

## SERVICES AGREEMENT

This Services Agreement (“Agreement”) by and between **SELF INSURED REPORTING, LLC**, a South Carolina limited liability company located at 18 Interchange Blvd, Suite A, Greenville, SC 29607, and \_\_\_\_\_, (“Client”) a \_\_\_\_\_ located at \_\_\_\_\_, is effective as of the date of Client’s electronic signature (“Effective Date”).

### BACKGROUND

Self Insured Reporting, LLC and/or its subcontractors (collectively, “Self Insured Reporting”) provide a service to prepare financial reporting and claim analytics of self insured employer sponsored health plans.

NOW, THEREFORE, in consideration of the mutual agreements set out below, the parties agree as follows:

1. Services. Subject to the obligations of Client under this Agreement, Self Insured Reporting shall provide to Client those services described on Addendum 1 (the “Services”) attached hereto and incorporated herein by reference.
2. Term. Unless sooner terminated as provided in this Agreement, this Agreement shall continue for an initial term of one (1) year, beginning on the Effective Date.

Except to the extent (if any) otherwise provided in this Agreement, this agreement will renew each subsequent year automatically (subject to the "Termination" sections below), on the same terms and conditions as in effect just before the then-current end of the term, unless written notice is provided to Self Insured Reporting no later than sixty (60) days before the then-current end of the term.

The cost of services and payment for the period of the extension is based upon the products and services selected by Client as well as the rates as in effect for the Services on the date of the extension of this Agreement. Client may not extend the term of this Agreement if at the time of its notice of extension it is in material breach of this Agreement.

3. Performance of Services. Self Insured Reporting will arrange to provide the Services to Client as specified in this Agreement.
  - 3.1 Self Insured Reporting warrants to Client, and to no other party (including individuals who receive reports created from the Services), that Self Insured Reporting will use commercially reasonable care in providing the Services under this Agreement. As Self Insured Reporting’s sole liability and Client’s sole and exclusive remedy under this Agreement for erroneous information reporting, Self Insured Reporting will correct the reporting at no additional charge to Client.

- 3.2 Client understands and acknowledges that Self Insured Reporting shall provide the Services based on information provided to Self Insured Reporting by Client or Client's service providers. Client is exclusively responsible for providing Self Insured Reporting with accurate and timely information required by Self Insured Reporting as described in Addendum 2. Client further understands that Self Insured Reporting will be entitled to rely fully on the accuracy and completeness of the information submitted by Client to Self Insured Reporting, and that Self Insured Reporting shall have no duty or responsibility to verify such information. Self Insured Reporting shall not be liable for any Damages (as defined in Section 8 of this Agreement) resulting from Client's failure to provide accurate and timely information required for Self Insured Reporting to provide the Services. Client is solely responsible for the accuracy and review of any reports created or resulting from the use of the data provided by Client.
- 3.3 Notwithstanding any other provision of this Agreement, Client understands and acknowledges (i) that Client shall retain all liability and responsibility under applicable federal and state law, and (ii) that Self Insured Reporting does not, by virtue of this Agreement, assume any responsibility or liability for any obligations which by law must remain with Client in its capacity as an agent, Broker, Producer, or plan sponsor.
- 3.4 Self Insured Reporting acknowledges and understands that it may have access to Protected Health Information (PHI) of individuals participating in Client's group health plan(s) during the course of this Agreement, as the term "protected health information" is defined under the Health Insurance Portability and Accountability Act and amendments thereto and regulations promulgated thereunder ("HIPAA"). If Client is subject to HIPAA and wish to use the Services with PHI, Client must sign a Business Associate Agreement (BAA) with Self Insured Reporting before using the Services with PHI. Client acknowledges its sole responsibility to request, review and accept the BAA from Self Insured Reporting.
4. Payment. For provision of the Services, Self Insured Reporting shall be compensated by Client based upon the products and services selected by Client as well as the rates as in effect for the Services on the date of execution of this Agreement. The parties agree that amounts paid or payable by Client to Self Insured Reporting for the Services represent fair market value for the Services and do not include additional services that may be added at a later date. The parties agree that amounts payable or payment schedule due by Client to Self Insured Reporting for Services are due upon execution of this Agreement.
5. Termination.
- 5.1 Either party may terminate this Agreement at any time, without cause, by providing not less than ninety (90) days' prior written notice stating the intended date of termination.
- 5.2 Either party may terminate this Agreement in the event the other party defaults in performance of any of its duties and obligations and the default is not cured within thirty (30) days after written notice is given to the defaulting party which specifies in reasonable detail the default in performance.
6. Additional Obligations of Client. As a condition precedent to the provision of the Services, Client shall perform those additional obligations listed in Addendum 2.

