

---

## HIPAA BUSINESS ASSOCIATE AGREEMENT

---

This Business Associate Agreement ("Agreement") is entered into upon the Signature of the TRIARQ-One Team Care Purchase Schedule or other signed document referencing the acceptance of this Agreement (the "Effective Date") by and between Licensee of TRIARQ-One Team Care software with its principal office as designated on the TRIARQ-One Team Care Purchase Schedule or other document referencing the acceptance of this Agreement ("COVERED ENTITY") and One Team Care, LLC DBA TRIARQ-One Team Care with its principal office at 1050 Wilshire, Suite 300, Troy, Michigan 48084 ("BUSINESS ASSOCIATE"). The purpose of this Agreement is to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64), any applicable state privacy laws, any applicable state security laws, any applicable implementing regulations issued by the Insurance Commissioner or other regulatory authority having jurisdiction and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the America Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates. BUSINESS ASSOCIATE recognizes and agrees it is obligated by law to meet the applicable provisions of the HITECH Act.

**WHEREAS**, COVERED ENTITY is in the business of providing health care services and is subject to the Health Insurance Portability and Accountability Act Privacy and Security Regulations at 45 CFR § 164.500 *et seq.*;

**WHEREAS**, BUSINESS ASSOCIATE intends to provide software and services to COVERED ENTITY pursuant to one or more service agreements ("Service Agreements") for the purpose of maintaining electronic medical records;

**WHEREAS**, BUSINESS ASSOCIATE may, in the course of providing such software and related services, pursuant to the Service Agreements, come into contact with, have access to, Use or Disclose Protected Health Information (as defined in Section 1, below); and

**WHEREAS**, BUSINESS ASSOCIATE and COVERED ENTITY are entering into this Agreement to set forth BUSINESS ASSOCIATE's obligations with respect to its handling of such Protected Health Information.

**WHEREAS**, the HIPAA Rules require that Covered Entity receive adequate assurances that a Business Associate will comply with certain obligations with respect to the PHI received in the course of providing services to or on behalf of Covered Entity.

**NOW THEREFORE**, for mutual consideration the sufficiency of which is acknowledged by both parties, the parties agree as follows.

## 1.0 DEFINITIONS

For purposes of this Agreement, the following terms shall have the indicated meanings:

11. "Affiliated Entity" shall mean an entity under common control or common ownership with COVERED ENTITY which has been designated as an Affiliated Entity pursuant to the HIPAA Regulations.
12. "Breach" has the same meaning as "breach" in 45 CFR § 164.402. Any impermissible use or disclosure of Unsecured PHI is presumed to be a Breach requiring notification, except where an exception exists or where a Business Associate or Covered Entity, as applicable, demonstrates that there is a low probability that Unsecured PHI has been compromised based on a risk assessment, involving the analysis of required factors including: (i) the nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification; (ii) the unauthorized person who used the protected health information or to whom the disclosure was made; (iii) whether the protected health information was actually acquired or viewed; and (iv) the extent to which the risk to the PHI has been mitigated.

"Business Associate" means, with respect to the Covered Entity, a person who:

13. On behalf of the Covered Entity or of an organized health care arrangement (as defined in this section) in which the Covered Entity participates, but other than in the capacity of a member of the Workforce of the Covered Entity or arrangement, creates, receives, maintains, or transmits PHI for a function or activity regulated by HIPAA, including claims processing or administration, data analysis, utilization review, quality assurance, safety activities, billing, benefit management, practice management, and repricing; or provides, other than in the capacity of a member of the Workforce of the Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation, or financial services to or for the Covered Entity, or to or for an organized health care arrangement in which the Covered Entity participates, where the provision of the service involves the Disclosure of PHI from the Covered Entity or arrangement, or from another Business Associate of the covered Entity or arrangement, to the person.
14. A Subcontractor, regardless of tier, that creates, receives, maintains, or transmits PHI on behalf of a Business Associate. In the event that Business Associate uses Subcontractors, regardless of tier, all references to obligations and responsibilities of Business Associates shall apply equally to Subcontractors, regardless of tier, and in this event, Business Associates shall include the definition of Subcontractor, regardless of tier.
15. "HIPAA Rules" mean the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as modified by Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") and the Final Rule: Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules Under the HITECH Act and the Genetic Information Nondiscrimination Act; and Other Modifications of the HIPAA Rules.
16. "Privacy Rule" means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E,
17. "Security Rule" means the Health Insurance Reform: Security Standards at 45 CFR Parts 160, 162 and 164.

