

# **Standard Clinical Affiliation Agreement (Revised)**

**August 3, 2016**

**This agreement is designed for use as a standardized form.  
Parties should call one another's attention to any specific  
changes made or proposed to be made to the template, to ensure  
an accurate, common understanding of their agreement.**

**AFFILIATION AGREEMENT  
BETWEEN  
ELMHURST COLLEGE  
AND  
MIDVALLEY SPECIAL EDUCATION COOPERATIVE 303**

**THIS AGREEMENT** (the “**Agreement**”) is entered into this May 15, 2018 by and between **MIDVALLEY SPECIAL EDUCATION COOPERATIVE 303** (“**the Facility**”) and Elmhurst College (“**the School**”).

**WHEREAS**, the School desires to utilize facilities and all affiliates that may be available for the purpose of providing practical learning and clinical experiences (see Exhibit A for a list of programs and Exhibit B for site-specific requirements) in connection with students of the School.

**NOW, THEREFORE**, it is understood and agreed upon by the parties hereto as follows:

**A. SCHOOL RESPONSIBILITIES:**

**1. Provision of foundational curriculum to students.** The School shall have the total responsibility for planning and determining the adequacy of the educational experience of students in theoretical background, basic skill, professional ethics, attitude and behavior, and will assign to the Facility only those students who have satisfactorily completed the prerequisite didactic portion of the School’s curriculum.

**2. Student professional liability insurance.**

(i) State Colleges and Universities

If the School is a state college or university, the School shall require students participating in the practicum to maintain and, the School shall provide proof to the Facility, of a personal student professional liability insurance policy of at least One Million Dollars (\$1,000,000.00) per occurrence or claim and Three Million Dollars (\$3,000,000.00) in the aggregate covering the acts of such student while participating in the program at the Facility.

(a) General Liability: Subject to applicable state law, neither party to this Agreement shall be legally liable for the consequences, whether bodily injury or property damage, occasioned by an act, omission, or neglect chargeable to the other party.

(b) Where Worker's Compensation or other obligation for payment of benefits may arise, this Agreement shall neither enlarge nor diminish such obligation.

(c) Provided further, in the event required insurance coverage is not provided or is canceled, the Facility may terminate the placement of the student.

(ii) Other Colleges and Universities

Unless otherwise specified in Exhibit B, the School shall require students participating in the practicum to maintain, and the School shall provide proof to the Facility of, a personal student professional liability insurance policy of at least One Million Dollars (\$1,000,000.00) per occurrence or claim and Three Million Dollars (\$3,000,000.00) in the aggregate; and general liability coverage of at least One Million Dollars (\$1,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) in the aggregate covering the acts of such student while participating in the program. Such insurance coverage must be placed with an insurance carrier acceptable to the facility. Certificates of insurance evidencing coverage as specified above must be produced prior to student participation in the program. The School shall require students participating in the program to maintain comprehensive health insurance. In the event required insurance coverage is not provided or is canceled, the Facility may terminate the placement of the student.

The Facility shall maintain, and the Facility shall provide proof to the School of, professional liability insurance policy (or other comparable policy) of at least One Million Dollars (\$1,000,000.00) per occurrence or claim and Three Million Dollars (\$3,000,000.00) in the aggregate; and general liability coverage of at least One Million Dollars (\$1,000,000) per occurrence or claim and Two Million Dollars (\$2,000,000) in the aggregate covering the acts of the Facility and its employees or other agents in connection with the program. Such insurance coverage must be placed with an insurance carrier acceptable to the School. Certificates of insurance evidencing coverage as specified above must be produced prior to student participation in the program.

**3. Designation of liaison to Facility; communications relating to clinical placements.**

The School will designate a faculty or other professional staff member to coordinate and act as its liaison to the Facility. The assignments to be undertaken by the students participating in the educational program will be mutually arranged and a regular exchange of information will be maintained by on-site visits when practical, and by letter or telephone in other instances.

4. The School shall notify the Facility in writing of any change or proposed change of the person(s) responsible for coordinating clinical placements with the Facility.

