

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is entered into, and effective as of _____, 2016 (the "Effective Date") by and between JEA on behalf of the Group Health and Welfare Plans of JEA ("Covered Entity") and _____, a _____ ("Business Associate"), each individually a "Party" and collectively the "Parties."

The purpose of this Agreement is to comply with the requirements of (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the associated regulations, as may be amended; (ii) the HIPAA Privacy Rule codified at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended; (iii) the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended; (iv) the Breach Notification Rule, codified at 45 C.F.R. Part 164, Subpart D, as may be amended; (v) the Enforcement Rule codified at 45 C.F.R. Part 160, Subparts C and D, as may be amended; (vi) the Electronic Transactions Rule codified at 45 C.F.R. Parts 160 and 162; (vii) the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and (viii) the HIPAA Omnibus Final Rule published in the Federal Register at 78 Fed. Reg. 5,566 (January 25, 2013), and effective on March 26, 2013. The HITECH Act provides further protection for the privacy and security of Protected Health Information ("PHI") used and disclosed through health information technology. The Privacy, Security, Breach Notification and Enforcement Rules are collectively referred to herein as the "HIPAA Rules." Unless otherwise defined in this Agreement, capitalized terms have the meanings given in the HIPAA Rules and the HITECH Act.

In consideration of the Parties' new or continuing obligations under the Services Agreement (as defined below) and other good and valuable consideration, the receipt and sufficiency is hereby acknowledged, the Parties agree to comply with the requirements of the HIPAA Rules and HITECH Act as follows:

1. **Services.** Covered Entity and Business Associate have entered into an agreement (the "Services Agreement") under which Business Associate may create, receive, use, maintain or transmit PHI from or on behalf of Covered Entity in the course of providing certain services (the "Services") for Covered Entity. The Services Agreement is incorporated herein by this reference. In the event of a conflict between the terms of the Services Agreement and this Agreement, this Agreement shall control.

2. **Relationship of the Parties.** None of the provisions of this Agreement are intended to create, nor shall they be deemed to create, any relationship between the Parties other than that of independent Parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. Business Associate is an independent contractor, and not an agent of Covered Entity.

3. **Permitted Uses and Disclosures.** Business Associate may use and/or disclose PHI only as permitted or required by this Agreement, or as otherwise required by law. Business

Associate may disclose PHI to, and permit the use of PHI by, its employees, contractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Services. Business Associate shall use, disclose, and request only the minimum amount of PHI reasonably necessary to accomplish the intended purpose of the use, disclosure or request. Business Associate shall not use or disclose PHI in a manner (i) inconsistent with Covered Entity's obligations under the HIPAA Rules or the HITECH Act, or (ii) that would violate the HIPAA Rules or the HITECH Act if disclosed or used in such a manner by Covered Entity. Business Associate may use PHI for the proper management and administration of Business Associate's business and to carry out its legal responsibilities in accordance with 45 C.F.R. § 164.504(e)(4). Business Associate may not de-identify PHI received from, or created on behalf of Covered Entity without the express written authorization of Covered Entity.

4. **Safeguards for the Protection of PHI.** As described below, Business Associate shall develop, implement, maintain and use appropriate administrative, technical, and physical safeguards to protect the privacy of PHI, including Electronic PHI, that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall conduct an accurate and thorough risk assessment of the potential risks and vulnerabilities to the confidentiality, integrity, and availability of Electronic PHI held by Covered Entity. Business Associate warrants that Business Associate has implemented and shall maintain commercially reasonable and appropriate security safeguards to protect the confidentiality and integrity of PHI created, received, used, maintained or transmitted from, or on behalf of Covered Entity. Upon request by Covered Entity, Business Associate shall provide a written description of such risk assessment and security safeguards. Business Associate shall comply with the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended, and with the applicable provisions of the HIPAA Privacy Rule codified at, 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended, to the extent Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule.

