



ACMIS American College of Mohs Surgery

MohsAIQ

The Mohs Surgery Registry • Advancing & Improving Quality

Powered by ArborMetrix

SM

555 East Wells Street • Suite 1100 • Milwaukee, WI 53202-3823
Telephone: (414) 347-1103 • Fax: (414) 276-2146
www.mohscollege.org/registry • registry@mohscollege.org

MohsAIQ Registry Enrollment Form

Please complete and forward to above via email / fax / mail.

All physician participants must be members of the American College of Mohs Surgery

Practice Information

Date: Practice type: Academic Group Private

Practice/Organization Legal Name (e.g., University of Wisconsin-Madison):

Practice Reporting Name (e.g., UW-Madison)

TIN: Email

Does practice have multiple locations? If so, how many? EHR

List main address or where Practice/Organization Administrator works:

Address Line 1

Address Line 2

City State ZIP

Preferred Phone Fax

Designated Practice/Organization Administrative Registry Coordinator

This person will be responsible for internal registry activities and will serve as the point person for official communications.

Name Position

Email Phone

All cases entered into the registry will be performed by ACMS members.

If more space is needed please add additional page.

Main Contact Physician #1

Full Name _____ NPI _____

Email _____ Phone _____

Physician #2

Full Name _____ NPI _____

Email _____

Physician #3

Full Name _____ NPI _____

Email _____

Physician #4

Full Name _____ NPI _____

Email _____

Physician #5

Full Name _____ NPI _____

Email _____

Physician #6

Full Name _____ NPI _____

Email _____

Please list support staff that will need MohsAIQ access for the purpose of entering information.

Support Staff #1

Name _____ Position _____

Email _____

Support Staff #2

Name _____ Position _____

Email _____

Support Staff #3

Name _____ Position _____

Email _____

Support Staff #4

Name _____ Position _____

Email _____

Support Staff #5

Name _____ Position _____

Email _____

Support Staff #6

Name _____ Position _____

Email _____

American College of Mohs Surgery MohsAIQ Registry Participation Agreement

THIS AGREEMENT is by and between (a) American College Mohs of Surgery, Inc., (ACMS), a not-for-profit organization with its principal place of business at 555 E. Wells St., Suite 1100, Milwaukee, WI 53202; and (b) _____, a group of physicians and/or a healthcare facility whose principal place of business is at:

("Participant").

WHEREAS, ACMS has developed and owns certain computerized databases containing information relating to patient treatment, the practice of medicine, and third parties submitting data to these databases pursuant to ACMS rules (said databases collectively referred to herein as the quality registry named MohsAIQ (Mohs Advancing and Improving Quality Registry) (the "Registry").

WHEREAS, the successful operation of MOHSAIQ is dependent in large measure on Participants' use of computer software that meets ACMS specifications for content, functionality, and otherwise or submission of data through a web-based portal designated by ACMS; and

WHEREAS, Participant has expressed an interest in participating in MOHSAIQ in accordance with ACMS requirements;

NOW, THEREFORE, in consideration of the foregoing recitals and the covenants contained herein, and for other good and valuable consideration, the parties hereto agree as follows:

1. Participation in MohsAIO

1.1 Participant agrees to participate in MohsAIQ by transmitting data pertaining to the practice of specialty medicine in accordance with the terms of this Agreement and such other policies and procedures as ACMS may establish from time to time ("ACMS Policies").

1.2 Participant will participate in the data harvests conducted by MOHSAIQ and/or its independent data warehouse service provider (the "Data Warehouse Service Provider") (the Data Warehouse Service Provider currently being ArborMetrix), by submitting Participant's data to the Data Warehouse Service Provider and otherwise complying with the ACMS policies and harvest schedules reasonably established by ACMS in connection therewith. In this regard, Participant acknowledges that ACMS Policies may include terms and conditions for, among other things, registering for, accessing and using (including restrictions and limits thereon) MOHSAIQ and reports, aggregated data of Participants and other information provided thereby, it being hereby further acknowledged that no Participant shall have access to data of any other Participant except by means of such reports as may be provided by MOHSAIQ subject to Participants' agreement to be subject to ACMS Policies including the foregoing.