5. **School notices to students.** The School shall notify each student prior to his/her arrival at the Facility that he/she is required to:

- (a) Follow the administrative policies, standards, and practices of the Facility.
- (b) Obtain medical care at his/her own expense for any injuries or illnesses sustained as a direct or indirect result of his/her affiliation with the Facility.
- (c) Provide his/her own transportation and living arrangements.
- (d) Report to the Facility on time and follow all established regulations during the regularly scheduled operating hours of the Facility.

- (e) Conform to the standards and practices established by the School while functioning at the Facility.
- (f) Obtain prior written approval of the Facility and the School before publishing any material relating to the clinical learning experience.
- (f) Meet the personal, ethical and professional standards required of employees of the Facility and consistent with the applicable professional Code of Ethics and the applicable standards of JCAHO and/or other relevant accrediting or regulatory bodies.
- (g) Where applicable, provide evidence that he or she has met all requirements of CPR certification, hepatitis B vaccination, TB, and OSHA compliance for prevention of transmission of blood borne pathogens.
- (h) Where applicable, complete a criminal background check and drug screen, as specified in Exhibit B, and as required by and acceptable to the Facility, prior to participation in the clinical rotation. It is the Facility's responsibility to determine whether the results of any criminal background check and drug screen are acceptable and whether the student will be permitted to participate in the program based upon the results.

## **B. FACILITY RESPONSIBILITIES:**

**1. Provision of facilities for supervised clinical and/or professional experiences.** Subject to the provisions of Section C.2 of this Agreement, the Facility agrees to make the appropriate facilities available to the School in order to provide supervised clinical experiences to students. Such facilities shall include an environment conducive to the learning process of the students as intended by the terms of this Agreement and conforming to customary Facility procedures.

**2. Facility rules applicable to students during clinical and/or professional assignments.** Students are to remain subject to the authority, policies, and regulations imposed by the School and, during periods of clinical assignment, students will be subject to all rules and regulations of the Facility and imposed by the Facility on its employees and agents with regard to following the administrative policies, standards, and practices of the Facility.

**3. Patient care.** While at the Facility, students are not to replace the Facility staff, and are not to render service except as identified for educational value and delineated in the jointly planned educational experiences. Any such direct contact between a student and a patient shall be under the proximate supervision of a member of the staff of the Facility. The Facility shall at all times remain responsible for patient care.

**4. Emergency treatment of students.** Emergency outpatient treatment will be available to students while in the hospital for clinical training in case of accident or illness. In case

of emergency at a non-hospital site, standard procedure will be followed. It is the student's responsibility to bear the cost of the emergency treatment.

**5. Designation of liaison to School; communications relating to clinical placements.**

The Facility shall designate a liaison responsible for coordinating the clinical placements. That person shall maintain contact with the School's designated liaison person to assure mutual participation in and surveillance of the clinical program. The Facility shall notify the School in writing of any change or proposed change of the person(s) responsible for coordinating the clinical placements.

**6. Identity and credentials of Facility supervising personnel.** The Facility shall designate and submit in writing to the School, the name and professional and academic credentials of the individual(s) overseeing student(s) experiences.

**7. School tour of Facility.** The Facility shall, on reasonable request and subject to legal restrictions regarding patient health information, permit a tour of its clinical facilities and services available and other items pertaining to clinical learning experiences, by representatives of the School and agencies charged with responsibility for approval of the facilities or accreditation of the curriculum.

**8. Provision of relevant Facility policies.** The Facility shall provide the student(s) and the School the Facility's administrative policies, standards and practices relevant to the clinical placement.

**9. FERPA compliance.** The Facility shall comply with the applicable provisions of the Family Educational Rights and Privacy Act of 1974, 20 USC 1232 (g), otherwise known as FERPA or the Buckley Amendment, and shall take all measures necessary to ensure the confidentiality of any and all information in its possession regarding the School's students who train at the Facility pursuant to this agreement.

