

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (the "BAA") is by and between Elekta, Inc. located at 400 Perimeter Center Terrace, Suite 50, Atlanta, GA 30346 ("Business Associate"), and Covered Entity, (individually, a "Party" and collectively, the "Parties"). Business Associate and Covered Entity have entered into or will in the future enter into agreements pursuant to which Covered Entity purchases and/or licenses products and services from Business Associate (the "Underlying Agreement"). This Business Associate Agreement amends by supplementing the Underlying Agreement. This Business Associate Addendum amends by supplementing Underlying Agreement. This BAA supersedes any previously executed Business Associate Agreement between the Parties.

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as modified by the Health Information Technology for Economic and Clinical Health Act, known collectively as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations at 45 CFR Parts 160 and 164, as the same may be amended from time to time (the "HIPAA Security and Privacy Rule"); and

WHEREAS, the Parties wish to enter into or have entered into the Underlying Agreement(s) whereby Business Associate will provide certain software and/or services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under the Underlying Agreement;

THEREFORE, in consideration of the Parties' continuing obligations under the Underlying Agreement, compliance with the HIPAA Security and Privacy Rule, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this BAA in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this BAA shall have the definitions set forth in the HIPAA Security and Privacy Rule. In the event of an inconsistency between the provisions of this BAA and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control.

The term "Protected Health Information" or "PHI" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that 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 that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. "Protected Health Information" includes without limitation "Electronic Protected Health Information" as defined below.

The term "Electronic Protected Health Information" means Protected Health Information that is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

II. PERMITTED USES AND DISCLOSURES

(a) Business Associate may use or disclose Protected Health Information as permitted or required by this BAA, the Underlying Agreement, or as required by law. Except as specifically set forth herein, Business Associate may not use or disclose Protected Health Information in a manner that would violate the HIPAA Security and Privacy Rule if such use or disclosure were done by Covered Entity. Specifically, Business Associate may use or disclose Protected Health Information (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship, including the Underlying Agreement, or (2) as required by applicable law, rule or regulation, or by an accrediting or credentialing organization to whom Covered Entity is required to disclose such information, or (3) as otherwise permitted under this BAA, the Underlying Agreement (if consistent with this BAA and the HIPAA Security and Privacy Rule), or the HIPAA Security and Privacy Rule, or (4) as would be permitted by the HIPAA Security and Privacy Rule as if such use or disclosure were made by Covered Entity.

(b) Business Associate may de-identify Protected Health Information in accordance with HIPAA guidelines. Business Associate may not sell Protected Health Information except at the direction of Covered Entity and in compliance with the requirements of the HIPAA Security and Privacy Rule.

(c) Business Associate may also use and disclose Protected Health Information:

(i) for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate;

(ii) for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) The disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(iii) to provide data aggregation services relating for the health care operations of Covered Entity pursuant to the Underlying Agreement or any other agreements between the Parties evidencing their business relationship. For purposes of this BAA, data aggregation means the combining of Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective covered entities.

III. CONFIDENTIALITY AND SECURITY REQUIREMENTS

(a) Business Associate agrees not to use or disclose Protected Health Information other than as permitted or required by this BAA or as required by law. To the extent Business Associate carries out obligations of Covered Entity under the HIPAA Security and Privacy Rule, Business Associate shall comply with the applicable provisions of the HIPAA Security and Privacy Rule as if such use or disclosure were made by Covered Entity. Covered Entity will not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Security and Privacy Rule if done by Covered Entity, except as otherwise provided herein. Business Associate agrees to use

best efforts to comply with Covered Entity's policies regarding the minimum necessary use or disclosure of Protected Health Information.

(b) Business Associate agrees to provide HIPAA training to all of its personnel who service Covered Entity or who otherwise will have access to Covered Entity's Protected Health Information.

(c) At termination of this BAA, the Underlying Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return (in a manner or process approved by the Covered Entity) or destroy all Protected Health Information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, that Business Associate still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Business Associate will (i) retain only that Protected Health Information necessary under the circumstances; (ii) return or destroy the remaining Protected Health Information that the Business Associate still maintains in any form; (iii) extend the protections of this BAA to the retained Protected Health Information; (iv) limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information not feasible; and (v) return or destroy the retained Protected Health Information when it is no longer needed by Business Associate. This paragraph shall survive the termination of this BAA and shall apply to Protected Health Information created, maintained, or received by Business Associate and any of its subcontractors.

(d) Business Associate agrees to ensure that its agents, including any subcontractors, that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate agree to substantially the same restrictions and conditions that apply to Business Associate with respect to such information.

