

CONSULTANT SERVICES AGREEMENT

THIS Agreement is entered into this ___ day of _____, 2017 ("Effective Date") by and between MaineHealth ("MaineHealth"), a nonprofit corporation organized under the laws of the Maine, with a primary place of business at 110 Free Street, Portland, Maine 04101 and _____ ("Consultant") with a place of business at _____.

WHEREAS, MaineHealth is a health care organization dedicated to the furtherance of quality health care; and

WHEREAS, Consultant is in business to provide specialized technical services and to _____; and

WHEREAS, MaineHealth desires to engage Consultant and Consultant agrees to provide services and support as set forth below.

NOW, THEREFORE, in consideration of the promises and mutual agreements herein, the sufficiency of which is hereby acknowledged, MaineHealth and Consultant agree as follows:

As used in this Agreement MaineHealth shall be defined to include the subsidiaries, agents, representatives, assigns and entities related or belonging to MaineHealth.

1. **Consultant's Engagement, Representations and Warranties**

(a) MaineHealth hereby engages Consultant and Consultant agrees to provide specialized services and support as described in the attached and incorporated Statement of Work. ("Services").

(b) Should MaineHealth and Consultant agree to modify the provisions set forth in a particular Statement of Work, a Change Authorization will be prepared and signed by the authorized representatives of both parties; **except that** in no case shall a Change Authorization valued in excess of \$_____ be approved absent a written, executed amendment to this Consultant Services Agreement reviewed and approved by _____. An otherwise allowable Change Authorization shall contain or incorporate by reference any and all modifications to the applicable Statements of Work and shall become part of this Agreement. In the event of a conflict between this Agreement and any Statement of Work, this Agreement shall control.

(c) While providing Services hereunder, Consultant represents and warrants to MaineHealth as follows:

1. The Services shall be performed in a professional, high quality and workmanlike manner by trained and qualified staff and shall strictly conform to the Statement of Work attached hereto.

2. Consultant shall comply at all times with all applicable federal, state and local laws, codes, and regulations of the United States and any jurisdiction in which Consultant acts, including, without limitation, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH”).
3. Consultant has all necessary rights, licenses and permits required to perform the Services hereunder, and is legally authorized to engage in business in the United States.
4. Consultant shall comply at all times with all applicable MaineHealth policies, procedural standards, and ethical standards of which Consultant has been made aware including, but not limited to, all security provisions in effect at MaineHealth or any affiliate of MaineHealth to which Consultant requires access in order to provide services under this Agreement.
5. Consultant will not use MaineHealth’s name in any promotional materials or other communications with third parties without the prior written consent of MaineHealth.
6. Consultant shall designate employees to provide the Services on the Statement of Work, and such individuals shall be employed by Consultant. MaineHealth shall have the right, in its sole discretion, to reject any of Consultant’s employees and any subcontractors who, in MaineHealth’s sole determination, are not acceptable for providing the Services. Consultant shall communicate to MaineHealth in writing, any proposed changes in Consultant’s personnel and shall obtain MaineHealth’s approval prior to implementing such change.
7. Consultant shall keep as confidential all proprietary and Confidential Information, as defined in this Agreement pertaining to MaineHealth and its customers, clients, patients, employees, affiliates, subsidiaries and other entities.

2. **Independent Contractor Status**

- (a) Consultant shall be an independent contractor and, as such, shall have no right, power, or authority to bind or commit MaineHealth. Nothing herein shall be deemed or construed to create a joint venture, partnership, agency, or employer/employee relationship for any purpose between Consultant and MaineHealth. In its capacity as an independent contractor, Consultant will (i) control and supervise its employees and any subcontractors assigned to provide the Services; (ii) ensure compliance with MaineHealth’s rules and requirements which may from time to time be provided to Consultant, (iii) utilize its own tools and equipment as appropriate, and (iv) be fully liable for the acts or omissions of itself and its employees and subcontractors.
- (b) During the term of this Agreement, Consultant shall retain the right to provide services and support of the same or of a different kind for others, and MaineHealth shall retain the right to obtain services and support of the same or a different kind from its own personnel or other contractors.