7. Indemnification.

- 7.1 Client shall indemnify, hold harmless and defend Self Insured Reporting, its officers, directors, shareholders and employees, from and against any and all liability, loss, damage, claim, causes of action, and expenses (including reasonable attorneys' fees)("Damages") whether or not covered by insurance, caused or asserted to have been caused by, or arising out of, directly or indirectly, or as a result of the performance by Client (and/or its agents, employees, officer and directors) under this Agreement or any information provided to Self Insured Reporting by Client or any agent, employee or contractor of Client.
- 7.2 Subject to the limitations set forth in Sections 3 and 8.1, Self Insured Reporting shall indemnify, hold harmless and defend Client, its officers, shareholders, directors and employees, from and against any and all Damages, whether or not covered by insurance, caused or asserted to have been caused, directly or indirectly, by or as a result of the performance of any gross negligence or intentional acts by Self Insured Reporting and/or its shareholders, agents, employees and/or subcontractors (other than Client) in the performance of its obligations under this Agreement.

8. Limitation of Liability.

- 8.1 Notwithstanding anything in this Agreement to the contrary and specifically separate Business Associate Agreement provisions for indemnification and hold harmless related to HIPAA, Client agrees that in no event will it seek to hold Self Insured Reporting liable for (i) any claims, for incidental, lost profits, consequential, or any similar damages or lost profits related to the Services provided by Self Insured Reporting under this Agreement or (ii) any claim, loss, damages, whether directly in contract, tort or otherwise, or through a claim for indemnity or contribution, in excess of the aggregate amount of any fees paid by Client to Self Insured Reporting for this engagement, even if Self Insured Reporting has been advised of the possibility of such claims, losses, or damages.

9. General.

- 9.1 Notices. Any notice required or desired to be given in respect to this Agreement shall be deemed to be given upon the earlier of (i) actual delivery to the intended recipient or its agent delivered by hand or by a nationally recognized overnight courier service, or (ii) upon the third business day following deposit in the United States mail, postage prepaid, certified or registered mail, return receipt requested. Any such notice shall be delivered to the respective addresses set out below, or to such other address as a party shall specify in the manner required by this Section 9.1. The respective addresses are:

If to Self Insured Reporting:

18 Interchange Blvd.; Suite A  
Attention: Jordan O. Smith  
Greenville, SC 29607

If to Client:

\_\_\_\_\_  
\_\_\_\_\_

Attention: \_\_\_\_\_

- 9.2 Alternate Dispute Resolution. The parties firmly desire to resolve all disputes arising hereunder without resort to litigation in order to protect their respective business reputations and the confidential nature of certain aspects of their relationship. Accordingly, the parties agree to first mediate, before filing a lawsuit, any controversy or claim arising out of or pertaining to this Agreement, or the breach thereof, which mediation shall be conducted in Greenville, South Carolina. The mediator shall be mutually agreed to by the parties and shall not have previously represented Self Insured Reporting, Client or any affiliate of either party in any capacity. No disclosure of the mediation process or the result thereof shall be made by the parties except as required by the law or as necessary or appropriate to enforce the terms of any binding agreement executed by the parties at the conclusion of such mediation.
- 9.3 No Third Party Beneficiaries. This Agreement is entered into for the sole benefit of Self Insured Reporting and Client. Nothing contained herein or in the parties course of the dealings shall be construed as conferring any third party beneficiary status on any person or entity not a party to this Agreement, including without limitation, any employee of Client.
- 9.4 Independent Contractors. The parties are independent contractors and neither party is an employee, agent, servant, representative, partner, or joint venturer of the other. Neither party has the right or ability to bind the other to any agreement with a third party, or to incur any obligation or liability on behalf of the other party, without the other party's written consent. Self Insured Reporting shall be solely responsible for all compensation, benefits, and taxes associated with its employees and their performance under this Agreement.
- 9.5 Amendments; Waivers. No waiver of any term or condition is valid unless in writing and signed by authorized representatives of both parties, and will be limited to the specific situation for which it is given. No amendment or modification to this Agreement shall be valid unless set forth in writing and signed by authorized representatives of both parties.
- 9.6 Governing Law. This agreement will be governed by and construed in accordance with the laws of the State of South Carolina.
- 9.7 Severance. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement is found to violate a law, it will be severed from the rest of the Agreement and ignored and a new provision deemed added to this Agreement to accomplish to the extent possible, the intent of the parties as evidenced by the provision so severed. The headings used in this Agreement have no legal effect.
- 9.8 Entire Agreement. This Agreement, and its attached Addenda, Exhibits, Attachments, and Schedules, as so designated, set forth the entire agreement and understanding of the parties relating to the subject matter contained herein, and merges all prior discussions and agreements, both oral and written, between the parties. Each party agrees that use of pre-printed forms, including, but not limited to email, purchase orders, acknowledgements or invoices, is for convenience only and all pre-printed terms and conditions stated thereon, except as specifically set forth in this Agreement, are void and of no effect.