**C. OTHER RESPONSIBILITIES:**

**1. Compliance with patient privacy laws.** The School agrees to abide by and require that its faculty and students abide by all applicable state and federal laws, rules and regulations regarding patient privacy, including but not limited to, the Standards for Privacy of Individually Identifiable Health Information as required under the Health Insurance Portability and Accountability Act (HIPAA). Students shall be required to comply with the Facility's policies and procedures regarding the confidentiality of patient information and the use of all such information. The parties will notify one another if there are known breaches of this confidentiality. If during the term of this Agreement, the Department of Health and Human Services, Office of Civil Rights or any other empowered federal or state agency, court or administrative tribunal determines that the School or any other educational institution similar to the School is a Business Associate ("**Business Associate**"), as described in the federal privacy regulations, the School shall, upon a date mutually agreed by the parties, abide by the conditions and requirements as stated in Exhibit C through the remainder of the term of this Agreement.

**2. Determination of instructional period.** The course of instruction will cover a period of time as arranged between the School and the Facility. The beginning dates and length of experience shall be mutually agreed upon by the School and the Facility.

**3. Determination of number of participating students.** The number of students eligible to participate in the clinical placement will be determined and may be changed by mutual agreement of the parties. Notwithstanding the foregoing, the Facility and the School agree and understand that the availability of clinical placements at Facility during the term of this Agreement may periodically be affected by a variety of factors. In such event, Facility may reduce the number of students eligible to participate in the clinical education program with prior notice to the School and adequate time for the School to reassign the student(s) to another clinical site. The Facility agrees further to accommodate students of the School who are similarly displaced from other clinical affiliates of the School to the extent that clinical space is available at the Facility.

**4. Evaluation of students' clinical experiences.** Evaluation of the clinical learning experiences of the students will be accomplished jointly by the School and the Facility. Appropriate School and the Facility staff will communicate on a regular basis for the purpose of reviewing and evaluating current clinical experiences offered to students.

**5. Removal of students.**

(a) The School has the right to remove a student from a clinical education program. The School shall notify the Facility of such removal in writing.

(b) The Facility may immediately remove any student participating in a clinical education program from the Facility's premises for behavior that the Facility deems to be an immediate threat to the health or welfare of its patients, staff members, visitors, or operations. In such event, the Facility shall notify the School in writing of its actions and the reasons for its actions as soon as practicable. If the Facility desires to remove a student for any other reason, it shall notify the School in writing of the reasons for the removal and shall consult with the School before removing the student.

**6. Productivity:**

**Speech-language pathology program:** The Facility will provide clinical hours at 50% productivity rate on average (50% of total time at the site will be in direct client/patient contact). This translates to half of the time the student is at the Facility, they will be in direct contact with clients/patients/children/individuals receiving speech-language-cognitive-swallow diagnosis or management and/or involved in IEP/parent team meetings if in a school setting.

Full time placements (40 hours/week) are expected to meet a 50% productivity expectation (20 hours direct client contact)

Part time placements (8-16 hours per week) are expected to meet a 50% productivity expectation (4-8 hours direct client contact).

**Occupational therapy program:** The Facility will provide 12 weeks of full-time practicum experience.

#### **D. TERM OF AGREEMENT:**

The term of this Agreement shall be for an initial five (5) years, to commence on September 1, 2018 and shall automatically renew for like periods thereafter. Either party to this Agreement may terminate the Agreement at any point in time without cause upon ninety (90) days written notice to the other party.

#### **E. ADDITIONAL TERMS:**

1. **Stipulations as to liability.** Subject to applicable state law, neither party to this Agreement shall be legally liable for the consequences, whether bodily injury or property damage, occasioned by an act, omission, or neglect chargeable to the other party. Where Worker's Compensation or other obligation for payment of benefits may arise, this Agreement shall neither enlarge nor diminish such obligation.

2. **Additional insurance coverage.** Any additional applicable insurance coverage requirements shall be set out by the parties in Exhibit B to this agreement.

3. **Qualifications of School faculty.** The School represents and warrants that relevant faculty members are appropriately certified and/or licensed. The School will provide the Facility with copies of evidence of certifications or licensures.

4. **Assignment of Agreement.** This Agreement may not be assigned without the prior written consent of the other party, which will not be unreasonably withheld.

5. **Entire Agreement.** This Agreement supersedes any and all other agreements, either oral or written, between the parties hereto with respect to the subject matter hereof. No changes or modifications of this Agreement shall be valid unless the same are in writing and signed by the parties. No waiver of any provisions of this Agreement shall be valid unless in writing and signed by the parties.

