

## Completion Instructions for the eRehabData® Subscription Agreement

Please return one subscription agreement for each separate facility with a distinct Medicare provider number. Simultaneous submission of agreements for multiple facilities within a single health care organization is recommended but not mandatory.

**Please return the signed agreement to:**

FLEMING-AOD, INC.  
816 THAYER AVENUE  
THIRD FLOOR  
SILVER SPRING, MD 20910  
(202) 588-1766

Please use FedEx or similar overnight carrier for submitting the subscription agreement.

A copy of the counter signed contract will be returned to your hospital.

An invoice will be sent to your facility after we have received the signed subscription agreement.

More information about the eRehabData® services is available in the Frequently Asked Questions (FAQ) on **eRehabData.com**.

Questions regarding the subscription agreement or the **eRehabData®** service can be directed to Sam Fleming at [sam@eRehabData.com](mailto:sam@eRehabData.com) or (202) 588-1766.

## SUBSCRIPTION AGREEMENT

**This AGREEMENT is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ by and between the American Medical Rehabilitation Providers Association, 529 14th Street, NW, Suite 1280, Washington, DC 20045 (hereinafter “AMRPA”), and \_\_\_\_\_ (hereinafter “Hospital”), a facility with the following distinct Medicare provider or sub-provider number: \_\_\_\_\_, located at address: \_\_\_\_\_.**

### PRELIMINARY STATEMENT

Hospital is a provider of inpatient hospital rehabilitation services under the Medicare Program. As such it will be paid for services to Medicare beneficiaries in accordance with the Inpatient Rehabilitation Facilities Prospective Payment System (IRF-PPS) effective with its cost reporting period beginning on or after January 1, 2002. As of that date, Hospital is required to record and report to its Medicare fiscal intermediary certain data, including that used to complete the Inpatient Rehabilitation Facility Patient Assessment Instrument (IRF-PAI). AMRPA is a voluntary membership organization of medical rehabilitation facilities. It is a not-for-profit entity exempt from federal income tax pursuant to section 501(c)(6) of the Internal Revenue Code. It is supported by dues from member facilities and governed by a board of directors elected by its membership and drawn from member facilities. All of its income and resources are dedicated to the advancement of the interests of its member facilities and their patients.

As a member service, AMRPA has developed a data service to facilitate participation in the IRF-PPS by inpatient hospital rehabilitation providers. This service, labeled eRehabData<sup>®</sup>, is designed to assist facilities in determining patient classification, billing, and payment under the IRF-PPS. This service has been developed under the direction of the Board of Directors of AMRPA. The membership of the Board of Directors is shown on Attachment A hereto.

Hospital wishes to contract with AMRPA to utilize eRehabData<sup>®</sup> services. Now, therefore, AMRPA and Hospital agree as follows:

#### 1. EFFECTIVE DATE AND SUBSCRIPTION FEE.

This AGREEMENT shall be effective on the date first stated above and shall continue in effect so long as Hospital is current in the payment of its annual subscription fee, unless terminated by AMRPA or Hospital in accordance with this AGREEMENT. The eRehabData<sup>®</sup> subscription fee for the period from January 1-December 31, 2025 is \$8,764 for facilities of eleven (11) beds or more, and \$4,685 for facilities with ten (10) beds or fewer and is due by December 31. Facilities that subscribe mid-year will have a pro-rated subscription fee to place them on a calendar year billing cycle.

**This AGREEMENT may be renewed for subsequent years by the payment of subscription fees for each subsequent year on or before the preceding December 31. AMRPA will notify**

Hospital not less than 90 days prior to the end of any calendar year, of the subscription fee for the next calendar year.

## 2. ACCESS TO eRehabData®.

A. Passwords. eRehabData® is an Internet based system to which access is limited. Access is controlled by the use of authorized passwords and user accounts. Upon receipt of this AGREEMENT and payment of the required fee, AMRPA will provide Hospital the ability to create user accounts and designate passwords and other information pertinent to its participation in eRehabData®. Hospital will designate a System Administrator to be responsible for creating user accounts within the facility and assigning feature privileges. There is no limit on the number of persons within Hospital who may be given user accounts on eRehabData®, which is a matter solely within the Hospital's discretion. Use of a password will enable a person to access all or part of Hospital's data, as determined by the System Administrator. Hospital will have no access to patient or facility specific data from any other subscriber.