1.2.1 Unless otherwise expressly agreed by ACMS in advance, Participant's data for inclusion in MOHSAIQ will be submitted via electronic data upload via the

web-based platform provided by ACMS, such data to contain only non-billing data.

1.2.2 Participant hereby warrants that all data submitted for inclusion in MOHSAIQ will be accurate and complete and acknowledges that such data may be subject to independent audit. Participant will use its best efforts to address any data or related deficiencies identified and agree to cooperate with and assist ACMS and its designees in connection with the performance of any independent audit.

1.2.3 Participant warrants that it will take all reasonable steps to avoid the submission of duplicative data for inclusion in MOHSAIQ.

1.2.4 Participant agrees to assist and cooperate with ACMS and the Data Warehouse Service Provider in their efforts to conduct MOHSAIQ.

1.2.5 The undersigned representative represents and warrants that s/he is authorized to enter into this Agreement on behalf of the Participant and to bind Participant to its terms and that all professional members of the group/facility and/or the duly elected or appointed decision makers for the group/facility have consented to the submission of data to ACMS.

1.2.6 It is the Participant's responsibility to verify that the data submitted to the Registry appears in the Registry as submitted. Should any data be omitted through the transmission process, it is the responsibility of the Participant to identify and notify ACMS and the Data Warehouse Service Provider of the omission as soon as practicable.

1.3 Participant agrees and acknowledges that its failure or the failure of any of its employees or agents to submit data to MOHSAIQ, or that the submission of data to MOHSAIQ that does not comply with ACMS requirements, may result in Participant's failure to receive one or more reports generated by MOHSAIQ (see paragraph 2).

1.4 Participant agrees and acknowledges that the data captured by MOHSAIQ will include certain healthcare facility identifying information, as well as certain provider identifying information (both in an encrypted form during transfer and at rest in the ACMS software system). Participant agrees that it is Participant's responsibility to obtain any permission(s) required in order to submit such data for inclusion in MOHSAIQ and Participant hereby represents and warrants to ACMS that it has obtained all such necessary permissions or consents and Participant is otherwise legally entitled to submit such data for inclusion in MOHSAIQ and for such data to be used as contemplated by this Agreement in compliance with HIPAA and other applicable law. Participant specifically agrees to indemnify, save and hold harmless ACMS and the Data Warehouse Service Provider, from and against all claims, liabilities, losses, damages and costs (including attorneys' fees) associated with Participant's submitting data for inclusion in MOHSAIQ and any failure to obtain necessary permission or consents in connection therewith or otherwise to comply with HIPAA or applicable law in connection therewith.

2. ACMS can provide registry reports, provided that Participant participates in MOHSAIQ in accordance with ACMS requirements (including but not limited to Participant's payment of all fees, if applicable). Reports may be created for Participant in consideration for the fees and express written approval required by ACMS in order to provide them. The aggregated data included in any and all reports provided hereunder constitute "ACMS Intellectual Property" (as defined herein) and, as such, may not be reproduced, further disseminated, republished, modified or otherwise used except as provided in paragraph 6.4 of this Agreement or as otherwise permitted by ACMS policies and procedures.

3. Participant Fees.- Currently participation in MohsAIO is an ACMS member benefit and there is no charge.
4. Confidentiality.

