

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”):

MRI Associates of Hackettstown, LLC, d/b/a ImageCare at Hackettstown 3T, located at 657 Willow Grove Street, Suite 205, Hackettstown, New Jersey 07840, and each of the entities identified in Exhibit A (each a “Covered Entity”, and collectively “Covered Entities”)

and

_____, with offices at _____ (“Business Associate”).

WITNESSETH:

WHEREAS, Business Associate has entered into an agreement with Covered Entities to provide services, the performance of which may require Business Associate to have access to Protected Health Information (as defined below) concerning patients of Covered Entities (the “Services”); and

WHEREAS, Covered Entities and Business Associate intend to meet their obligations regarding the use and disclosure of Protected Health Information under the federal Health Insurance Portability and Accountability Act of 1996 (“Original HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act (“HITECH,” and collectively with Original HIPAA, the “HIPAA Statute”), along with regulations promulgated by the Secretary of the Department of Health & Human Services (“HHS”) under the HIPAA Statute, including the “Privacy Rule” (45 C.F.R. Parts 160 and 164, Subparts A and E) and the “Security Rule” (45 C.F.R. Part 160 and 164, Subparts A and C), as amended by the “Omnibus Rule” (45 C.F.R. Part 160, Subparts A, B, C and D and Part 164, Subparts A and C) (the Privacy Rule, the Security Rule and the Omnibus Rule, collectively the “HIPAA Rules”), as well as any other applicable laws concerning the privacy and security of health information, all as may be amended from time to time (collectively referred to herein as “HIPAA”).

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

1. **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.

2. **Definitions.**

(a) **Interpretation.** The terms defined below are included for ease of reference and are intended to have the same meaning as provided under HIPAA. Other terms used but not otherwise defined in this Agreement are also intended to be defined and interpreted in accordance with HIPAA.

(b) “Breach.” The term “Breach” means, as defined in 45 CFR § 164.402, the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.

(c) “Designated Record Set.” The term “Designated Record Set” means, as defined in 45 CFR § 164.501, a group of records maintained by or for covered Entities that is, (i) the medical records and billing records about individuals maintained by or for a covered health care provider, or (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan, or (iii) used, in whole or in part, by or for a covered Entities 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 disseminated by or for a covered Entities.

(d) “Electronic Protected Health Information.” The term “Electronic Protected Health Information” (also “E-PHI”) means, as defined in 45 CFR § 160.103, individually identifiable health information that is transmitted by or maintained in electronic media.

(e) “Protected Health Information.” The term “Protected Health Information” (also “PHI”) means, as defined in 45 CFR § 160.103, information that, (i) is created or received by a health care provider, health plan, employer or health care clearinghouse, (ii) relates to the past, present, or future physical or mental condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, and (iii) either identifies an individual or there is a reasonable basis to believe that it could be used to identify an individual.

(f) “Required by Law.” The phrase “Required by Law” means, as defined in 45 CFR § 164.103, a mandate contained in law that compels an entity to make a use or disclosure of Protected Health Information and that is enforceable in a court of law. Required by Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, a grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; civil or authorized investigative demands; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

(g) “Secretary.” The term “Secretary” means, as defined in 45 CFR § 160.103, the Secretary of the Department of Health and Human Services or any other officer or employee of the department to whom the authority involved has been delegated.

(h) “Security Incident.” The term “Security Incident” means, as defined in 45 CFR § 164.304, the attempted or successful unauthorized access, use, disclosure, modification or destruction of information, or interference with system operations in an information system.

(i) “Subcontractor.” The term “Subcontractor” means, as defined in 45 CFR § 160.103, a person to whom Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of Business Associate.

(j) “Unsecured PHI.” The term “Unsecured PHI” means, as defined in 45 CFR § 164.402, PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary.

3. **Permitted Uses and Disclosures of PHI.**

(a) Performance of Services. Except as otherwise prohibited or limited by any applicable law, rule or regulation, Business Associate may use or disclose PHI to perform the Services for or on behalf of Covered Entities, 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 Entities.

(b) Subcontractors. 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, including E-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).

(c) 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.

(d) Data Aggregation Services. Except as otherwise set forth herein, Business Associate may use PHI to provide data aggregation services to Covered Entities as permitted by 45 CFR § 164.504(e)(2)(i)(B), so long as such services are within the scope of Services under the agreement for Services and provided consistent therewith.

(e) 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).

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

(a) Obligations and Activities of Business Associate.

