



BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this “Agreement”) is made as of the date set forth below on the signature page by and between the following parties (each a “Party” and collectively the “Parties”): _____, with offices at _____ (“Covered Entity”) and **Hackettstown Imaging Services, LLC**, with offices at 57 Route 46 East, Suite 212 Hackettstown, New Jersey 07840 (“Business Associate”).

WITNESSETH:

WHEREAS, Business Associate provides certain services to Covered Entity, the performance of which may require or permit Business Associate to have access to Protected Health Information (“PHI”) concerning patients of Covered Entity (the “Services”); and

WHEREAS, Covered Entity and Business Associate intend to meet their obligations regarding the use and disclosure of PHI under the federal Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, all as amended, including without limitation the Privacy Rule, the Security Rule, the HITECH Act, and the Breach Notification Rule (collectively referred to herein as “HIPAA”).

NOW, THEREFORE, intending to be legally bound, the Parties hereto agree as follows:

- **Entire Agreement.** This Agreement represents the entire agreement and understanding of the Parties with respect to the subject matter hereof, and it supersedes any prior or current oral or written business associate agreement between the Parties.
- **Definitions.** Capitalized terms used in this Agreement that are not otherwise defined herein shall be defined and interpreted in accordance with HIPAA.
- **No Fee for Pre-Authorization Services.** Business Associate agrees to perform pre-authorization services for Covered Entity free of charge and free of any costs or expenses.
- **Permitted Uses and Disclosures of PHI.**
 - **Performance of Services.** Subject to applicable laws and regulations, Business Associate may use or disclose PHI to perform the Services for or on behalf of Covered Entity, provided that (i) such use or disclosure involves only the minimum amount of PHI as is necessary for such performance, and (ii) the use or disclosure would not violate HIPAA if done by Covered Entity.
 - **Subcontractors.** Subject to anything to the contrary in the agreement for Services, Business Associate may disclose PHI to a business associate (as defined in 45 CFR § 160.103) that is a Subcontractor and may permit such Subcontractor to create, receive, maintain or transmit PHI on its

behalf, but only if Business Associate enters into a written business associate agreement with the Subcontractor that satisfies the requirements of 45 CFR § 164.314(a) and § 164.504(e).

- Management, Administration and Legal Responsibilities. Business Associate may use PHI as is necessary for the proper management and administration of Business Associate or for Business Associate to perform its legal obligations. Business Associate may disclose PHI for such purposes, but only if (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any breach of confidentiality concerning such information of which it is aware.

- Data Aggregation Services. Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B), so long as such services are within the scope of Services under the Parties' agreement for Services and are provided consistently therewith.

- Reporting. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR § 164.502(j)(1).

- **Responsibilities of the Parties with Respect to PHI.**

- Obligations and Activities of Business Associate.

- Business Associate shall not use or disclose PHI other than as permitted or required under this Agreement, or as Required by Law.

- Business Associate shall use appropriate administrative, physical and technical safeguards and comply with the applicable requirements of Subpart C of 45 CFR § 164 with respect to E-PHI to prevent the use or disclosure of PHI other than as provided for herein.

- Business Associate shall comply with the applicable requirements of Subpart E of 45 CFR § 164. To the extent that Business Associate, in providing the Services, is carrying out one or more of Covered Entity's obligations under Subpart E of 45 CFR § 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

- Business Associate shall ensure that any Subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to comply with the applicable requirements of Subpart C and Subpart E of 45 CFR § 164, and that each Subcontractor enters into a business associate agreement with Business Associate under which each Subcontractor agrees to the same restrictions and conditions that apply to Business Associate under this Agreement.

- Business Associate shall report to Covered Entity any successful Security Incident of which it becomes aware, including any Breach of Unsecured PHI as required by 45 CFR § 164.410. Business Associate shall report to Covered Entity any Breach of Unsecured PHI (other than a successful Security Incident as set forth immediately above) as soon as reasonably practicable after Business Associate's discovery (as such term is used and defined under HIPAA) but in no event later than such timeframe as required under 45 CFR § 164.410.

- Business Associate shall include in any report required under **Section 4(a)(v)** immediately above, to the extent possible, (A) a description of and details concerning the Security Incident or Breach, including the date of discovery by Business Associate (B) the identification of each individual whose PHI has been, or is reasonably believed to have been, the subject of the Breach, (C) a description of the Business Associate's investigation into the incident, including mitigating actions taken by Business Associate to mitigate harm to affected individuals and protect against further breach; (D) contact information for the individual within Business Associate's organization most knowledgeable about the incident and who is responsible for coordinating efforts with Covered Entity with respect to same, and (E) such other available information, as requested by Covered Entity, which Covered Entity may be required to include in any required notifications to the affected individuals.

- Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (A) a successful Security Incident, (B) a Breach of Unsecured PHI, and (C) a use or disclosure of PHI by Business Associate or its employees or agents, including any Subcontractors, in violation of the requirements of this Agreement. Further, Business Associate shall reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Agreement, any successful Security Incident or any Breach of Unsecured PHI.

- Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under 45 CFR § 164.524.

- Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526.