4.1 Generally, ACMS acknowledges that the data submitted to MOHSAIQ by Participant are deemed confidential to the extent consistent with the terms of this Agreement. Accordingly, ACMS agrees and acknowledges that it will treat such information as confidential and will require this treatment as well from any contractor that ACMS might engage to assist with management of MOHSAIQ, including the Data Warehouse Service Provider. The parties hereby agree to comply with all statutes and regulations applicable to them, under federal and state laws. The parties acknowledge that the activities contemplated hereby will involve the use or disclosure of individually identifiable health information (“Protected Health Information”) subject to the Standards for Privacy of Protected Health Information promulgated by the U.S. Department of Health and Human Services (“HHS”), 45 CFR Parts 160 and 164 (as in effect on the date hereof and as amended from time to time, hereinafter referred to as the “Privacy Standards”), the Standards for the Security of Electronic Protected Health Information promulgated by HHS, 45 CFR Parts 160 and 164 (as in effect on the date hereof and as amended from time to time, hereinafter referred to as the “Security Standards”), and the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”) and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates (collectively, “HIPAA”). To that end, it is agreed and acknowledged that they are executing the Business Associate Contract and Data Use Agreement attached hereto as Exhibit A in conjunction with their execution of this Agreement, which is incorporated herein by reference and made part of this Agreement (the “Business Associate Agreement”).

4.2 Protected Health Information. ACMS shall use and disclose Protected Health Information received from, or received or created by ACMS on behalf of, Participant only as necessary or appropriate in connection with ACMS’ performance of its obligations under this Agreement, as otherwise required or specifically permitted under the Privacy Standards or incident to any such use or disclosure. ACMS shall not use or disclose any such Information in any manner in which Participant would not be so entitled, except as provided in the following provision. ACMS may use and disclose such Information for its own proper management and administration and for data aggregation services relating to Participant to the extent allowed under the Privacy Standards, provided ACMS obtains reasonable assurance from any person to whom any such Information is disclosed in connection therewith that such person shall keep such Information confidential, shall disclose such Information only for such purpose(s) or as otherwise required by law, and shall notify ACMS of any instances of which such person becomes aware in which the confidentiality of such Information has been breached. In all matters relating to this Agreement, ACMS shall use and disclose such Information only to the minimum extent necessary to accomplish the purposes allowed under the foregoing provisions of this Section. Notwithstanding anything to the contrary contained herein, ACMS may, in its discretion, de-identify any Protected Health Information received from, or received or created on behalf of, Participant in accordance with the de-identification provisions of the Privacy Standards, and any such de-identified data shall not be deemed Protected Health Information for the purposes of this Agreement, and may be aggregated with other data in ACMS’ possession (whether or not such other data constitutes Protected Health Information) and used for data aggregation and informational purposes.

5. Intellectual Property.

5.1 It is agreed and acknowledged that all data submitted for inclusion in MOHSAIQ by or on behalf of Participant are and shall remain Participant's proprietary information and may

be used by ACMS and its designees only in accordance with the terms of this Agreement.

5.2 Participant hereby agrees that all data submitted by or on behalf of Participant to ACMS or ACMS's designee for purposes of inclusion in MOHSAIQ may be used by ACMS and the Data Warehouse Service Provider as a part of MOHSAIQ and any subset thereof or other derivative that ACMS may choose to create and use as contemplated by this Agreement or as it sees fit for the purposes of promoting of Participant's health care operations and for medical research (as defined by HIPAA regulations) purposes, physician self-assessment and the other interests of MOHSAIQ (including, without limitation, publication or distribution of such data); provided, however, that no such data shall be used or disclosed in such a way as to identify Participant or institution of Participant or any individual physician or physician group, unless and until Participant advises ACMS in writing that it has authorized and/or secured appropriate consent to same. Further, ACMS shall be entitled, during the term of this Agreement and after any expiration or termination thereof, to utilize the data submitted to MOHSAIQ and which has been aggregated with the data of other Participants for any purpose whatsoever so long as such data has been de-identified so as to no longer be considered "patient health information" for HIPAA purposes. Participant acknowledges and agrees that its data, to the extent de-identified and aggregated with other Participants' data as contemplated by this Agreement may be used, disclosed and incorporated into derivative works may be used by ACMS, other Participants and others as in accordance with the terms of and as is otherwise contemplated by this Agreement.

