
Subscription Agreement to the Surescripts Network for Clinical Interoperability

THIS **Subscription Agreement to the Surescripts Network for Clinical Interoperability** (this "**Agreement**") is entered into and is effective as of the date signed below (the "**Effective Date**") between KRYPTIQ CORPORATION ("**Kryptiq**"), an Oregon corporation, located at 1920 NW Amberglen Parkway, Suite 100, Beaverton, Oregon 97006, and _____ ("**Subscriber**").

Insert organizational name here

RECITALS

A. Surescripts, LLC ("Surescripts") operates the Surescripts Network for Clinical Interoperability ("CI Network") to allow patient information to be exchanged among healthcare providers, payers, and pharmacies.

B. Kryptiq has developed and continues to enhance Secure Messaging for Centricity EMR and CPS ("Secure Messaging"), a software product licensed by Subscriber.

C. Surescripts has agreed that Kryptiq may offer access to the CI Network to Secure Messaging users per the terms of this Agreement.

D. Subscriber wishes to subscribe to the CI Network per the Terms of this Agreement.

I. DEFINITIONS

- a. "Applicable Law" means any and all applicable federal, state, local, common law, rules, regulations, directives, and guidelines, including but not limited to the Health Insurance Portability and Accountability Act ("HIPAA") and related regulations; the Health Information Technology for Economic and Clinical Health Act ("HITECH") and related regulations; the Anti-Kickback provisions of the Social Security Act and related regulations; the federal Physician Self-Referral Prohibition provisions of the Social Security Act and related regulations; and state and federal laws and regulations regarding breach notifications.
- b. "Participants" means all health care providers, and facilities, technology vendors, and other entities and individuals that have entered into written agreements, either directly or indirectly, in order to access, provide access to, or communicate through the Surescripts Network for Clinical Interoperability.
- c. "Proprietary Information" means information, materials, processes, ideas, and techniques (whether or not reduced to writing) (i) which are not generally known in the relevant industry or trade; (ii) which afford possessors of the information a commercial advantage over others who do not have such information; (iii) which are considered trade secrets under Applicable Law; and/or (iv) which, if utilized or disclosed by a Party receiving such information, would place the Party disclosing such information at a competitive or

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- business disadvantage. (Proprietary Information includes, by way of illustration, but without limitation, any and all information relating to: services provided by each Party; processes therefore; employee and customer information; accounting data; statistical data; development and marketing plans; strategies; forecasts; any and all information and documentation deemed confidential or a trade secret under any federal, state, or local statute or regulation; and the like, whether or not tangibly embodied in a document, model, specimen, computer storage device, or other physical object.) Any documentation provided by Surescripts and/or Kryptiq under this Agreement is Proprietary Information to Surescripts and/or Kryptiq and may not be copied or used in any way other than as specifically authorized in this Agreement.
- d. “Private Information” means: (i) Protected Health Information (“PHI”), as defined under HIPAA and related regulations, created or received on behalf of, or received from Surescripts; (ii) Nonpublic Personal Financial Information and, as applicable, Nonpublic Personal Health Information, as defined by the Gramm-Leach-Bliley Act; or (iii) any data or information that: (1) relates to an individual, and (2) identifies or can reasonably be believed to form the basis for identifying an individual (such as, but not limited to, an individual’s name, postal address, e-mail address, telephone number, date of birth, Social Security number, driver’s license number, financial account number, or any other unique identifier).
 - e. “Provider End User” means a duly licensed physician, nurse practitioner or physician assistant, located in the United States or a United States territory.
 - f. “Surescripts Data” means any data or information relating to Surescripts, or its services or operations, provided to Subscriber by or on behalf of Surescripts, including statistics collected by Surescripts regarding transactions processed by the Surescripts Network for Clinical Interoperability, test data, test cases, configuration information, and problem description and resolution information.
 - g. “Surescripts Materials” means the materials that Surescripts provides to Kryptiq and Subscriber to enable participation in the Surescripts Network for Clinical Interoperability, as such materials may be further developed or modified by Surescripts from time to time.

