

## BUSINESS ASSOCIATE AGREEMENT

\_\_\_\_\_ (the “Covered Entity”) and Mammography Reporting System, Inc. (“Business Associate”) desire to ensure that their respective rights and responsibilities reflect applicable federal statutory and regulatory requirements relating to the creation, receipt, maintenance and transmission of health information protected by the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d – 1320d-8 (“HIPAA”) and the regulations promulgated there under; and the Health Information Technology for Economic Clinical Health Act and regulations promulgated thereunder (“HITECH Act”). To that end, the parties have agreed to execute this Agreement as of the last signed date (the “Effective Date”).

### 1. Definitions.

(a) Capitalized terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in HIPAA’s Standards for the Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160, Subpart A and 164, Subpart E (the “Privacy Rule”), the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. Part 160, Subpart A and 164 Subpart C (the “Security Rule”), and the Notification in the Case of Breach of Unsecured Protected Health Information, as codified at 45 C.F.R. Part 164, Subpart D (the “Breach Notification Rule”) (collectively the “HIPAA Rules”).

(b) “Protected Health Information” or “PHI,” as used in this Agreement, means (subject to the definition provided at 45 C.F.R. § 160.103) Individually Identifiable Health Information that Business Associate receives from Covered Entity or that it creates or receives on behalf of Covered Entity. This Agreement is intended to comply with the requirements for business associate agreements under the HIPAA Rules and is to be construed to achieve compliance with those requirements.

2. Uses and Disclosures Permitted by HIPAA. Business Associate may use or disclose PHI for purposes of providing services to Covered Entity. Notwithstanding the foregoing, Business Associate may not use or further disclose the PHI in a manner that would violate the requirements of the HIPAA Privacy Rule if done by the Covered Entity, except that Business Associate may use and disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate consistent with the provisions of 45 C.F.R. §§ 164.504(e)(4)(i) and (ii). Business Associate may disclose PHI for such purposes only if:

(a) the disclosure is Required By Law, as that term is defined at 45 C.F.R. § 164.103; or

(b) 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Unless an exception applies, as set forth in Section 13405(d)(2) of the HITECH Act, 42 U.S.C. § 17935(d)(2), in no event may Business Associate directly or indirectly receive remuneration in exchange for any PHI of an individual unless the Covered Entity obtained from the individual a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that individual. This prohibition does not apply to remuneration Business Associate receives from the Covered Entity for activities that the Business Associate undertakes on behalf of and at the specific request of the Covered Entity pursuant to this Agreement.

Business Associate agrees to make uses and disclosures and request of PHI consistent with Covered Entity's minimum necessary policies and procedures, such policies and procedures to be provided to Business Associate by Covered Entity concurrent with the execution of the Agreement.

To the extent that Business Associate is to carry out any of Covered Entity's obligations under the Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

3. Uses and Disclosures Permitted By Agreement or By Law. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

4. Safeguards. With respect to Protected Health Information held by Business Associate, Business Associate will implement and maintain appropriate administrative, physical and technical safeguards sufficient to meet Covered Entity's responsibility to ensure the integrity and confidentiality of Protected Health Information and to protect against any reasonably anticipated threats or hazards to the security or integrity of the Protected Health Information and to prevent unauthorized use and/or disclosure of such Protected Health Information pursuant to 42 U.S.C. § 1320d-2(d)(2). With respect to Electronic Protected Health Information, as that term is defined at 45 C.F.R. § 160.103, that Business Associate receives, creates, transmits, or maintains on behalf of the Covered Entity, Business Associate will:

(a) Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by HIPAA;

(b) Ensure that any agent, including a subcontractor, to whom it provides such Protected Health Information agrees to implement reasonable and appropriate safeguards to protect it; and

(c) Report to Covered Entity any successful Security Incident (as defined at 45 C.F.R. § 164.304) of which it becomes aware within twenty-four (24) hours of the Business Associate's determination that a particular event constitutes a Security Incident;

5. Mitigation. Business Associate agrees to 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. This paragraph shall survive the termination of this Agreement.

6. Reporting of Certain Disclosures.

(a) Business Associate will report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.

(b) Business Associate agrees to report to the Covered Entity any Breach of Unsecured Protected Health Information without unreasonable delay and in no case later than thirty (30) calendar days after the Discovery of such a Breach of Unsecured Protected Health Information, as those terms are defined at 45 C.F.R. 164 subpart D. Business Associate's notice to the Covered Entity shall include the applicable elements as set forth at 45 C.F.R. § 164.410(c).

7. Agents/Subcontractors. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to enter into written agreements with any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate, and the terms of such agreements shall incorporate the applicable restrictions, conditions, and requirements that apply to Business Associate with respect to such information as set forth herein.

8. Access. Business Associate agrees to provide access to PHI at the request of Covered Entity, and in the time, manner, and place designated by Covered Entity, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. The obligations of Business Associate in this paragraph apply only to PHI in Designated Record Sets in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

9. Amendment. Business Associate will make PHI available to Covered Entity in the time, manner, and place designated by the Covered Entity, to the extent required for amendment and incorporate any amendments to PHI in accordance with 45 C.F.R. § 164.526, which describes the requirements applicable to an individual's request for an amendment to the PHI relating to the individual. The obligations of Business Associate in this paragraph apply only to Designated Record Sets in Business Associate's possession or control as such term is defined at 45 C.F.R. § 164.501.

