

**AGREEMENT
FOR
MATERNAL LEVELS OF CARE VERIFICATION SERVICES**

THIS AGREEMENT for Maternal Levels of Care (MLC) Verification services, effective upon the date last signed by a party (“Agreement”), is by and between Shands Teaching Hospitals & Clinics, Inc. (“the Organization”) and The Joint Commission on Accreditation of Healthcare Organizations (d/b/a The Joint Commission), a 501(c)(3) non-profit corporation organized under the law of the State of Illinois (together “the Parties.”)

WHEREAS, the Joint Commission’s mission is to continuously improve health care for the public, in collaboration with other stakeholders, by evaluating health care organizations and inspiring them to excel in providing safe and effective care of the highest quality and value.

WHEREAS, The Joint Commission collaborated with the American College of Obstetricians and Gynecologists (ACOG) to create a MLC Verification program using the ACOG Maternal Levels of Care to promote collaboration among maternal facilities and health care providers so that women receive risk-appropriate maternal care, a key strategy to reduce maternal mortality and morbidity.

WHEREAS, the Organization wishes to purchase certain products and services related to the verification process to advance its own quality improvement initiatives and thereby improve the quality and safety of patient care provided.

NOW, THEREFORE, in consideration of the mutual promises in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties hereby agree to the following terms and conditions:

1.0 The Joint Commission’s Rights and Obligations

1.1 The Joint Commission developed MLC Verification standards, in collaboration with ACOG, and related quality improvement activities that are appropriate to each type of health care organization that seeks MLC Verification. The Joint Commission will publicize new standards and activities through its official newsletter, currently called *Perspectives*, reasonably in advance of their implementation dates unless The Joint Commission determines that delaying the implementation could be detrimental to health or safety.

1.2 The Joint Commission staffs verification services with the appropriate number and type of trained verification reviewers as determined by consistent scheduling rules that are based upon volume, programs, site and service data as submitted by the Organization in its electronic application for verification. The Joint Commission relies on accurate and regularly updated data in the electronic application. The Joint Commission is not responsible for review scheduling delays beyond its control, for example, from extreme weather or airline strikes.

1.3 The Joint Commission will assign an account executive who serves as the primary point of contact with the Organization for verification services. The account executive will receive and coordinate The Joint Commission’s response to the Organization’s inquiries, as well as provide support in accessing and utilizing the Joint Commission’s electronic extranet-based accreditation services and communications.

1.4 The Joint Commission will provide each individual Organization with a secure, Organization-specific password protected extranet web site, which serves as the primary means for all communications between The Joint Commission and Organization related to the services under this

Agreement.

1.5 The Joint Commission provides the public with certain information about the MLC verification at the Organization on the Joint Commission's public website in accordance with its Public Information Policy, which is subject to change from time to time. The Joint Commission will not disclose Organization's confidential information except as expressly provided in this Agreement and in the Joint Commission's Public Information Policy.

1.6 The Joint Commission may develop and/or implement performance measures or other type measures for certain types of accredited health care organizations.

1.7 The Joint Commission may make changes in its products and services during the term of this Agreement and will update those changes in its verification manual. If there is a conflict between this Agreement and the relevant verification manual, the manual will control.

2.0 Organization's Rights and Obligations

2.1 The Organization represents that it is duly organized and is validly existing, in good standing under the laws of the state of its formation and is qualified to do business. The Organization has obtained any necessary consents or authorizations it needs to enter into this Agreement and to permit The Joint Commission with access to Organization's confidential organizational and patient information.

2.2 Organization agrees to: a) permit only authorized personnel to access the password protected extranet site which is the primary means of communication between Organization and The Joint Commission, b) protect against any reasonably anticipated or predictable threats or hazards to the security or integrity of the extranet site, c) promptly notify The Joint Commission if it discovers anything unusual that might suggest a breach of the site, d) cooperate with The Joint Commission's investigation, and mitigate, to the extent possible, any risk to the data or site. If Organization personnel discover a breach and obtain unintended access to any third-party confidential information, such personnel shall not re-disclose the confidential information and shall immediately report the unintended access to The Joint Commission.

2.3 Organization agrees to keep its electronic application information up to date for The Joint Commission to properly staff verification reviews and price the annual fee. Inaccurate or incomplete information in the application and/or E-Update may necessitate an additional review, which may delay the Joint Commission's final report and verification decision. The Organization may also incur additional charges in such circumstances.