II. ACCESS TO AND PARTICIPATION IN THE SURESCRIPTS NETWORK

- a. In General. Kryptiq will provide Subscriber with access to the CI Network for the sole purpose of transmitting and receiving information for the use and disclosure of clinical information (protected health information, or PHI), for the purposes of treatment, payment, and health care operations (including but not limited to care coordination, quality improvement, and payment for care).
- b. Message Transmission and Content.
 - 1. Message Transmission in General. Subscriber shall conduct identity proofing and authentication sufficient to meet regulatory requirements and industry standards to Kryptiq’s reasonable satisfaction to confirm that all Subscriber messages transmitted via the CI Network originate

from Provider End Users who are duly licensed and are registered with Kryptiq in accordance with the terms and conditions of this Agreement.

2. Commercial Messaging Rules. Subscriber shall comply with the following, referred to as the Surescripts Commercial Messaging Rules.

A. General Limitation. Subscriber shall not, in conjunction with the CI Network, use any means, program, or device, or permit any other person to use any means, program, or device, including, but not limited to, advertising, instant messaging, and pop-up ads, to solicit business or to influence or attempt to influence for commercial purposes (through economic incentives or otherwise) any diagnostic or treatment-related decision of a health care provider. The bona fide professional recommendation of a Provider End User offered to another Provider End User regarding the treatment or diagnosis of a shared patient is not intended to be prohibited by this provision; however, Surescripts shall have sole discretion to determine the bona fide non-commercial and clinical nature of all messages.

B. Exceptions to General Limitation. Notwithstanding the above Section I(b)(2)(A), Participants may (A) use the CI Network to communicate information regarding a patient's health care coverage, including patient lowest cost options, on/off tier, prior authorization, step therapy, coverage status, and co-pay information; and/or (B) deliver or have delivered to health care providers clinical alerts that are sourced from payers and/or are attributed to generally recognized and reputable sources providing clinical information, even if, in the event of either (A) or (B), such information influences the health care provider's treatment decisions.

C. Effect of Violation of the Commercial Messaging Rules. Any violation of this Section shall be deemed a material breach of this Agreement, and Kryptiq shall have a right of immediate termination.

c. Surescripts Directory. Subscriber shall identify an administrator or similar person to obtain any applicable training and to assume responsibility for the accuracy and integrity of Subscriber data provided to Kryptiq for Surescripts' directories. Subscriber agrees that all of their licensed Secure Messaging Provider End Users will be listed in the Surescripts directory (note: multiple or all Provider End Users can share a single address.) Subscriber acknowledges that Surescripts has unlimited rights to use all directory and related information that shall come to reside within the CI Network database, whether provided by Subscriber or otherwise.

d. Confidentiality. Subscriber shall keep confidential any Surescripts or Participant Proprietary Information.

e. Patient Consent. Subscriber shall transmit information through the CI Network in accordance with Applicable Law. Pursuant thereto, Subscriber

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- shall ensure that all patient consents and/or authorizations required by Applicable Law have been obtained.
- f. Maintaining PHI within United States of America. Subscriber represents and warrants and covenants that it has not in the past, does not currently, and covenants that it will not in the future, physically or electronically send or store PHI or any other individually identifiable information outside of the United States of America.
 - g. Surescripts Materials. Subscriber shall comply with the Surescripts Materials.
 - h. Audit by Kryptiq. Subscriber shall allow Kryptiq and/or Surescripts to access, inspect, and audit records of Subscriber relating to the use of the CI Network, Surescripts Data, and data or information provided by Participants.
 - i. Surescripts as Third Party Beneficiary. Surescripts will be a third party beneficiary to this Agreement.