- 9.9 Compliance with Laws. The parties expressly agree to abide by any and all applicable federal and/or state statutes, rules and regulations applicable to the parties in connection with this Agreement. In particular, without limitation, Client shall comply with all federal and state laws and regulations governing Client's relationship with its employees, its clients, and other participants in health insurance plans associated with the Services.
- 9.10 Non-Solicitation. Each party agrees not to solicit the employment of or hire any employee of the other until the expiration of a period of twenty-four (24) months after such employee of the other party shall have been last employed or retained by the other party.
- 9.11 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument. Such executions may be transmitted to the parties by electronic transmission and such digital execution shall have the full force and effect of an original signature.
- 9.12 Confidentiality. During the term of this Agreement and at all times thereafter, each party agrees that it shall not cause or permit (i) any employee, officer, director, manager, owner, other affiliates or agent of such party to, (ii) any officer, director, manager, shareholder, owner, employee or other affiliate or agent of any entity in which such Party owns an interest to, or (iii) any professional advisors of such Party to (such persons in (i), (ii) and (iii) collectively, referred to as the "Representatives" of a party) disclose, publish, or otherwise disseminate, the terms of this Agreement or any of the confidential information of the other party to any third parties. Client agrees that Self Insured Reporting may collect and use technical data, deidentified data, and related information—including but not limited to technical information about your usage, system and application software, and peripherals—that is gathered periodically to facilitate the provision of software updates, product support, and other services (if any) related to the development of its business products. Self Insured Reporting may use this information, as long as it is in a form that does not personally identify Client, to improve its products or to provide services or technologies. Any products or services developed using the aforementioned data are the exclusive property of Self Insured Reporting, and Client shall have no right, title, or interest in and to future products.
- 9.13 Proprietary Rights. This Agreement, proprietary software, and all other materials used by Self Insured Reporting in the performance of Services or provided to Client in connection with the Services (collectively, the "Materials") are confidential and proprietary to Self Insured Reporting and Self Insured Reporting reserves all right, title, and interest in and to the Materials. All information set forth in the Materials is confidential and proprietary to Self Insured Reporting and may not be disclosed in any manner by Client or its officers, directors, employees, agents, or contractors to any person or entity. Any disclosure, use, reproduction, or transmission of the Materials is expressly prohibited without the prior written consent of Self Insured Reporting which may be withheld in Self Insured Reporting's sole discretion.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the day and year first written herein. The electronic signature of Client will create a digital record which shall serve as the date signed by both parties.

**SELF INSURED REPORTING, LLC:**

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

Its (*Title*): \_\_\_\_\_

Signature: \_\_\_\_\_

**AUTHORIZED SIGNOR OF CLIENT:**

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

Its (*Title*): \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

## **ADDENDUM 1: GENERAL DESCRIPTION OF SERVICES**

Self Insured Reporting will provide the Services listed in this Addendum 1. As a condition to Self Insured Reporting performing the Services, Client shall perform the obligations listed in Addendum 2.

1. Client will have access through an online electronic interface to Self Insured Reporting's proprietary software designed to collect the necessary information produce financial reporting and claim analytics of employer self insured plan's financial status.
2. Client's employer group historical data will be loaded initially by the Self Insured Reporting team in full, based upon the information provided by Client. Data will be loaded within 30 days of Self Insured Reporting being provided full and accurate details for processing.
3. Client designated contacts will be trained by Self Insured Reporting account managers on the system.
4. Client will be allowed two of their team members to become designated contacts. Client designated contacts will be trained on the system and allowed to have ongoing contact with Self Insured Reporting account managers under our base agreement.
5. For any Client with more than 25 employer clients on the system, they will be allowed to add one additional account manager point of contact every additional 25 clients on the system.
6. For Clients with multiple offices, each office must be contracted with separately.
7. Client designated contacts will have access to customer support via phone and email support according to the service package purchased and as described at the time of purchase.
8. Upon notification and request from Client, Self Insured Reporting will enter into a Business Associate Agreement with Client.
9. Self Insured Reporting support Client in their entering of employer information, claims information, plan information, enrollment and payroll data submitted in accordance with Addendum 2, and will support Client's generation of reports in the software.

