

**AMENDED AND RESTATED  
MEDICAL DIRECTOR AGREEMENT**

*Emergency Medical Services Agency Education Agreement: Non-Compensated Physicians  
SSM St. Mary's Health Center*

This AMENDED AND RESTATED MEDICAL DIRECTOR AGREEMENT ("Agreement") is effective **May 22, 2014** ("Effective Date") by and between **City of Brentwood Fire Department of St. Louis County** ("EMS"), **SSM Health Care St. Louis**, a Missouri nonprofit corporation owning and operating **SSM St. Mary's Health Center** ("HOSPITAL") and **Clayton Emergency Group, LLC**, a Missouri limited liability company ("GROUP").

WHEREAS, HOSPITAL, EMS, and GROUP entered into a Medical Director Agreement on or about January 1, 2011, and subsequently amended ("Prior Agreement");

WHEREAS, EMS is, among other things, an emergency medical response agency that provides basic life support services and/or advanced life support services to patrons of its community; and

WHEREAS, HOSPITAL is a general, acute care hospital, primarily providing inpatient and outpatient care to the residents of community; and

WHEREAS, GROUP has been contracted by HOSPITAL to provide professional staffing and management of its emergency department; and

WHEREAS, EMS desires to engage GROUP as an independent contractor to provide, through a designated individual ("Physician"), the services described herein and serve as the medical director ("Medical Director") of EMS; and

WHEREAS, GROUP desires to provide EMS Medical Director services free of charge and as a courtesy to HOSPITAL to help EMS establish and maintain quality life support services to the community; and

WHEREAS, EMS, HOSPITAL and GROUP desire to enter into this Agreement for the provision of such services.

THEREFORE, the parties agree to amend and restate the Prior Agreement as follows:

1. **Relationship Between EMS, Hospital And Group.**

1.1 **Independent Contractors.**

EMS, HOSPITAL and GROUP are independent contractors and this Agreement shall not constitute the formation of a partnership, joint venture or principal-agent, relationship, nor shall this Agreement be deemed to create any relationship other than that of independent parties contracting with each other solely for the purpose of carrying out the terms and conditions of this Agreement.

1.2 **State Law.**

EMS, HOSPITAL and GROUP have entered into this Agreement pursuant to the requirement of Section 190.103.4 of the Missouri Revised Statutes that EMS maintain an agreement with a medical director to ensure appropriate clinical education and guidance of

EMS provision of life support services. GROUP agrees to provide a Medical Director, and HOSPITAL agrees to provide an EMS Liaison to EMS and enters this Agreement to enable EMS to comply with Missouri law.

2. **Group's Duties.**

2.1 **Duties.**

GROUP, through the Physicians designated on **Exhibit A**, shall perform such duties as set forth in **Exhibit B** ("Medical Director Services"). GROUP may from time to time modify **Exhibit A** by designating a new Physician who shall fulfill GROUP's obligations hereunder.

2.2 **Standards.**

GROUP, through Physician, shall provide Medical Director Services in accordance with: (a) the professional standards then prevailing in the EMS; (b) the then currently accepted methods and practices (including codes of ethics) of the American Medical Association and the American Board of Emergency Medicine; and (c) applicable regulatory and accreditation standards.

2.3 **Licensure.**

GROUP agrees that at all times Physician shall have and maintain the following:

2.3.1 a currently valid and unlimited license to practice medicine in the State of Missouri, in good standing;

2.3.2 valid and current unrestricted registrations to prescribe and dispense controlled substances as required by federal, state, or local laws and regulations; and

2.3.3 board certification or board eligibility and active practice in emergency medicine; or board certification or board eligibility in a primary care specialty (family practice, internal medicine, or pediatrics) or surgery, active practice in emergency medicine, and is current in Advanced Cardiac Life Support, Advanced Trauma Life Support, and Pediatric Advanced Life Support.

3. **Hospital's Duties.**

HOSPITAL shall coordinate activities between Physician and EMS in meeting GROUP's obligations hereunder by providing a Hospital EMS Liaison. The duties of the Hospital EMS Liaison shall be to supervise education and function of the Emergency Medical Services ("Services") and its programs. This person serves as a liaison between the pre-hospital providers and the HOSPITAL.

4. **Grievance Procedures.**

The parties agree to abide by the grievance procedures set forth in **Exhibit C**, which shall govern disputes between EMS and Medical Director, including disputes between EMS employees and Medical Director.