III. TERM AND TERMINATION

- a. This Agreement terminates on Subscribers' Secure Messaging software maintenance anniversary date in 2013. It is anticipated the Agreement will be renewed, but under market based terms at the time.
- b. Termination by Either Party.
 - 1. Upon Mutual Written Consent. The Parties hereto may agree at any time to terminate this Agreement upon mutual written consent.
 - 2. Upon Written Notification from Subscriber. The Subscriber may terminate this agreement at any time, within thirty (30) of written notification to Kryptiq.
 - 3. Upon Material Breach. This Agreement may be terminated by either Party in the event that the other Party materially breaches or fails to comply with its obligations or the terms and conditions applicable to such Party hereunder. In the event a non-breaching Party (the "Non-Breaching Party") wishes to terminate this Agreement for such material breach by the other Party (the "Breaching Party"), it must notify the Breaching Party in writing of such alleged breach and proposed termination and, if such breach is not cured within thirty (30) days of the date the written notice was received by the Breaching Party, this Agreement shall terminate on the thirtieth day. The Non-Breaching Party may withdraw such notice at any time before the end of the thirty (30) day period by giving written notice of such withdrawal received by the Breaching Party prior to the end of the thirty (30) day period.
- c. Termination by Kryptiq for Breach by Provider End Users. Kryptiq may terminate use of the CI Network (with no cure period) if: (i) a Subscriber Provider End User is not duly licensed or authorized under Applicable Law; or (ii) an act or omission of Subscriber Provider End User would constitute a material breach of this Agreement. Such termination shall be effective upon Kryptiq's delivery of written notice of such act or omission to Subscriber.

IV. PRIVACY AND SECURITY

- a. General. The Parties acknowledge that messages transmitted via the CI Network may contain PHI. Furthermore, some but not all Participants in the CI Network are either Covered Entities or Business Associates of Covered Entities, as those terms are defined in the HIPAA regulations. To support the privacy, confidentiality, and security of the messages transmitted via the CI Network, Subscriber agrees to comply with the HIPAA regulations
- b. Safeguarding Data. Subscriber shall have in place appropriate administrative, technical, and physical safeguards to protect the privacy of Private Information. Subscriber shall reasonably safeguard Private Information from any intentional or unintentional use or disclosure that is in violation of HIPAA regulations, and limit incidental uses or disclosures made pursuant to otherwise permitted or required disclosures.
- c. Breach Notification. Both Kryptiq and Subscriber agrees to provide notice without unreasonable delay, but no later than ten (10) business days after determining that a Breach (as defined below) of data transmitted pursuant to this Agreement has occurred. The notification shall include, to the extent possible, sufficient information for the other Party to understand the nature of the Breach such as descriptions of (i) The Breach, including the date of the Breach and the date of discovery of the Breach, if known; (ii) a general description of the type of message content involved, if applicable; (iii) the roles of the people involved in the Breach; (iv) the individuals or records which are or reasonably could be impacted by the Breach; (v) any steps the individuals whose PHI was breached should take to protect themselves from potential harm resulting from the Breach; (vi) actions taken by the Party to investigate and mitigate the Breach; (vii) current status of the Breach and corrective action being undertaken and plans to prevent similar breaches; and (viii) contact procedures for individuals whose PHI was breached to ask questions or learn additional information about the Breach, if applicable. The notifying Party shall supplement the information contained in the notification as it becomes available and shall cooperate with the other Party as necessary. This Section is in addition to the Parties' obligations and limitations under relevant security incident, breach notification, or confidentiality provisions of Applicable Law. For purposes of this Section, the term "Breach" has the same meaning as defined in 45 C.F.R. § 164.402 and, therefore, is limited to a breach of "Unsecured PHI." Unsecured PHI is protected health information that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through use of technology or methodology specified by the Secretary of the U.S. Department of Health and Human Service.

V. WARRANTIES/COVENANTS

- a. The CI Network is provided "as is" and without warranties, except that Kryptiq represents and warrants that (i) the CI Network will perform substantially as described in its written documentation and (ii) the CI Network does not, and

will not, infringe or misappropriate any patent, copyright, trade secret, Proprietary Information or other intellectual property right of any third party. ALL OTHER WARRANTIES AND REPRESENTATIONS OF ANY KIND WITH REGARD TO THE CI NETWORK ARE HEREBY DISCLAIMED, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. Kryptiq does not warrant that the CI Network will meet Subscriber's requirements or that it will operate without interruption or be error free.