18. "Protected Health Information" or "PHI" has the same meaning as the term "protected health information" in 45 CFR 164.103 and 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
19. "Unsecured PHI" shall have the same meaning as "unsecured protected health information" in Section 13402 of the HITECH Act and 45 CFR § 164.402.
110. "Designated Record Set" shall mean medical, case or medical management billing, enrollment, payment or claims adjudication information used in whole or part by, or for, the Covered Entity to make decisions about individuals in accordance with 4 CFR § 164.103.
111. "Catch-All" means all other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule, Security Rule or related regulations.

## 2.0 OBLIGATIONS OF BUSINESS ASSOCIATE

Business Associate agrees that it will:

21. not use or disclose PHI other than as permitted or required by this Agreement, Service Agreement, or by law or regulation. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations. The additional requirements of the HIPAA Rules that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into the Business Associate Agreement. Section 164.504(e)(1)(ii) of Title 45, Code of Federal Regulations, shall apply to Business Associate with respect to compliance with such subsection, in the same manner that such section applies to a covered entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of Title 45, except that in applying such Section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.
22. Use appropriate safeguards, including without limitation administrative, physical, and technical safeguards, to prevent use or disclosure of the PHI other than as provided for by this Agreement and to reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it may receive, maintain, or transmit on behalf of the Covered Entity. Sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), and 164.316 (Policies and Procedures and Documentation Requirements) of Title 45, Code of Federal Regulations, shall apply to Business Associate in the same manner that such sections apply to Covered Entity as required by the HIPAA Rules.
23. secure all PHI by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the

Secretary specifying the technologies and methodologies that render PHI unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under the HIPAA Rules. For purposes of clarity, in accordance with current standards and guidance:

- a. For Administrative Safeguards, Business Associate shall:
  - i. Implement policies and procedures to prevent, detect, contain, and correct security violations;
  - ii. Identify the security official who is responsible for the development and implementation of the policies and procedures required;
  - iii. Implement policies and procedures to ensure that only appropriate members of the workforce have access to PHI;
  - iv. Implement policies and procedures for authorized access to PHI that are consistent with the applicable requirements of the Privacy Rule;
  - v. Implement a security awareness and training program for all members of its workforce (including management);
  - vi. Establish policies and procedures for responding to an emergency or other occurrence (for example, fire, vandalism, system failure, and natural disaster) that could damage systems that contain PHI; and
  - vii. Perform periodic technical and non-technical evaluations to ensure that standards continue to be met in response to operational and environmental changes.
- b. For Physical Safeguards, Business Associate shall at least implement policies and procedures to limit physical access to its electronic information systems capable of accessing PHI while ensuring that properly authorized access is allowed. Such policies and procedures shall address facility access, workstation use, workstation security and device and media controls.
- c. For Technical Safeguards, Business Associate shall:
  - i. Implement technical policies and procedures for electronic information systems that maintain PHI to allow access only to those persons or software programs that have appropriately granted access rights;
  - ii. Implement hardware, software, and/or procedural mechanisms that record and examine activity in information systems that contain or use PHI;
  - iii. Implement policies and procedures to protect PHI from improper alteration or destruction;
  - iv. Implement procedures to verify that a person or entity seeking access to PHI is the one claimed; and
  - v. Implement technical security measures (including encryption) to guard against unauthorized access to PHI that is being transmitted over an electronic communications network.
- d. For Policies and Procedures and Documentation Requirements, Business Associate shall:
  - i. Maintain policies and procedures and suitable documentation in written form;
  - ii. Retain the documentation and PHI for six (6) years from date of creation or effect;
  - iii. Make such documentation and policies and procedures available to persons responsible for implementing and amending them; and
  - iv. Review the policies and procedures periodically and update as needed.