5. **Insurance and Indemnification.**

- 5.1 During the term of this Agreement, GROUP, at its sole cost and expense, agrees to procure and maintain general and professional liability coverage, on an occurrence basis, for losses arising out of the acts or omissions of GROUP and Physician serving as Medical Director in the minimum amounts of One Million Dollars (\$1,000,000), per occurrence, Three Million Dollars (\$3,000,000) annual aggregate. GROUP shall annually provide EMS and HOSPITAL with a certificate of insurance evidencing such coverage.
- 5.2 EMS shall defend, indemnify and hold HOSPITAL and GROUP, their officers, directors, employees, agents, the Physician and Medical Director, including parent and affiliated entities, harmless from and against all claims, liabilities, losses and expenses, including reasonable costs, collection expenses and attorneys' fees which may arise out of the acts or omissions of EMS, its agents or employees and/or in the performance of Medical Director services by GROUP and its Physicians and/or in the performance of services by HOSPITAL.

6. **Term and Termination.**

6.1 **Term.**

This Agreement shall commence as of the Effective Date and shall continue for a period of time up to and including **May 21, 2015** unless earlier terminated as provided herein. Thereafter, this Agreement may be renewed upon written agreement of the parties at the time of each renewal. In the event the parties fail to appropriately document an extension, and Physician continues to provide services hereunder, the term of this Agreement shall be deemed to be automatically extended on a day to day basis until terminated by either party upon ninety (90) days prior written notice if the termination is without cause, or if the termination is not without cause, then as provided by the applicable time frame set forth in the Agreement. Notwithstanding the foregoing, a party may terminate this Agreement without cause at any time during a term by giving ninety (90) days' prior written notice, effective on the date stated therein.

6.2 **Termination.**

Notwithstanding the provisions of Subsection 6.1, this Agreement may be terminated as follows:

- 6.2.1 **Voluntary and Involuntary Termination.** At any time during the Initial Term or any Renewal Term a party may terminate this Agreement upon ten (10) days prior written notice in the event that another party is in material breach of any provision of this Agreement and fails to cure such breach on or before the expiration of a thirty (30) day written notice and cure period ("Cure Period"). Notwithstanding the foregoing, if the breach is cured within the Cure Period but the breaching party commits the same or a substantially similar breach within a six (6) month period following expiration of the Cure Period, then a non-breaching party may immediately terminate this Agreement without affording any further Cure Period.
- 6.2.2 **Termination Due to Change in Law.** In the event that any law or regulation enacted, promulgated or amended after the date of this Agreement, or any interpretation of law or regulation by a court or regulatory authority of competent

jurisdiction after the date of this Agreement (collectively “Change in Law”) materially affects or materially impacts upon the reasonable expectations of a party under this Agreement, renders any provision of this Agreement illegal or unenforceable, or materially affects the ability of a party to perform its obligations under this Agreement, then that party may request renegotiation of the applicable terms of this Agreement by written notice to the other parties. The parties agree to negotiate in good faith an amendment which preserves the original reasonable expectation of the parties to the extent possible in a manner consistent with the Change in Law. If no such amendment can be agreed upon in the reasonable opinion of a party within sixty (60) days of receipt of such notice, then EMS, HOSPITAL or GROUP may terminate this Agreement upon an additional thirty (30) days written notice.

6.2.3 Termination Due to GROUP’s Loss of Agreement with Hospital. In that GROUP is contracted to provide emergency department staffing and management services to HOSPITAL pursuant to an agreement between GROUP and HOSPITAL, this Agreement shall terminate concurrently should GROUP’s agreement with HOSPITAL be terminated or expire without renewal.

## 7. Miscellaneous.

### 7.1 Waiver of Breach.

The waiver by a party of a breach or violation of any provision of this Agreement shall not operate as, nor be construed to be, a waiver of any subsequent breach of the same or any other provision thereof.

### 7.2 Entire Agreement.

This Agreement, together with its Attachments, supersedes all previous agreements between the parties relating to the subject matter of this Agreement and constitutes the entire understanding between the parties relating to the subject matter of this Agreement. No amendments or variation thereof shall be valid unless evidenced by a writing signed by all parties.

### 7.3 Governing Law.

This Agreement shall be governed by and interpreted in accordance with the substantive laws of the State of Missouri, without application of choice of laws rules.

### 7.4 Severability.

In the event any provision of this Agreement is invalid or unenforceable, such invalid or unenforceable provision shall not invalidate or affect the other provisions of this Agreement which shall remain in effect and be construed as if such provision were not a part hereof, provided that if the invalidation or unenforceability of such provision shall, in the opinion of a party to the Agreement, have a material effect on such party’s rights or obligations under this Agreement, then the Agreement may be terminated by such party upon thirty (30) days prior written notice by such party to the other parties.



agree to the provisions of the HIPAA Business Associate Addendum attached hereto and incorporated herein as **Exhibit D**.