- Business Associate shall make available to Covered Entity information required to provide an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

- Business Associate shall make internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of Covered Entity's or the Secretary's determination of the Parties' compliance with HIPAA.

- If the scope of Services includes electronic transactions, Business Associate shall satisfy all applicable provisions of the HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, codified at 45 C.F.R. Part 162. Business Associate further agrees to ensure that any Subcontractor that conducts standard transactions, as such term is defined at 45 C.F.R. § 162.103, on its behalf will comply with the EDI standards.

- Obligations of Covered Entity.

- Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

- 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 may affect Business Associate's use or disclosure of PHI.

- Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

- **Term and Termination.**

- **Term.** This Agreement is effective as of the date first set forth below, and continues in effect until otherwise terminated in accordance with this **Section 5**.

- **Termination.**

- If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Agreement, then the Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified time frame, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following: (A) if feasible, terminate this Agreement and any and all agreements for Services; or (B) if termination of this Agreement or the agreements for Services is infeasible, report the issue to the U.S. Department of Health & Human Services.

- Notwithstanding the foregoing, Covered Entity may immediately terminate this Agreement and any and all agreements for Services if Covered Entity determines that Business Associate has breached a material term of this Agreement and no cure is possible.

- **Automatic Termination.** This Agreement automatically terminates without any further action of the Parties, (i) if the Services are no longer provided by Business Associate to or on behalf of Covered Entity, or (ii) if HIPAA is no longer applicable to Covered Entity.

- **Obligations of Business Associate upon Expiration or Termination.** Upon the expiration or termination of this Agreement, Business Associate shall return or destroy all PHI (including E-PHI) received from, or created or received by, Business Associate on behalf of Covered Entity that Business Associate maintains in any form, and shall retain no copies of such PHI (including E-PHI), unless such return or destruction is not feasible. If it is not feasible for Business Associate to return or destroy the PHI (including E-PHI) upon expiration or termination of this Agreement, as reasonably determined in good faith by Business Associate, Business Associate shall extend indefinitely any and all protections, limitations and restrictions to the PHI as contained in this Agreement.

- **Miscellaneous.**

- **Survival.** The provisions of **Section 4(a)(v)-(vii)**, **Section 5(d)**, and **Section 6** survive the expiration or termination of this Agreement.

- **Independent Contractor.** Business Associate and Covered Entity are independent contractors. Nothing in this Agreement may be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint ventures, or any similar relationship, between the Parties. Except as expressly set forth herein, the Parties to this Agreement do not intend, nor shall anything in this Agreement be construed, to create any rights in any third parties.

- Amendments; Waiver; Assignment; Benefit. This Agreement may not be modified or amended, nor may any provision hereof be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event may not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. Except as expressly provided herein, this Agreement and the obligations, rights and benefits hereunder may not be assigned by either Party without the prior written consent of the other Party. This Agreement is binding upon and inures to the benefit of the Parties hereto, their respective heirs, executors, administrators, successors and permitted assigns.

- Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance is found, for any reason or to any extent, to be invalid or unenforceable by a court of competent jurisdiction or government agency with the authority to make such a finding, the remainder of this Agreement and the application hereof to any person, entity or circumstance will not be affected thereby, but rather the remainder of this Agreement will be enforced to the greatest extent permitted by law.

- Choice of Law; Jurisdiction. This Agreement is governed by, and should be construed in accordance with, the laws of the U.S. and State of New Jersey. The Parties consent to the filing of an action in, and hereby personally submit to the jurisdiction of, the state or federal courts located in the State of New Jersey.

- Notice. Whenever, under the provisions of this Agreement, notice is required to be given, it will be in writing and will be deemed given three (3) business days after being mailed, certified or registered mail, return receipt requested, or one (1) business day after deposit with a nationally recognized overnight courier, addressed to the Parties at the addresses set forth above, or when given by hand delivery.

- Further Assurances. Each Party shall do all acts, and make, execute and deliver such written instruments as may from time to time be reasonably required to carry out the terms, conditions and provisions of HIPAA, as promulgated from time to time.

- Headings; Construction. The paragraph headings in this Agreement are solely for convenience or reference and are not intended to affect its interpretation. It is specifically understood and agreed by and between the Parties that this Agreement is the result of negotiations between the Parties. Accordingly, it is understood and agreed that all Parties will be deemed to have drawn this Agreement and there will be no negative inference from the language of this Agreement by any fact finders as against any Party.

- Counterparts. This Agreement may be executed in multiple, identical counterparts, each of which shall be an original but all of which together shall constitute one and the same instrument. Signatures of this Agreement transmitted by facsimile transmission, by electronic mail in “portable document format” (“.pdf”) form, or by any other electronic means intended to preserve the original graphic and pictorial appearance of a document, will have the same effect as physical delivery of the paper document bearing the original signature.

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed in its name and on its behalf on the date set forth below.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

Printed Name: _____

Title: _____

Date: _____

A handwritten signature in black ink that reads "Clay R. Hinrichs MD". The signature is written in a cursive style with a horizontal line underneath.

By:

Printed Name: Clay Hinrichs MD

Title: President

Date: 9/12/2019