B. Hospital to Monitor eRehabData® Use. Hospital has sole control over the persons who are granted access to eRehabData® through use of Hospital assigned passwords and Hospital agrees to monitor use of its accounts and access to eRehabData®. Hospital agrees to keep its records current and to promptly deactivate a person's ability to access eRehabData® if the person leaves the Hospital or his/her responsibilities no longer include accessing eRehabData®.

C. Passwords are personal and non-transferable, and may be used only by individuals to whom they are assigned for authorized purposes. Hospital agrees to inform users of these conditions and will maintain the confidentiality of its passwords and user accounts. Hospital agrees to immediately notify AMRPA if it learns of any unauthorized use of its accounts or passwords, or of any other breach of security.

## 3. SOFTWARE ARCHITECTURE.

eRehabData® is built using open source components including the LINUX operating system, POSTGRES database and the Java development environment.

## 4. INTENDED USES OF DATABASE.

AMRPA has developed eRehabData® to address two needs of the rehabilitation field. The first of these needs is to facilitate participation in the IRF-PPS by subscribing facilities through the provision of a means for classification of patients and recording data required for the IRF-PPS. AMRPA places no restrictions on the use by Hospital of its data or of eRehabData® reports prepared for Hospital. The second need is to develop a database that can be used to assess the equity and adequacy of the IRF-PPS and to support other efforts to improve the provision of adequate and effective rehabilitation services. AMRPA intends to utilize this database, including aggregate data submitted by Hospital for these purposes, and Hospital hereby consents to such use with the express reservation that no such use will entail or permit the identification of any such data with specific patients or facilities. Such permission shall survive termination or expiration of this AGREEMENT.

## 5. OBLIGATION OF HOSPITAL TO PROVIDE DATA.

Hospital agrees that it will submit data to eRehabData® in strict accordance with the requirements of the IRF-PPS and instructions for such transmission issued by AMRPA. Hospital acknowledges that it is solely responsible for the completeness and accuracy of the data and for HIPAA compliance. Hospital shall notify eRehabData® promptly if, and as, any errors in any such submitted data are discovered.

## 6. COMPLIANCE WITH 42 CFR 412.616.

42 CFR 412.616 provides that an inpatient rehabilitation facility participating in the IRF-PPS may release information from the patient assessment instrument only as specified in 42 CFR 482.24(b)(3) and may release information that is patient-identifiable to an agent only in accordance with a written contract under which the agent agrees not to use or disclose the information except for the purposes specified in the contract and only to the extent the facility itself is permitted to do so. AMRPA will hold all patient-identifiable information provided to it by Hospital in the use of eRehabData® in strict confidence and will not release any such data to any other party. In addition to assisting inpatient hospital rehabilitation providers in participating in the IRF-PPS, AMRPA will use data submitted by eRehabData® subscribers for research, including continuing assessment of the IRF-PPS, and identification of potential modifications thereto. In the course of any such research, patient and facility identifiers shall not be disclosed. AMRPA will use its best efforts to conform eRehabData® to any laws, regulations and other authorities pertaining to patient privacy that may hereafter become effective, including, but not limited to, modification of the laws, regulations and other authorities governing the IRF-PPS and the Health Insurance Portability and Accountability Act of 1996.

## 7. SUBCONTRACTOR.

eRehabData® has been developed and is administered for AMRPA by a contractor, Fleming-AOD, Inc. under the guidance and control of AMRPA and its members. AMRPA warrants that Fleming-AOD, Inc. will be bound to the terms and conditions of this AGREEMENT as they apply to AMRPA.

## 8. TERMINATION.

A. By Hospital. Hospital may terminate this agreement at any time, upon thirty (30) days written notice to AMRPA.

B. By AMRPA. AMRPA may terminate this agreement at the end of any calendar year with notice delivered to Hospital not less than ninety (90) days prior to the end of such year; if hospital is over thirty (30) days delinquent in any payment or is in material breach of this AGREEMENT and fails to cure such delinquency or breach within twenty (20) days of written notice from AMRPA; or at any time upon reasonable advance notice, should AMRPA in its sole discretion cease offering the eRehabData® Services.

