

## BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum ("**Addendum**") is made and entered into as of \_\_\_\_\_, 20\_\_\_\_ (the "**Effective Date**"), by and between Trans Union LLC, a Delaware limited liability company having an office at 555 West Adams Street, Chicago, Illinois 60661 ("**TransUnion**"), and \_\_\_\_\_, a \_\_\_\_\_ having an office at \_\_\_\_\_ ("**Customer**").

### I. GENERAL PROVISIONS

**Section 1.1. Service Agreements.** This Addendum is part of the one or more separate agreements, entered into as of the Effective Date or in the future, pursuant to which TransUnion is providing services, products or, both ("**Services**") to Customer ("**Service Agreements**"). Service Agreements shall not include, and this Addendum shall not be applicable to, any such agreement (e.g., a "Data Furnishers Reporting Agreement") under which Customer furnishes information to TransUnion for inclusion into TransUnion's Fair Credit Reporting Act (15 U.S.C. §1681 et seq. including, without limitation, all amendments thereto) ("**FCRA**") regulated consumer reporting database, including, but not limited to, Protected Health Information ("**PHI**") as provided for under the definition of "payment" as set forth in HIPAA (as defined below). With respect to each Service Agreement, the term of this Addendum shall run concurrent with the term of such Service Agreement, unless this Addendum is earlier terminated in accordance with this Addendum's provisions.

**Section 1.2. Status of Parties Under HIPAA.** The parties acknowledge and agree that Customer is a Covered Entity and TransUnion is a Business Associate of Customer when TransUnion creates, receives, maintains, transmits, uses or discloses PHI on behalf of Customer.

**Section 1.3. Defined Terms.** Capitalized terms used in this Addendum without definition shall have the respective meanings assigned to such terms by the Administrative Simplification section of the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health Act and their implementing regulations as amended from time to time (collectively, "**HIPAA**").

### II. OBLIGATIONS OF TRANSUNION

**Section 2.1. Use and Disclosure of PHI.** TransUnion may use and disclose PHI as permitted or required under the Service Agreements (including this Addendum) or as Required by Law, but shall not otherwise use or disclose any PHI. To the extent TransUnion carries out any of Customer's obligations under the HIPAA privacy standards, TransUnion shall comply with the requirements of the HIPAA privacy standards that apply to Customer in the performance of such obligations. Without limiting the generality of the foregoing, TransUnion is permitted to:

(a) use and disclose PHI internally for TransUnion's proper management and administration or to carry out its legal responsibilities.

(b) disclose PHI to a third party for TransUnion's proper management and administration, provided that the disclosure is Required by Law or TransUnion obtains reasonable assurances from the third party to whom the PHI is to be disclosed that the third party will (1) protect the confidentiality of the PHI, (2) only use or further disclose the PHI as Required by Law or for the purpose for which the PHI was disclosed to the third party and (3) notify TransUnion of any instances of which the third party is aware in which the confidentiality of the PHI has been breached.

(c) use and disclose PHI to conduct Data Aggregation.

(d) use and disclose PHI in connection with payment activities or as reasonably necessary to enable TransUnion to provide the Services under the Service Agreements.

(e) use and disclose PHI to create de-identified health information in accordance with the HIPAA de-identification requirements. Customer acknowledges that PHI does not include such de-identified health information and TransUnion may use and disclose such de-identified health information for any purpose permitted by law.

**Section 2.2. Safeguards.** TransUnion shall use appropriate safeguards to prevent the unauthorized use or disclosure of PHI. In addition, TransUnion shall implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of PHI transmitted or maintained in Electronic Media ("E PHI") that it creates, receives, maintains or transmits on behalf of Customer.

**Section 2.3. Minimum Necessary Standard.** To the extent required by the "minimum necessary" requirements of HIPAA, TransUnion shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

**Section 2.4. Mitigation.** TransUnion shall take reasonable steps to mitigate, to the extent practicable, any harmful effect (that is known to TransUnion) of a use or disclosure of PHI by TransUnion in violation of this Addendum.

**Section 2.5. Subcontractors.** TransUnion shall enter into a written agreement meeting the requirements of 45 C.F.R. §§ 164.504(e) and 164.314(a)(2) with each Subcontractor (including, without limitation, a Subcontractor that is an agent under applicable law) that creates, receives, maintains or transmits PHI on behalf of TransUnion. TransUnion shall ensure that the written agreement with each Subcontractor obligates the Subcontractor to comply with restrictions and conditions that are at least as restrictive as the restrictions and conditions that apply to TransUnion under this Addendum.