6. **Severability.** If any provision of this Agreement or the application thereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue valid and enforceable to the fullest extent permitted by law.

7. **Non-Discrimination.** The parties hereto shall abide by the requirements of Executive Order 11246, 42 U.S.C. Section 2000d and the regulations thereto, as may be amended from time to time, the Illinois Human Rights Act, and the Rules and Regulations of the Illinois Department of Human Rights. There shall be no unlawful discrimination or treatment because of race, color, religion, gender, national origin, ancestry, military status, sexual orientation, handicap or disability in the employment, training, or promotion of students or personnel engaged in the performance of this Agreement.

8. **Employment status.** No assigned student or School faculty member under this Agreement shall in any way be considered an employee or agent of the Facility nor shall any such student or faculty member be entitled to any fringe benefits, Worker's

Compensation, disability benefits or other rights normally afforded to employees of the Facility.

**9. Notice to Parties.** Any notice, demand or request required or permitted to be given under the provisions of this Agreement shall be in writing and shall be deemed to have been duly given under the earlier of (a) the date actually received by the party in question, by whatever means and however addressed, or (b) the date sent by facsimile (receipt confirmed), or on the date of personal delivery, if delivered by hand, or on the date signed for if sent by an overnight delivery service, to the following addresses, or to such other address as either party may request, in the case of the School, by notifying the Facility, and in the case of the Facility, by notifying the School:

If to the Facility:

Melissa Jackson  
Program Coordinator  
1304 Ronzheimer Ave, St Charles, IL 60174  
(331) 228-4873  
(331) 228-4874  
Melissa.jackson@d303.org

If to the School:

The School Legal Counsel at:  
Karen Kissel  
VP for Finance and Administration & CFO  
190 Prospect Avenue  
Elmhurst, IL 60126  
Facsimile: (630) 617-3701  
Telephone: (630) 617-3012

With a Copy to:

Elmhurst College  
190 Prospect Avenue  
Elmhurst, IL 60126

Graduate Program in Speech-Language Pathology  
Attention: Susie Dulay, M.S., CCC-SLP  
Facsimile: (630) 617-6461  
Telephone: (630) 617-6123

Graduate Program in Occupational Therapy  
Attention: Bhumi Bhatt, MS, OTR/L  
Facsimile: (630)617-3784\  
Telephone: (630)617-3083

or to such other addresses as the parties may specify in writing from time to time.



10. **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Illinois, without regard to the conflict of laws provisions thereof.

11. **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

12. **No Third-Party Beneficiaries.** This Agreement shall inure exclusively to the benefit of and be binding upon the parties hereto and their respective successors, assigns, executors and legal representatives. Nothing in this Agreement, expressed or implied, is intended to confer on any person other than the parties hereto or their respective successors and assigns any rights, remedies, obligations or liabilities under or by reason of this Agreement.

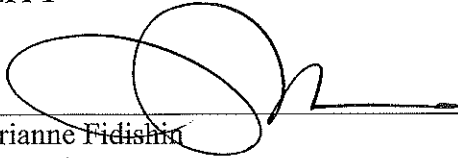
13. **Agreement binding on parties successors and assigns.** This Agreement shall be binding upon the School and the Facility, their successors, employees, agents and assigns, during the initial term of this Agreement and any extensions thereof.

14. **Captions for reference only.** The captions contained in this Agreement are for convenience of reference only and do not define, describe, or limit the scope or intent of this Agreement or any of its provisions.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective corporate names by duly authorized officers, all on the day and year first set forth above.