## 9. LIMITED WARRANTY.

If the eRehabData<sup>®</sup> software or services are found to be defective, AMRPA's sole responsibility and Hospital's sole remedy shall be, at AMRPA's sole discretion, to (a) correct or replace such defect, or (b) terminate this AGREEMENT. AMRPA has gone to great lengths to satisfy itself that eRehabData<sup>®</sup> will function in the manner intended. Nevertheless, eRehabData<sup>®</sup> relies on services and products supplied by third parties over which AMRPA and its contractor Fleming-AOD, Inc. have no control and therefore can make no representations that such services will not affect the provision of services hereunder.

## 10. GENERAL DISCLAIMER.

Except as expressly provided above in section 9, the eRehabData<sup>®</sup> software and services are provided "AS IS" and AMRPA makes no warranties or representations concerning the software or services or any results to be achieved by participation in the PPS program or any other program. AMRPA DISCLAIMS ALL OTHER WARRANTIES, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NONINFRINGEMENT AND TITLE, AND ALL IMPLIED WARRANTIES OF ANY NATURE. There are no third party beneficiaries of this agreement, and AMRPA disclaims any and all liability for payment or patient claims.

## 11. DISCLAIMER REGARDING THIRD PARTY PRODUCTS, SERVICES OR ACTIONS.

The parties acknowledge that third parties, including the government, will be supplying products or services that are important to the function and purpose of eRehabData<sup>®</sup>. AMRPA does not and cannot control the performance of third parties, or any possible impairment or disruption of services caused by such third parties. AMRPA MAKES NO REPRESENTATIONS AND EXPRESSLY DISCLAIMS ANY LIABILITY OR WARRANTY REGARDING THE DATA, PRODUCT, OR SERVICES PROVIDED BY ANY THIRD PARTY, INCLUDING THE PROVIDERS OF TELECOMMUNICATIONS PRODUCTS OR SERVICES, ANY GOVERNMENT PRODUCTS, SERVICES OR PAYMENTS, THE INTEGRITY OF ANY DATA, OR ANY OTHER PARTY NOT UNDER AMRPA'S CONTROL. AMRPA is not responsible for any damage, failure, corruption, action or misdeeds caused by persons or things not under AMRPA's control, including but not limited to computer hacking or trespass, corruption of data due to unauthorized access or misuse of passwords, other unauthorized access or misuse of passwords, or computer viruses, worms, Trojan horses, or other computer programming routines that are intended to damage, interfere with, intercept or corrupt any system or data.

## 12. LIMITATIONS OF LIABILITY.

Neither party nor any of its officers, directors, members, employees, shareholders, or other representatives shall be liable to any other party for any special, indirect, incidental or consequential damage, loss of profits, loss of data or loss of goodwill, regardless of the nature of the claim or action, even if the other party has been notified of the possibility or likelihood of such damages. If Hospital incurs any direct loss or injury as a result of its participation in

eRehabData<sup>®</sup>, AMRPA's total liability, if any, shall not exceed the annual subscription fee paid by Hospital.

### 13. LIABILITY FOR ANY BREACH OF UNSECURED PHI.

AMRPA will indemnify, defend, and hold harmless Hospital, Hospital's subsidiaries or affiliates under its control, and their respective trustees, directors, officers, grantors, partners, employees, agents, and contractors from any and all third party claims asserted against Hospital resulting in losses, liabilities, damages, judgments, fees, expenses, awards, civil monetary penalties, and costs (including attorneys' and court fees and expenses) arising out of or related to any Breach of Unsecured PHI created, received, maintained, transmitted, or otherwise used by AMRPA and arising from AMRPA's breach, or failure to perform (and whether as a result of the negligence or willful misconduct of Hospital, or any of Hospital's employees, contractors, or agents), pursuant to this Agreement provided that AMRPA's total liability under this indemnification provision shall not exceed the amount paid by Hospital under the Agreement during the 12-month period preceding this Breach.

### 14. ACTS OF GOD.

AMRPA is not responsible for system or service failures nor is it required to comply with its obligations under this AGREEMENT resulting from factors beyond its control, including, but not limited to, war, civil insurrection, power failures, strikes, pestilence, terrorism, sabotage, or other acts of God.

### 15. APPLICABLE LAW AND VENUE.

This AGREEMENT shall be governed by the laws of the United States and the District of Columbia. Any legal proceedings pertaining to this AGREEMENT shall be instituted in the District of Columbia, and the parties hereby consent to personal jurisdiction and venue for such purposes.

### 16. COMPLETE AGREEMENT AND AMENDMENT.

This AGREEMENT constitutes the complete agreement between the parties and may be modified, interpreted or amended only by written instrument signed by authorized persons for each of the parties.