2.4 Obtaining and maintaining verification requires the Organization to meet all the applicable requirements and comply with all policies in the verification manual currently in effect. Organization is responsible for, and in control of, Organization's compliance with Joint Commission requirements, as determined by The Joint Commission in its sole discretion. The start date of any Organization's verification cycle is dependent upon multiple factors, including, but not limited to, the Organization's ability to be or become fully compliant with Joint Commission standards as determined by The Joint Commission. If verified, Organization agrees to keep current with new and revised standards, policies, procedures, eligibility requirements, participation requirements, and other requirements as periodically revised and published in official Joint Commission publications. Organization will be bound by any such new or revised standards, policies, procedures, eligibility requirements, participation requirements, or other requirements and will take any steps needed to come into compliance with them in a reasonable period of time. Ceasing services or failing to comply with Joint Commission eligibility requirements, which are found in the manual, can result in the loss of verification with no opportunity to appeal.

2.5 Organization agrees to engage in good faith and frank participation in the verification process. Organization will provide all relevant and never false or falsified information that may be used to determine the Organization's compliance with Joint Commission requirements in a timely manner. The Organization shall furnish any reasonable certifications about the information it supplies to the Joint Commission. Organization shall promptly provide all official records and reports of public licensing, examining, reviewing or planning bodies. Organization grants permission to the state licensing authority, federal agencies, and any other relevant examining or review agency, to release to the Joint Commission any information concerning the Organization and any related entities included in the Organization's verification process.

2.6 Organization agrees to permit the performance of a verification review when reviewers arrive on-site or off-site to conduct a review. Most reviews are unannounced and may occur before the end of a verification cycle.

2.7 Organization agrees that it is responsible for obtaining any necessary authorizations from patients to permit Joint Commission access to protected health information. Organization agrees that it must look to The Joint Commission to keep its information confidential and will not require individual reviewers to sign an individual confidentiality agreement upon their arrival.

2.8 Organization will make every effort to submit post-review clarifications and Evidence of Standards Compliance in advance of or no later than the established due date(s). Failing to participate in the post review process can result in a Denied Verification decision.

2.9 Organization is not permitted to use Joint Commission reviewers to provide any verification-related consulting services before or after reviews. Examples of prohibited consulting services include helping an Organization meet Joint Commission standards, completing intra-cycle monitoring activities, remedying areas of performance identified as needing improvement, and conducting mock reviews. This prohibition on reviewer consultation does not extend to consultative commentary made during reviews.

2.10 The Joint Commission will publicly identify Organization's MLC in Quality Reports on Quality Check, in accordance with the Public Information Policy available at www.jointcommission.org. Organization agrees to permit The Joint Commission to publish/release Quality Reports on individual programs as well as aggregate performance measure data, if any. And to make available to federal, state, local or other government certification or licensing agencies specific verification-related information; and to publicly disclose certain information in accordance with The Joint Commission's Public Information Policy, which may reasonably be revised from time to time.

3.0 **Payment Terms.** A nonrefundable, nontransferable deposit is due with the initial electronic application for verification. The Joint Commission shall bill the Organization for a nonrefundable annual fee and for on-site and offsite review fees. The annual fee is for the provision of intra-cycle resources, performance measure submissions if applicable, and other intra-cycle activities. The annual fee is billed at or near the beginning of the calendar year and is due upon receipt but no later than January 31 of each year. The annual fee for organizations applying for the first time is prorated. The on-site or off-site review fee is billed as reviews occur. Both annual and on-site/off-site review fees may be subject to adjustment each year. The Joint Commission may respond to complaints and patient safety events by conducting a for-cause survey. There may be additional fees for intra-cycle for-cause or other type reviews, specialty reviewers, if necessary; and any additional fees or deposits for other services, if requested. All payments are due upon receipt. Failure to provide timely payment of fees can result in loss of verification at The Joint Commission's sole discretion. If incurred by The Joint Commission, the Organization shall pay for any collection costs and expenses, including reasonable attorney's fees. The Joint Commission may change the above described fee structure, and if so, will provide advance notice to organizations.