- (c) Consultant shall bear sole responsibility for payment of compensation to its personnel and any subcontractors and shall pay and report, for all personnel assigned to MaineHealth's work, federal and state income tax withholding, social security taxes, and unemployment insurance applicable to such personnel as employees of Consultant. Consultant shall bear full responsibility for any health or disability insurance, retirement benefits, or other welfare or pension benefits, if any, to which such personnel may be entitled. Consultant agrees to defend, indemnify, and hold harmless MaineHealth, MaineHealth's officers, directors, employees and agents, and the administrators of MaineHealth's benefit plans, from and against any claims, liabilities, or expenses relating to such compensation, tax, insurance, or benefit matters; provided that MaineHealth shall (1) promptly notify Consultant of each such claim when and as it comes to MaineHealth's attention; (2) cooperate with Consultant in the defense and resolution of such claim; and (3) not settle or otherwise dispose of such claim without Consultant's prior written consent, such consent not to be unreasonably withheld.
- (d) Consultant shall procure and maintain workers' compensation coverage sufficient to meet the statutory requirements of every state in which Consultant's personnel are engaged in MaineHealth work.
- (d) Consultant shall require each of its personnel who participate in the provision of Services under any Statement of Work to comply with all provisions of this Agreement, and shall confirm that such personnel shall have no status as employees of MaineHealth and no claim under any MaineHealth benefit plan. In addition, Consultant certifies that Consultant's personnel or any of its subcontractors who will perform services pursuant to this Agreement are not currently and have never been suspended from participation in or subjected to any type of criminal or civil sanction, fine, civil monetary penalty, debarment, or other penalty by any private or public health insurance program, including Medicare, Medicaid, Tricare, or any other federal or state health insurance program.

3. No Power To Act on Behalf of MaineHealth

Consultant will have no right, power, or authority to create any obligation, express or implied, or make any representation on behalf of MaineHealth except as Consultant may be authorized in writing from time to time by MaineHealth and only to the extent of such authorization.

4. Fees and Invoices

- (a) All Services provided hereunder will be provided in accordance with the provisions set forth in the Statement of Work. Unless otherwise specified in the Statement of Work, fees and applicable taxes will be invoiced monthly based on actual fees incurred and in a manner prescribed by MaineHealth.

- (b) Invoices shall be accompanied by supporting documentation as reasonably required by MaineHealth. Payments will be due by MaineHealth within thirty (30) business days of the date of MaineHealth's receipt of any invoice.

5. Expenses and Invoices

- (a) Subject to the terms of this Agreement, MaineHealth will pay Consultant reasonable and authorized out-of-pocket expenditures incurred in connection with Consultant's provision of Services and as set forth in the Statement of Work. Invoiced travel expenses shall conform to the terms of the Maine Medical Center's "Reimbursement of Travel and Expenses for Consultant's" attached hereto and incorporated herein. Requests for expense reimbursement shall be presented no later than thirty (30) days following the date the expenses are incurred and in a manner prescribed by MaineHealth.
- (b) Invoices shall be accompanied by supporting documentation as required by MaineHealth. Payment by MaineHealth shall be due within thirty (30) business days of receipt of the billing statement.

6. Confidentiality

- (a) During the course of providing Services to MaineHealth, Consultant may have access to certain information that (i) relates to MaineHealth's patients, employees and/or customers, (ii) relates to MaineHealth's past, present, or future research, development, or business activities, (iii) relates to proprietary products, materials, services, or technical knowledge belonging to MaineHealth, and/or (iv) is regarded as confidential by MaineHealth ("Confidential Information").
- (b) Confidential Information specifically includes any individually identifiable health information as that term is defined in HIPAA and its implementing regulations, as amended from time to time ("protected health information or PHI"). Consultant acknowledges and agrees that it is a "Business Associate" as defined by HIPAA and the parties have executed a Business Associate Agreement simultaneously with this Agreement. With respect to the use, disclosure and protection of PHI, in the event of a conflict or inconsistency between this Agreement and the Business Associate Agreement, the terms and conditions of the Business Associate Agreement shall control.
- (c) Consultant agrees to use all Confidential Information as delineated in (a) and (b) above only for the purposes for which it was disclosed and not to further disseminate or disclose this Confidential Information to other third parties, without prior written approval from MaineHealth or as otherwise required by law, unless such disclosure is necessary for Consultant to meet its contractual obligations and that third party is similarly bound by the same privacy and security standards in its handling of Confidential Information. Further, Consultant agrees, where legally required, to comply with all applicable privacy and security laws, including but not limited to, (1) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), (2) the Health Information Technology for Economic and Clinical Health Act

("HITECH"), and (3) any relevant federal, state or local laws and/or regulations promulgated in conjunction with applicable privacy and security laws. Consultant agrees to cooperate with MaineHealth to ensure its privacy and security compliance.