**Section 2.6. Reporting Requirements.**

(a) If TransUnion becomes aware of a use or disclosure of PHI in violation of this Addendum by TransUnion or a third party to which TransUnion disclosed PHI, TransUnion shall report the use or disclosure to Customer without unreasonable delay.

(b) TransUnion shall report any Security Incident involving E PHI of which it becomes aware in the following manner: (a) any actual, successful Security Incident will be reported to Customer in writing without unreasonable delay, and (b) any attempted, unsuccessful Security Incident of which TransUnion becomes aware will be reported to Customer orally or in writing as reasonably practicable. If the HIPAA security regulations are amended to remove the requirement to report unsuccessful attempts at unauthorized access, the requirement hereunder to report such unsuccessful attempts will no longer apply as of the effective date of the amendment. Notwithstanding the foregoing, TransUnion and Customer acknowledge the ongoing existence and occurrence of attempted but unsuccessful Security Incidents that are trivial in nature, such as pings and port scans, and Customer acknowledges and agrees that no notification to Customer of such unsuccessful Security Incidents is required.

(c) TransUnion shall, following the discovery of a Breach of Unsecured PHI, notify Customer of the Breach in accordance with 45 C.F.R. § 164.410 without unreasonable delay and in no case later than thirty (30) days after discovery of the Breach.

**Section 2.7. Access to PHI.** The parties agree that TransUnion does not maintain for Customer any Designated Record Sets. However, to the extent it is determined that TransUnion maintains a Designated Record Set in the future, within fifteen (15) business days of a request by Customer for access to PHI about an Individual contained in any Designated Record Set of Customer

maintained by TransUnion, TransUnion shall make available to Customer such PHI for so long as TransUnion maintains such information in the Designated Record Set. If TransUnion receives a request for access to PHI directly from an Individual, TransUnion shall forward such request to Customer within ten (10) business days. Customer shall have the sole responsibility to make decisions regarding whether to approve a request for access to PHI.

**Section 2.8. Availability of PHI for Amendment.** The parties agree that TransUnion does not maintain for Customer any Designated Record Sets. However, to the extent it is determined that TransUnion maintains a Designated Record Set in the future, TransUnion agrees that within fifteen (15) business days of receipt of a request from Customer for the amendment of an Individual's PHI contained in any Designated Record Set of Customer maintained by TransUnion, TransUnion shall provide such information to Customer for amendment and incorporate any such amendments in the PHI (for so long as TransUnion maintain such information in the Designated Record Set) as required by 45 C.F.R. § 164.526. If TransUnion receives a request for amendment to PHI directly from an Individual, TransUnion shall forward such request to Customer within ten (10) business days. Customer shall have the sole responsibility to make decisions regarding whether to approve a request for an amendment to PHI.

**Section 2.9. Accounting of Disclosures.** Within fifteen (15) business days of notice by Customer to TransUnion that it has received a request for an accounting of disclosures of PHI (other than disclosures to which an exception to the accounting requirement applies), TransUnion shall make available to Customer such information as is in TransUnion's possession and is required for Customer to make the accounting required by 45 C.F.R. § 164.528. If TransUnion receives a request for an accounting directly from an Individual, TransUnion shall forward such request to Customer within ten (10) business days. Customer shall have the sole responsibility to provide an accounting of disclosures to the Individual. Moreover, TransUnion shall disclose PHI to an Individual to the extent such information (including, but not limited to, information pertaining to disclosures of such PHI) resides in TransUnion's consumer reporting database regulated by the FCRA and such disclosure to said Individual is permitted and required by the FCRA.

**Section 2.10. Availability of Books and Records.** TransUnion shall make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by TransUnion on behalf of, Customer available to the Secretary for purposes of determining Customer's and TransUnion's compliance with HIPAA.

### III. OBLIGATIONS OF CUSTOMER

**Section 3.1. Permissible Requests.** Customer shall not request or permit TransUnion to use or disclose PHI in any manner that would not be permissible under HIPAA if done directly by Customer (except for those activities described in Sections 2.1(a), (b) and (c) of this Addendum which are permissible for TransUnion to undertake under HIPAA).