### 17. INDEPENDENT CONTRACTORS.

The relationship of eRehabData<sup>®</sup> to Hospital or AMRPA to Hospital shall be that of independent contractors and nothing therein contained shall be construed as creating another relationship. Neither party shall have any rights or assume any obligation on behalf of the other party.

### 18. NON-WAIVER.

A failure by any party to exercise a right with respect to the other party as herein provided shall not be deemed a waiver of such right or any other right.



19. REPRESENTATIONS AND WARRANTY OF AUTHORITY.

The persons executing this AGREEMENT warrant and represent that they are duly empowered by AMRPA or Hospital to do so with intent to bind the parties thereto.

20. HOSPITAL CONTACT.

All communications to **Hospital** regarding this Subscription Agreement shall be addressed to:

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

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

Hospital's designated **eRehabData®** System Administrator is:

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

Phone: \_\_\_\_\_

E-mail: \_\_\_\_\_

Hospital may change its contact information on written notice to AMRPA.

21. AMRPA CONTACT.

All communications to AMRPA regarding this AGREEMENT shall be addressed to:

Sam Fleming  
Fleming-AOD, Inc.  
816 Thayer Avenue, 3<sup>rd</sup> Floor  
Silver Spring, MD 20910  
Phone: 202-872-1033  
Fax: 301-495-9121  
e-mail: **sam@eRehabData.com**

AMRPA may change its contact information on written notice to Hospital.


NOTE: eRehabData® is a service provided by AMRPA to its members and subscribers. AMRPA is a membership organization devoted to the interests of the rehabilitation field and to this end the views of subscriber facilities are solicited. Accordingly, subscribers are encouraged to send comments, suggestions and criticism regarding eRehabData® to Sam Fleming of Fleming-AOD, Inc.

eRehabData<sup>®</sup> has been designed and will be refined and expanded in the future based on the expressed desires and views of subscribing rehabilitation facilities.

In witness of the foregoing AGREEMENT the parties have, by their authorized representatives, set their hands as shown below.

AMERICAN MEDICAL REHABILITATION  
PROVIDERS ASSOCIATION (“AMRPA”)

Signature:



Printed Name: Jonathan Ferraro

Title: AMRPA Executive Director

\_\_\_\_\_  
\_\_\_\_\_(“Hospital”)

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

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

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



## eRehabData® BUSINESS ASSOCIATE ADDENDUM

### SUPPLEMENT

Updated November 2014

This Business Associate Addendum supplements and is made part of the Subscription Agreement (herein “Agreement”) between the American Medical Rehabilitation Providers Association (“AMRPA” or “Business Associate”) and Hospital (also referred to as “Covered Entity”). Covered Entity and Business Associate may be referred to herein individually as a “Party” or collectively as “the Parties.”

The terms of this Addendum shall replace all previous HIPAA business associate terms and are incorporated into the Agreement and all other provisions of the Agreement shall remain in full force and effect. The purpose of this Addendum is to comply with the relevant provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the American Recovery and Reinvestment Act of 2009 (“ARRA”), including those portions of which as are known as the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, and applicable regulations promulgated pursuant to HIPAA and the HITECH Act, including the Privacy, Security, Breach Notification, Enforcement and Transaction Rules (“HIPAA Rules”).

### RECITALS

WHEREAS, Covered Entity may wish to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information; and

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide for the security of Protected Health Information disclosed to Business Associate pursuant to the Agreement in compliance with the HIPAA Rules.

NOW, THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the Parties agree as follows:

#### A. DEFINITIONS

Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the HIPAA Rules, 45 CFR Parts 160, 162, and 164.

##### 1. Specific definitions:

- (a) Breach. “Breach” shall have the meaning given to such term under the Breach Notification Rule.
- (b) Breach Notification Rule. “Breach Notification Rule” shall mean the Breach Notification Standards at 45 CFR Parts 160 and 164.
- (c) Business Associate. “Business Associate” shall generally have the same meaning as given to such term in 45 CFR § 160.103, and in reference to a party to this agreement, shall mean AMRPA.
- (d) Covered Entity. “Covered Entity” shall generally have the same meaning as given to such term in 45 CFR § 160.103, and in reference to a party to this agreement, shall mean “Hospital.”
- (e) De-Identified Health Information. “De-Identified Health Information” shall mean PHI from which the following identifiers of the individual or of relatives, employers, or household members of the individual, have been removed, as provided in 45 CFR § 164.514(b)(2):
  - (i) Names;