4.0 **Term and Termination.** Unless prohibited by law, this Agreement will renew itself yearly upon the date last signed. ("Term"). (Notwithstanding the foregoing and for the purposes of revenue recognition, the initial service period under this contract ends on December 31 of the year the contract is

last signed, and annually renews each January 1 thereafter, ending December 31 each year.) Either party may terminate this Agreement at any time during the Term for any reason or for no reason at all with sixty (60) days' written notice posted on the extranet or sent by U.S. Mail. This Agreement terminates if The Joint Commission denies verification. If the Organization chooses to terminate, Organization agrees to pay all fees then due and owing at the time of notice. If this Agreement is terminated, MLC verification is removed and all references to MLC verification must be removed from the Organization's website and other communication platforms.

5.0 Electronic Clinical Quality Measures. If, as part of verification, the Organization submits electronic clinical quality measures (eCQMs), Organization understands it may be using a platform powered by a third-party vendor. The Organization shall not hold The Joint Commission or its affiliates responsible for the platform's functionality nor seek damages or make claims against The Joint Commission or its affiliates for harms or damages caused by submission to and use of the third party platform. Organizations that submit eCQMs to The Joint Commission must have network security and privacy insurance coverage for this activity in amounts that adequately reflect the scope of submissions and potential harm to Joint Commission systems.

6.0 Intellectual Property.

6.1 The Joint Commission will retain all right, title, and interest to all data, plans, documentation, proprietary software, methodologies, templates, tools, specifications, drawings, sketches, models, samples, records, works of authorship or creative works, ideas, knowledge, or other materials, which have been originated or developed by the personnel of The Joint Commission or by third parties under contract to develop the same, or which have been purchased by, or licensed to, The Joint Commission (collectively, "Proprietary Intellectual Property").

6.2 The Joint Commission reserves all rights in the Proprietary Intellectual Property that are not expressly licensed to Organization, or its affiliates. Organization, and its affiliates, agree not to record, rebroadcast, resell or collect any charge related to the services and products provided under this Agreement, unless mutually agreed to in advance and in a writing signed by both Parties.

6.3 To the extent that The Joint Commission incorporates or embeds any Proprietary Intellectual Property in the services or products, upon full payment for all services and products, The Joint Commission grants the Organization receiving the services or products a fully revocable, non-exclusive, non-transferable, perpetual, worldwide, royalty-free license to: (i) use, for internal purposes the Intellectual Property as incorporated in the product and services and (ii) to use, display and to create limited copies of the Proprietary Intellectual Property, as incorporated into the products and services, solely in connection with internal use of the products and services; No portion of the Proprietary Intellectual Property may be unbundled or separated or used as a standalone product.

6.4 The Joint Commission, and its employees and agents shall be free to use and employ their general skills, tools, techniques, know-how, processes, and expertise, and to use, disclose, and employ any generalized ideas, concepts, know-how, methods, techniques or skills gained or learned during the course of any services performed hereunder, subject to its obligations with respect to Organization's Confidential Information.

6.5 In addition to any other rights provided for above, the Parties expressly acknowledge and agree that The Joint Commission exclusively retains all rights, title and interest to its patents, copyrights, trademarks, service marks, trade secrets, all other similar items of intellectual property (including but not limited to reference, listing, and all other components of the various versions of The Joint Commission's MLC Verification Manual (including individual chapters), interpretations of such standards, the National Patient Safety Goals®, if any and identified best practices thereto) and all variations and derivatives of any of the foregoing, whether registered or unregistered, including any rights created by use thereof, all proceeds thereof

(such, as by way of example, licenses, royalties and proceeds of current infringements), and the right to sue for past, present and future infringements thereof.

7.0 Licenses. The Joint Commission hereby grants to the Organization a revocable, non-exclusive, non-transferable, world -wide license to use as appropriate and to the extent necessary for Organization to obtain the benefit of verification, any Joint Commission provided: software applications, web-based portals, documents and certificates. Organization's license to use and display as appropriate licensed materials terminates when this Agreement terminates. The Joint Commission provides the Organization with one Certificate of Verification for each organization, service, or related entity included in the scope of the review. The certificate and all copies remain the Joint Commission's property and must be returned or destroyed upon termination of the verification for any reason. No other use of Joint Commission trademarks, logos or tradenames is permitted except as expressly stated herein and in The Joint Commission's communication guidelines.

