

Addendum 2

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("Agreement") is made this \_\_\_\_ day of \_\_\_\_\_ 2018, ("Effective Date") by and between \_\_\_\_\_ ("Business Associate") and Northern Colorado Independent Practice Association ("Covered Entity") who are also parties to a service arrangement, pursuant to the following agreement: Fee For Service Provider Participation Agreement dated \_\_\_\_\_.

WITNESSETH:

WHEREAS, Covered Entity is subject to federal privacy rules promulgated under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and

WHEREAS, Business Associate provides services for Covered Entity that require the use, disclosure, or creation of Protected Health Information; and

WHEREAS, Covered Entity and Business Associate are committed to complying with the Privacy Regulations and desire to set forth the rights and responsibilities of the parties with respect to Protected Health Information.

NOW THEREFORE, in consideration of the mutual promises and covenants contained herein, the sufficiency of which is hereby acknowledged by the parties, the parties agree as follows:

1. DEFINITIONS

1.1 "Designated Record Set" means a group of records containing Protected Health Information maintained by or for Covered Entity which fall within one of the following categories: (a) a health care provider's medical and billing records; (b) a health plan's enrollment, payment, claims adjudication and case management records; or (c) records used in whole or in part by Covered Entity to make decisions about the individuals to whom the information relates.

1.2 "Individual" means the person who is the subject of Individually Identifiable Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. ' 164.502(g).

1.3 "Privacy Regulations" mean the Standards for Privacy of Individually Identifiable Health Information promulgated by the U.S. Department of Health and Human Services at 45 C.F.R. Part 160 and Part 164, and includes any amendments and additions thereto as may be enacted from time to time.

1.4 "Protected Health Information" or "PHI" means any information, whether oral or recorded in any form or medium, that is (a) created or received by a health care provider, health plan, employer, or health care clearinghouse; (b) relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual, and (c) identifies an individual with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

1.5 "Required By Law" means a mandate contained in law that compels a Covered Entity or Business Associate to use or disclose PHI that is enforceable in a court of law, including, but not limited to, court orders, subpoenas, summonses, court-ordered warrants and statutes and regulations that require such information if payment is sought under a government health care program.

1.6 All other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 C.F.R. ' 160.103 and 164.501.

## 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.

2.1 Non-disclosure. Business Associate agrees not to use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

2.2 Safeguards. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Business Associate will document and keep safeguards current.

2.3 Mitigation. 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 Agreement.

2.4 Reporting. Business Associate agrees to report in writing to the Privacy Officer of Covered Entity any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware. Such report shall be made as soon as reasonably possible but in no event more than five (5) business days after discovery by Business Associate of such unauthorized use or disclosure. This reporting obligation shall include breaches by Business Associate, its employees, subcontractors and/or agents. Each such report of a breach will: (i) identify the nature of the unauthorized use or disclosure; (ii) identify the PHI used or disclosed; (iii) identify who made the unauthorized use or disclosure; (iv) identify who received the unauthorized use or disclosure of PHI; (v) identify what corrective action Business Associate took or will take to prevent further unauthorized uses or disclosures; (vi) identify what Business Associate did or will do to mitigate any deleterious effect of the unauthorized use or disclosure; and (vii) provide such other information as Covered Entity may reasonably request.

2.5 Agents and Subcontractors. Business Associate agrees to ensure that any agent or 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 to Business Associate through this Agreement with respect to such information.

2.6 Access. 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 within five business (5) days of receiving a written request from Covered Entity in order to meet the requirements of 45 C.F.R. § 164.524. This provision does not apply if Business Associate and its employees, subcontractors or agents have no PHI from a Designated Record Set of Covered Entity or do not maintain PHI in a Designated Record Set on behalf of Covered Entity.

2.7 Amendments. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 within five (5) business days of receiving a written request from Covered Entity. Such amendment shall be made by addition to the PHI record, and under no circumstances shall PHI be deleted as part of the amendment process. This provision does not apply if Business Associate and its employees, subcontractors or agents have no PHI from a Designated Record Set of Covered Entity or do not maintain PHI in a Designated Record Set on behalf of Covered Entity.