## **ADDENDUM 2: ADDITIONAL OBLIGATIONS OF CLIENT**

As a condition precedent to Self Insured Reporting providing the Services under this Agreement, Client will be responsible for performing the additional obligations set forth in this Addendum 2:

1. Client will access Self Insured Reporting's proprietary online software and provide the necessary information to Self Insured Reporting account management team in order for reports to be generated.
2. Client will enter into a Business Associate Agreement with Self Insured Reporting in the form provided by Self Insured Reporting.
3. Client understands that responsibility for the accuracy of information remains with the Client. Client agrees to review all information provided by Self Insured Reporting and work with its representatives to provide corrected information if necessary.
4. Obligations of Client Related to Additional Services
  - 4.1. Client must make its representatives reasonably available to their assigned account manager in order for the account manager to successfully administer the services purchased. This includes providing an additional point of contact in case Self Insured Reporting is unable to reach the primary point of contact.
  - 4.2. If Client purchases custom reporting to be developed on their behalf, Client must pay Self Insured Reporting any additional fees associated with this development. Additional fees will be agreed upon prior to custom development beginning, and Client will be invoices prior to development beginning.



### ADDENDUM 3: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, by and between Self Insured Reporting, LLC (“Business Associate”) and \_\_\_\_\_ on behalf of its group health plan(s) (“Covered Entity”).

**WHEREAS**, Title II of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) requires that Covered Entity and Business Associate enter into an Agreement complying with certain requirements of HIPAA, as described at 45 CFR § 164.504; and

**WHEREAS**, Covered Entity and Business Associate desire to ensure complete compliance with HIPAA as described in this Business Associate Agreement.

**NOW THEREFORE**, Covered Entity and Business Associate enter into the following Business Associate Agreement.

#### 1. DEFINITIONS

a. Specific definitions.

- i. Data Aggregation. With respect to PHI created or received by Business Associate in its capacity as a Business Associate of Covered Entity, the term “Data Aggregation” means the combining of such PHI by Business Associate with PHI received by Business Associate in its capacity as business associate of another entity to permit data analyses that relate to the health care operations of the respective entities.
- ii. Designated Record Set. The term “Designated Record Set” means a group of records maintained by or for the Covered Entity that is:
  - (1) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
  - (2) Used by or for the Covered Entity to make decisions about Individuals.

For purposes of this paragraph, the term “record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disclosed by or for the Covered Entity.
- iii. Individual. The term “Individual” shall have the same meaning as the term “individual” in 45 CFR §160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

- iv. Privacy Rule. The term “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E, as from time to time amended.
- v. Protected Health Information. The term “Protected Health Information” (“PHI”) shall mean individually identifiable health information maintained and transmitted in any form or medium, including, without limitation, all information (including demographic, medical, and financial information), data, documentation, and materials which are created or received by a health care provider, school, health plan, employer, or health care clearinghouse, and relate to: (A) the past, present, or future physical or mental health or condition of an Individual; (B) the provision of health care to an Individual; or (C) the past, present, or future payment for the provision of health care to an Individual, and that identifies or could reasonably be used to identify an Individual. PHI does not include: (1) health information that has been de-identified in accordance with the standards for de-identification contained in the Privacy Rule, or (2) employment records.
- vi. Required By Law. The term “Required By Law” shall have the same meaning as “required by law” in 45 CFR §164.103.
- vii. Secretary. The term “Secretary” shall mean the Secretary of the Department of Health and Human Services (“HHS”) or his or her designee.

## **2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE**

- a. Business Associate acknowledges that in providing services to Covered Entity, it will create, receive, use or disclose PHI.
- b. Business Associate agrees that it will not use or disclose PHI except as permitted or required by this Agreement, or as Required By Law.
- c. Business Associate agrees that it will use appropriate safeguards to prevent use or disclosure of PHI other than as provided in this Agreement.
- d. Business Associate agrees to mitigate, to the extent practicable, any harmful effects known to it which are caused by a use or disclosure of PHI by it or by one of its agents or subcontractors in violation of the requirements of this Agreement.
- e. Business Associate agrees that it will report to Covered Entity any use or disclosure of PHI not allowed by this Agreement if it becomes aware of the use or disclosure.
- f. Business Associate agrees that it will ensure that any agent or subcontractor to whom it provides PHI pertaining to Covered Entity agrees in writing to the same restrictions and conditions that this Agreement imposes on Business Associate.