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

(ii) 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.

(iii) 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 Entities' obligations under Subpart E of 45 CFR § 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entities in the performance of such obligations.

(iv) Business Associate shall ensure that any Subcontractors that create, receive, maintain or transmit PHI, including any E-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 with respect to PHI. In addition to other provisions required by HIPAA or this Agreement, such Subcontractor agreements shall contain provisions to ensure Business Associate will meet its reporting obligations under **Sections 4(a)(v) and 4(a)(vi)**, immediately below.

(v) Business Associate shall promptly report to Covered Entities, within five (5) business days of discovery, any use or disclosure of PHI not permitted by this Agreement, as well as any successful Security Incident. In addition, Business Associate shall promptly and without unreasonable delay, notify Covered Entities following the discovery of a Breach of Unsecured PHI as required by 45 CFR § 164.410, except that Business Associate shall make such reports to Covered Entities no later than five (5) business days after discovery of the same unless a law enforcement official determines that such a report would impede a criminal investigation or cause damage to national security, in which case Business Associate will comply with 45 CFR § 164.412. A Breach is deemed discovered as of the first day on which it is known to Business Associate or to any person, other than the person committing the Breach, who is an employee, officer or other agent of Business Associate, or, by exercising reasonable diligence, would have been known to Business Associate or such person.

(vi) 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 impermissible use/disclosure, successful Security Incident or Breach of Unsecured PHI, 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 impermissible use/disclosure, Security Incident or Breach of Unsecured PHI, (C) a description of the Business Associate's investigation into the impermissible use/disclosure, Security Incident or Breach of Unsecured PHI, 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 impermissible use/disclosure Security Incident or Breach of Unsecured PHI and who is responsible for coordinating efforts with Covered Entities with respect to same, and (E) such other available information, as requested by Covered Entities, which Covered Entities may be required to include in any required notifications to the affected individuals.

(vii) 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

Entities in the investigation of any violation of the requirements of this Agreement, including any impermissible use/disclosure, Security Incident or Breach of Unsecured PHI.

(viii) Business Associate, within ten (10) business days after written request by Covered Entities, shall provide access to PHI in a Designated Record Set to Covered Entities or, as directed by Covered Entities, to an individual in order to meet the requirements under 45 CFR § 164.524.

(ix) Within ten (10) business days after written request by Covered Entities, Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entities directs or agrees to pursuant to 45 CFR § 164.526.

(x) Within ten (10) business days after written request by Covered Entities, Business Associate shall make available to Covered Entities information required to provide an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

(xi) Within five (5) business days after written request by Covered Entities, 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 Entities available to Covered Entities and the Secretary for purposes of Covered Entities' or the Secretary's determination of the Parties' compliance with HIPAA.

(xii) 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.

(b) Obligations of Covered Entities.

(i) Covered Entities 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.

(ii) Covered Entities 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.

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

5. Term and Termination.

(a) 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**.

(b) Termination.

(i) 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 Department of Health and Human Services.

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

(c) 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 Entities, or (ii) if HIPAA is no longer applicable to Covered Entities.

(d) Obligations of Business Associate upon Termination, Expiration or Non-Renewal.

(i) Return or Destruction. Upon the expiration, termination or non-renewal of this Agreement, for any reason, Business Associate shall return or destroy all PHI (including E-PHI) received from, or created or received by, Business Associate on behalf of Covered Entities that Business Associate still maintains in any form and shall retain no copies of such PHI (including E-PHI), unless such return or destruction is not feasible.

(ii) Non-Return or Destruction. If it is not feasible for Business Associate to return or destroy the PHI (including E-PHI) upon the termination of this Agreement for any reason, as reasonably determined in good faith by Business Associate, Business Associate shall extend indefinitely any and all protections, limitations and restrictions contained in this Agreement to its use and disclosure of such PHI (including E-PHI).

6. Indemnification.

(a) Indemnification of Covered Entities. Business Associate agrees to and shall indemnify and hold harmless Covered Entities from and against any and all losses, damages, liabilities, demands and claims of any nature whatsoever, including reasonable legal fees and costs (collectively, "Losses") arising out of, based upon, resulting from or in any way relating to any act or omission of Business Associate (to include Business Associate and its principals, officers, directors, employees, agents, independent contractors and Subcontractors) in violation of this Agreement or that in any way otherwise constitutes or directly or indirectly causes or results in

any use or disclosure not permitted by this Agreement, any Security Incident and any Breach of Unsecured PHI. For purposes of this Agreement, Losses shall include, but not be limited to, costs of investigation, mitigation, credit monitoring, notifications, penalties and fines. Business Associate agrees to and shall reimburse Covered Entities for any and all Losses immediately upon demand by Covered Entities.