9. **Affirmative Action Statement.**

HOSPITAL and GROUP are equal opportunity employers. As part of their affirmative action policies and obligations, HOSPITAL and GROUP are subject to and will comply with the provisions governing federal contractors as set forth on 41 CFR 60-1.4(a), 41 CFR 741.5(a) and 41 CFR 250.5(a), and these regulation are hereby incorporated into this contract by reference.

**[Remainder of Page Intentionally Left Blank - Signature Page to Follow]**

IN WITNESS WHEREOF, each person signing below represents and warrants that he or she is fully authorized to sign and deliver this Agreement in the capacity set forth beneath his or her signature and the parties hereto have signed this Agreement as of the date and year written below.

EMS:

**City of Brentwood Fire Department of  
St. Louis County**

By: \_\_\_\_\_

Name: Bola Akande  
Title: City Administrator  
Address: 2348 S. Brentwood Blvd.  
Brentwood, MO 63144  
Email: bakande@brentwoodmo.org

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

HOSPITAL:

SSM Health Care St. Louis, owning and  
operating **SSM St. Mary's Health Center**

By: \_\_\_\_\_

Name: Lee Bernstein  
Title: Regional Executive Vice President of  
Hospital Operations/COO  
Address: 1173 Corporate Lake Drive  
St. Louis, MO 63132

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

GROUP:

**Clayton Emergency Group, LLC**

By: \_\_\_\_\_

Name: James Guidry, Jr.  
Title: Authorized Representative  
Address: 200 Corporate Blvd., Suite 201  
Lafayette, LA 70508  
Email: Lisha\_Falk@schumachergroup.com

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

**EXHIBIT A**

**DESIGNATED PHYSICIAN**

The following Physician shall provide the services under this Agreement unless and until substituted pursuant to the provisions of Section 2.1 of the Agreement:

1. Clayton Emergency Group, LLC appointed Physician.

## **EXHIBIT B**

### **SCOPE OF MEDICAL DIRECTOR SERVICES**

The Medical Director, in cooperation with EMS administration, shall perform the following duties:

1. Develop, implement and annually review:
  - (a) Medical and treatment protocols for medical, trauma and pediatric patients;
  - (b) Triage protocols;
  - (c) Protocols for do-not-resuscitate requests;
  - (d) Air ambulance utilization; and
  - (e) Medications and medical equipment to be utilized.
  
2. Ensure that all licensed service personnel meet the educational skills competencies required for their level of license and patient care environment. The Medical Director shall have authority to require additional education and training for any licensed service personnel who fail to meet this requirement, and limit the patient care activities of those who deviate from established standards.
  
3. Develop and implement a quality assurance and improvement program that includes at least an annual review of the following:
  - (a) Prolonged emergency medical response agency response times;
  - (b) Incomplete run documentation;
  - (c) Compliance with adult and pediatric triage, treatment protocols (or sample thereof);
  - (d) Skills performance (or sample thereof); and
  - (e) Any other activities that EMS administration or the Medical Director deems necessary.
  
4. Perform any other Medical Director duties as reasonably requested by EMS and agreed to by the Medical Director.

## EXHIBIT C

### **GRIEVANCE PROCEDURES**

As required by Section 190.103.4 of the Missouri Revised Statutes there is established herein a grievance procedure between EMS and the Medical Director as follows:

- A. In the event there is a grievance filed either by EMS (or any of its personnel) or by the HOSPITAL or GROUP (through the Medical Director), arising out of the services, duties and responsibilities encompassed in this Agreement, said grievance shall be filed with a three (3) person dispute resolution panel (“Dispute Resolution Panel”), with one person appointed by EMS, one person appointed by HOSPITAL and GROUP, and one person mutually agreed upon, and appointed by, the other two Dispute Resolution Panel members. The Dispute Resolution Panel shall provide a copy of a grievance to the person or persons against whom any grievance is filed within forty-eight (48) hours of receipt of the grievance.
  
- B. Upon the filing of a written grievance with either EMS or the HOSPITAL and GROUP, the party receiving the grievance shall schedule, within ten (10) working days of receipt of the grievance, a hearing, at a mutually agreeable location, with the Dispute Resolution Panel in which the complainant(s) and the respondent(s) to the grievance shall each have an opportunity to present evidence to the Dispute Resolution Panel regarding his/her or its grievance or response.
  
- C. The Dispute Resolution Panel shall resolve all grievances within sixty (60) days of receipt of a grievance. The Dispute Resolution Panel shall retain final authority for all non-clinical decisions but shall retain a duly qualified physician, agreed upon by the HOSPITAL and GROUP, to render a final decision regarding any clinical issue in dispute between the Medical Director and EMS. The Decisions of the Dispute Resolution Panel and any duly qualified physician shall be in writing and final, and shall take into consideration the authority granted to HOSPITAL and Medical Director under Missouri law.