5.3 Participant acknowledges that ACMS is and shall be deemed the owner of all rights in and to MOHSAIQ and the aggregated body of data contained therein and subsets thereof), and any and all reports derived therefrom or based thereon, all information derived therefrom (including, without limitation, all risk algorithms and associated Beta coefficients and Y intercepts) and all trademarks (including, without limitation, MOHSAIQ, MOHS ADVANCING AND IMPROVING QUALITY REGISTRY, ACMS and AMERICAN COLLEGE OF MOHS SURGERY and all variations thereon and graphic representations thereof), trade secrets and all other intellectual property arising from or reflected in MOHSAIQ (collectively, "ACMS Intellectual Property") with the exception of Participant's data. Participant shall assert no interest in the ACMS Intellectual Property or in any components thereof or in the platform upon which MOHSAIQ is provided, including, without limitation, source code, "look and feel," features, organization, software, databases, functionality, web site designs, audio, video, text, photographs or graphics within same

5.4 Participant may not use ACMS Intellectual Property **WITHOUT FIRST OBTAINING EXPRESS WRITTEN CONSENT OF ACMS**, provided that Participant may, to the extent provided in this Agreement and in accordance with ACMS policies, use aggregated data from MOHSAIQ that have been previously included in ACMS Reports to release to Participant in accordance with this Agreement or otherwise to the public by ACMS (*e.g.*, in published reports and slide sets) without first obtaining such written consent so long as Participant does not make any statements about such data that are false or misleading.

5.5 Neither party shall use the name, trademark, or logo of the other party or its employees for any purposes without prior written consent of the other party.

6. Indemnification, Limitation of Liability, Insurance.

6.1 Participant agrees to indemnify, save and hold harmless ACMS and the Data Warehouse Service Provider from and against any and all loss, damage, third party claims, costs and expenses (including attorneys' fees and expenses), demands, actions and liabilities of every kind and character whatsoever arising or resulting in any way from Participant's submission of data to MOHSAIQ or use of data obtained through MOHSAIQ or otherwise from Participant's

(including Participant's employees or agents) breach of any provision of this Agreement or any ACMS policies with respect to MOHSAIQ, except to the extent directly caused by the gross negligence or willful misconduct of ACMS or the Data Warehouse Service Provider, respectively. All of the foregoing rights of indemnification shall apply to any expenses incurred by ACMS and/or the Data Warehouse Service Provider in defending themselves, respectively, against claims of gross negligence or willful misconduct unless a court of competent jurisdiction concludes in a final judgment that such party seeking indemnification has committed gross negligence or willful misconduct.

6.2 Under no circumstances will either party be liable to the other for any indirect or consequential damages of any kind, including lost profits (whether or not the parties have been advised of such loss or damage) arising in any way in connection with this Agreement.

7. Term and Termination.

7.1 Subject to the terms of this Section 8, this Agreement shall be effective through December 31, 2019, and shall be automatically renewed on an annual basis thereafter unless any party provides the other(s) with a written notice of termination on or before December 1, 2019, or December 1 of any subsequent renewal year.

7.2 This Agreement may be terminated prior to December 31, 2019, (or December 31 of any subsequent renewal year) upon any party's material breach of this Agreement and any other party's provision of written notice thereof; provided, however, that if said breach is cured to the non-breaching party's(ies') satisfaction (as reflected in written notice thereof) within thirty (30) days after the provision of such notice, said termination notice shall be of no further force or effect and this Agreement shall be fully reinstated.

7.3 Either party may also terminate this Agreement for any reason upon sixty (60) days written notice to the other party.