VI. DISCLAIMERS AND CERTAIN ASSOCIATED RESPONSIBILITIES

- a. In General. All disclaimers set forth throughout this Agreement shall survive termination or expiration of this Agreement.
- b. Availability of Participants. Surescripts and Kryptiq make no representation or warranty regarding the availability through the CI Network of any particular Participant in the CI Network. At any time, Participants in the CI Network may be added to or deleted from the CI Network, and such changes may occur without prior notice to Kryptiq.
- c. Limitations of the CI Network. Because it is possible that there may be errors in information transmitted through the CI Network, it is the responsibility of any treating physician or other health care provider or facility (not the responsibility of Surescripts or Kryptiq) to verify all transmitted information through other means with each patient and/or the patient's representatives before such information is relied upon or utilized in diagnosing or treating the patient. Neither Surescripts nor any Participant provides any representations or warranties with respect to the accuracy or completeness of the transmitted information, and Subscriber releases and holds harmless any person or entity providing information through the CI Network from any liability, cause of action, or claim related to the completeness or lack thereof of the information.
- d. No Substitution for Written Documentation. The CI Network is not intended to serve as a replacement for appropriate written documentation. Use of the CI Network is not a substitute for a health care provider's standard practice or professional judgment. Any decision with regard to the appropriateness of treatment, or the validity or reliability of information, is the sole responsibility of a patient's health care provider.

VII. INDEMNIFICATION

- a. Indemnification by Subscriber. Except to the extent arising from the negligence or willful misconduct of Kryptiq, and subject to the limitations set forth below, Subscriber shall indemnify and save harmless Kryptiq from and against any and all loss, damage, or expense (or claims of damage or liability) asserted against Kryptiq by third parties and arising directly out of any breach of this Agreement by Subscriber or any loss of connectivity to the CI Network.
- b. Indemnification by Kryptiq. Except to the extent arising from the negligence or willful misconduct of Subscriber, Kryptiq shall indemnify and save harmless

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- Subscriber from and against any and all loss, damage or expense (or claims of damage or liability) asserted against Subscriber by third parties and arising out of any breach of this Agreement by Kryptiq.
- c. Limitation of Liability. Except as otherwise provided in this Agreement, all remedies provided for in this Agreement shall be cumulative and in addition to and not in lieu of any other remedies available at law or in equity. NEITHER PARTY SHALL, IN ANY EVENT, BE LIABLE TO THE OTHER PARTY OR TO ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL, EXEMPLARY, OR SIMILAR DAMAGES, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH LOSS OR DAMAGE. Each Party shall use all reasonable efforts to mitigate damages for which the other Party is responsible. The provisions of this Section shall survive any termination or expiration of this Agreement.
 - d. Force Majeure. Neither Party shall be liable or deemed in default for failure to fulfill any obligation under this Agreement due to causes beyond its reasonable control ("Force Majeure"). Such causes or conditions shall include, but shall not be limited to, acts of God or of the public enemy, acts of the Government in either its sovereign or contractual capacity, fires, floods, epidemics, quarantine restrictions, strikes, shortages of labor or materials, freight embargoes, unusually severe weather, electrical power failures, telecommunication or internet backbone outages, failure of an internet access provider or other similar causes beyond the Parties' control, and neither Party shall be liable for losses, expenses or damages, ordinary, special or consequential, resulting directly or indirectly from such causes.
 - e. Subcontractor. If Kryptiq's failure to fulfill any of its obligations under this Agreement is caused by the default of a subcontractor, and if such default arises out of causes that would constitute a Force Majeure under the definition above, Surescripts shall not be liable unless the supplies or services to be furnished by the subcontractor were obtainable from other sources in sufficient time to permit Surescripts to fulfill its obligations hereunder.

VIII. **GENERAL PROVISIONS**

- a. Compliance with Applicable Law. Each Party shall perform its obligations under this Agreement in a manner that complies with Applicable Law. The Parties shall take such action as is necessary to amend this Agreement from time to time in order for each Party to comply with the requirements of Applicable Law.
- b. Notices. Except as otherwise provided in this Agreement, notices required to be given pursuant to this Agreement shall be addressed to the appropriate Party as provided below and shall be effective: (i) on the date of delivery if given in writing and hand delivered; (ii) on the date received, if sent by overnight courier with written proof of receipt, or by First Class United States Mail with postage prepaid and return receipt received; (iii) on the date confirmation is received if sent via facsimile with printed confirmation from the receiving Party; or (iv) the date sent by electronic mail (if an email address is provided below) so long as the sending Party does not receive a message in return that the electronic message is

provides the non-assigning party with advance written notice of the assignment, and (2) remains liable for all of its obligations under the Agreement. This Agreement may not be modified or amended except by an agreement in writing signed by both of the Parties hereto. Each Party represents that the individual signing below on behalf of the Party has the authorization to bind the Party indicated to this Agreement.