- (d) Consultant shall implement and maintain commercially reasonable information security measures to protect against unauthorized access to or use of MaineHealth's Confidential Information. Consultant shall promptly notify MaineHealth of any breach of security resulting in unauthorized access to MaineHealth's Confidential Information.
- (e) Unless otherwise expressly agreed in writing by MaineHealth, all Confidential Information made available to Consultant, including copies of such Confidential Information, shall be returned to MaineHealth upon the first to occur of: (i) termination of this Agreement or (ii) request by MaineHealth.
- (f) This section shall survive the termination of this Agreement.

7. **Records**

For at least four (4) years after providing services pursuant to the Agreement, Consultant shall, upon request, make the following documents available to MaineHealth, and/or the Secretary of Health and Human Services, the Comptroller General, or the authorized representative of each: a copy of this Agreement, all books, documents and records of Consultant necessary to certify the nature and extent of the costs incurred by MaineHealth in connection with this Agreement, and such other documentation as may be requested pursuant to 42 U.S.C. §1395x(v)(1)(i) as amended. If Consultant carries out the duties of this Agreement through a subcontract with a value or cost of \$10,000 or more over a twelve month period with a related organization, the subcontract also shall contain a clause permitting access by MaineHealth, the Secretary of Health and Human Services, the Comptroller General and their duly authorized representatives to books, documents, records of the related organization as necessary to verify the nature and extent of such costs.

8. **Ownership**

- (a) All files and materials including, but not limited to, all copyrights, patents, trade secrets, or other intellectual property rights associated with any ideas, concepts, programming, processes, techniques, or works of authorship, any and all software programs or packages or any other patentable or copyrightable materials, (collectively, the "Work Product") developed or created by Consultant during the course of performing MaineHealth's work or prepared by Consultant for MaineHealth pursuant to this Agreement shall be owned exclusively by MaineHealth and shall be deemed works "made for hire". In the event any such materials may not, by operation of law, be works "made for hire", Consultant automatically assigns, at the time of creation of the Work Product, without any requirement of further consideration, any right, title, or interest it or they may have in such Work Product, including any copyrights or other intellectual property rights pertaining thereto. Upon request of MaineHealth, Consultant shall take such further actions, including execution and delivery of instruments of

conveyance, as may be appropriate to give full and proper effect to such assignment.

- (b) MaineHealth does not grant any licenses or patents to Consultant under this Agreement or any Statement of Work.

10. **Insurance**

The Consultant shall obtain, as its own expense, prior to the commencement of the Services hereunder, the following insurance coverage:

- Minimum Required Commercial General Liability Insurance: \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate. This policy shall name MaineHealth as an additional insured.
- Minimum Required Professional Liability Insurance: \$1,000,000.00 per occurrence and \$2,000,000.00 aggregate
- Minimum Required Workers' Compensation Insurance: At statutory limits for each person assigned by Consultant under this Agreement, including Employer's Liability limits of not less than \$100,000.00 per occurrence and \$500,000.00 aggregate
- Automobile Liability Insurance: covering all owned, non-owned and hired vehicles operated by Consultant and its employees, with policy limits not less than \$1,000,000.00 per accident

11. **Indemnification**

(a) Consultant shall indemnify, defend and hold MaineHealth, its officers, directors, its employees, agents, assigns, representatives, and related entities, harmless from and against any claim, demand, loss, liability, fine, damage, or expense (including, without limitation, reasonable attorney's fees, court costs and litigation expense) (i) related to bodily injury, death of any person, or damage to property resulting from the negligent or willful acts or omissions of Consultant, its employees and agents; (ii) that MaineHealth may be obligated to pay as the result of any act, error, omission or breach by Consultant, its employees, agents, representatives or related entities in performing its obligations hereunder; (iii) resulting from any claim that Consultant is not an independent contractor, (iv) incurred by MaineHealth based on any claim that any deliverable or other materials delivered under this Agreement or use thereof by MaineHealth infringes any copyright, trade secret, or other proprietary right of any third party, (v) due and owed to the IRS by Consultant including, but not limited to, social security, income tax, or other tax or withholdings, and (vi) arising out of or relating to the Services performed by Consultant hereunder or any breach of the representations and warranties made by Consultant pursuant to Section 2 herein.

- (b) Consultant's obligations in this Section shall survive the expiration or termination of this Agreement.