- g. Business Associate agrees to provide an appropriate Individual with access to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.524.
- h. Business Associate agrees to allow an appropriate Individual to make amendment(s) to PHI in a Designated Record Set in the manner required of Covered Entity pursuant to the requirements of 45 CFR §164.526.
- i. Business Associate agrees to make its internal practices, books, and records (including PHI pertaining to Covered Entity) available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule.
- j. Business Associate agrees to document disclosures of PHI and information related to these disclosures so it or Covered Entity may respond to requests by Individuals for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.
- k. Business Associate agrees to provide PHI in the possession or control of Business Associate to appropriate Individuals in order to respond to requests for an accounting of disclosures of PHI pursuant to the requirements of 45 CFR §164.528.
- l. Business Associate's responses to requests for action with respect to PHI described in this Section II shall be completed in a manner which complies with the timeliness requirements contained in the Privacy Rules.
- m. Business Associate agrees to notify Covered Entity if there is a breach of unsecured PHI pursuant to the requirements of 45 CFR §§164.410.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- a. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI pertaining to Covered Entity for the purposes set forth in the parties' service agreement, if the use or disclosure would not violate the Privacy Rule.
- b. Specific Use and Disclosure Provisions:
  - i. Except as otherwise limited in this Agreement, Business Associate may use PHI for its own proper management and administration or to carry out its legal responsibilities, provided the disclosures are Required By Law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

- ii. 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).
- iii. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

#### 4. OBLIGATIONS OF THE COVERED ENTITY

- a. To Inform Business Associate. Covered Entity will inform Business Associate of its privacy practices and any agreed restrictions on PHI as follows:
  - i. Covered Entity shall advise Business Associate of any limitations in the notice of privacy practices that Covered Entity produces in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
  - ii. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes affect Business Associate's use or disclosure of PHI.
  - iii. Covered Entity shall notify Business Associate of any restrictions on use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect Business Associate's use or disclosure of PHI.
- b. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would violate the Privacy Rule if done by Covered Entity, except that Business Associate may in its discretion use or disclose PHI for Data Aggregation and/or management and administrative activities of Business Associate.

#### 5. COMPLIANCE WITH HIPAA SECURITY REGULATIONS

- a. Business Associate shall:
  - i. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI it creates, receives, maintains or transmits on behalf of Covered Entity as required to comply with HIPAA Security Regulations at 45 CFR Parts 160, 162 and 164.
  - ii. Ensure that any agents, including but not limited to contractors and subcontractors, to which Business Associate provides PHI pertaining to Covered Entity, agree in writing to implement reasonable and appropriate safeguards to protect it.

- iii. Have a system in place to report to Covered Entity any security incident of which Business Associate becomes aware. “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. STANDARDS FOR ELECTRONIC TRANSACTIONS

- a. In connection with Standard Transactions, as defined in HIPAA, Business Associate will:
  - i. Comply with all applicable provisions of the HIPAA Standard for Electronic Transactions Rule on or before the compliance date (the “Transactions Compliance Deadline”) when exchanging information in covered electronic transactions. Business Associate will comply with any future required transactions or code set standards adopted by HHS on or before the required compliance date.

“Standards for Electronic Transactions Rule” means the final regulations issued by HHS concerning Standard Transactions and Code Sets under HIPAA Rules, 45 CFR Parts 160 and 162, as may thereafter be amended.  
“Transactions” means the types of information exchange between two parties to carry out financial or administrative activities related to health care as defined in the Standards for Electronic Transactions Rule.
  - ii. Ensure that any agents, including but not limited to contractors and subcontractors, that assist Business Associate in conducting Standard Transactions on behalf of Covered Entity, agree in writing to comply with the Standards for Electronic Transactions Rule.
  - iii. Not change the definition, data condition, or use of any data element or segment.
  - iv. Not add any data elements or segments to the maximum defined data set in a Standard Transaction.
  - v. Not use any code or data elements that are either marked “not used” in the standard’s implementation specification or are not in the standard’s implementation specification(s).
  - vi. Not change the meaning or intent of the standard’s implementation specification(s).