- e. To render PHI unusable, unreadable or indecipherable to unauthorized individuals, Business Associate shall refer to the current Guidance issued by the U.S. Department of Health and Human Services, which currently identifies the use of encryption and destruction as the two acceptable methods of rendering PHI unusable, unreadable or indecipherable and provides specific guidance relating to the state of the PHI, such as if the PHI is in transmission, in use, or simply in storage.
- 24. not use or further disclose PHI other than as specifically set forth in this Agreement or other signed Agreement between the parties and the laws and regulations pertaining to the disclosure of PHI;
- 25. not use or further disclose PHI in a manner that would violate the requirements of state or federal law including the provisions of the HIPAA Regulations;
- 26. use appropriate safeguards to prevent use or disclosure of PHI other than as provided for in this Agreement;
- 27. report to COVERED ENTITY any use or disclosure of PHI not provided for by this Agreement of which BUSINESS ASSOCIATE becomes aware;
- 28. ensure that any of its agents, including subcontractors, to whom BUSINESS ASSOCIATE provides PHI agree to the same restrictions and conditions that apply to BUSINESS ASSOCIATE with respect to such PHI;
- 29. agree to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR 164.524 (i.e. allow individuals access to their own PHI);
- 210. make available PHI in accordance with the HIPAA Regulations;
- 211. make available PHI for amendment and incorporate any amendments to PHI in accordance with the HIPAA Regulations;
- 212. 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;
- 213. report to Covered Entity any use or disclosure of Unsecured PHI not provided for by this Agreement of which it becomes aware or should be aware, or any security incident of which it becomes aware involving Unsecured PHI of the Covered Entity or a security incident within the timeframes specified in Section 13402(d) of the HITECH Act. Business Associate will report to Covered Entity, promptly after discovery but in no event more than five (5) calendar days following, any Breach of Unsecured PHI of Covered Entity. The report and notice to Covered Entity will contain the information specified in 45 CFR §164.410. With regards to a breach by a subcontractor of Business Associate, if any, Business Associate will require the subcontractor to notify Business Associate of a discovered breach of Unsecured PHI or a security incident and Business Associate will, in turn, notify Covered Entity for the purpose of carrying out further notifications as applicable.

- 214. to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to comply with the Privacy Rule and the Security Rule to the same extent as Business Associate, with its direct relationship with Covered Entity and to agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Subcontractors of Business Associate will automatically become business associates themselves, and Business Associates will be required to obtain “satisfactory assurances” that the subcontractors will appropriately safeguard PHI. When Business Associate uses subcontractors to create, receive, or transmit PHI on its behalf, it will have a written business associate agreement (“BAA”) with each subcontractor, thereby creating a continuous “chain of trust” for PHI. A subcontractor’s permitted uses and disclosures may not be broader than those of Business Associate from whom the subcontractor receives PHI. The subcontractors will be directly liable under HIPAA, and Business Associate will take reasonable steps to cure any breach or terminate a BAA if a subcontractor materially breaches its BAA;
- 215. to provide access, at the request of Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in order to meet the requirements under 45 CFR 164.524 (i.e. allow individuals access to their own PHI);
- 216. to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to at the request of Covered Entity or an Individual, pursuant to 45 CFR 164.526;
- 217. to document 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. Business Associate further agrees to provide Covered Entity or Individual such documentation in accordance with 45 CFR 164.528;
- 218. make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services for purposes of determining COVERED ENTITY’S compliance with the HIPAA Regulations;
- 219. return or destroy all PHI received from COVERED ENTITY which BUSINESS ASSOCIATE maintains in any form at the termination of this Agreement; and
- 220. incorporate any amendments or corrections to PHI which may be requested pursuant to the HIPAA Regulations.