- g. Headings. The heading of any Section or subsection contained in this Agreement is for convenience only and shall not be deemed a part of this Agreement or a representation as to the contents of the same.
- h. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which taken together shall constitute one and the same instrument.

THE TERMS AND CONDITIONS CONTAINED IN THIS AGREEMENT INCLUDING ANY EXHIBITS, ATTACHMENTS, OR SCHEDULES HERETO ARE PART OF THIS AGREEMENT AND INCORPORATED HEREIN BY REFERENCE. BY SIGNING THIS AGREEMENT, SUBSCRIBER ACKNOWLEDGES HAVING READ AND UNDERSTOOD THIS AGREEMENT, INCLUDING ALL TERMS AND CONDITIONS. SUBSCRIBER AND KRYPTIQ ACKNOWLEDGE AND AGREE TO BE BOUND BY THE TERMS HEREOF.

SUBSCRIBER

By: _____

Name: _____

Title: _____

Date: _____

KRYPTIQ CORPORATION

By: _____

Name: Kurt Koehler

Title: Chief Financial Officer

Date: _____

EXHIBIT A: HIPAA BUSINESS ASSOCIATE AGREEMENT
BETWEEN KRYPTIQ AND SUBSCRIBER

THIS HIPAA BUSINESS ASSOCIATE AGREEMENT (the “BAA Agreement”) is entered into as of the Effective Date of the Subscription Agreement to the Surescripts Network for Clinical Interoperability (the “Agreement”) between Kryptiq and Subscriber to which this BAA Agreement is Exhibit A. This BAA Agreement is entered into between the Subscriber (“Covered Entity”) and Kryptiq Corporation (“Business Associate”).

WITNESSETH

WHEREAS, Congress enacted the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), which protects the confidentiality of health information;

WHEREAS, pursuant to HIPAA, the United States Department of Health and Human Services (“HHS”) promulgated Privacy Standards and Security Standards, each as defined below, governing confidential health information;

WHEREAS, Business Associate performs services through its provision of the CI Network on behalf of Covered Entity;

WHEREAS, Business Associate’s provision of the CI Network requires Covered Entity to provide Business Associate with access to confidential health information; and

WHEREAS, in order to comply with the business associate requirements of HIPAA and its implementing regulations, Business Associate and Covered Entity must enter into an agreement that governs the uses and disclosures of such confidential health information by the Business Associate.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises and covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. Definitions. For purposes of this BAA Agreement, the following words shall have the following meanings.

“**Breach**” when capitalized, “Breach” shall have the meaning set forth in 45 C.F.R. § 164.402 (including all of its subsections); with respect to all other uses of the word “breach” in this BAA Agreement, the word shall have its ordinary contract meaning.

“**Electronic Media**” shall have the meaning set forth in 45 C.F.R. §160.103, which is defined as electronic storage media (including memory devices in computers, hard drives, any removable or transportable digital memory medium, such as magnetic tape or disk, optical disk or digital memory card) or transmission media used to exchange information already in electronic storage media (including the Internet, extranet (using Internet technology to link a business with information only accessible to collaborating parties), leased lines, dial-up lines, private networks, and those transmissions that are physically moved from one location to another

using magnetic tape, disk, or compact disk media). Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged does not exist in electronic form before the transmission.

“Electronic Protected Health Information” or “EPHI” shall mean Individually Identifiable Health Information that is (i) transmitted by Electronic Media or (ii) maintained in any medium constituting Electronic Media. For instance, EPHI includes information contained in a patient’s electronic medical records and billing records. “EPHI” shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g; (ii) records described in 20 U.S.C.§1232g(a)(4)(B)(iv); and (iii) employment records held by a Covered Entity in its role as employer.

“HITECH Act” shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, effective February 17, 2009.

“Individual” shall have the same meaning as set forth in 45 C.F.R. § 160.103, defined as the person who is the subject of PHI, and shall include a personal representative in accordance with 45 C.F.R. § 164.502(g).