5. **Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.** If Business Associate has knowledge of any use or disclosure of PHI not provided for by this Agreement, then Business Associate shall promptly notify Covered Entity in accordance with Section 16. Business Associate shall establish and implement procedures and other reasonable efforts for mitigating, to the extent possible, any harmful effects arising from any improper use and/or disclosure of PHI of which it becomes aware. Business Associate will report to Covered Entity any Security Incident of which Business Associate becomes aware. Business Associate will make this report monthly in the manner specified by Covered Entity. However, in the event Business Associate becomes aware of a Security Incident resulting in a disclosure of PHI not permitted by this Agreement or a Breach of Unsecured PHI, by itself or any of its agents or subcontractors, Business Associate shall notify Covered Entity as provided in Section 6, Data Breach Notification and Mitigation. Covered Entity and Business Associate agree to act together in good faith to take reasonable steps to investigate and mitigate any harm caused by any unauthorized use, disclosure, or Security Incident. For these purposes, a "Security Incident" shall have the same meaning set forth in the Security Rule: "a Security Incident means the attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system."

6. **Data Breach Notification and Mitigation.** Business Associate agrees to promptly notify Covered Entity of any "Breach" or suspected "Breach" of "Unsecured PHI" as those terms are defined by 45 C.F.R. §164.402 (hereinafter a "Data Breach"). The Parties acknowledge and agree that 45 C.F.R. §164.404, as described below in this Section, governs the determination of the date of a Data Breach. Business Associate shall, following the discovery or suspicion of a Data Breach, promptly notify Covered Entity and in no event later than two (2) hours after Business Associate discovers or suspects such Data Breach, unless Business Associate is prevented from doing so by 45 C.F.R. §164.412 concerning law enforcement investigations. For purposes of reporting a Data Breach to Covered Entity, the discovery of a Data Breach shall occur immediately when which such Data Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be considered to have had knowledge of a Data Breach if the Data Breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the Data Breach) who is an employee, officer or other agent of Business Associate. No later than twenty-four (24) hours following a Data Breach, Business Associate shall provide Covered Entity in writing with sufficient information to permit Covered Entity to comply with the Data Breach notification requirements set forth at 45 C.F.R. §164.400 et seq. Specifically, such information shall include Business Associate's risk assessment, which conforms to the requirements of 45 C.F.R. § 164.402, as to the probability that the impermissible use or disclosure did or did not compromise PHI, and if the following information is known to (or can be reasonably obtained by) Business Associate, Business Associate shall provide Covered Entity with: (i) contact information for Individuals who were or who may have been affected by the Data Breach (e.g., first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Data Breach, including the date of the Data Breach, date of discovery, and number of Individuals affected by the Data Breach; (iii) a description of the types of unsecured PHI involved in the Data Breach (e.g., names, social security number, date of birth, address(es), account numbers of any type, disability codes, diagnosis and/or billing codes and similar information); (iv) a brief description of what the Business Associate has done or is doing to investigate the Data Breach, mitigate harm to the Individual affected by the Data Breach, and protect against future Data Breaches; and (v) appoint a liaison and provide contact information for same so that the Covered Entity may ask questions and/or learn additional information concerning the Data Breach. Following a Data Breach, Business Associate shall have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding the Data Breach, including but not limited to the information described in the items above.

7. **Use and Disclosure of PHI by Subcontractors, Agents, and Representatives.** Business Associate shall require any subcontractor, agent, or other representative that is authorized to create, receive, maintain, or transmit PHI on behalf of Business Associate to execute a business associate agreement to agree in writing to the same terms set forth herein. Business Associate shall terminate its business associate agreement with any subcontractor, agent or other representative if such subcontractor, agent or representative fails to abide by any material term of such agreement. Such business associate agreement shall identify Covered Entity as a third-party beneficiary with rights of enforcement in the event of any HIPAA violations.

8. **Individual Rights.** Business Associate shall comply with the following Individual rights requirements as applicable to PHI used or maintained by Business Associate:

8.1. **Right of Access.** Business Associate agrees to provide access to PHI maintained by Business Associate in a Designated Record Set, at the request of Covered Entity, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity, including, where applicable, access by electronic means pursuant to Section 13405(e) of the HITECH Act and 45 C.F.R. § 164.524.