- (ii) All geographic subdivisions smaller than a State, including street address, city, county, precinct, zip code, and their equivalent geocodes, except for the initial three digits of a zip code if, according to the current publicly available data from the Bureau of the Census: (1) The geographic unit formed by combining all zip codes with the same three initial digits contains more than 20,000 people; and (2) The initial three digits of a zip code for all such geographic units containing 20,000 or fewer people is changed to 00;
  - (iii) All elements of dates (except year) for dates directly related to an individual, including birth date, admission date, discharge date, date of death; and all ages over 89 and all elements of dates (including year) indicative of such age, except that such ages and elements may be aggregated into a single category of age 90 or older;
  - (iv) Telephone numbers;
  - (v) Fax numbers;
  - (vi) Electronic mail addresses;
  - (vii) Social security numbers;
  - (viii) Medical record numbers;
  - (ix) Health plan beneficiary numbers;
  - (x) Account numbers;
  - (xi) Certificate/license numbers;
  - (xii) Vehicle identifiers and serial numbers, including license plate numbers;
  - (xiii) Device identifiers and serial numbers;
  - (xiv) Web Universal Resource Locators (URLs);
  - (xv) Internet Protocol (IP) address numbers;
  - (xvi) Biometric identifiers, including finger and voice prints;
  - (xvii) Full face photographic images and any comparable images; and
  - (xviii) Any other unique identifying number, characteristic, or code, except as permitted under 45 CFR § 164.514(c).
- (f) Designated Record Set. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR § 164.501.
- (g) Enforcement Rule. “Enforcement Rule” shall mean the Compliance and Enforcement Standards at 45 CFR Part 160.
- (h) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, Enforcement and Transaction Rules at 45 CFR Parts 160, 162 and 164.
- (i) Individual. “Individual” shall have the same meaning given to such term in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- (j) Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- (k) Protected Health Information. “Protected Health Information” (“PHI”) shall have the same meaning given to such term in 45 CFR § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. When used in this Addendum, the term PHI includes Electronic PHI as that term is used in the Security Rule. Health information that does not identify an individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an individual is not PHI.

- (l) Required By Law. “Required By Law” shall have the same meaning given to such term in 45 CFR § 164.501.
- (m) Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services (“HHS”) or the Secretary’s designee.
- (n) Security Incident. “Security Incident” shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 CFR § 164.304.
- (o) Security Rule. “Security Rule” shall mean the Security Standards at 45 CFR Parts 160 and 164.
- (p) Transaction. “Transaction” shall have the same meaning given to such term under the Transaction Rule, including, but not limited to, 45 CFR § 160.103.
- (q) Transaction Rule. “Transaction Rule” shall mean the Standards for Electronic Transactions at 45 CFR Parts 160 and 162.
- (r) Unsecured PHI. “Unsecured PHI” shall have the same meaning given to such term, as “unsecured protected health information,” under the Breach Notification Rule.

#### B. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

1. Use or Disclosure. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Addendum, the Agreement, or as required by the HIPAA Rules, or other applicable law. Business Associate agrees to limit its uses and disclosures of PHI to the “minimum necessary” amount of information to accomplish the intended purpose of the use, disclosure, or request for information. Business Associate acknowledges that for purposes of this Addendum, it will be deemed to meet the “minimum necessary” requirement if it discloses only such information within the definition of a “limited data set” as described in 45 CFR 164.514(e)(2), or if it discloses only such information consistent with guidance required to be provided by the Secretary under section 13405(b)(1)(B) of the HITECH Act.
2. Appropriate Safeguards. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Addendum or the Agreement. These safeguards will include appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI that Business Associate creates, receives, maintains or transmits on behalf of the Covered Entity.
3. Mitigation Procedures. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum, the Agreement, or the Privacy or Security Rules.
4. Reporting Unauthorized Disclosures. Business Associate agrees to notify Covered Entity immediately upon discovery of a breach of Unsecured PHI. In providing such notification, Business Associate shall include, to the extent possible: (i) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (ii) A description of the types of Unsecured PHI that were involved in the breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved); (iii) Any steps recommended by Business Associate that individuals should take to protect themselves from potential harm resulting from the breach; (iv) A brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and (v) the name of a contact person at Business Associate so that Covered Entity may obtain additional information about the matter. The notice also should identify each individual whose Unsecured PHI was likely affected by the breach. Business Associate agrees to comply with any other notice requirements of Covered Entity or as set forth in applicable law, and to cooperate with Covered Entity. Business Associate should not wait until it has all the above information but should notify Covered Entity immediately (i.e., within 24 hours or less) after discovering a breach of Unsecured PHI.