For and on behalf of:

**FACILITY**



\_\_\_\_\_  
Dr. Marianne Fidishin  
Executive Director  
1304 Ronzheimer Ave, St Charles, IL 60174  
(331) 228-4873  
(331) 228-4874

Date: 6/28/2014

**ELMHURST COLLEGE**

\_\_\_\_\_  
Elmhurst College  
Ms. Karen Kissel  
Elmhurst College Vice Pres. for Finance & Administration & CFO

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

Elmhurst College Master of Occupational Therapy/ Master of Science in Communication  
Sciences and Disorders

## **EXHIBIT A**

### **Programs**

#### **Master of Occupational Therapy Master of Science in Communication Sciences and Disorders**

- **Names, license number and other relevant credentials of practicum supervisors will be requested prior to commencement of student experience and be stored in secure database in school liaison office**

**EXHIBIT B**

**SITE-SPECIFIC REQUIREMENTS**

(Each site shall have its own program specific requirement checklist; please mark the requirements with an "x")

Facility: **Midvalley Special Education  
Cooperative 303**  
 School: Elmhurst College  
 Program: Master of Occupational  
 Therapy/ Master of Science in  
 Communication Sciences and Disorders

<b>Facility requires:</b>	<b>Yes</b>	<b>No</b>
1. Proof of student professional and general liability insurance (paragraph A.2)	<input type="checkbox"/>	<input type="checkbox"/>
2. Proof of comprehensive health insurance (paragraph A.2)	<input type="checkbox"/>	<input type="checkbox"/>
3. Verification that students have met requirements for: (paragraph A.4)		
a. Negative annual TB test or chest x-ray	<input type="checkbox"/>	<input type="checkbox"/>
b. Rubella, Rubella and Mumps with proof of immunization or titer	<input type="checkbox"/>	<input type="checkbox"/>
c. Varicella with proof of immunization or titer	<input type="checkbox"/>	<input type="checkbox"/>
d. Hepatitis B with proof of disease/immunization or immunity by titer	<input type="checkbox"/>	<input type="checkbox"/>
e. Current American Heart Association Healthcare Provider CPR card	<input type="checkbox"/>	<input type="checkbox"/>
f. OSHA compliance for prevention of transmission of blood borne pathogens and TB	<input type="checkbox"/>	<input type="checkbox"/>
d. Proof of Flu Immunization	<input type="checkbox"/>	<input type="checkbox"/>
4. Criminal background check (paragraph A.5) If yes, type of check _____	<input type="checkbox"/>	<input type="checkbox"/>
5. Drug screen (paragraph A.5) If yes, type of screening _____	<input type="checkbox"/>	<input type="checkbox"/>
6. Acceptance of faith-based provision addendum (if included)	<input type="checkbox"/>	<input type="checkbox"/>
7. Evidence of relevant faculties' certifications or licensures (paragraph E.3)	<input type="checkbox"/>	<input type="checkbox"/>
8. Additional insurance coverage (paragraph E.2) If yes, type of insurance and coverage required _____	<input type="checkbox"/>	<input type="checkbox"/>
9. Other _____	<input type="checkbox"/>	<input type="checkbox"/>

**School requires:**

1. Copy of relevant Facility policies (paragraph B.8)	<input checked="" type="checkbox"/>	
2. Evidence of academic credentials, certifications and licensures of individual(s) overseeing student(s) experiences (paragraph B.6) upon request	<input checked="" type="checkbox"/>	
3. The Facility will meet productivity requirements as specified in above contract.	<input checked="" type="checkbox"/>	
4. Other _____	<input type="checkbox"/>	<input type="checkbox"/>

## EXHIBIT C

### BUSINESS ASSOCIATE ADDENDUM

#### I. DEFINITIONS FOR USE IN THIS ADDENDUM

**"Data Aggregation"** shall mean, with respect to Protected Health Information ("PHI" as defined below) created or received by the Business Associate, the combining of such PHI by the Business Associate or with the PHI received by the Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

**"Designated Record Set"** shall mean a group of records maintained by or for the Covered Entity that is (i) the medical records and billing records about individuals maintained by or for the Covered Entity; (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about individuals. As used herein the term "Record" means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.

**"Electronic Media"** shall mean the mode of electronic transmissions. It includes the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another using magnetic tape, disk, or compact disk media.

**"Electronic Protected Health Information" or "EPHI"** shall mean Individually Identifiable Health Information that is (i) transmitted by Electronic Media or (ii) maintained in any medium constituting Electronic Media. For instance, EPHI includes information contained in a patient's electronic medical records and billing records. "EPHI" shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g and (ii) records described in 20 U.S.C. §1232g(a)(4)(B)(iv).