### 3.0 GENERAL USE AND DISCLOSURE BY BUSINESS ASSOCIATE

- 3.1. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to a third party Subcontractor to provide those services set forth in this Agreement and the Service Agreements between the parties or as specified in the HIPAA Rules. Such use or disclosure of PHI shall be done in such a manner that would not violate the Privacy Rule if done by Covered Entity. Such use or disclosure shall conform to the minimum necessary policies and procedures of Covered Entity; provided, however, such use or disclosure will

be limited, to the extent practicable, to a limited data set of PHI.

- 3.2. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate shall ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements in writing, including notification of a Breach of Unsecured PHI or a Violation, through a Business Associate Agreement that applies to the Business Associate, as limited by the Service Agreement, with respect to such PHI. A Business Associate, with respect to its Subcontractor, is liable for the actions of the Business Associate or Business Associate's Subcontractors, regardless of tier, respectively, to the extent that they are acting as an "agent" under the federal common law of agency.
- 3.3. Notwithstanding the foregoing, Business Associate may disclose PHI as required by law and use PHI to report violations of law to appropriate Federal and State authorities in strict compliance with 45 CFR 164.502(j)(l).
- 3.4. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.5. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, or to carry out its legal responsibilities only: (i) if the Business Associate obtains in writing, reasonable assurances from all Subcontractors of Business Associate, regardless of tier, that the PHI will be held confidentially for such management and administrative purposes or used or further disclosed only as Required By Law; and/or (ii) if the persons to which it is disclosed agree, in writing, to notify the Business Associate of any Breach of confidentiality, integrity and/or availability of PHI immediately upon Discovery. Business Associate, in turn, shall immediately notify the Covered Entity in writing, upon Discovery. Activities which are outside the scope of the proper management and administration of the Business Associate are prohibited under this provision, including Marketing, Fundraising, or the sharing of information for Commercial Use, even if such sharing would be permitted by federal or state laws, except as subsequently authorized in writing signed by the CEO of the covered Entity. This provision applies only where the purpose of the Use or Disclosure of information is for the proper management and administration of the Business Associate or to carry out its legal responsibilities and not for the purposes of the Covered Entity as provided in the Service Agreement or this Agreement.
- 3.6. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 3.7. Except as otherwise limited in this Agreement, Business Associate may aggregate and de-identify any and all PHI obtained by the Business Associate under this Agreement and use such de-identified data all in accordance with the de-identification requirements at 45 CFR 164.514(b). With respect to de-identification, the aggregated and de-identified data produced by the Business Associate either: (i) will not include any identifiers listed in 45 CFR 164.514(b)(2)(i), or (ii) will have been determined by a person with appropriate knowledge of and experience with generally accepted statistical and scientific principles and methods for rendering information not individually identifiable and applying such principles and methods, that the risk is very small that the aggregated and de-identified data generated by the Business Associate under this Agreement could be used, alone or in combination with other reasonably

available information, by an anticipated recipient, to identify an individual who is a subject of the information, thereby forming a “statistically de-identified data set” and rendering the information not PHI under HIPAA. De-identified information does not constitute PHI and is not subject to the terms of this Agreement.

## 4.0 PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- 4.1. Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use or disclose PHI on behalf of, or to provide services to, COVERED ENTITY for software and data archiving services, if such use or disclosure of PHI would not violate the Privacy Rule if done by COVERED ENTITY or the minimum necessary policies and procedures of the COVERED ENTITY.
- 4.2. BUSINESS ASSOCIATE may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. §164.502(j)(1).