## EXHIBIT D

### **BUSINESS ASSOCIATE ADDENDUM (“BAA”)**

The parties to the Agreement are committed to complying with the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“HITECH”), and the rules and regulations promulgated thereunder, as amended. In order to ensure such compliance, this exhibit sets forth the terms and conditions pursuant to which Protected Health Information that is provided to, or created or received by, BUSINESS ASSOCIATE from or on behalf of COVERED ENTITY will be handled.

1. **Definitions.**

- 1.1 “BUSINESS ASSOCIATE” shall mean **HOSPITAL**.
- 1.2 “COVERED ENTITY” shall mean **EMS**.
- 1.3 “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164, as amended. A reference in this BAA to a section in the HIPAA Rules means the section as in effect or as amended.
- 1.4 The following terms as used in this BAA shall have the meaning ascribed to them in the HIPAA Rules: breach, data aggregation, designated record set, disclosure, electronic media, health care operations, individual, minimum necessary, notice of privacy practices, protected health information (“PHI”), required by law, Secretary, security incident, subcontractor, unsecured protected health information, use, and workforce.

2. **Obligations and Activities of BUSINESS ASSOCIATE.**

- 2.1 BUSINESS ASSOCIATE shall use and disclose PHI only as permitted or required by this BAA or as required by law, and shall not authorize, enable or permit any other use or disclosure of PHI.
- 2.2 BUSINESS ASSOCIATE shall use appropriate administrative, physical and technical safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by this BAA and to protect against any anticipated threats or hazards to the security or integrity thereof.
- 2.3 In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), BUSINESS ASSOCIATE shall ensure that any subcontractors that create, receive, maintain, transmit or otherwise have access to, use or disclose PHI on behalf of BUSINESS ASSOCIATE agree to the same restrictions, conditions and requirements that apply to BUSINESS ASSOCIATE with respect to such PHI, it being understood that BUSINESS ASSOCIATE shall remain jointly and severally liable for any violation of the HIPAA Rules or this BAA by its subcontractors.
- 2.4 Promptly and no later than ten (10) days after COVERED ENTITY’s request, in a manner designated or agreed to by COVERED ENTITY and at no charge, BUSINESS

ASSOCIATE shall make available PHI in a designated record set to COVERED ENTITY or, if designated or agreed to by COVERED ENTITY, to the individual or the individual's designee, and shall take any other actions necessary to satisfy COVERED ENTITY's obligations under 45 CFR 164.524. If an individual requests his or her PHI directly from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall notify COVERED ENTITY promptly and no later than five (5) days after receipt of the request.

- 2.5 Promptly and no later than ten (10) days after COVERED ENTITY's request, in a manner designated or agreed to by COVERED ENTITY and at no charge, BUSINESS ASSOCIATE shall make amendments to PHI in a designated record set, and shall take any other actions necessary to satisfy COVERED ENTITY's obligations under 45 CFR 164.526. If an individual requests amendment to his or her PHI directly from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall notify COVERED ENTITY promptly and no later than five (5) days after receipt of the request.
- 2.6 Promptly and no later than ten (10) days after COVERED ENTITY's request, in a manner designated or agreed to by COVERED ENTITY and at no charge, BUSINESS ASSOCIATE shall make available all information required to provide an accounting of disclosures to COVERED ENTITY or, if designated or agreed to by COVERED ENTITY, to the individual or the individual's designee, and shall take any other actions necessary to satisfy COVERED ENTITY's obligations under 45 CFR 164.528. If an individual requests an accounting of disclosures directly from BUSINESS ASSOCIATE, BUSINESS ASSOCIATE shall notify COVERED ENTITY promptly and no later than five (5) days after receipt of the request.
- 2.7 To the extent BUSINESS ASSOCIATE is to carry out one or more of COVERED ENTITY's obligations under Subpart E of 45 CFR Part 164, BUSINESS ASSOCIATE shall comply with the requirements of Subpart E that apply to COVERED ENTITY in the performance of such obligations.
- 2.8 Promptly and no later than ten (10) days after the request, in a manner designated or agreed to by the Secretary or COVERED ENTITY and at no charge, BUSINESS ASSOCIATE shall make its internal policies, practices, books and records relating to the use and disclosure of PHI available to the Secretary, COVERED ENTITY and/or their designee(s) for purposes of determining COVERED ENTITY's and/or BUSINESS ASSOCIATE's compliance with the HIPAA Rules and this BAA.
- 2.9 BUSINESS ASSOCIATE shall not destroy PHI unless expressly designated or agreed to in writing by COVERED ENTITY, and further subject to BUSINESS ASSOCIATE (i) notifying COVERED ENTITY in advance of such planned destruction; (ii) ensuring that, prior to such destruction, COVERED ENTITY has received a copy of any PHI that it desires or is required by law to retain, and (iii) complying with the return and destruction requirements of the HIPAA Rules and this BAA.
- 2.10 BUSINESS ASSOCIATE shall not (i) remove PHI from COVERED ENTITY's facilities or systems, (ii) export, transfer or make available PHI outside of the United States, whether for storage, processing or otherwise, or (iii) allow workforce or subcontractors not residing in the United States to access, receive or view PHI, unless expressly authorized in writing by COVERED ENTITY in each instance.