8.2. **Right of Amendment.** Business Associate agrees to make any amendment(s) to PHI maintained by Business Associate in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

8.3. **Right to Accounting of Disclosures.** Business Associate agrees to document such disclosures of PHI 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 C.F.R. §164.528. Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, such information collected in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528, as amended by Section 13405(c) of the HITECH Act and any related regulations or guidance issued by HHS in accordance with such provision.

9. **Restriction Agreements and Confidential Communications.** Covered Entity shall notify Business Associate of any limitations in the Notice of Privacy Practices of Covered Entity under 45 C.F.R § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Business Associate will comply with any notice from Covered Entity to (1) restrict use or disclosure of PHI pursuant to 45 C.F.R § 164.522(a), or (2) provide for confidential communications of PHI pursuant to 45 C.F.R § 164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communications obligations that Business Associate must follow. Covered Entity will notify Business Associate in writing of the termination of any such restriction or confidential communications requirement and, with respect to termination of any such restriction, instruct Business Associate whether any of the PHI will remain subject to the terms of the restriction agreement.

10. **Ownership of PHI.** Covered Entity holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and shall not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity in the course of fulfilling its obligations pursuant to this Agreement, any right, title or interest in or to such PHI. Except as specified in this Agreement, Business Associate shall have no right to compile or distribute any statistical analysis or report utilizing such PHI or derived from such

PHI, any aggregate information derived from such PHI, or any other health and medical information obtained from Covered Entity.

11. **Prohibition on Sale of PHI.** Business Associate shall not sell PHI or receive any remuneration, direct or indirect, in exchange for PHI, except as expressly permitted by this Agreement and the Services Agreement.

12. **Prohibition on Use or Disclosure of Genetic Information.** Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA Rules.

13. **Compliance with Electronic Transactions Rule.** If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which the U.S. Department of Health and Human Services ("HHS") Office for Civil Rights ("OCR") has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by OCR with respect to Transactions.

14. **Inspection of Books and Records.** Business Associate shall make its internal practices, books, records, and policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to HHS, OCR, or their agents or to Covered Entity for purposes of monitoring compliance with the HIPAA Rules and the HITECH Act. Such information shall be made available in a time and manner designated by Covered Entity, HHS or OCR. With reasonable notice, Covered Entity may audit Business Associate to monitor compliance with this Agreement. Business Associate will promptly correct any violation of this Agreement found by Covered Entity and will certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement.

15. **Term and Termination.**

15.1. **Term.** This Agreement shall commence on the Effective Date and end with the termination of the Services Agreement unless terminated sooner pursuant to Section 15.2.

15.2. **Termination for Breach by Covered Entity.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity may immediately terminate this Agreement, all relevant Services Agreement(s) and any related agreements if Covered Entity determines that Business Associate has breached a material term of this Agreement. Alternatively, and in the sole discretion of Covered Entity, Covered Entity may choose to provide Business Associate with written notice of the existence of the breach and provide Business Associate with thirty (30) calendar days to cure said breach upon mutually agreeable terms.

15.3. **Termination by Business Associate.** If Business Associate determines that Covered Entity has breached a material term of this Agreement, then Business Associate

shall provide Covered Entity with written notice of the existence of the breach and shall provide Covered Entity with thirty (30) calendar days to cure said breach upon mutually agreeable terms or end the violation within this thirty (30) day period. Failure by Covered Entity to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by Business Associate.

15.4. Effect of Termination. Upon termination of this Agreement, Business Associate shall recover any PHI relating to this Agreement in possession of Business Associate and its subcontractors, agents, or representatives. Business Associate shall return to Covered Entity or destroy all such PHI plus all other PHI relating to this Agreement in its possession, and shall retain no copies. Business Associate agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and Electronic PHI shall be purged or destroyed by one of the methods described in NIST Special Publication 800-88, Guidelines for Media Sanitization at <http://www.csrc.nist.gov/>, or any other guidance issued by OCR regarding rendering PHI unusable, unreadable, or indecipherable to unauthorized persons. If Business Associate believes that it is not feasible to return or destroy the PHI as described above, Business Associate shall notify Covered Entity in writing. The notification shall include: (i) a written statement that Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. If the Parties agree that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in this Agreement shall be extended to any PHI retained after the termination of this Agreement, and that any further uses and/or disclosures shall be limited to the purposes that make the return or destruction of the PHI infeasible. Business Associate further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