**Section 3.2. Minimum Necessary PHI.** When Customer discloses PHI to TransUnion, Customer shall provide the minimum amount of PHI necessary for the accomplishment of TransUnion's purpose.

**Section 3.3. Permissions; Restrictions.** Customer warrants that it has obtained and will obtain any consents, authorizations and/or other legal permissions required under HIPAA and other applicable law for the disclosure of PHI to TransUnion. Customer shall notify TransUnion 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 TransUnion's use or disclosure of PHI. Customer shall not agree to any restriction on the use or disclosure of PHI under 45 CFR § 164.522 that restricts TransUnion's use or disclosure of PHI under the Service Agreements unless such restriction is Required by Law or TransUnion grants its written consent, which consent shall not be unreasonably withheld.

**Section 3.4. Notice of Privacy Practices.** Except as Required by Law, with TransUnion's consent or as set forth in the Service Agreements, Customer shall not include any limitation in the

Customer's notice of privacy practices that limits TransUnion's use or disclosure of PHI under the Service Agreements.

#### IV. TERMINATION OF THIS ADDENDUM

**Section 4.1. Termination Upon Breach of this Addendum by Either Party.** Any other provision of the Service Agreements notwithstanding, either party (the "**Non-Breaching Party**") may terminate the Service Agreements upon thirty (30) days advance written notice to the other party (the "**Breaching Party**") in the event that the Breaching Party materially breaches this Addendum and such breach is not cured to the reasonable satisfaction of the Non-Breaching Party within such 30-day period.

**Section 4.2. Termination by TransUnion Due to Legal Requirements.** This Addendum and the Service Agreements may be terminated by TransUnion upon five (5) business days' prior written notice to Customer in the event that TransUnion believes that the requirements of any law, legislation, consent decree, judicial action, governmental regulation or agency opinion, enacted, issued, or otherwise effective after the date of this Addendum and applicable to the PHI or to this Addendum, cannot be met by TransUnion in a commercially reasonable manner and without significant additional expense.

**Section 4.3. Return or Destruction of PHI upon Termination.** Customer acknowledges that TransUnion has requirements that make the return or destruction of PHI received from Customer or created or received by TransUnion infeasible. The parties agree that the terms and provisions of this Addendum shall survive termination of the Service Agreements and such PHI shall be used or disclosed solely for such purpose or purposes which prevented the return or destruction of such PHI.

#### V. MISCELLANEOUS PROVISIONS.

**Section 5.1. No Third Party Beneficiaries.** The parties have not created and do not intend to create by this Addendum any third party rights, including, but not limited to, third party rights for Customer's patients.

**Section 5.2. HIPAA Amendments.** The parties acknowledge and agree that HIPAA imposes certain requirements with respect to privacy, security and breach notification applicable to Business Associates (collectively, the "**HITECH BA Provisions**"). The HITECH BA Provisions and any other future amendments to HIPAA affecting Business Associate agreements are hereby incorporated by reference into this Addendum as if set forth in this Addendum in their entirety, effective on the later of the effective date of this Addendum or such subsequent date as may be specified by HIPAA.

**Section 5.3. Regulatory References.** A reference in this Addendum to a section in HIPAA means the section as it may be amended from time-to-time.

**Section 5.4. Entire Agreement.** This Addendum and the other agreements referred to herein constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the TransUnion and Customer with respect to the subject matter hereof.

**Section 5.5. Effect; Order of Precedence; Amendment.** Except as otherwise explicitly provided for in this Addendum, the terms and conditions of the Service Agreements shall continue to be in full force and effect. In the event of a conflict between the terms of the Service Agreements and the terms of this Addendum, the terms of this Addendum shall control. The terms of this Addendum may only be amended by a separate writing, signed by the authorized representatives of both parties, which makes specific reference to this Addendum.

**IN WITNESS WHEREOF**, the parties, intending to be legally bound, have caused this Addendum to be executed by their duly authorized representatives as of the Effective Date. The parties hereto agree

that a facsimile transmission of this fully executed Addendum shall constitute an original and legally binding document.

\_\_\_\_\_

TRANS UNION LLC

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

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

\_\_\_\_\_  
Name and Title of Signer

\_\_\_\_\_  
Name and Title of Signer

\_\_\_\_\_  
Date Signed

\_\_\_\_\_  
Date Signed