## 5.0 OBLIGATIONS OF COVERED ENTITY

- 5.1. COVERED ENTITY shall notify BUSINESS ASSOCIATE of any limitation(s) in its notice of privacy practices of COVERED ENTITY in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.
- 5.2. COVERED ENTITY shall notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by any individual to use or disclose PHI, to the extent that such changes may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.
- 5.3. 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.
- 5.4. COVERED ENTITY shall not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under 45 C.F.R. § 164.500 et seq. if done by COVERED ENTITY.



## 6.0 AUDIT RIGHTS

6.1. In order to allow COVERED ENTITY to certify its compliance with the HIPAA Regulations, BUSINESS ASSOCIATE shall permit COVERED ENTITY, at COVERED ENTITY'S sole expense and on five (5) days prior written notice, to audit BUSINESS ASSOCIATE's internal practices, books and records relating to its use and disclosure of PHI to verify BUSINESS ASSOCIATE's compliance with this Agreement; provided that COVERED ENTITY or its agents conducting such audit shall agree to maintain the confidentiality of BUSINESS ASSOCIATE's commercial, confidential, and proprietary information, and shall not interfere unreasonably with BUSINESS ASSOCIATE's business activities. COVERED ENTITY hereby agrees that such an audit will be conducted no more than once per calendar year, unless COVERED ENTITY has received a written request from the Secretary of Health Human Services for a more frequent audit, or unless a previous audit has disclosed a material breach of this Agreement. COVERED ENTITY and its agents shall use information received during an audit solely for the purposes of this Agreement and will otherwise maintain the confidentiality of any information provided by BUSINESS ASSOCIATE.

## 7.0 ELECTRONIC DATA SECURITY

7.1. BUSINESS ASSOCIATE shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any electronic PHI that it creates, receives, maintains or transmits to or on behalf of COVERED ENTITY as required by the HIPAA Security Regulations. BUSINESS ASSOCIATE further agrees to ensure that any agent, including a subcontractor, to whom it provides such information, agrees to implement reasonable and appropriate safeguards to protect it. BUSINESS ASSOCIATE agrees to promptly report to COVERED ENTITY any material security incident of which it becomes aware.

## 8.0 ADDITIONAL HIPAA PROVISIONS

81. A reference in this Agreement to a section in any law or regulation means the section as in effect or as amended.
82. 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 Rule, the Security Rule, HIPAA, and related regulations.
83. The respective rights and obligations of Business Associate under Section (9) Term and Termination (c)(2) below shall survive the termination of this Agreement.
84. Any ambiguity in this Agreement shall be resolved to permit compliance with the HIPAA Rules.
85. Business Associate can use PHI as needed for proper management and administrative purposes, individually or in the aggregate.
86. In the event that Covered Entity makes a determination that notification to individuals is required under HIPAA, the decision of whether the COVERED ENTITY or BUSINESS ASSOCIATE will prepare and deliver such

notification to individuals on COVERED ENTITY's behalf shall be agreed upon between BUSINESS ASSOCIATE and COVERED ENTITY. Regardless of who prepares and delivers such notifications to individuals, such notifications shall be consistent with the notification content requirements and deadlines established in HIPAA. Each party shall cooperate fully with one another in the event of a breach of Unsecured PHI.

87. A breach is not an unintentional acquisition, access, or use of PHI by a person acting under the authority of COVERED ENTITY, BUSINESS ASSOCIATE, subcontractor or agent, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted by HIPAA.
88. Any inadvertent disclosure by a person who is authorized to access PHI at the COVERED ENTITY, BUSINESS ASSOCIATE, subcontractor or agent to another person authorized to access PHI at the same entity, and the information received is as a result of such disclosure is not further used or disclosed in a manner not permitted under HIPAA is not a breach.
89. A disclosure of PHI where the COVERED ENTITY, BUSINESS ASSOCIATE, subcontractor or agent has a good faith belief that an unauthorized person to whom the disclosure was made would not unreasonably have been able to retain such information is not a breach.