8.0 Confidentiality . In connection with this Agreement, each Party may disclose, make available or provide access to its Confidential Information, as defined below, ("Disclosing Party") to the other Party ("Recipient"). Recipient shall only use Confidential Information for the limited express purposes of this Agreement, shall keep the Confidential Information confidential and shall take all reasonable security precautions to protect the Confidential Information from unauthorized access and use.

8.1 "Confidential Information" includes any information, technical data, or know-how (including, but not limited to, information relating to research, products, software, services, development, process, tools, methods, techniques, customers, pricing, internal procedures, business and marketing plans or strategies, finances, employees (and other personnel) and business opportunities disclosed by the Disclosing Party to the Recipient either directly or indirectly; that (a) has been marked as confidential or proprietary or by similar restrictive notation; (b) has been made known is confidential or proprietary either in writing or as spoken, or (c) due to its character and nature, a reasonable person under like circumstances would treat such information as confidential or proprietary.

8.2 The obligations for such Confidential Information shall not apply to information that is:

- a. Or becomes publicly available through no fault of the Recipient;
- b. Disclosed to the Recipient by a third party entitled to disclose such information;
- c. Already known to the Recipient as shown by its prior written records;
- d. Required by law or court order to be disclosed; provided however that in such a case, the Recipient shall give the Disclosing Party notice of such required disclosure (unless directed not to disclose by law enforcement) as soon as reasonably practical so that the Disclosing Party may have such opportunity to contest such disclosure or obtain protective orders regarding such disclosure.

8.3 Confidential Information does not include information subject to The Joint Commission's Public Information Policy which may be revised from time to time. The Public Information Policy includes demographic and quality-related information as viewed on Quality Check, a public website accessible via The Joint Commission's official website. Confidential Information does not include personnel contact information that The Joint Commission may share with its affiliates for marketing and quality improvement.

8.4 Exception: The Joint Commission may notify the authorities having jurisdiction when it finds a serious condition that appears to immediately threaten public safety or the safety of patients in an Organization.

8.5 All Joint Commission personnel are bound by The Joint Commission Code of Conduct and receive regular training on confidentiality and the protection of protected health information as required by state and federal laws. The Joint Commission fully expects its staff to maintain the confidentiality of Organization-specific information.

9.0 Business Associate Agreement. The Parties agree to be bound by a Business Associate Agreement, which is attached to and incorporated into this Agreement as an Addendum.

10. Disclaimers and Limitations.

10.1 Services and products of Joint Commission affiliate companies are provided independently and without consideration of verification services or any efforts by the Organization to attain or retain such verification. To ensure the integrity and independence in the verification decision process, The Joint Commission maintains a strict firewall between the award of verification and the provision of Joint Commission Resource's consultative technical assistant services. Organization's use of JCR consultative technical assistance does not provide any undue advantage over other organizations that do not utilize JCR services.

10.2 MLC verification does not serve as a substitute for the Organization's responsibilities to patients, visitors, and staff. The Joint Commission makes no representations about the effect verification has, if any, on the quality of care and treatment of individuals or the actual outcomes of patient care provided by the Organization.

11. Indemnification and Hold Harmless.

11.1 The Organization agrees that, as provided for in Section 10.2 above, verification does not create a warranty of compliance with standards and verification is not a substitute for self-monitoring and assessment of the quality and safety of care provided by the Organization. Unless indemnification is prohibited by law, the Organization agrees to indemnify and hold harmless The Joint Commission, its Commissioners, officers, agents, employees and member organizations from any and all professional liability claims of third parties arising for damages incurred during the term of this Agreement.

11.2 Off-site surveys require use of a virtual platform powered or licensed by a third party. The Organization shall not hold The Joint Commission or its affiliates responsible for the platform's functionality or security nor seek damages or make claims against The Joint Commission or its affiliates for harms or damages caused by use of the third-party platform.

12. LIMITATION OF LIABILITY. THE MAXIMUM LIABILITY OF THE JOINT COMMISSION, ITS COMMISSIONERS, OFFICERS, AGENTS, EMPLOYEES AND MEMBER ORGANIZATIONS FOR DAMAGES FROM ANY AND ALL CAUSES WHATSOEVER, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE TOTAL FEES PAID IN THE PREVIOUS 12 MONTHS REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, OR OTHER. IN NO EVENT SHALL THE JOINT COMMISSION, ITS COMMISSIONERS, OFFICERS, EMPLOYEES AND AGENTS BE LIABLE FOR LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL,

SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO THE SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF THE JOINT COMMISSION HAD BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. **Insurance.** All Parties shall, at their expense, and for the duration of the Agreement, maintain policies of general liability insurance, including appropriate professional liability, in amounts reasonable for their operations and with respect to such risks as is customarily recognized by businesses of like size and character. Upon written request, evidence of coverage shall be made available to either Party.