7.4 Upon any expiration or termination of this Agreement, ACMS may, in its discretion, and subject to the terms of the Business Associate Agreement, return to Participant such data as has been submitted by Participant to MOHSAIQ and which is then resident thereon in the form submitted by Participant, provided, however, that ACMS shall, except to the extent otherwise provided in the Business Associate Agreement, have no obligation to do so, it being hereby agreed and acknowledged that any such data constituting "patient health information" for purposes of HIPAA shall be governed by the Business Associate Agreement. ACMS shall not be required to destroy or return any data that has been submitted by Participant to MOHSAIQ which is, as of the date of such expiration or termination, and which has been de-identified and/or incorporated into any reports or otherwise aggregated with data of other Participants, Participant hereby expressly acknowledging and agreeing that ACMS, other Participants and others may utilize such data to the extent permitted or contemplated by this Agreement and applicable ACMS Policies.

8. Equitable Relief. The parties understand and agree that money damages may not be a sufficient remedy for the breach of the provisions of this Agreement, and that each party shall be entitled to emergency injunctive relief as a remedy for any such breach by any other party. Such remedy shall not be deemed to be the exclusive remedy for the breach of this Agreement, but shall be in addition to all other remedies at law or in equity to the non-breaching party(ies).

9. Independent Contractors. The relationship of the parties to this Agreement is that of independent contractors, and not that of master and servant, principal and agent, employer and employee, or partners or joint venturers.

10. Notices. All notices and demands of any kind or nature which any party to this Agreement may be required or may desire to serve upon the other in connection with this Agreement shall be in writing, and may be served personally, by registered or certified United States mail, by facsimile transmission or by overnight courier (e.g., FedEx or DHL) to the addressees of both parties located on the first page of agreement.

Service of such notice or demand so made shall be deemed complete on the day of actual delivery. Without limiting the generality of the foregoing, if notice is given by facsimile transmission, such notice shall be deemed to be provided upon confirmation of the receipt of the transmission. Any party hereto may, from time to time, by notice in writing served upon the other party(ies) as aforesaid, designate a different mailing address, a different facsimile number, or a different person to which all further notices or demands shall thereafter be addressed.

11. Headings. The headings of the various paragraphs hereof are intended solely for the convenience of reference and are not intended for any purpose whatsoever to explain, modify or place any construction upon any of the provisions of this Agreement.

12. Assignment. This Agreement may not be assigned by any party without the prior express written approval of the other party(ies), except that either party may assign this Agreement to an affiliate, successor entity, or subsidiary without the written approval of the other party.

13. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same instrument.

14. Waiver. A waiver by any party to this Agreement of any of its terms or conditions in any one instance shall not be deemed or construed to be a general waiver of such term or condition or a waiver of any subsequent breach.

15. Choice of Law and Forum. All disputes regarding the meaning, effect, force or validity of this Agreement shall be determined according to federal law and the law of the State of Wisconsin. The parties expressly agree that the Circuit Courts of Milwaukee County, Wisconsin, or the United States District Court of Wisconsin, are the most reasonable and convenient forums for resolutions of any such disputes, and they hereby designate said courts as the exclusive forums in which all such disputes shall be litigated. Accordingly, the parties consent to the jurisdiction and venue of, and service of process by, said courts. Each party agrees that the provisions of this paragraph are specifically enforceable, and that it shall pay all expenses, damages, and costs (including attorneys' fees and expense) of any other party if said other party commences, prosecutes, or permits to continue any actions in any other forum.

16. Severability. All provisions of this Agreement are severable. If any provision or portion hereof is determined to be unenforceable by a court of competent jurisdiction, then the rest of this Agreement shall remain in full effect, provided that its general purposes remain reasonably capable of being effected.

17. Survival. The provisions of paragraph 1.4, 5, 6, 7, 9-19 and all other terms within this Agreement that are necessary or appropriate to give meaning thereto shall survive any termination of this Agreement.

18. Entire Agreement. This Agreement (a) constitutes the entire agreement between the parties hereto with respect to the subject matter hereof; (b) supersedes and replaces all prior agreements, oral or written, between the parties relating to the subject matter hereof; and (c)

except as otherwise indicated herein, may not be modified, amended or otherwise changed in any manner except by a written instrument executed by the party against whom enforcement is sought.