- 2.11 In connection with any visits to COVERED ENTITY's facilities or access to COVERED ENTITY's systems, BUSINESS ASSOCIATE shall comply with all on-site and remote access rules and procedures communicated by COVERED ENTITY, including all sign-in, badging, escort, and restricted access requirements, and shall exercise reasonable care and appropriate judgment in connection therewith.
- 2.12 BUSINESS ASSOCIATE shall evaluate and adjust its safeguards, policies and procedures as necessary to respond to evolving security threats, keep pace with generally accepted industry standards and best practices, and comply with the HIPAA Rules and other applicable laws and regulations pertaining to the privacy, security, integrity, retention, disposal, use and disclosure of PHI. BUSINESS ASSOCIATE shall promptly correct any deficiencies identified as part of internal or external monitoring, testing or auditing, and shall provide COVERED ENTITY at no charge with copies of any audit and testing reports prepared in connection therewith.
- 2.13 BUSINESS ASSOCIATE shall encrypt PHI transmitted, received, processed or maintained on electronic media, both while in transit and at rest, in accordance with the guidance established under the HIPAA Rules to "Render Unsecured Protected Health Information Unusable, Unreadable, or Indecipherable to Unauthorized Individuals," as amended. Whenever feasible, BUSINESS ASSOCIATE shall secure all other PHI using measures that comply with the foregoing guidance. BUSINESS ASSOCIATE shall provide COVERED ENTITY with all information and assistance necessary to decrypt and otherwise access and use PHI that has been secured by BUSINESS ASSOCIATE in one of the foregoing manners.
- 2.14 BUSINESS ASSOCIATE acknowledges that it is directly subject to and responsible for ensuring its compliance with the HIPAA Rules. BUSINESS ASSOCIATE shall indemnify and hold COVERED ENTITY, its affiliates and their respective directors, officers, employees and agents harmless from and against any and all claims, demands, causes of action, investigations, liabilities, losses, damages, judgments, awards, penalties, fines, settlements, costs and expenses (including reasonable attorneys' fees, expert witness fees, court costs, and costs of investigation, notification and remediation) caused by, attributable to, or otherwise arising out of or resulting from any violation of the HIPAA Rules or other applicable law, breach of this BAA, or negligent or wrongful acts or omissions by BUSINESS ASSOCIATE, its workforce or subcontractors.
- 2.15 BUSINESS ASSOCIATE shall, at all times, maintain liability insurance coverage, including coverage for adverse privacy and security events, covering its responsibilities provided for in this Agreement on an occurrence basis in minimum amounts of One Million Dollars (\$1,000,000) per occurrence and One Million Dollars (\$1,000,000) annual aggregate. In the event BUSINESS ASSOCIATE procures insurance coverage which is not on an occurrence basis, BUSINESS ASSOCIATE shall, upon the termination of such coverage, secure a continued reporting endorsement which effectively converts such coverage to occurrence based coverage.

3. **Permitted Uses and Disclosures by BUSINESS ASSOCIATE.**

Subject to BUSINESS ASSOCIATE's compliance with the HIPAA Rules and this BAA:

- 3.1 BUSINESS ASSOCIATE may only use or disclose PHI as authorized by and necessary to perform the services set forth in the Agreement;