14. **Privacy and Security.** The Parties shall:

14.1 Ensure adequate internet, data, information and system security in accordance with industry standards.

14.2 Implement administrative, physical, and technical safeguards as necessary to reasonably and appropriately protect the confidentiality, integrity, and availability of Joint Commission information.

14.3 Ensure that personnel access and use computer equipment/systems only as authorized, maintain login and passwords in a confidential manner, and not further disclose any portion of systems or information to unauthorized individuals.

15. **Compliance with Law and Regulation.**

15.1 All Parties shall comply at all times with applicable laws and regulations.

15.2 All Parties shall abide by the requirements of 41 CFR 60-1.4(a), 60-300.5(a) and 60-741.5(a). These federal regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin.

15.3 The Joint Commission hereby attests that it complies with Executive Order 11246, as amended (Equal Employment Opportunity); Section 2012 of the Vietnam Era Veterans' Readjustment Assistance Act of 1974; Section 503 of the Rehabilitation Act of 1973 and Executive order 13465 (Use of E-Verify) and Executive Order 13496.

15.4 All Parties represent that they and their personnel involved in this Agreement for which a claim may be submitted to the government are not presently:

- a. Debarred, suspended, proposed for debarment, or declared ineligible for the award of contracts by any federal agency;
- b. Guilty of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public contract or subcontract, or
- c. Guilty of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, violating federal criminal tax laws, or receiving stolen property.

15.5 All Parties agree to promptly notify the other of the imposition of any sanctions or exclusion from government programs and of the initiation of any investigation or proceeding the result of which may include such sanctions or exclusion. This Agreement shall be subject to immediate

termination in the event a Party is subject to sanctions or exclusion from government programs.

16. **Independent Contractors.** Both Parties are independent of one another during the term of this Agreement, are independent contractors and not agents, employees, joint ventures or partners of one another.

17. **Impossibility.** The performance of this Agreement may be suspended or cancelled by either Party without penalty or damages in the event acts of God, war, terrorism, government regulation, disease, disaster, fire, strikes, civil disorder, or other similar cause beyond control of the Parties make it illegal, impossible or inadvisable to provide the services. Notice of the event requiring suspension or cancellation must be communicated in writing as soon as practical to the non-suspending or non-cancelling Party.

18. **Survival.** Sections 6, 8, 10, 11, 12, 19 and 27 shall survive termination of this Agreement.

19. **Governing Law and Jurisdiction .** The Parties agree that this Agreement is entered into in the State of Illinois, governed and interpreted by the laws of the State of Illinois without application of its conflicts of law principles, and the Parties submit to the personal jurisdiction of the state or federal courts located in Cook County or DuPage County, Illinois.

20. **Notice.** The Joint Commission-provided password protected portal known as JC Connect is the primary means of communication between the Parties. Any and all notices shall be delivered via the extranet with a corresponding email alert to authorized users of the extranet. Organization is responsible for accepting email notifications from the extranet site, to make sure these emails do not go to spam or clutter files, and to regularly update any new email or account information.

21. **Assignment.** Neither Party shall assign this Agreement without the other Party's consent. The Joint Commission may assign this Agreement to an affiliate, provided the affiliate agrees in writing to be bound by the terms of this Agreement, and provided that such assignment shall not release The Joint Commission from its obligations.

22. **Waiver .** Any failure by either Party to enforce any of the terms or conditions of this Agreement shall not constitute a waiver of such terms or conditions and shall not affect or impair such terms or conditions in any way, nor shall waiver impair the right of either Party at any time to avail itself of such remedies as it may have for any default in the performance of such terms or conditions.

23. **Severability .** If any term or provision of this Agreement is found by a court of competent jurisdiction to be illegal, invalid or otherwise unenforceable, such term or provision shall not affect the other terms of provisions nor the whole of this Agreement. Such term or provision shall be modified to the extent necessary to render such term or provision enforceable.

24. **Headings.** The section headings contained in this Agreement are inserted for convenience only and shall not affect in any the way the meaning of this Agreement.

