was used, disclosed, released, or obtained in violation of this Agreement, and such other information as Covered Entity may reasonably request. Any delay in notification must include evidence demonstrating the necessity of the delay. Business Associate shall not be required to report an immaterial incident consisting solely of trivial incidents that occur on a daily basis, such as scans, “pings,” or an unsuccessful attempt to improperly access PHI that is stored in an information system under its control; provided, however, Business Associate shall maintain logs of such incidents and make such logs available to Covered Entity upon written request. The party responsible for the breach shall bear the cost of any required notifications and corrective actions (e.g. credit monitoring services).

In accordance with 45 CFR § 164.402, any acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule is presumed to be a Breach unless it can be demonstrated that a low probability exists that the PHI has been compromised. Covered Entity shall have the final and exclusive right to make determinations as to whether a Breach has occurred requiring notification under the Breach Rule. In no case shall any reporting be delayed pending Business Associate’s internal risk assessment of whether an unauthorized use or disclosure resulted in a low probability that the PHI has been compromised.

2.13 HIPAA Security Rule. With regard to its use and/or disclosure of PHI, Business Associate shall, at its own expense:

2.13.1 implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity or its affiliates and at a minimum comply with those applicable safeguards in 45 CFR Section 164;

2.13.2 ensure that Agent and any and all of Business Associate’s other subcontractors or agents to whom the Business Associate provides PHI agree in writing to implement reasonable and appropriate safeguards consistent with the requirements of 2.12.1, above, to protect such PHI; and

2.13.3 report promptly to Covered Entity any Security Incident (as defined in 45 CFR Section 164.304) relating to PHI created, received, maintained or transmitted in regards to Covered Entity, of which Business Associate becomes aware, subject to the limitations in Section 2.11 above.

2.14 Data Aggregation. As may be applicable, Business Associate is permitted to use and disclose PHI for data aggregation purposes for or on behalf of the Covered Entity, however, only in order to analyze data for permitted health care operations, and only to the extent that such use is permitted under HIPAA and the underlying Agreement.

2.15 De-identified Information. Business Associate may use and disclose de-identified health information if (i) the intended use is disclosed to and permitted in writing by the Covered Entity, and (ii) the de-identification is in compliance with 45 C.F.R. §164.502(d) and meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b) and guidance issued thereafter by HHS.

### ARTICLE 3 - COVERED ENTITY OBLIGATIONS

3.1 If deemed applicable by Covered Entity, Covered Entity shall:

3.1.1 provide Business Associate a copy of its Notice of Privacy Practices (“Notice”) in accordance with 45 C.F.R. 164.520 (“Notice of Privacy Practices”) as well as any changes to such Notice;

3.1.2 provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate’s permitted or required uses and/or disclosures;

3.1.3 notify Business Associate of any restriction to the use and/or disclosure of PHI to which Covered Entity has agreed in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of protected health information;

3.1.4 notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by Business Associate; and

3.1.5 if Business Associate maintains a Designated Record Set, provide Business Associate with a copy of Covered Entity’s policies and procedures related to an Individual’s right to: access PHI; request an amendment to PHI; request confidential communications of PHI; or request an accounting of disclosures of PHI.

### ARTICLE 4 - TERM AND TERMINATION

4.1 Term. The term of this BAA shall begin on the Effective Date and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to the Covered Entity, or, if it is not feasible to return or destroy PHI, protections are extended to such PHI, in accordance with the provisions in Section 4.3.

4.2 Termination for Cause. Upon Covered Entity’s knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, Covered Entity shall terminate: (A) this Agreement; and (B) all of the provisions of the Underlying Agreement that involve the use or disclosure of Protected Health Information.

4.3 Effect of Termination. Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, and which may be maintained by Business Associate or any Subcontractor of Business Associate in any form or format. Where Business Associate is unable to return PHI to the Covered Entity, Business Associate shall certify to the Covered Entity in writing that such PHI has been appropriately destroyed as required by the Security Rule. If Business Associate

determines that the return or destruction of PHI is not feasible, Business Associate shall inform Covered Entity in writing of the reason thereof, and shall agree to extend the protections of this Agreement to such PHI and limit further uses and disclosures of the PHI to those purposes that make the return or destruction of the PHI not feasible for so long as Business Associate retains the PHI and limitations of this BAA in accordance with Subpart C of 45 CFR Part 164.

## ARTICLE 5 – MISCELLANEOUS

5.1 Mitigation. If Business Associate violates this Agreement or the HIPAA Rules, Business Associate agrees to mitigate any damage caused by such breach.

5.2 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the HIPAA Rules. The provisions of this Agreement shall prevail over the provisions of any other agreement, including the Underlying Agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the HIPAA Rules.

5.3 Amendment. Except as provided in this Section 6.3, no supplement, modification, or amendment of any term, provision, or condition of this Agreement will be binding or enforceable unless executed in writing by the Parties. Notwithstanding the foregoing, the Parties acknowledge that the HITECH Act imposes new requirements on business associates and their Subcontractors and agents with respect to the privacy and security of PHI and notification of breaches involving Unsecured PHI and contemplates that such requirements shall be implemented by regulations to be adopted by HHS. Those provisions of the HITECH Act and the final regulations implementing the HITECH Act that are applicable to business associates and their Subcontractors and agents are collectively referred to herein as the “HITECH BA Provisions”. Business Associate hereby acknowledges and agrees to comply with HITECH BA Provisions applicable to a business associate as mandated by HIPAA and the HITECH BA Provisions commencing on the applicable effective date of each such provision. Covered Entity and Business Associate each further agree that the provisions of HIPAA and HITECH, including the HITECH BA Provisions, that apply to business associates, and that are required to be incorporated into a business associate agreement, are hereby incorporated into this Agreement as if set forth in this Agreement in their entirety and are effective as of the applicable effective date.