## 7. TERM AND TERMINATION

- a. Term. This Agreement shall be effective as of the date stated above and shall terminate when all PHI pertaining to Covered Entity which Business Associate maintains is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy

PHI, protections are extended to such information in accordance with the Termination provisions in this Section.

- b. Termination for Cause. If Covered Entity or Business Associate learns of a material breach by the other party, it shall: (1) provide a reasonable opportunity for the party to cure the breach or end the violation, or if the party does not cure the breach or end the violation within the time specified by the non-breaching party; (2) immediately terminate this Agreement and any underlying service agreement upon written notice to the breaching party that it has breached a material term of this Agreement and there is no cure.
- c. Effect of Termination:
  - i. Except as provided in paragraph (c)(ii) of this Section VII, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI relating to Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of this PHI.
  - ii. In the event that Business Associate reasonably determines that returning or destroying the PHI is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Business Associate's reasonable determination that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of PHI to those purposes that make the return or destruction not feasible, for as long as Business Associate maintains the PHI.

## 8. MISCELLANEOUS

- a. Regulatory References. Reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- b. Amendment. The Parties agree to take such action as may be necessary to amend this Agreement from time to time for Covered Entity or Business Associate to comply with the requirements of the Privacy Rule and other requirements of HIPAA.
- c. Survival. The respective rights and obligations of Business Associate under Sections VII(c)(i) and (ii) of this Agreement shall survive termination of this Agreement.
- d. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity or Business Associate to comply with the Privacy Rule and other requirements of HIPAA. This Agreement shall be interpreted without regard to the rule that a document is to be construed against the party which drafts it.
- e. Complete Integration. This Agreement Forms - the entire agreement between the parties relating to the subject matter hereof, and supersedes all prior negotiations, discussions, representations, or proposals, whether oral or written, unless expressly

incorporated herein. Further, this Agreement may not be modified except in a writing signed by the duly authorized representatives of both parties. If any provision or part of this Agreement is found to be invalid, the remaining provisions shall remain in full force and effect.

- f. Successors and Assigns. This Agreement will inure to the benefit of and be binding upon the successors and assigns of Covered Entity and Business Associate. However, this Agreement is not assignable by either party without the prior written consent of the other party, except that Business Associate may assign or transfer this Agreement to any entity owned or under common control with Business Associate. Written consent will not be unreasonably withheld.
- g. Not a Fiduciary, Plan Administrator or Agent. Business Associate shall not be considered a fiduciary, plan administrator or agent of any of Covered Entity's employee benefit plans.
- h. No Third Party Beneficiaries. This Agreement is entered into for the benefit of Covered Entity and Business Associate. There are no third party beneficiaries to this Agreement. Business Associate's obligations are to Covered Entity only.
- i. Confidentiality. Except as otherwise provided in the Privacy Rule or this Agreement, neither party will disclose the terms of this Agreement to any third party without the other party's written consent.
- j. Counterparts. This Agreement may be executed in two or more counterparts, each of which may be deemed an original.
- k. Indemnification and Hold Harmless. If the Business Associate is found to be a federal common law agent of the Covered Entity, the Business Associate agrees to indemnify Covered Entity and hold it harmless from any and all liabilities or damages, including penalties, costs or attorneys' fees, resulting directly or indirectly from Business Associate's breach of the terms of this Agreement, or resulting directly or indirectly from any breach of the HIPAA Rules by one of Business Associate's employees, agents or contractors. Covered Entity agrees to indemnify Business Associate and hold it harmless from any and all liabilities or damages, including penalties, costs or attorneys' fees, resulting directly or indirectly from Covered Entity's breach of the terms of this Agreement, or resulting directly or indirectly from any breach of the HIPAA Rules by one of Covered Entity's employees, agents or contractors. In no event shall Business Associate be held liable for a violation or breach of the HIPAA Rules resulting directly or indirectly from Covered Entity's disclosure of login or access information to its account on Business Associate's system to unauthorized individuals or entities.

## 9. ACKNOWLEDGEMENT AND SIGNATURES

THE PARTIES ACKNOWLEDGE THAT THEY HAVE READ THIS AGREEMENT, UNDERSTAND IT, AND AGREE TO BE BOUND BY ITS TERMS. THE ELECTRONIC SIGNATURE OF COVERED ENTITY WILL CREATE A DIGITAL RECORD WHICH SHALL SERVE AS THE DATE SIGNED BY BOTH PARTIES.

### BUSINESS ASSOCIATE

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

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

Signature: \_\_\_\_\_

### COVERED ENTITY

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

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

Signature: \_\_\_\_\_

Date: \_\_\_\_\_