25. **Entire Agreement.** This Agreement terminates all prior agreements between the Parties and, along with the Business Associate Agreement attached, represents the entire agreement between the Parties.

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

27. **No Third Party Beneficiaries.** Other than the parties, nothing expressed or implied in this Agreement confers any rights, remedies, obligations or liabilities whatsoever upon third parties.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and represent that the persons whose signatures appear below are duly authorized to execute this Agreement on behalf of itself and its Affiliates.

The Joint Commission

**Shands Teaching Hospitals & Clinics,
Inc.**

A rectangular box with a small icon in the top-left corner, intended for a signature.

By:
Name:
Title:
Date:

Name:
Title:
Date:

**ADDENDUM TO
The Joint Commission Verification Agreement
(Business Associate Agreement)**

Whereas, The Joint Commission and the Organization are parties to the Maternal Levels of Care Verification Agreement pursuant to which The Joint Commission provides certain services to the Organization and, in connection with the provision of those services, the Organization discloses to The Joint Commission certain Protected Health Information ("PHI", as defined in 45 C.F.R. §160.103) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

Whereas, The Joint Commission and the Organization may be parties to other agreements involving the disclosure of PHI to The Joint Commission (such as agreements and the Verification Agreement may be referred to collectively herein as the "Underlying Agreements");

Whereas, the Organization is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule"); and 45 C.F.R. Part 164, Subpart C, the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

Whereas, as used herein, the Privacy Rule and the Security Rule are each deemed to include the amendments thereto that are included in the Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule (the "Omnibus Rule"), 78 Fed. Reg. 5565;

Whereas, The Joint Commission, as a recipient of PHI from the Organization, is a "Business Associate" as that term is defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule and the Security Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI;

Whereas, the Health Information Technology for Economic and Clinical Health Act ("HITECH") adopted as part of the American Recovery and Reinvestment Act of 2009 imposes certain requirements on Business Associates with respect to privacy, security and breach notification and contemplates that such requirements shall be implemented by regulations, some of which are included in the Omnibus Rule (all such statutory and regulatory provisions may be referred to collectively as the "HITECH BA Provisions");

Whereas, the purpose of this Addendum is to comply with the requirements of the Privacy Rule, the Security Rule, the Breach Notification Rule (45 C.F.R. §§ 164.400-401), the Omnibus Rule and the HITECH BA Provisions, including, but not limited to, the Business Associate contract requirements at 45 C.F.R. §164.308(b), §164.314(a), §164.502(e), §164.504(e), and as may be amended; and

Whereas, the parties also wish to address the privacy and security requirements with respect to each of the Underlying Agreements and to provide an efficient mechanism to address future changes in laws and regulations that relate to HIPAA and HITECH with respect to the Underlying Agreements.

NOW, THEREFORE in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Addendum, capitalized terms have the same meanings as set forth in HIPAA, the Privacy Rule, the Security Rule, the Breach Notification Rule, the Omnibus Rule or the HITECH BA Provisions.

2. Scope of Use and Disclosure by The Joint Commission of Protected Health Information

- a. The Joint Commission shall be permitted to Use and Disclose PHI consistent with the Minimum Necessary standard (45 C.F.R. §164.502(b)) disclosed to it by the Organization as necessary to perform its obligations under the Underlying Agreements.
- b. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Addendum or Required by Law, The Joint Commission may:
 - i. Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of The Joint Commission;
 - ii. Disclose the PHI in its possession to a third party for the purpose of The Joint Commission's proper management and administration or to fulfill any legal responsibilities of The Joint Commission; provided, however, that the Disclosures are Required by Law or The Joint Commission has received from the third party written assurances that (a) the information will be held confidentially and used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party; and (b) the third party will notify The Joint Commission of any instances of which it becomes aware in which the confidentiality of the information has been breached;
 - iii. Aggregate the PHI with that of other Organizations for the purpose of providing the Organization with data analyses relating to the Health Care Operations of the Organization. The Joint Commission may not Disclose the PHI of one Organization to another Organization without the written authorization of the Organizations involved; and
 - iv. De-identify any and all PHI created or received by The Joint Commission under this Addendum; provided that the de-identification conforms to the requirements of the Privacy Rule.