(b) Business Associate Losses. Business Associate shall be responsible for, and shall at its own expense, defend itself against any and all losses, damages, liabilities, demands and claims of whatever kind or nature, arising out of or in connection with any act or omission of Business Associate (to include Business Associate and its principals, officers, directors, employees, agents, independent contractors and Subcontractors) in the performance of the duties and obligations of Business Associate under the Services agreement or this Agreement (“BA Losses”). Business Associate hereby releases and hold harmless Covered Entities from any and all BA Losses.

(c) Unaffected by Limitations. The provisions of this **Section 6** shall control and be unaffected by any limitation of liability or remedies that may be contained in any agreement for Services between the Parties.

7. Miscellaneous.

(a) Survival. The provisions of **Section 5(d)**, **Section 6** and **Section 7** survive the expiration or termination of this Agreement for any reason.

(b) Independent Contractor. Business Associate and Covered Entities 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.

(c) Amendments; Waiver. This Agreement may not be modified, nor may any provision hereof be waived or amended, 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.

(d) 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.

(e) 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.

(f) Severability. If any provision of this Agreement or the application thereof to any person, Entities, 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, Entities or circumstance will not be affected thereby, but rather the remainder of this Agreement will be enforced to the greatest extent permitted by law.

(g) Choice of Law; Jurisdiction. This Agreement is governed by, and should be construed in accordance with, the laws of the 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.

(h) Benefit. This Agreement is binding upon and inures to the benefit of the Parties hereto, their respective heirs, executors, administrators, successors and permitted assigns.

(i) Assignment. Except as otherwise 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.

(j) Headings. The paragraph headings in this Agreement are solely for convenience or reference and are not intended to affect its interpretation.

(k) 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.

(l) Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended.

(m) Construction. 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 these documents and there will be no negative inference from the language of this Agreement by any fact finders as against any Party.

[SIGNATURE PAGE FOLLOWS]

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.

ImageCare Radiology, LLC

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

EXHIBIT A

This Business Associate Agreement applies to the following covered entities:

ENTITY
1. 95 Madison Imaging Center at Morristown, Inc., d/b/a ImageCare at Morristown
2. Center for Advanced Imaging, LLC, d/b/a ImageCare at Milburn
3. Denville Diagnostics & Open MRI, LLC, d/b/a ImageCare at Denville
4. East Brunswick Open Upright MRI, LLC, d/b/a ImageCare at East Brunswick Open Upright MRI
5. GCM, LLC
6. Hackettstown Imaging Associates, LLC
7. Hackettstown Imaging Services, LLC
8. Hackettstown Radiology Associates, LLC
9. Hackettstown Regional MRI, LLC
10. Middletown Ventures Associates, LLC, d/b/a ImageCare at Middletown
11. ImageCare Radiology, LLC
12. Open MRI Radiology, LLC d/b/a Woodbridge Radiology, d/b/a ImageCare at Woodbridge
13. Newton Imaging, PA, d/b/a The ImageCare Centers
14. Personal Touch Radiology, LLC, d/b/a Pink Breast Center
15. Pink Management, LLC
16. Pink Management of Flemington, LLC
17. Pink Radiology, LLC, d/b/a Pink Breast Center
18. Pink Touch Radiology, LLC
19. Radiologic Associates of Northern New Jersey, PA, d/b/a The ImageCare Centers
20. Radiology Associates of Hackettstown, LLC, d/b/a ImageCare at Hackettstown
21. Radiology Center of Fair Lawn, LLC, d/b/a ImageCare at Fair Lawn
22. Richard J. Claps, M.D. & Associates, P.A., d/b/a ImageCare at Morristown
23. Skylands Medical Leasing, LLC
24. Sparta Imaging, LLC
25. Star MRI of Wayne, LLC, d/b/a ImageCare at Wayne
26. Sussex County Imaging, LLC
27. The Radiology Group of New Jersey, LLC, d/b/a The Medical Group of New Jersey
28. Women's Diagnostic Center, PA, d/b/a The ImageCare Centers
29. West Orange Radiology, LLC, d/b/a ImageCare at West Orange