**"HITECH" or "HITECH Act"** shall mean the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009, Public Law 111-005,

**"Individually Identifiable Health Information"** shall mean information that is a subset of health information, including demographic information collected from an individual, and

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

(ii) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

**"Privacy Standards"** shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

**“Protected Health Information” or “PHI”** shall mean Individually Identifiable Health Information that is (i) transmitted by Electronic Media, (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. For instance, PHI includes information contained in a patient’s medical records and billing records. “Protected Health Information” shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g and (ii) records described in 20 U.S.C. §1232g(a)(4)(B)(iv).

**“Secretary”** shall mean the Secretary of the U.S. Department of Health and Human Services or any office or person within the U.S. Department of Health and Human Services to which/whom the Secretary has delegated his or her authority to administer the Privacy Standards, such as the Director of the Office for Civil Rights, and the Security Standards.

**“Security Standards”** shall mean Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Part 160 and Part 164, Subpart C.

Capitalized terms used not defined herein shall have the meanings ascribed to them in the Privacy Standards or the Security Standards.

## **II. OBLIGATIONS OF THE BUSINESS ASSOCIATE.**

- 2.1. Use and Disclosure of Protected Health Information.** The Business Associate may use and disclose PHI only as required to satisfy its obligations to the Covered Entity, as permitted herein, or Required By Law, but shall not otherwise use or disclose any PHI. The Business Associate shall not and shall ensure that its directors, officers, employees, contractors and agents do not use or disclose PHI received from the Covered Entity in any manner that would constitute a violation of the Privacy Standards or the Security Standards if used by the Covered Entity, except that the Business Associate may use PHI (i) for the Business Associate's proper management and administrative services, (ii) to carry out the legal responsibilities of the Business Associate, or (iii) to provide data aggregation services relating to the health care operations of the Covered Entity if required under the Agreement. The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity, including any and all forms thereof developed by the Business Associate in the course of its fulfillment of its obligations pursuant to the Agreement. The Business Associate further represents that, to the extent the Business Associate requests that the Covered Entity disclose PHI to the Business Associate, such a request is only for the minimum necessary PHI for the accomplishment of the Business Associate's purpose.
- 2.2. Safeguards against Misuse of Information.** The Business Associate shall use all appropriate safeguards to prevent the use or disclosure of PHI other than as permitted under this Addendum. The Business Associate shall implement Administrative Safeguards, Physical Safeguards, and Technical Safeguards as outlined within HITECH, Privacy Standards and Security Standards, that reasonably and appropriately protect the Confidentiality, Integrity and Availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity.
- 2.3. Reporting of Disclosures of Protected Health Information.** The Business Associate shall, as soon as practicable, but in no event later than within thirty (30) days after becoming aware of any Security Incident or any use or disclosure of PHI in violation of this Addendum by the Business Associate, its officers, directors, employees, contractors or agents or by a third party to which the Business Associate disclosed PHI pursuant to Section 2.4, report any such disclosure to the Covered Entity. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. Business Associate is responsible for any and all

costs related to notification of individuals, their legal representatives, or next of kin (if the individual is deceased) of any security or privacy breach reported by Business Associate, as defined in Section 13402 of the HITECH Act (42 USC 17932).

- 2.4. **Agreements by Third Parties.** The Business Associate shall obtain and maintain an agreement with each agent or subcontractor that has or will have access to PHI, which is received from, or created or received by the Business Associate on behalf of the Covered Entity, pursuant to which agreement such agent or subcontractor agrees to be bound by the same restrictions, terms and conditions that apply to the Business Associate pursuant to this Addendum with respect to such PHI.
- 2.5. **Access to Information.** Within thirty (30) days after request by the Covered Entity for access to PHI about an individual contained in a Designated Record Set, the Business Associate shall make available to the Covered Entity such PHI for so long as such information is maintained in the Designated Record Set. In the event any individual requests access to PHI directly from the Business Associate, the Business Associate shall within ten (10) days forward such request to the Covered Entity. Any denials of access to the PHI requested shall be the responsibility of the Covered Entity.
- 2.6. **Availability of Protected Health Information for Amendment.** Within thirty (30) days of receipt of a request from the Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), the Business Associate shall provide such information to the Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526.
- 2.7. **Accounting of Disclosures.** Within thirty (30) days of notice by the Covered Entity to the Business Associate that it has received a request for an accounting of disclosures of PHI, other than related to the treatment of the patient, the processing of payments related to such treatment, or the health care operations of a covered entity or its business associate and not relating to disclosures made earlier than six (6) years prior to the date on which the accounting was requested, the Business Associate shall make available to the Covered Entity such information as is in the Business Associate's possession and is required for the Covered Entity to make the accounting required by 45 C.F.R. §164.528. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI disclosed, and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall within thirty (30) days forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section.
- 2.8. **Availability of Books and Records.** The Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Secretary for purposes of determining the Covered Entity's and the Business Associate's compliance with the Privacy Standards or the Security Standards. This Section 2.8 shall survive the expiration or termination of this Addendum.
- 2.9. **Indemnification.** The Business Associate shall indemnify and hold the Covered Entity harmless from and against any and all liability and costs, including attorneys' fees, created by a breach of this Addendum by the Business Associate, its agents or subcontractors, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement.