3. Obligations of The Joint Commission. In connection with its Use and Disclosure of PHI, The Joint Commission agrees that it will:

- a. Use or further Disclose PHI only as permitted or required by this Addendum or as Required by Law;
- b. Use reasonable and appropriate safeguards and comply, where applicable, with the Security Rule with respect to electronic PHI, to prevent Use or Disclosure of PHI other than as provided for by this Addendum, including implementation of the Administrative, Physical and Technical Safeguards and the Organizational Requirements of the Security Rule (45 C.F.R. §§164.306-316) that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic PHI that it creates, receives, maintains or transmits on behalf of the Organization;
- c. To the extent practicable, mitigate any harmful effect that is known to The Joint Commission of a Use or Disclosure of PHI by The Joint Commission in violation of this Addendum;
- d. Report to the Organization any Use or Disclosure of PHI not provided for by this Addendum of which The Joint Commission becomes aware including Breaches of Unsecured PHI as required by 45 C.F.R. §164.410;
- e. Require that any subcontractor that creates, receives, maintains or transmits PHI on behalf of The Joint Commission agrees to the same restrictions and conditions that apply to The Joint Commission with respect to such PHI in accordance with the applicable requirements of the Privacy Rule and the Security Rule;
- f. Make available to the Secretary of HHS The Joint Commission's internal practices, books and records relating to the Use and Disclosure of PHI received from or created or received by The Joint Commission on behalf of the Organization for purposes of determining the

Organization's compliance with the Privacy Rule, the Security Rule and the Breach Notification Rule, subject to any applicable legal privileges;

g. Within (15) days of receiving a request from the Organization, make available the information necessary for the Organization to make an accounting of Disclosures of PHI about an individual;

h. Within ten (10) days of receiving a written request from the Organization, make available PHI necessary for the Organization to respond to Individuals' requests for access to PHI about them in the event that the PHI in The Joint Commission's possession constitutes a Designated Record Set;

i. Within fifteen (15) days of receiving a written request from the Organization, make PHI available for amendment and incorporate any amendment to the PHI in accordance with the Privacy Rule in the event that the PHI in The Joint Commission's possession constitutes a Designated Record Set;

j. To the extent that The Joint Commission is to carry out an obligation of the Organization under the Privacy Rule, The Joint Commission shall comply with the requirements of the Privacy Rule that apply to the Organization in the performance of such obligation; and

k. Promptly report to the Organization any Breach of Unsecured PHI after its Discovery and any Security Incident with respect to Electronic PHI of which it becomes aware; provided, however, that unless specifically requested by the Organization, The Joint Commission shall not be obligated to report unsuccessful attempts to penetrate computer networks or servers that do not result in loss of data or degradation of computer networks or services. To the extent a determination has been made that patient notification is required in a breach involving The Joint Commission, both parties agree to cooperate on the notification language.

The Joint Commission hereby acknowledges and agrees that The Joint Commission shall be subject to each of the HITTECH BA Provisions with respect to the Joint Commission's role as a Business Associate of the Organization commencing on the Applicable Effective Date of such provision. The Joint Commission and the Organization each further agree that the provisions of HITTECH that apply to Business Associates that are required to be incorporated by reference in a business associate agreement are hereby incorporated into this Addendum as of the Applicable Effective Dates.

4. Obligations of the Organization. The Organization agrees that it:

a. Has included, and will include, in the Organization's Notice of Privacy Practices required by the Privacy Rule that the Organization may Disclose PHI for Health Care Operations purposes.

b. Has obtained, and will obtain, from Individuals consents, authorizations and other permissions necessary or Required by Law applicable to the Organization for The Joint Commission and the Organization to fulfill their obligations under the Underlying Agreement and this Addendum.

c. Will promptly notify The Joint Commission in writing of any restrictions on the Use and Disclosure of PHI about Individuals that the Organization has agreed to that may affect The Joint Commission's ability to perform its obligations under the Underlying Agreement or this Addendum.

d. Will promptly notify The Joint Commission in writing of any changes in, or revocation of, permission by an Individual to Use or Disclose PHI, if such changes or revocation may affect The Joint Commission's ability to perform its obligations under the Underlying Agreement or this Addendum.

5. Termination.

- a. **Termination for Breach.** The Organization and The Joint Commission may each terminate this Addendum, in whole or in part, by giving written notice as described below if either of them (the “Terminating Party”) determines that the other party (the “Non-Terminating Party”) has breached a material term of this Addendum. Alternatively, the Terminating Party may choose to provide the Non-Terminating Party with notice of the existence of an alleged material breach and provide the Non-Terminating Party an opportunity to cure the alleged material breach within a specified period.