Business Associate should supplement the initial notification as additional information becomes available.

5. Subcontractors and Agents. Business Associate agrees to ensure that any agent, including any subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information, including (but not limited to) implementation of reasonable and appropriate safeguards to protect Electronic PHI. Business Associate further agrees to ensure that any agent, including any subcontractor, that conducts Transactions on behalf of Covered Entity or Business Associate, agrees to the requirements of the Transaction Rules with respect to such Transactions.
6. Right of Access to Information. Business Associate agrees to provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual at the written request of Covered Entity within ten (10) calendar days to allow Covered Entity to meet the requirements of 45 CFR § 164.524.
7. Amendment of PHI. Within ten (10) calendar days of a written request by Covered Entity, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to make pursuant to 45 CFR § 164.526.
8. Access to Books and Records. Business Associate agrees to make its internal practices, books, and records relating to the use or disclosure of PHI received from, or created or received by Business Associate on behalf of the Covered Entity, available to the Secretary within ten (10) calendar days of such request, for purposes of determining compliance with this Addendum and the Privacy or Security Rule to the extent required by law. If such request comes directly from the Secretary to Business Associate, Business Associate agrees to notify Covered Entity immediately of such request.
9. Documentation of Disclosures. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.
10. Accounting of Disclosures. Business Associate agrees to provide to Covered Entity within ten (10) calendar days of a written request, information collected in accordance with Section B9 of this Addendum, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528. Effective as of the applicable date set forth in section 13405(c)(4) of the HITECH Act, the Parties agree that for purposes of 45CFR 164.528, to the extent Business Associate makes a disclosure of an electronic health record containing PHI from a Designated Record Set, Business Associate will maintain such information as required by the Secretary in regulations promulgated pursuant to 13405(c)(2) of the HITECH Act to provide an accounting to the individual of such disclosures upon request.
11. Electronic Format Requests. Business Associate agrees to disclose PHI to Covered Entity, an individual or an individual's designee, as may be necessary to satisfy Covered Entity's obligations under 45 CFR § 164.524(c)(2)(ii) and (3)(ii) regarding an individual's request for an electronic copy of PHI.
12. Disaster Recovery Plan. Business Associate shall maintain a disaster recovery plan to protect and/or recover records that are essential to the continuing operation of Covered Entity in the event of a disaster. Upon reasonable request, Business Associate shall provide Covered Entity a brief written statement summarizing the status of its disaster recovery plan, where Covered Entity acknowledges that such disaster recovery plan is confidential. As of the date this Agreement is signed, Business Associate represents that its disaster recovery plan meets the requirements of the Security Rule.

13. Compliance with HIPAA. Business Associate understands and agrees that it is obligated to comply with those certain requirements of HIPAA, the Privacy Rule and the Security Rule made directly applicable to Business Associates under the HITECH Act and the HIPAA Rules.

#### C. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

1. Except as otherwise limited in this Addendum, Business Associate may use or disclose PHI to perform functions, activities, or services for, on behalf of, Covered Entity, related to services provided pursuant to the Agreement or this Addendum provided that such use or disclosure would not violate the Privacy or Security Rule if done by the Covered Entity.
2. Except as otherwise limited in this Addendum, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the responsibilities of the Business Associate. Except as otherwise limited in this Addendum, Business Associate may disclose PHI for the proper management and administration of Business Associate provided that such disclosures are Required By Law or Business Associate obtains assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it is being disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
3. Except as otherwise limited in the Agreement or this Addendum, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B). Business Associate may also use PHI for Transactions, provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.
4. Business Associate may use PHI to create De-Identified Health Information and may use such De-Identified Health Information for the purposes set forth in Section C of the Agreement.