(e) Business Associate will use appropriate safeguards, and comply where applicable with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for by this BAA.

(f) To the extent applicable and upon receipt of written notice provided by Covered Entity, Business Associate will use best efforts to comply with (i) Covered Entity's Notice of Privacy Practices; (ii) any limitations to which Covered Entity has agreed in regard to an Individual's permission to use or disclose his or her Protected Health Information; and (iii) any restrictions to the use or disclosure of Protected Health Information to which Covered Entity has agreed or is required to agree.

(g) Business Associate will make its internal practices, books and records available to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the terms of the HIPAA Security and Privacy Rule, and, at the request of the Secretary, will comply with any investigations and compliance reviews, permit access to information, and cooperate with any complaints, as required by law. Without unreasonable delay, Business Associate will notify Covered Entity in writing of any request by any governmental entity, or its designee, to review Business Associate's compliance with law or this Agreement, to pursue a complaint, or to conduct an audit or assessment of any kind.

(h) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information that is not in compliance with the terms of this BAA, as well as any actual Security Incident, of which it becomes aware, without unreasonable delay, and in no event later than five business (5) days of such discovery. Security Incidents and Breaches shall be treated as discovered by Business Associate as of the first day on which such Security Incident or Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. For purposes of this BAA, "Security Incident" means the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. Such notification shall contain

the elements required by 45 C.F.R. § 164.410. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BAA, as well as to provide reasonable cooperation to Covered Entity should Covered Entity elect to review or investigate such noncompliance or Security Incident.

(i) Business Associate shall permit Covered Entity, in its reasonable discretion, to conduct a remote audit of Business Associate's compliance with this BAA, HIPAA, and HITECH. Business Associate shall respond to Covered Entity's requests for information in support of the audit, which shall not be conducted more than once annually except in cases of an actual Security Incident or Breach, or reasonably suspected noncompliance with this BAA, HIPAA or HITECH. Each Party shall bear its own costs associated with the audit.

IV. AVAILABILITY OF PHI

(a) Business Associate agrees to make available Protected Health Information in a Designated Record Set to Covered Entity to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule.

(b) Business Associate agrees to make available Protected Health Information in a Designated Record Set for amendment and to incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule and at the direction of Covered Entity.

(c) Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule. Business Associate will comply with Covered Entity's policy regarding accounting of disclosures.

(d) Business Associate agrees to comply with any requests for restriction on certain disclosures of Protected Health Information pursuant to Section 164.522 of the HIPAA Security and Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity.

(e) In the event an Individual makes a request under this Section IV directly to Business Associate, Business Associate will notify Covered Entity in writing of such request within five (5) business days and shall cooperate with, and act only at the direction of, Covered Entity in responding to such request.

V. TERMINATION

This BAA shall be effective as of the date first set forth above and shall terminate upon the earlier of (i) the termination of all agreements between the Parties, and (ii) the termination by either party for cause as provided herein. Notwithstanding anything in this BAA to the contrary, either party shall have the right to terminate this BAA if it determines that the other party has violated any material term of this BAA and the breaching party does not cure such violation within thirty (30) days of receipt of written notice.

VI. NOTICE

All notices or communications required or permitted pursuant to the terms of this BAA shall be in writing and will be delivered in person or by means of certified or registered mail, postage paid, return receipt requested, to such Party at its address as set forth below, or such other person or address as such Party may specify by similar notice to the other party hereto, or by telephone facsimile with a hard copy sent by mail with delivery on the next business day. All such notices will be deemed given upon delivery or delivered by hand, on the third business day after deposit with the U.S. Postal Service, and on the first business day after sending if by facsimile.

If to Business Associate:

Elekta, Inc
Attn: Legal Counsel
400 Perimeter Center Terrace
Suite 50
Atlanta, GA 30346

If to Covered Entity:

At Covered's Entity's Address Listed in the Underlying Agreement

VII. MISCELLANEOUS

Except as expressly stated herein or in the HIPAA Security and Privacy Rule, the Parties to this BAA do not intend to create any rights in any third parties. The obligations of Business Associate under this BAA shall survive the expiration, termination, or cancellation of this BAA, the Underlying Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This BAA may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this BAA without the prior written consent of the other Party. None of the provisions of this BAA are intended to create, nor will 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 BAA and any other agreements between the Parties evidencing their business relationship. This BAA will be governed by the laws of the State of Georgia. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

Any ambiguity in this BAA shall be resolved to permit the Parties to comply with its obligations under the HIPAA Rules.

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