If no cure period was provided or if the Non-Terminating Party fails to cure the breach to the satisfaction of the Terminating Party within the cure period provided, the Terminating Party may immediately thereafter terminate this Addendum with respect to, in its discretion, all Underlying Agreements or only the Underlying Agreement with respect to which the breach occurred. Such termination shall be effective as of the date specified in a written notice given by the Terminating Party to the Non-Terminating Party (the “Termination Notice”). The Termination Notice shall be given as required in the Underlying Agreement or by nationally recognized overnight courier, receipt requested, if no means of notice is set forth in the Underlying Agreement. The Termination Notice shall specify the extent of termination of this Addendum and which related Underlying Agreement(s) are terminated.

- b. **Automatic Termination.** This Addendum will automatically terminate upon the termination or expiration of the Underlying Agreement but only with respect to the PHI that was Used or Disclosed pursuant to the Underlying Agreement that has expired or terminated.

- c. **Effect of Termination.**

- i. If this Addendum is completely terminated, it will result in the termination of all Underlying Agreement(s) pursuant to which PHI was disclosed subject to this Addendum. If this Addendum is terminated only in part, then only the Underlying Agreements related to the terminated portion of this Addendum shall be terminated.
- ii. Upon termination of this Addendum or the Underlying Agreement(s), to the extent that The Joint Commission then retains any PHI, The Joint Commission will return or destroy all PHI received from the Organization or created or received by The Joint Commission on behalf of the Organization with respect to the portion of this Addendum and the Underlying Agreement(s) being terminated and The Joint Commission will retain no copies of such PHI; provided that if such return or destruction is not feasible, The Joint Commission will extend the protections of this Addendum to such PHI and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.

6. Amendment.

- a. The Joint Commission and the Organization agree to take such action as is necessary to amend this Addendum from time to time as is necessary for the Organization and/or The Joint Commission to comply with the requirements of HIPAA, the Privacy Rule, the Security Rule and the HITTECH BA Provisions as currently in effect and as they may be amended from time to time in the future, including any interpretations thereof under federal law (each a “Change in Law”).

- b. To the extent necessary to amend this Addendum to include specific language to enable the Organization and/or The Joint Commission to comply with any Change in Law, such language shall automatically be deemed incorporated by reference and included in this Addendum as of the date required by such Change in Law.
- c. Notwithstanding Sections 6.a and 6.b above, if a party to this Addendum (an “Objecting Party”) deems compliance with any Change in Law to be impractical or likely to materially increase its costs, risks or obligations under this Addendum or any of the Underlying Agreements, the Objecting Party may give written notice to the other party describing its concerns. Upon receipt of such notice, the parties shall negotiate in good faith to develop an amendment to address the concerns of the Objecting Party. If such an amendment is not executed within thirty (30) days of such notice, the Objecting Party may terminate this Addendum by written notice to the other party and shall not have any obligation hereunder for early termination.
7. **Survival**. The obligations of The Joint Commission under Section 5.c (ii) of this Addendum shall survive any termination of this Addendum.
8. **Reporting**. Notwithstanding anything contained herein to the contrary, the provisions provided herein are not intended to restrict or prevent The Joint Commission from fulfilling its obligation, if any, to make certain disclosures to public officials (including CMS), in cases of immediate jeopardy/imminent harm or a good faith belief that the Organization has engaged in conduct that is unlawful, violates professional or clinical standards or potentially endangers one or more patients, workers or the public as allowable under the Privacy Rule (45 C.F.R. §164.502 (j)).
9. **No Third Party Beneficiaries**. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
10. **Independent Contractor**. Unless and to the extent otherwise expressly provided in an Underlying Agreement, The Joint Commission is an independent contractor and not an agent of the Organization. The parties note that this characterization of their relationship is consistent with the Omnibus Rule. (See commentary to the Omnibus Rule at 78 Fed. Reg. 5581-5582.)
11. **Entire Agreement**. This Addendum constitutes the entire understanding and obligation of the parties with respect to the subject matter hereof and supersedes any prior agreements, writings or understandings, whether oral or written with respect to the subject matter hereof.

Effective Date. This Addendum shall be effective upon execution of the Underlying Agreement.