“Individually Identifiable Health Information” shall mean information that is a subset of health information, including demographic information collected from an individual, and

(i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(ii) 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 (a) identifies the individual, or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“Privacy Standards” shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164, Subparts A, D, and E, as currently in effect.

“Protected Health Information” or “PHI” shall mean Individually Identifiable Health Information that is (i) transmitted by Electronic Media, (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. For instance, PHI includes information contained in a patient’s medical records and billing records. “Protected Health Information” shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g; (ii) records described in 20 U.S.C.§1232g(a)(4)(B)(iv); and (iii) employment records held by a Covered Entity in its role as employer.

“Required by Law” shall have the same meaning as the term “Required by law” in 45 C.F.R. § 164.103.

“Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or any office or person within the U.S. Department of Health and Human Services to which/whom the Secretary has delegated his or her authority to administer the Privacy Standards and the Security Standards, such as the Director of the Office for Civil Rights.

“Security Standards” shall mean Security Standards for the Protection of Electronic Protected Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and C.

“Subsequent Business Associate” shall mean any agent, including subcontractors, of Business Associate to whom Business Associate discloses Protected Health Information or Electronic Protected Health Information.

“Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

All references to “days” in this BAA Agreement shall mean calendar days. Capitalized terms used not defined herein shall have the meanings ascribed to them in the Privacy Standards or the Security Standards.

2. Business Associate Obligations. Business Associate acknowledges and agrees that it is considered a “business associate” as defined by HIPAA and by regulations promulgated there under. As a business associate of Covered Entity, Business Associate shall comply with the following terms of this BAA Agreement.

2.1 Permitted Uses and Disclosures. Business Associate agrees that it shall use and disclose Protected Health Information received from Covered Entity for the purposes of providing the CI Network services, as otherwise permitted under this BAA Agreement, or as Required by Law. Business Associate agrees to follow guidance issued by the Secretary regarding what constitutes “minimum necessary” with respect to the use or disclosure of PHI and EPHI. Until such time that such guidance is issued, Business Associate shall limit its use or disclosure of PHI and EPHI, to the extent practicable, to the limited data set (as defined in 45 C.F.R. § 164.514(e)(2)), or to the minimum necessary to accomplish the intended purpose of such use, disclosure or request, respectively.

2.2 Disclosures to Subsequent Business Associates. Business Associate shall not disclose any PHI to any Subsequent Business Associate, unless and until Business Associate and the Subsequent Business Associate have entered into an agreement containing the same terms and conditions as set forth in this BAA Agreement.

2.3 Reporting Violations of Law. Consistent with the requirements of 45 C.F.R. § 164.502(j)(1), Business Associate may disclose Protected Health Information to report violations of law to appropriate Federal and State authorities.

2.4 Appropriate Safeguards. Business Associate shall implement appropriate administrative, technical, and physical safeguards to prevent any use or disclosure of Protected Health Information not authorized by this BAA Agreement. Specifically, Business Associate agrees to comply with the requirements of 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 to the same extent such requirements apply to Covered Entity.

2.5 Reporting of Illegal, Unauthorized or Improper Uses or Disclosures and Remedial Actions. Business Associate shall report to Covered Entity any illegal, unauthorized, or improper use or disclosure of Protected Health Information, Security Incident or any Breach (collectively, “Known Misuse”) by it or a Subsequent Business Associate without unreasonable delay and within ten (10) business days of obtaining knowledge of such Known Misuse. Additionally, if the Known Misuse is a Breach of Unsecured Protected Health Information, Business Associate shall comply with the requirements of 45 C.F.R. § 164.410. Business Associate shall take, or, in the event that the acts or omissions of a Subsequent Business Associate gave rise to the Known Misuse, shall require a Subsequent Business Associate to take, commercially reasonable actions to mitigate the negative impact of any Known Misuse and adopt additional or improve existing safeguards to prevent recurrence.

2.6 Internal Practices, Books and Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, or their designees, for purposes of determining and facilitating Business Associate’s and Covered Entity’s compliance with the Privacy Standards and Security Standards.

2.7 Access to Protected Health Information.

2.7.1 Within ten (10) days of a request by Covered Entity, Business Associate shall provide Protected Health Information in its possession or in the possession of a Subsequent Business Associate to Covered Entity in order for Covered Entity to comply with its obligations under 45 C.F.R. § 164.524 to provide Individuals with access to their Protected Health Information.