19. Electronic Signature. Participant hereby consents to receive electronic communications and hereby agrees that all agreements, notices, disclosures, and other communications ACMS provides to Participant electronically, via email and on the MOHSAIQ, satisfy any legal requirement that such communication be in writing. PARTICIPANT HEREBY AGREES TO THE USE OF ELECTRONIC SIGNATURES, CONTRACTS, ORDERS, AND OTHER RECORDS, AND TO ELECTRONIC DELIVERY OF NOTICES, POLICIES, AND RECORDS OF TRANSACTIONS INITIATED OR COMPLETED BY ACMS OR VIA THE MOHSAIQ. Participant hereby waives any rights or requirements under any statutes, regulations, rules, ordinances, or other laws in any jurisdiction which require an original signature or delivery or retention of non-electronic records, or to payments or the granting of credits by any means other than electronic means.

By executing this document in the space provided below, the undersigned is considered to have executed this Registry Participation Agreement and the Business Associate Agreement attached hereto.

THE AMERICAN COLLEGE OF MOHS SURGERY, INC.

By: Mary Riordan, Executive Director _____ Date: _____

PARTICIPANT ORGANIZATION: _____

By: _____

Title (or physician representing Participant Organization): _____

Print Name: _____ Date: _____

Other Practice/Organization Authority (if applicable)

By: _____

Title: _____

Print Name: _____ Date: _____

Other Practice/Organization Authority (if applicable)

By: _____

Title: _____

Print Name: _____ Date: _____

Business Associate Agreement and Data Use Agreement

Agreement made as of _____, _____ by and between

("Covered Entity"), and American College Mohs of Surgery, Inc. ("Business Associate").

Recitals

Covered Entity has engaged Business Associate to perform, or assist in the performance of, a function or activity that may or will involve the use or disclosure of individually identifiable health information ("Protected Health Information") and/or any other function or activity regulated by the Standards for Privacy of Protected Health Information promulgated by the U.S. Department of Health and Human Services ("HHS"), 45 CFR Parts 160 and 164 (as in effect on the date hereof and as amended from time to time hereafter, the "Privacy Standards"), the Standards for the Security of Electronic Protected Health Information proposed by HHS, 45 CFR Parts 160 and 164 (as proposed to be in effect after the date hereof and as amended from time to time hereafter, the "Security Standards"), and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") and any regulations adopted or to be adopted pursuant to the HITECH Act that relate to the obligations of business associates. Such services shall be performed pursuant to a separate agreement, whether written or oral (hereinafter, together with any successor such agreement(s), referred to collectively as the "Service Agreement"), and the parties have agreed to enter into this Agreement in order to satisfy the requirements of Sections 164.502(e) and 164.504(e) of the Privacy Standards and 164.308(b) and 164.314(a) of the Security Standards and to otherwise facilitate implementation of the Privacy Standards and the Security Standards by both parties, also all on the terms and conditions hereinafter set forth.

Agreement

In consideration of the foregoing and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties have agreed as follows:

1. **Use and Disclosure.** Business Associate may use and disclose Protected Health Information received from, or received or created by Business Associate on behalf of, Covered Entity solely to perform the services required under the Service Agreement or as otherwise required under the Privacy Standards. Business Associate may not use or disclose any such Information in any manner in which Covered Entity is not entitled to do so, except as provided in the following provision. Business Associate may use or disclose such Information for Business Entity's own proper management and administration, to carry out Business Associate's legal responsibilities and, if within the scope of the Service Agreement, for data aggregation services relating to Covered Entity; provided, however, that such disclosures shall only be permitted if: (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable assurance from any person to whom any such Information is disclosed in connection therewith that such person shall keep such Information confidential and use or further disclose such Information only for such purpose(s) for which Business Associate disclosed such Information or as otherwise required by law, and such person notifies Business Associate of any instances of which such person becomes aware in which the confidentiality of such Information has been breached. In all matters relating to this Agreement, Business Associate shall use and disclose such Information only to the minimum extent necessary to accomplish the purposes allowed under the foregoing provisions of this Section.