16. Notices. Any and all notices and other communications required or permitted to be given under this Agreement shall be: (a) delivered by personal delivery, provided the person to whom delivered signs a receipt; (b) delivered by commercial courier such as Federal Express, provided the person to whom delivered signs a receipt or the commercial courier can verify delivery; (c) sent by overnight U.S. express mail, provided the postal service can verify delivery; (d) sent by registered or certified mail, postage prepaid, provided delivery is actually made; or (e) sent by facsimile, provided the person that sent the notice can verify delivery. All notices shall be sent to the following addresses or to such other addresses as shall be furnished by notice to the other party in accordance with the provisions of this Section 16:

If to Covered Entity:

JEA

[Insert Address Here]

Attn: *[Insert Contact Here]*

Facsimile: *[Insert Fax No. Here]*

If to Business Associate:

Attn: _____

Facsimile: _____

17. **Indemnification.** Business Associate shall indemnify, defend and hold harmless Covered Entity and its respective shareholders, directors, officers, members, managers, employees, and agents from and against all claims, actions, damages, judgments, losses, liabilities, fines, penalties, costs, or expenses (including without limitation reasonable attorney's fees, expert witness fees, consultant fees and costs of investigation, litigation or dispute resolution), resulting from or related to the acts or omissions of Business Associate or its employees, directors, officers, subcontractors, or agents in connection with the breach of any representations, duties and obligations of Business Associate under this Agreement. This indemnification obligation of Business Associate shall survive termination of this Agreement.

18. **Miscellaneous.**

18.1. **Survival.** The respective rights and obligations of the Parties under Section 14 (Inspection of Books and Records), Section 15.4 (Effect of Termination), Section 17 (Indemnification) and Section 18 (Miscellaneous) shall survive termination of this Agreement indefinitely, and those other provisions of this Agreement that apply to rights or obligations of a Party, which continue or arise upon or after the termination of this Agreement shall survive the termination of this Agreement to the extent necessary to enforce such rights and obligations and to otherwise effectuate such provisions.

18.2. **State Law.** In addition to HIPAA and the HITECH Act, Business Associate shall comply with all applicable state and federal security and privacy laws.

18.3. **Regulatory References.** A citation in this Agreement to the Code of Federal Regulations shall mean the cited section as that section may be amended from time to time.

18.4. **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they shall negotiate amendments to this Agreement to conform to any changes in the HIPAA Rules as are necessary for Covered Entity to comply with the current requirements of the HIPAA Rules. In addition, in the event that either Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Rules or any other applicable legislation, then such Party shall notify the other Party of its belief in writing. For a period of up to thirty (30) days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Rules or any other

applicable legislation, then either Party has the right to terminate this Agreement and the Services Agreement upon written notice to the other Party.

18.5. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules and HITECH Act.

18.6. Injunctive Relief. Business Associate expressly acknowledges and agrees that the breach, or threatened breach, by it of any provision of this Agreement may cause Covered Entity to be irreparably harmed and that Covered Entity may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, Covered Entity shall be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this Section shall be deemed to limit or abridge any other remedy available to Covered Entity at law or in equity.

18.7. Governing Law; Venue. This Agreement shall be governed by and construed in all respects by the laws of the State of Florida, except to the extent preempted by federal law. Venue for any action commenced under this Agreement shall be in the state and federal courts in Duval County, Florida.

18.8. No Third Party Beneficiaries. Except as provided in Section 8, nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors and permitted assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

18.9. No Offshoring. Business Associate shall not transfer PHI outside the United States without the prior written consent of Covered Entity. In this context, a "transfer outside the United States" occurs if Business Associate's workforce members, agents or subcontractors physically located outside the United States are able to access, use or disclose PHI.

18.10. Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to its subject matter and supersedes all prior agreements, representations and understandings of the Parties, written or oral, with regard to this same subject matter.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement effective as of the Effective Date.

Covered Entity:

JEA, on behalf of the

JEA Health & Welfare Plans

Business Associate:

By: _____

By: _____

Its: _____

Its: _____