#### D. OBLIGATIONS OF COVERED ENTITY

1. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.
3. Covered entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI. To the extent applicable under the circumstances, if an individual requests a restriction on the uses or disclosures of the individual's PHI with which Covered Entity must comply under 45 CFR § 164.522(a)(1)(vi), Business Associate agrees to abide by such restriction to the extent applicable and provided that Business Associate is made aware of the restriction. Covered Entity agrees to furnish to Business Associate written notice of a required restriction as soon as possible following Covered Entity's receipt of the individual's request.
4. Covered Entity shall disclose PHI to Business Associate only in a manner that is in accordance with the HIPAA Rules and any other applicable state or federal law. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

#### E. TERM AND TERMINATION

1. Term. The Term of the Addendum shall be effective as of the effective date of the Agreement and shall terminate when all of the PHI is destroyed or returned to Covered Entity, or, if it is infeasible to return



or destroy the PHI, protections are extended to such information, in accordance with the termination provisions in this Section. Termination of this Addendum may also coincide with the end of the business relationship between Covered Entity and Business Associate.

2. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:
  - (a) Provide written notice of the breach and an opportunity for Business Associate to cure the breach or end the violation within ten (10) calendar days of the notice or within such other time period specified by Covered Entity. If Business Associate does not cure the breach or end the violation within the time specified herein, Covered Entity may immediately terminate this Addendum and the Agreement;
  - (b) Immediately terminate this Addendum and the Agreement if Business Associate has breached a material term of this Agreement and cure is not feasible; or
  - (c) If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
3. Effect of Termination.
  - (a) Except as provided in Section E3(b) of this Addendum, upon termination of the Agreement, for any reason, Business Associate shall immediately return or destroy all PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.
  - (b) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible.

#### F. MISCELLANEOUS

1. Regulatory References. A reference in this Addendum to a section in the HIPAA Rules means the section as in effect or as amended.
2. Amendment. The Parties agree to take such action as is necessary to amend this Addendum and the Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HITECH Act and the HIPAA Rules and other applicable laws relating to the security or confidentiality of PHI. Upon either Party's request, the other party agrees to promptly enter into negotiations concerning the terms of an amendment.
3. Survival. The respective rights and obligations of Business Associate under Section E3 and Section F5 of this Addendum shall survive the termination of the Agreement.
4. Interpretation. Any ambiguity in this Addendum shall be resolved to permit Covered Entity and Business Associate to comply with HIPAA, the HITECH Act and the regulations promulgated thereunder.
5. No Third-Party Rights. This Addendum is intended for the sole benefit of Business Associate and Covered Entity and does not create any third-party beneficiary rights, except to the extent that HIPAA validly requires the Secretary of HHS to be a third-party beneficiary of this Addendum.
6. Notices. All notices, requests, and demands or other communications to be given hereunder to a Party shall be made by first class mail, registered or certified, by express courier to the Party using the contact information given in the Subscription Agreement. As set forth in that Agreement, communications to AMRPA should be copied to Sam Fleming of Fleming-AOD. A party may change its contact information on written notice.

7. Binding Effect. All terms of this Addendum shall be binding upon, and inure to the benefit of, and be enforceable by the Parties hereto, and their heirs, legal representatives, successors, and permitted assigns.

#### G. INDEMNIFICATION

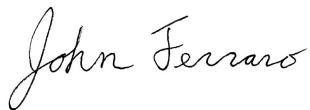
Business Associate will indemnify, defend, and hold harmless Covered Entity, Covered Entity's subsidiaries or affiliates under its control, and their respective trustees, directors, officers, grantors, partners, employees, agents, and contractors from any and all third party claims asserted against Covered Entity resulting in losses, liabilities, damages, judgments, fees, expenses, awards, civil monetary penalties, and costs (including attorneys' and court fees and expenses) arising out of or related to any Breach of Unsecured PHI created, received, maintained, transmitted, or otherwise used by Business Associate and arising from Business Associate's breach, or failure to perform (and whether as a result of the negligence or willful misconduct of Covered Entity, or any of Covered Entity's employees, contractors, or agents), pursuant to this Agreement provided that Business Associate's total liability under this indemnification provision shall not exceed the amount paid by Covered Entity under the Agreement during the 12-month period preceding this Breach.

ON BEHALF OF AMRPA

ON BEHALF OF HOSPITAL

By:

By:



Name: Jonathan Ferraro

Name:

Title: AMRPA Executive Director

Title:





## Attachment A AMRPA Board of Directors

### Board Chairman

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### Secretary

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**Phil Loverso, PhD**

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