- 3.2 BUSINESS ASSOCIATE may use or disclose PHI as required by law. Unless otherwise required by law, BUSINESS ASSOCIATE shall notify COVERED ENTITY promptly prior to making any such use or disclosure so that COVERED ENTITY may, if desired, resist such disclosure or seek an appropriate protective order. If BUSINESS ASSOCIATE nonetheless is required by law to use or disclose PHI, BUSINESS ASSOCIATE shall limit its use or disclosure to the minimum necessary that is required by law;
- 3.3 BUSINESS ASSOCIATE shall use, disclose and request PHI in a manner consistent with the minimum necessary requirements of the HIPAA Rules and COVERED ENTITY's minimum necessary policies and procedures;
- 3.4 BUSINESS ASSOCIATE shall not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if such use or disclosure was made by COVERED ENTITY;
- 3.5 BUSINESS ASSOCIATE may use PHI to provide data aggregation services relating to the health care operations of COVERED ENTITY at the request of and for the sole benefit of COVERED ENTITY;
- 3.6 If use or disclosure of PHI is based upon an individual's specific consent or authorization and (i) the individual revokes such consent or authorization, (ii) the duration of such consent or authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, BUSINESS ASSOCIATE shall notify COVERED ENTITY promptly and no later than ten (10) days after discovering or receiving notice of such revocation, expiration or invalidity, and shall cease all further use and disclosure of the individual's PHI that is not permitted or required in the absence of such consent or authorization; and
- 3.7 As between COVERED ENTITY and BUSINESS ASSOCIATE, COVERED ENTITY shall remain the sole and exclusive owner of the PHI. BUSINESS ASSOCIATE does not have and shall not acquire any right, title or interest in or to the PHI, including aggregate or de-identified PHI, by virtue of this BAA or the Agreement, or as a result of the selection, arrangement, creation or processing thereof.

4. **Responsibilities of COVERED ENTITY.**

- 4.1 COVERED ENTITY shall notify BUSINESS ASSOCIATE of any limitations in COVERED ENTITY's Notice of Privacy Practices under 45 CFR 164.520, to the extent that such limitations may affect BUSINESS ASSOCIATE's use or disclosure of PHI. Making available a physical or electronic copy of such Notice of Privacy Practices shall be deemed sufficient notice for purposes of this paragraph.
- 4.2 COVERED ENTITY shall notify BUSINESS ASSOCIATE upon becoming aware of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect BUSINESS ASSOCIATE's use or disclosure of PHI.
- 4.3 COVERED ENTITY shall notify BUSINESS ASSOCIATE of any restrictions on the use or disclosure of PHI that COVERED ENTITY has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restrictions may affect BUSINESS ASSOCIATE's use or disclosure of PHI.

5. **Notification of Unintended Use or Disclosure of PHI.**

- 5.1 BUSINESS ASSOCIATE shall report to COVERED ENTITY any use or disclosure of PHI not provided for in this BAA or in violation of the HIPAA Rules or other applicable law, including any and all actual and potential breaches and security incidents (each an “unintended use or disclosure”), promptly and no later than seventy-two (72) hours after BUSINESS ASSOCIATE, its workforce or any subcontractor discovers, is alerted to or otherwise becomes aware of such unintended use or disclosure. Such report shall be submitted to COVERED ENTITY’s designated Privacy Officer by both mail and electronic mail using the mailing and email addresses set forth below the signature block. BUSINESS ASSOCIATE also shall notify the person designated to receive contractual notices on COVERED ENTITY’s behalf under the Agreement.
- 5.2 If the unintended use or disclosure presents a substantial or ongoing risk of harm to COVERED ENTITY or individuals, or affects or may affect the PHI of five hundred (500) or more individuals, in addition to submitting a written report, BUSINESS ASSOCIATE shall report the unintended use or disclosure to COVERED ENTITY’s designated Privacy Officer by email or telephone using the contact information listed below the signature block promptly and no later than twenty-four (24) hours after BUSINESS ASSOCIATE, its workforce or any subcontractor discovers, is alerted to, or otherwise becomes aware of the unintended use or disclosure.
- 5.3 BUSINESS ASSOCIATE shall take all reasonable actions necessary to investigate, respond to and mitigate the harmful effects of the unintended use or disclosure. BUSINESS ASSOCIATE shall provide status updates and any information and assistance requested by COVERED ENTITY in connection therewith. Unless otherwise required by law or agreed to by the parties, it shall be the responsibility of COVERED ENTITY to communicate with affected individual(s), the Secretary and the media information regarding the unintended use or disclosure.
- 5.4 Where the unintended use or disclosure arises out of or results in whole or in part from the negligent or willful acts or omissions of BUSINESS ASSOCIATE, its workforce or subcontractors, including any violation of the HIPAA Rules or breach of this BAA, without limiting COVERED ENTITY’s rights or remedies under the circumstances, BUSINESS ASSOCIATE shall reimburse COVERED ENTITY for all reasonable costs incurred in connection with investigating, responding to, mitigating the harmful effects of, and notifying individuals, regulators and the media concerning the unintended use or disclosure, including all legal, compliance, risk management, security, and information technology expenses, all costs of printing and postage and all credit and fraud monitoring, identity theft remediation and similar services offered to affected individuals.