2.7.2 Business Associate shall notify Covered Entity within five (5) days of receiving a request from an Individual to access Protected Health Information. Following receipt of such notice from Business Associate, Covered Entity shall handle such request from the Individual.

2.8 Amendments to Protected Health Information.

2.8.1 Within ten (10) days of a request by Covered Entity, Business Associate shall provide Protected Health Information in its possession or in the possession of a Subsequent Business Associate to Covered Entity in order for Covered Entity to comply with its obligations under 45 C.F.R. § 164.526 to provide Individuals the right to amend their Protected Health Information.

2.8.2 Business Associate shall notify Covered Entity within five (5) days of receiving a request from an Individual to amend Protected Health Information. Following receipt of such notice from Business Associate, Covered Entity shall handle such request from the Individual.

2.9 Accounting of Disclosures.

2.9.1 Within twenty (20) days of a request by Covered Entity, Business Associate shall provide Covered Entity with an accounting of all disclosures of Protected Health Information, other than disclosures excepted from the Privacy Standards accounting requirement under 45 C.F.R. § 164.528(a)(1)(i)-(ix), made by Business Associate or by a Subsequent Business Associate in the previous six (6) years (but in no event prior to April 14, 2003) in order for Covered Entity to comply with its obligations under 45 C.F.R. § 164.528 to provide Individuals with an accounting of disclosures of their Protected Health Information.

2.9.2 Such accounting shall include, with respect to each disclosure: the date of the disclosure; the name (and address, if known) of the entity or person receiving the Protected Health Information; a description of the Protected Health Information disclosed; a statement of the purpose of the disclosure; and any other information the Secretary may require under 45 C.F.R. § 164.528 (collectively, “Disclosure Information”).

2.9.3 Notwithstanding Section 2.11.2, for repetitive disclosures of Protected Health Information that Business Associate makes for a single purpose to the same person or entity, Business Associate may record: (a) the Disclosure Information for the first of these repetitive disclosures; (b) the frequency, periodicity or number of these repetitive disclosures made during the accounting period; and (c) the date of the last of these repetitive disclosures.

2.9.4 Business Associate shall notify Covered Entity within ten (10) days of receiving a request from an Individual for an accounting of disclosures of Protected Health Information. Following receipt of such notice from Business Associate, Covered Entity shall handle such request from the Individual.

2.9.5 In accordance with the HITECH Act, the parties acknowledge that the Secretary shall promulgate regulations regarding the right of Individuals to receive an accounting of disclosures made for treatment, payment and healthcare operations during the previous three (3) years if such disclosures are made through the use of an electronic health record. The parties agree to comply with such regulations promulgated by the Secretary as of the effective date of those regulations.

2.10 Subpoenas, Court Orders, and Governmental Requests. If Business Associate receives a court order, subpoena, or governmental request for documents or other information containing Protected Health Information, Business Associate will use reasonable efforts to notify

Covered Entity of the receipt of the request within ten (10) business days to provide Covered Entity an opportunity to respond. Business Associate may comply with such order, subpoena, or request as required by Law or permitted by law.

2.11 Remuneration in Exchange for PHI. Except as permitted by the HITECH Act or regulations promulgated by the Secretary in accordance with the HITECH Act, and as of the effective date of such regulations, Business Associate shall not directly or indirectly receive remuneration in exchange for PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.

3. Covered Entity Obligations.

3.1 Notice of Privacy Practices. Covered Entity shall notify Business Associate of limitation(s) in its notice of privacy practices; to the extent such limitation affects Business Associate's permitted Uses or Disclosures.

3.2 Individual Permission. Covered Entity shall notify Business Associate of changes in, revocation of, permission by an Individual to use or disclose PHI, to the extent such changes affect Business Associate's permitted Uses or Disclosures.

3.3 Restrictions. Covered Entity shall notify Business Associate of restriction(s) in the Use or Disclosure of PHI that Covered Entity has agreed to; to the extent such restriction affects Business Associate's permitted Uses or Disclosures.