2. Additional Obligations. Notwithstanding any provision in the Service Agreement to the contrary, Business Associate agrees to do the following with respect to all Protected Health Information received from, or received or created by Business Associate on behalf of, Covered Entity: (a) use appropriate safeguards (including administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of any such Information stored in electronic form and other requirements subsequently promulgated under or in connection with the Privacy Standards) to prevent use or disclosure of such Information other than as provided in this Agreement, (b) promptly report to the Covered Entity any use or disclosure of Protected Health Information not provided for in this Agreement and, with respect to electronic Protected Health Information, any “Security Incident” (as that term is defined by the Section 164.304 of the Security Standards, (c) ensure that any agents, including subcontractors, to whom Business Associate provides such Information agree to the restrictions and conditions set forth in this Agreement, (d) mitigate, to the extent practicable, any harmful effect known to Business Associate of any use or disclosure of such Information by Business Associate or such agents in violation of this Agreement, (e) at the request of and in the time and manner reasonably designated by Covered Entity, make such Information available and incorporate amendments thereto in order to satisfy the requirements under Sections 164.524 and 164.526 of the Privacy Standards, (f) promptly provide to Covered Entity information necessary or appropriate for Covered Entity to provide accountings of disclosures in accordance with Section 164.528 of the Privacy Standards, (g) make Business Associate’s internal practices, books and records relating to the use or disclosure of such Information available to the Secretary of Health and Human Services (the “Secretary”) in the time and manner designated thereby for purposes of the Secretary determining compliance by Covered Entity and/or the Business Associate with the Privacy and Security Standards.

3. Breach of Privacy and Security Obligations.

(a) Reporting. Business Associate will report to Covered Entity: (i) any use or disclosure of PHI (including Security Incidents) not permitted by this Agreement or in writing by Covered Entity; (ii) any Security Incident; (iii) any “breach,” as defined in the HITECH Act; or (iv) any other breach of a security system, or the like, as such may be defined under applicable state law (collectively a “Breach”). Except as described in subparagraph (e) below, Business Associate will, without unreasonable delay, but no later than five (5) business days after Business Associate’s discovery of a Breach, make the report to Covered Entity by sending a written report to the Covered Entity’s privacy officer. Without limiting the foregoing, Business Associate shall notify Covered entity of any such Breach prior to making any public disclosures thereof, including any Breach notifications under the HITECH Act and its implementing regulations. Additionally, Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting Covered Entity’s obligations under the HITECH Act, and any other security breach notification laws or regulatory obligations.

(b) Examples of Security Incidents. Covered Entity requires prompt notification from Business Associate if Business Associate experiences any Security Incidents that impact the confidentiality, integrity or availability of Covered Entity data or information systems. Below are some examples:

- (i) Business Associate’s information systems are exposed to malicious code, such as a virus or worm, and such code could be transmitted to Covered Entity data or systems.
- (ii) Unauthorized access is granted or obtained to servers or workstations that contain Covered Entity data or Business Associate discovers that Covered Entity data is being used, copied, or destroyed inappropriately.

- (iii) Business Associate experiences an attack or the compromise of a server or workstation containing Covered Entity information requiring that it be taken offline.
- (iv) Unauthorized access or disclosure has occurred involving Protected Health Information, which is an obligation under the HIPAA Privacy Standards.

(c) Unsuccessful Security Incidents. Except as noted in Section 3(d) below, the parties acknowledge and agree that this Section 3(c) constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

(d) Breach of Unsecured Protected Health Information. A Breach of Unsecured Protected Health Information includes any Breach as defined in the HITECH act or regulations adopted pursuant thereto.