- 2.10. Notice of Request for Data.** The Business Associate agrees to notify the Covered Entity within ten (10) business days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge.
- 2.11. Injunction.** The Business Associate acknowledges and agrees that the Covered Entity will suffer irreparable damage upon the Business Associate's breach of this Addendum and that such damages shall be difficult to quantify. The Business Associate acknowledges and agrees that the Covered Entity may file an action for an injunction to enforce the terms of this Addendum against the Business Associate, in addition to any other remedy the Covered Entity may have.

### **III. TERMINATION OF ADDENDUM WITH BUSINESS ASSOCIATE**

- 3.1. Termination Upon Breach of Provisions Applicable to PHI.** Any other provision of this Addendum notwithstanding, this Addendum may be terminated by the Covered Entity upon five (5) days written notice to the Business Associate in the event that the Business Associate breaches any provision contained in this Addendum and such breach is not cured within such five (5) day period; provided, however, that in the event that termination of this Addendum is not feasible, in the Covered Entity's sole discretion, the Business Associate acknowledges and agrees that the Covered Entity has the right to report the breach to the Secretary, notwithstanding any other provision of this Addendum to the contrary.
- 3.2. Return or Destruction of PHI upon Termination.** Upon termination of this Addendum, the Business Associate shall either return or destroy all PHI received from the Covered Entity or created or received by the Business Associate on behalf of the Covered Entity and which the Business Associate still maintains in any form. The Business Associate shall not retain any copies of such PHI. Notwithstanding the foregoing, to the extent that the Covered Entity agrees that it is not feasible to return or destroy such PHI, the terms and provisions of this Addendum shall survive termination of the Agreement and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.
- 3.3. The Covered Entity's Right of Cure.** At the expense of the Business Associate, the Covered Entity shall have the right to cure any breach of the Business Associate's obligations under this Addendum. The Covered Entity shall give the Business Associate notice of its election to cure any such breach and the Business Associate shall cooperate fully in the efforts by the Covered Entity to cure the Business Associate's breach. All requests for payment for such services of the Covered Entity shall be paid within thirty (30) days.

### **IV. GENERAL PROVISIONS**

- 4.1. Effect.** The terms and provisions of this Addendum shall supercede any other conflicting or inconsistent terms and provisions in any other agreement between the Covered Entity and the Business Associate, including all exhibits or other attachments thereto and all documents incorporated therein by reference. Without limitation of the foregoing, any limitation or exclusion of damages provisions shall not be applicable to this Addendum. All other terms of existing agreements between the Covered Entity and the Business Associate remain unchanged and shall be enforced as written.
- 4.2. Amendment.** The Parties' agree to amend this Addendum to the extent necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions (45 C.F.R. Parts 160 and 162), HITECH and the Security Standards (collectively, the "Standards")



promulgated or to be promulgated by the Secretary or other regulations or statutes. The Business Associate agrees that it will fully comply with all such Standards and that it will agree to amend this Addendum to incorporate any material required by the Standards. Such amendment shall be binding upon the Parties at the end of a ten (10) days' prior written notice of amendment to maintain compliance with applicable law or regulations, and shall not require the consent of the Parties.