3.4 Consents and Authorizations. Covered Entity represents and warrants that any and all consents, authorizations, or other permissions necessary under the Privacy Standards or other applicable law (including state law) to transmit information through the CI Network and/or under this BAA Agreement have been properly secured.

3.5 Marketing. Covered Entity represents and warrants that it has obtained any and all authorizations from Individual for any use or disclosure of PHI for marketing, unless the marketing communication is made without any form of remuneration (i) to describe medical services or products provided by either party; (ii) for treatment of the Individual; or (iii) for case management or care coordination for the Individual or to direct or recommend alternate treatments, therapies, providers or settings.

4. Term and Termination.

4.1 Term. The Term of this BAA Agreement shall commence on the Effective Date of the Agreement, and shall continue in effect for as long as Covered Entity subscribes to the CI Network per the Agreement.

4.2 Termination for Cause. In the event either party determines that the other has engaged in a pattern of activity or practice that constitutes a material breach of a term of this BAA Agreement and such violation continues for thirty (30) days after written notice of such

breach has been provided, the party claiming a breach shall have the right to terminate Covered Entity's participation in the CI Network or, if termination is not feasible, to report the breach to the Secretary.

4.3 Effect of Termination.

4.3.1 Return or Destruction of Protected Health Information; Disposition When Return or Destruction Not Feasible. Upon termination of this BAA Agreement, the parties hereby acknowledge that the return or destruction of PHI received by the Business Associate from Covered Entity is not feasible, and that, therefore, Business Associate may retain a copy of such Protected Health Information provided that: (i) the provisions of this BAA Agreement shall continue to apply to any such information retained following cancellation, termination, expiration, or other conclusion of Covered Entity's participation in the CI Network; and (ii) Business Associate shall limit Uses and Disclosures of such PHI to those purposes that make the return or destruction thereof not feasible, for as long as Business Associate maintains such PHI.

4.3.2 Reasonable Fees. All reasonable fees incurred to cause the return, destruction, or storage of Protected Health Information under this Section 4.3 shall be borne by the Covered Entity.

5. Miscellaneous.

5.1 Regulatory References. A reference in this BAA Agreement to a section in HIPAA, the HITECH Act, the Privacy Standards, or the Security Standards means the section as in effect or as amended at the time.

5.2 Survival. The respective rights and obligations of the parties under Section 4.3 of this BAA Agreement shall survive the termination of this BAA Agreement.

5.3 Interpretation. Any ambiguity in this BAA Agreement shall be resolved in favor of a meaning that permits the parties to comply with the Privacy Standards and Security Standards. Except to the extent specified by this BAA Agreement, all of the terms and conditions governing Covered Entity's participation in the CI Network shall be and remain in full force and effect. In the event of any inconsistency or conflict between this BAA Agreement and the terms and conditions governing Covered Entity's participation in the CI Network, the terms and provisions and conditions of this BAA Agreement shall govern and control.

5.4 Amendment. The parties shall work together through reasonable negotiations to amend this BAA Agreement as necessary to comply with any changes in law, including, but not limited to, the promulgation of amendments to the Privacy Standards or Security Standards required by the HITECH Act or any other future laws, applicable to or affecting the rights, duties, and obligations of the parties under this BAA Agreement or the terms and conditions governing Covered Entity's participation in the CI Network.

5.5 Independent Relationship. None of the provisions of this BAA Agreement 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 as independent contractors solely for the purposes of effecting the provisions of this BAA Agreement and the Agreement governing Covered Entity's participation in the CI Network.

5.6 Notices. All notices and notifications under this BAA Agreement shall be sent in writing by traceable carrier to the listed persons on behalf of Business Associate and Covered Entity at the addresses indicated in Section VIII.b of the Agreement, or such other address as a party may indicate by at least ten (10) days' prior written notice to the other party. Notices will be effective upon receipt.

5.7 Construction and Jurisdiction. This BAA Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Virginia (excepting any conflict of laws provisions which would serve to defeat application of Virginia law). Each of the parties hereto submits to the exclusive jurisdiction of the state and/or federal courts located within the Commonwealth of Virginia for any suit, hearing or other legal proceeding of every nature, kind and description whatsoever in the event of any dispute or controversy arising hereunder or relating hereto, or in the event any ruling, finding or other legal determination is required or desired hereunder.