## 9.0 TERM AND TERMINATION

91. Term. This Agreement shall be effective as of the Effective Date and shall terminate when all of the PHI provided by COVERED ENTITY to BUSINESS ASSOCIATE, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, is destroyed or returned to COVERED ENTITY, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
92. Termination for Cause. Upon COVERED ENTITY'S knowledge of a material breach of this Agreement by BUSINESS ASSOCIATE, COVERED ENTITY shall either:
  - a) Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and terminate this Agreement if BUSINESS ASSOCIATE does not cure the breach or end the violation within the time specified by COVERED ENTITY; or
  - b) Immediately terminate this Agreement if BUSINESS ASSOCIATE has breached a material term of this Agreement and cure is not possible.

## 10.0 EFFECT OF TERMINATION

101. Upon termination of this Agreement, BUSINESS ASSOCIATE shall return or destroy all PHI received from COVERED ENTITY, or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY.
102. In the event that BUSINESS ASSOCIATE determines that returning or destroying the PHI is infeasible, BUSINESS ASSOCIATE shall provide to COVERED ENTITY written notification of the conditions that make return or destruction infeasible. Upon receipt of such notification, 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 ASSOCIATES maintains such PHI.

## 11.0 MISCELLANEOUS

- 11.1. Third Party Rights. The terms of this Agreement are not intended nor should they be construed to grant any rights to parties other than BUSINESS ASSOCIATE and COVERED ENTITY.
- 11.2. Applicable Law and Forum. This Agreement shall be interpreted and construed in accordance with the laws of the State of Michigan. Any action arising under or relating to this Agreement shall be brought in the federal or state courts located in Michigan. Each party hereto consents to the exclusive jurisdiction of the foregoing courts.
- 11.3. Waiver. No delay or omission on the part of either party in exercising any right hereunder shall operate as a waiver of such right or of any other right under this Agreement. A waiver on any one occasion shall not be construed as a bar to or waiver of any right or remedy on any further occasion. The election of either party of a particular remedy on default will not be exclusive of any other remedy, and all rights and remedies of the parties hereto will be cumulative.
- 11.4. Amendments. The term of this agreement may only be amended by mutual consent of the parties.
- 11.5. Limitation of Liability. Business Associate agrees to maintain in force a liability policy with the aggregate limit of One Million Dollars (\$1,000,000.00) for claims arising out of a breach of the HIPAA privacy rule ("Insurance") by Business Associate. Covered Entity agrees that it shall not make any claim for, nor be entitled to obtain from Business Associate damages, costs, or attorneys' fees of any kind or nature in excess of the limits of liability of the Insurance and Covered Entity may not pursue a claim in excess of the Insurance limits of liability against Business Associate, SUBCONTRACTORS, its agents, employees, officers, directors, attorneys, or assignees.
- 11.6. Notices. Any notices required or permitted under this Agreement shall be in writing and delivered in person or sent by registered or certified mail, return receipt requested, proper postage prepaid, properly addressed to the address of the addressee set forth above or to such other more recent address of the addressee of which the sending party has received written notice.
- 11.7. Severability. If one or more provisions of this Agreement shall be held unenforceable, invalid, or illegal in any respect, such unenforceability, invalidity, or illegality shall not affect any other provision of this Agreement, which shall be construed as if such unenforceable, invalid, or illegal provisions had never been a part of the Agreement.
- 11.8. Authority. Each party has full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.
- 11.9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be considered an original and all of which, when taken together, shall constitute one and the same instrument,



and facsimile and PDF signatures shall be given the same effect as original signatures.

This Agreement contains the entire agreement among all Parties in regard to the matters set forth herein. The terms of this Agreement are contractual and not a mere recital, and there are no agreements, understandings, or representations of any kind made by the Parties to this Agreement or their attorneys except as expressly stated herein.