10. Accounting. Business Associate will make PHI and information related to disclosures of PHI by Business Associate available to Covered Entity in the time, manner, and place designated by the Covered Entity, to the extent required to provide an

accounting of disclosures in accordance with 45 C.F.R. § 164.528, which describes the requirements applicable to an individual's request for an accounting of disclosures of PHI relating to the individual. Business Associate agrees to document such 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 C.F.R. § 164.528.

11. HHS Access. If Business Associate receives a request, made on behalf of the Secretary of the Department of Health and Human Services, Business Associate will make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining Covered Entity's compliance with the HIPAA Rules, then Business Associate will promptly comply with the request.

12. Acknowledgment of Obligations under HITECH Act. Business Associate agrees and acknowledges that it is directly subject to HIPAA as amended by the HITECH Act, including its provisions relating to security and privacy of PHI as well as its enforcement and penalty provisions. Business Associate agrees that it will: (a) comply with all applicable security and privacy provisions of HIPAA as amended by the HITECH Act and as it may be amended from time to time; and, (b) not act in any way to interfere with or hinder Covered Entity's ability to comply with HIPAA as amended by the HITECH Act and as it may be amended from time to time.

13. Breach.

(a) In the event that either Party has knowledge of a material breach of this Agreement by the other Party and cure is possible, the non-breaching Party shall provide a reasonable opportunity for the breaching Party to cure the breach or end the violation. If the breaching Party does not cure the breach or end the violation within the time specified by non-breaching Party, the non-breaching Party may terminate this Agreement.

(b) In the event that either Party has knowledge of a material breach of this Agreement by the other Party and cure is not possible, the non-breaching Party shall terminate the portion of the service being perform that is affected by the breach if feasible.

14. Return or Destruction of PHI. Upon termination of this Agreement for any reason, if feasible, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information. If such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. This paragraph shall survive the termination of this Agreement.

15. Termination. This Agreement may be terminated by either Party (a) pursuant to paragraph 18; or (b) pursuant to paragraph 13; or (c) on the provision of sixty (60) days' written notice to the other Party.

16. No Third Party Beneficiary. This Agreement is intended for the sole benefit of Business Associate and Covered Entity and does not create any third party beneficiary rights, except to the extent that the Privacy Rule validly requires the Secretary of the Department of Health and Human Services to be a third party beneficiary to the Agreement.

17. Amendment of Terms and Conditions. This Agreement cannot be amended except by the mutual written agreement of Business Associate and the Covered Entity.

18. Amendment for Compliance. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of the Agreement will remain in full force and effect. In addition, in the event that either Party believes in good faith that any provision of the agreement fails to comply with the then-current requirements of the applicable HIPAA regulations, that Party shall notify the other in writing. For a period of up to thirty (30) days, the parties shall address in good faith such concern and shall amend the terms of this Agreement, if necessary, to bring it into compliance. If after such thirty-day period this Agreement fails to comply with the HIPAA regulations with respect to the concern(s) raised pursuant to this paragraph, the notifying Party has the right to terminate this Agreement upon written notice to the other Party.

19. Conflict Resolution. Any controversy, claim or dispute arising out of, or relating to this Agreement, which can not be settled, by mutual agreement or negotiation among the parties, by agreement of the parties may be settled by nonbinding arbitration or mediation pursuant to procedures agreed to in good faith by the parties. This paragraph shall survive the termination of this Agreement.

20. Severability. If any provision of this Agreement, or any other agreement, document, or writing pursuant to or in connection with this Agreement, is found to be wholly or partially invalid or unenforceable, the remainder of the Agreement is unaffected.

21. Waiver. No term or provision of this Agreement shall be deemed waived and no breach excused unless such waiver or excuse of breach is in writing, signed by the Party against who such waiver or excuse is claimed.

22. Indemnification. The parties agree to defend (if requested), indemnify, and hold each other harmless from and against any claim or damage arising from the negligent acts or omissions or willful misconduct of their own officers, employees, students, or agents in the performance of their duties under this agreement. This paragraph shall survive the termination of this Agreement.

23. Assignment and Binding Effect. Neither Party shall transfer or assign its obligations under this Agreement without the prior written consent of the other Party, consent not to be unreasonably withheld.

24. Successors and Assigns. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, devisees, personal representatives, transferees, successors and assigns.

25. Notice. Any notice required or permitted to be given in connection with this Agreement shall be in writing and shall be deemed given as of the day it is received either by messenger, express delivery service, or in the United States of America mails, postage prepaid, certified or registered, return receipt requested, and addressed to the parties at the addresses set forth below their respective signatures.

26. Governing Law. This Agreement shall be construed in accordance with and pursuant to the laws of the State of Washington.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

(“COVERED ENTITY”)

\_\_\_\_\_  
Facility Name  
\_\_\_\_\_  
Address  
\_\_\_\_\_  
City, State, Zip  
\_\_\_\_\_  
Phone

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

\_\_\_\_\_  
(Printed)

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

(“BUSINESS ASSOCIATE”)

Mammography Reporting System, Inc.  
19000 33<sup>rd</sup> Ave W, Suite 130  
Lynnwood, WA 98036-4753  
425-563-1738

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

Ralph E. Porter, VP/CFO  
(Printed)

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

**Any alterations to the original document automatically voids Ralph Porter’s electronic signature.**