6. **Term and Termination.**

- 6.1 The term of this BAA shall continue in full force and effect for the term of the Agreement unless sooner terminated as provided herein.
- 6.2 COVERED ENTITY may terminate this BAA and/or the Agreement, including all future payment obligations, without termination charge or penalty, if BUSINESS ASSOCIATE: (i) violates the HIPAA Rules or breaches any material provision of this BAA and does not

cure such violation or breach within fifteen (15) days after receiving written notice thereof from COVERED ENTITY; provided, however, for grossly negligent or willful or wanton acts or omissions, or a violation or breach that is not reasonably subject to cure or poses a substantial risk of harm to COVERED ENTITY or individuals, no such opportunity to cure need be provided; (ii) becomes or is declared insolvent, makes a general assignment for the benefit of creditors, suffers a receiver to be appointed for it, enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, files a voluntary petition in bankruptcy, or has an involuntary petition in bankruptcy filed against it; (iii) is unable to provide, upon COVERED ENTITY's demand, reasonably satisfactory written assurances of BUSINESS ASSOCIATE's ability to comply with the HIPAA Rules and this BAA; (iv) is or becomes excluded or suspended from participation in any federal or state health care reimbursement program, or becomes the subject of any investigation which COVERED ENTITY, in its sole discretion, believes may lead to suspension or exclusion; or (v) experiences or announces a change in control, whether by operation of law, merger, acquisition, sale of assets or business or otherwise, that has or is likely to have a negative impact on BUSINESS ASSOCIATE's operations, financial condition or ability to perform under this BAA or the Agreement.

- 6.3 Promptly and no later than fifteen (15) days after the expiration or termination of this BAA or the Agreement, or upon COVERED ENTITY's earlier request, at no charge, BUSINESS ASSOCIATE shall return to COVERED ENTITY and/or its designee all PHI (both paper and electronic) in BUSINESS ASSOCIATE's or any subcontractor's possession. BUSINESS ASSOCIATE shall return PHI in a manner designated or agreed to by COVERED ENTITY, and shall provide all information and assistance reasonably requested by COVERED ENTITY in connection therewith. BUSINESS ASSOCIATE shall not condition receipt, access to or viewing of PHI on COVERED ENTITY's purchase, license or continued use of proprietary software or technology of BUSINESS ASSOCIATE or its subcontractors. If such proprietary software or technology is required to receive, access or view PHI, BUSINESS ASSOCIATE shall provide such software or technology to COVERED ENTITY at no charge.
- 6.4 Promptly and no later than thirty (30) days after the expiration or termination of this BAA or the Agreement, or upon COVERED ENTITY's earlier request (in either case only after BUSINESS ASSOCIATE has returned the PHI to COVERED ENTITY as provided in Section 6.3 above), at no charge, BUSINESS ASSOCIATE shall destroy all PHI (both paper and electronic) in BUSINESS ASSOCIATE's or any subcontractor's possession, securely dispose of such PHI in accordance with the HIPAA Rules, retain no copies or summaries thereof, and, upon COVERED ENTITY's request, certify in writing to COVERED ENTITY that it has complied with the foregoing requirements.
- 6.5 Notwithstanding the destruction requirements set forth in Section 6.4 above, if (i) BUSINESS ASSOCIATE has an independent legal right to retain PHI, as expressly set forth in the Agreement or otherwise required by law, or (ii) the destruction of PHI is not feasible, as communicated promptly and in writing by BUSINESS ASSOCIATE to COVERED ENTITY, then BUSINESS ASSOCIATE may retain such PHI only for so long as such independent legal right persists or such destruction is infeasible. In either case, BUSINESS ASSOCIATE may further use or disclose retained PHI only for the limited purpose that made destruction inapplicable or infeasible, and the obligations, limitations and protections of this BAA shall extend and continue to apply to such PHI.

6.6 The obligations of BUSINESS ASSOCIATE and rights and remedies of COVERED ENTITY under this BAA shall survive the expiration or termination of this BAA and/or the Agreement for any reason, and shall be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

7. **Miscellaneous.**

7.1 This BAA shall be governed and interpreted for all purposes by the laws of the State of Missouri, U.S.A., without giving effect to any conflict of laws principles that would require the application of the laws of a different jurisdiction. Any dispute, action or proceeding arising out of or related to this BAA may be commenced in the state courts of St. Louis County, Missouri or, if proper subject matter jurisdiction exists, the United States District Court for the Eastern District of Missouri. Each party irrevocably submits and waives any objections to the personal jurisdiction and venue of such courts.