2.8 Records. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity or, at the request of Covered Entity, to the Secretary of the Department of Health and Human Services ("Secretary"), during regular business hours within five (5) business days of receiving a written request from Covered Entity, or sooner if requested by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Regulations.

2.9 Accounting of Disclosures. Business Associate agrees to document all disclosures of PHI by Business Associate, its employees, subcontractors or agents in a record maintenance form which shall include: (a) the date of the disclosure; (b) the name and address (if known) of the person or entity who received the disclosure; (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of the consent to the disclosure signed by the individual to whom the PHI relates. Business Associate agrees to provide Covered Entity or, at Covered Entity's request, an Individual within five (5) business days of receiving a written request from Covered Entity, information collected in accordance with the preceding sentence, to permit Covered Entity to respond to a request by an Individual for such an accounting of disclosures.

2.10 Trading Partner" Provisions: Use and Disclosure in Connection with Standard Transactions. If Business Associate conducts Standard Transactions (as defined in 45 C.F.R. Part 162) for or on behalf of Covered Entity, Business Associate will comply, and will require each subcontractor or agent involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate will not enter into, or permit its subcontractors or agents to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that: (i) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (ii) adds any data elements or segments to the maximum defined data set; (iii) uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or (iv) changes the meaning or intent of the Standard Transaction's implementation specification.

### 3. PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.

3.1 Upon execution of this Agreement and subject to its terms, from time to time, Covered Entity may disclose PHI to Business Associate and allow Business Associate to create or receive PHI on behalf of Covered Entity.

3.2 Except as otherwise limited in this Agreement, Business Associate may use PHI received from or created on behalf of Covered Entity to carry out the responsibilities imposed upon Business Associate under the Service Arrangement provided that such use or disclosure would not violate the Privacy Regulations if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity. Business Associate may use PHI in connection with the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate. Business Associate may disclose PHI in connection with the proper management and administration of Business Associate if (a) the disclosure is Required By Law, or (b) Business Associate receives adequate assurances from the person to whom the information is disclosed that the information will be held confidentially, used or further disclosed only as Required By Law or for the purposes for which the disclosure was made, and the person notifies Business Associate of any instance of which it is aware in which the confidentiality of the information has been breached.

3.3 Any use or disclosure of PHI which is not specifically permitted in this Agreement is prohibited.

3.4 Business Associate may use PHI to report violations of law to appropriate authorities consistent with 45 C.F.R. ' 164.502(j)(1).

### 4. OBLIGATIONS OF COVERED ENTITY.

Covered Entity shall provide Business Associate with its privacy notices, any relevant privacy policies or other information, and any restrictions on the use or disclosure of PHI voluntarily agreed to by Covered Entity which may impact the permissible uses or disclosures of PHI by Business Associate. Throughout the term of this Agreement, Covered Entity shall notify Business Associate of any changes or additions to such notices, policies, information or agreements.

## 5. SECURITY OF ELECTRONIC DATA.

If PHI is transmitted to or maintained by Business Associate in electronic format, Business Associate agrees to:

(a) Develop, implement, maintain, and use administrative, technical and physical safeguards that reasonably and appropriately protect the integrity, confidentiality, and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of the Covered Entity;

(b) Ensure that any agent or subcontractor to whom it provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect it;

(c) Report to the Covered Entity any security incident of which it becomes aware; and

(d) Provide reasonable access to and/or permit inspection of its systems to allow Covered Entity to determine Business Associate's compliance with this provision.

## 6. TERM AND TERMINATION.

6.1 The term of this Agreement shall commence on the Effective Date and shall continue until terminated as permitted herein.

6.2 Termination for Cause. Upon Covered Entity's reasonable determination that Business Associate has breached a material term of this Agreement, Covered Entity shall be entitled to do any one or more of the following:

(a) Give Business Associate written notice of the existence of such breach and give Business Associate an opportunity to cure upon mutually agreeable terms. If Business Associate does not cure the breach or end the violation according to such terms, or if Covered Entity and Business Associate are unable to agree upon such terms, Covered Entity may immediately terminate the Service Arrangement. If termination of the Service Arrangement is not feasible, Covered Entity shall report the breach to the Secretary.