4. Term and Termination.

(a) Term. Except for the rights and obligations set forth in this Agreement specifically surviving termination, this Agreement shall terminate simultaneously upon the termination of the Service Agreement.

(b) Termination for Cause. In addition to any termination provisions otherwise set forth in the Service Agreement, upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall either:

- (i) Provide a reasonable opportunity for Business Associate to cure the breach (in the event that cure would be feasible) or end the violation, and terminate this Agreement if Business Associate does not cure the breach or end the violation within a reasonable time to be specified by Covered Entity; or
- (ii) Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- (iii) If termination and/or cure are not feasible, Covered Entity shall report the violation to the Secretary.

Notwithstanding anything to the contrary contained herein, for purposes of this Section 4(b), it is hereby acknowledged and agreed by the parties that, to the extent that the breach of a material term of this Agreement relates to the use or disclosure of PHI in violation of this Agreement or 45 C.F.R. Parts 160-64, such breach may be cured by the Business Associate through appropriate disciplinary action against the employees or other agents of Business Associate responsible for such non-permitted use or disclosure.

5. Effect of Termination. Business Associate shall retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities. Business Associate shall return to Covered Entity the Protected Health Information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal

responsibilities. In any event, all obligations of Business Associate and its agents under this Agreement shall continue to apply after termination of this Agreement, except to the extent that return of Protected Health Information renders such obligations inapplicable, and any use and disclosure of such Information after such termination shall be limited to those purposes for which such Protected Health Information was retained and subject to the same terms and conditions which applied prior to termination.

6. Savings Clause. This Agreement is intended to satisfy the requirements with respect to business associates under the Privacy Standards and the Security Standards, the provisions of which are hereby incorporated by this reference, and this Agreement and the Service Agreement, notwithstanding any other provisions hereof or thereof, shall be interpreted and applied in a manner so as to satisfy such requirements.

7. Notices. Any and all notices required or permitted hereunder may be in writing and may be delivered in any manner required or permitted for notices under the Service Agreement.

8. Further Assurance. Each of the parties hereto hereby agrees to execute and deliver such documents, including, without limitation, supplements and/or other amendments to this Agreement, and to take such other actions at any time and from time to time hereunder as may be reasonably requested by the other party hereto to comply with the Privacy Standards, the Security Standards and/or to otherwise carry out the provisions or purposes of this Agreement.

9. Successors. This Agreement shall be binding upon, and inure to the benefit of, the parties hereto and their respective heirs, administrators, legal representatives, successors and assigns. Business Associate may not assign any of its rights or obligations under this Agreement without the prior written consent of Covered Entity. This Agreement shall not confer any rights or remedies upon any third-party beneficiary or other person other than the parties hereto, except to the extent specifically otherwise provided herein.

10. Severability. In the event that any provision of this Agreement is later determined to be illegal, invalid or unenforceable for any reason, such provision shall be deemed severed herefrom and such severance shall not affect the legality, validity or enforceability of the other provisions hereof.

11. Jurisdiction. This Agreement shall be governed by, and construed and enforced in accordance with, the internal laws of the State of Wisconsin.

12. Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same instrument. The parties agree that a signature affixed to a counterpart of this Agreement and delivered by fax or email by a party shall be valid, binding, and enforceable against such party.

13. Amendment. This Agreement may be amended by, and only by, a written instrument signed by both parties. No failure or delay on the part of either party hereto in the exercise or enforcement of any of its rights under any provision hereof shall be deemed to constitute a waiver or other relinquishment of any of such rights or of such provision in the absence of a written waiver signed by such party.

14. Integration. In the event of any conflict between the terms and provisions of this Agreement and the Service Agreement, the terms of this Agreement shall control. Notwithstanding the foregoing provision, nothing in this Agreement relieves Business Associate of any obligations with respect to Protected Health Information under the Service Agreement to the extent that such obligations are not affirmatively inconsistent with the terms and conditions of this Agreement.