7.2 In connection with this BAA, the Agreement, and any services provided under the Agreement, BUSINESS ASSOCIATE is and shall at all times hold itself out as an independent contractor conducting business as a principal for its own account. Nothing in this BAA or the Agreement is intended or shall be construed to create any agency, employment, partnership or joint venture relationship between the parties. Nothing herein provides COVERED ENTITY with the right or authority to control the BUSINESS ASSOCIATE's conduct in the course of providing services for or on behalf of COVERED ENTITY.

7.3 Neither party may assign or transfer this BAA, in whole or in part, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the foregoing, (i) any assignee of the Agreement shall be deemed bound by the provisions of this BAA, and (ii) COVERED ENTITY may assign this BAA to an affiliate or to a successor in interest. Any attempted assignment or transfer in violation of the foregoing shall be null and void from the beginning and without effect.

7.4 BUSINESS ASSOCIATE acknowledges that its breach or threatened breach of any provision of this BAA would cause irreparable harm to COVERED ENTITY, the extent of which would be difficult and impracticable to assess, and that money damages would not be an adequate remedy for such breach. Accordingly, in addition to all other remedies available at law or in equity, COVERED ENTITY shall be entitled to obtain specific performance, temporary or permanent injunctive relief, and other equitable relief in any court of competent jurisdiction, without the necessity of posting bond in connection therewith.

7.5 If BUSINESS ASSOCIATE creates, receives, maintains, transmits or otherwise uses or discloses PHI for or on behalf of any affiliate of COVERED ENTITY, such affiliate shall be deemed an express third party beneficiary of this BAA, with full right to enforce this BAA as though a signatory hereto, and all references to COVERED ENTITY under this BAA shall be construed to include such affiliate. If BUSINESS ASSOCIATE provides services or enters into the Agreement through an affiliate, such affiliate shall be deemed directly bound by and subject to this BAA, and all references to BUSINESS ASSOCIATE under this BAA shall be construed to include such affiliate. Except as set forth in this paragraph, there are no third party beneficiaries to this BAA. Without limiting the

foregoing, nothing contained in this BAA is intended or shall be construed to give rise to any right, claim or cause of action, contractual or otherwise, by or on behalf of any individual.

- 7.6 If BUSINESS ASSOCIATE provides application or data processing, hosting, storage or similar services to COVERED ENTITY, including software as a service (SaaS), cloud computing, or cloud storage, the obligations of BUSINESS ASSOCIATE and rights and remedies of COVERED ENTITY with respect to PHI under this BAA shall apply to all financial, business, accounting, technical, creative, human resources and other data created, received, maintained, transmitted or otherwise accessed, used or disclosed by BUSINESS ASSOCIATE for or on behalf of COVERED ENTITY, and such data shall be deemed included in the definition of “PHI” for such purpose.
- 7.7 The parties agree to amend this BAA as necessary to comply with the HIPAA Rules and other applicable law. Any amendment to this BAA, or waiver of any provision or breach hereof, must be in writing and signed by an authorized representative of each party. No rights or obligations shall be waived by any act, omission or knowledge of a party. Any waiver on one occasion shall not constitute a waiver on subsequent occasions.
- 7.8 This BAA supplements the Agreement and is enforceable standing alone or as an amendment thereto. A breach of this BAA also shall be deemed a breach of the Agreement. A party’s obligations, rights and remedies under this BAA shall not be subject to, and are expressly excluded from, any and all limitations on liability, limitations of remedy and disclaimers set forth in the Agreement. In the event of any conflict between this BAA and the Agreement, the provisions of this BAA shall control.
- 7.9 Any ambiguity in this BAA shall be interpreted to permit compliance with the HIPAA Rules. If any provision of this BAA is determined to be invalid or unenforceable under applicable law, the provision shall be amended and interpreted by a court of competent jurisdiction to accomplish the objectives of such provision to the greatest extent possible under applicable law, or severed from this BAA if such amendment is not feasible, and the remaining provisions of this BAA shall continue in full force and effect. The captions in this BAA are for reference purposes only and shall not affect the meaning or interpretation of this BAA. The term “including” means “including without limitation.” The terms “herein,” “hereunder,” “hereto” and “hereof” refer to this BAA as a whole rather than to any particular section.
- 7.10 This BAA sets forth the entire agreement of COVERED ENTITY and BUSINESS ASSOCIATE and supersedes all prior and contemporaneous negotiations, understandings and agreements, written or oral, concerning the subject matter hereof. Without limiting the foregoing, this BAA expressly amends, replaces and supersedes any prior Business Associate Agreements in effect between COVERED ENTITY and BUSINESS ASSOCIATE.