(b) Immediately terminate Service Arrangement or any other arrangement between Covered Entity and Business Associate which is the subject of such breach.

(c) Immediately stop all further disclosures of PHI to Business Associate pursuant to the Service Arrangement or other arrangement which is the subject of such breach.

6.3 Termination Without Cause. This Agreement shall terminate upon any such date as Covered Entity and Business Associate may agree in a writing signed by both parties.

6.4 Termination of Service Arrangement. This Agreement shall terminate upon the termination or expiration of the Service Arrangement.

### 6.5 Effect of Termination.

(a) Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity, or destroy, all PHI received, created or maintained in any form by Business Associate on behalf of Covered Entity. Business Associate shall retain no copies of such information. This section shall also apply to PHI that is in possession of subcontractors or agents of Business Associates.

(b) In the event that Business Associate determines that return or destruction of PHI is not feasible, Business Associate shall provide to Covered Entity written 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 Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

(c) Business Associate shall cooperate with Covered Entity to the extent reasonably necessary for Covered Entity to determine that all PHI has been properly returned, destroyed or protected upon termination of this Agreement. Such cooperation shall include allowing Covered Entity to review electronic and computer systems for data and deleting electronic access paths and codes which allow Business Associate to receive or transmit PHI in electronic formats.

(d) Business Associate's obligation to protect the privacy of PHI is continuous and survives any termination, cancellation, expiration, or other conclusion of this Agreement or any other agreement between Business Associate and Covered Entity. The respective rights and obligations of Business Associate under this Article 6 regarding the return, destruction or protection of PHI after termination shall survive the termination of this Agreement.

## 7. MISCELLANEOUS.

7.1 Scope of Agreement. This Agreement relates only to the use, disclosure and protection of PHI if it is disclosed to, created or received by Business Associate in connection with any relation between Business Associate and Covered Entity. This Agreement is the sole understanding between the parties relating such matters, and supersedes all prior agreements and understandings, whether oral or written. Nothing herein shall require Covered Entity to disclose any PHI to Business Associate or to utilize any service of Business Associate. Nothing herein requires Business Associate to accept any PHI or to provide any particular services.

7.2 Assignment. No assignment of this Agreement or of the rights and obligations hereunder by any party shall be valid, without the prior written consent of the other party. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and each of their respective successors, heirs and permitted assigns, if any.

7.3 Severability. In the event that any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable, the remaining provisions of this Agreement shall not be affected thereby.

7.4 Waiver and Breach. The waiver by either party of a breach or violation of any provision of this Agreement shall not operate as, or be construed to be, a waiver of any subsequent breach of the same or other provisions hereof.

7.5 Notice. Any notice required or permitted to be given under this Agreement shall be in writing and may be either personally delivered, sent by registered or certified mail in the U.S. Postal Service, Return Receipt Requested, postage prepaid, or reputable overnight courier, delivery prepaid and signature required, addressed to each party at the addresses set forth at the end of this Agreement. Any such notice shall be deemed to have been given, if mailed as provided herein, as of 48 hours after mailing.

7.6 Amendments. This Agreement may only be amended or modified by written agreement executed by all parties. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Regulations and HIPAA.

7.7 Governing Law/Construction. This Agreement shall be governed by applicable federal law and the laws of the State of Colorado, without regard to conflict of laws principles. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Regulations.

7.8 No Third Party Beneficiaries. Business Associate and Covered Entity Agreement that Individuals who are the subject of PHI are not third party beneficiaries of this Agreement.

7.9 Further Acts. The parties agree that the intent of this Agreement is to comply with the business associate provisions of the Privacy Regulations. Each of the parties shall execute and deliver all documents, papers and instruments reasonably necessary or convenient to carry out the terms of this Agreement. The parties shall, upon request at any time after the date of this Agreement, execute, deliver and/or furnish all such documents and instruments, and do or cause to be done all such acts and things as may be reasonable to effectuate the purpose and intent of this Agreement as set forth herein.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Covered Entity: Northern Colorado Individual Practice Association

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

Printed Name: Jan Gillespie-Wagner, MD

Title: Executive Director

Business Associate (Member):

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

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

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