12. Term

This Agreement shall be effective upon execution by both parties and shall continue in full force and effect for a period of _____ months, unless terminated in accordance with the provisions set forth in this Agreement. This Agreement shall not be extended absent an amendment to this Professional Services Agreement reviewed and approved by [_____]

13. Termination

- (a) MaineHealth may, upon giving fifteen (15) days prior written notice of termination, identifying specifically the basis for such notice, terminate this Agreement and/or current Statement of Work for Consultant's breach of a material term or condition of this Agreement, provided Consultant has not cured such breach within the fifteen (15) day period.
- (b) Either party may immediately terminate this Agreement by written notice given to the other party and may regard the other party as being in default of this Agreement, if the other party becomes insolvent, makes a general assignment for the benefit of creditors, files a voluntary petition of bankruptcy, suffers or permits the appointment of a receiver for its business or assets, or becomes subject to any proceeding under any bankruptcy or insolvency law, whether domestic or foreign, or has wound up or liquidated its business, voluntarily or otherwise. In the event that any of the above events occurs, the affected party shall immediately notify the other party of its occurrence.
- (c) MaineHealth may at any time and without cause terminate this Agreement and/or any Statement of Work subject hereto, upon giving thirty (30) days prior written notice to Consultant.
- (d) MaineHealth may at any time and without cause request Consultant to immediately remove a specific employee of Consultant and/or any subcontractor and Consultant shall comply with said request.
- (e) Upon termination of this Agreement for any reason and at MaineHealth's request, Consultant shall cease all activities related to the Services being provided and promptly provide to MaineHealth, without additional cost to MaineHealth, all Work Product and files developed by Consultant in connection with said Services under this Agreement and all materials provided to Consultant by MaineHealth in connection with this Agreement.

14. Assignment

This Agreement may not be assigned by Consultant nor may Consultant's obligations hereunder be subcontracted, without the prior written consent of MaineHealth.

15. **Waiver**

Failure of either party to enforce any of the provisions of this Agreement, to enforce any rights with respect thereto, or to exercise any election provided for herein, shall in no way be considered a waiver of such provisions, rights, or elections, or in any way affect the validity of this Agreement. Failure of either party to enforce or exercise any of said provisions, rights, or elections shall not prejudice such party from later enforcing or exercising the same or any other provisions, rights, or elections which it may have under this Agreement.

16. **Notices**

Unless otherwise stated, any payment, notice, consent, or other communications given pursuant to this Agreement shall be in writing and will be effective either when delivered personally to the party for whom intended, or seven (7) days following deposit of the same into the United States mail (certified or registered mail, return receipt requested, or first class mail postage prepaid), addressed to such party as set forth below or as either party may hereafter designate by written notice given to the other party in accordance herewith:

If to MaineHealth

If to Consultant

MaineHealth
c/o _____

Portland, ME 04102

17. **Severability**

If any term or provision of this Agreement is found by a court of competent jurisdiction to be invalid, illegal, or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement. Such terms or provisions will be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the Parties will be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

18. **Complete Agreement**

(a) This Agreement sets forth the entire understanding between the parties hereto and supersedes all prior agreements, arrangements, and communications, whether oral or written, with respect to the subject matter hereof. No other agreements, representations, warranties, or other matters, whether oral or written, shall be deemed to bind the parties entering into this Agreement solely on the basis of the agreements and/or representations contained therein. This

Agreement may not be modified or amended except by the mutual and prior written consent of both parties.

- (b) Captions and/or headings appearing in this Agreement are for convenience only and shall not be deemed to explain, limit, amplify or otherwise interpret any of the provisions hereof.

19. **Governing Law**

This Agreement is governed by and construed in accordance with the laws of the State of Maine.

20. **Miscellaneous**

- (a) This Agreement is enforceable only by Consultant and MaineHealth. The terms of this Agreement are not a contract or assurance regarding compensation, continued engagement or benefit of any kind to any of Consultant's personnel, assigned to perform Services hereunder, or any beneficiary of any such personnel, and no such personnel or any beneficiary thereof, shall be a third-party beneficiary under or pursuant to the terms of this Agreement.
- (b) This Agreement shall inure to the benefit of, and be binding upon, Consultant and MaineHealth, their respective successors and permitted assigns.
- (c) Consultant agrees that in the performance of this Agreement it will not discriminate or permit discrimination against any person or group of persons on the grounds of sex, race, color, religion, or national origin in any manner prohibited by the laws of the United States.
- (d) All remedies available to either party for one or more breaches by the other party are and shall be deemed cumulative and may be exercised separately or concurrently without waiver of any other remedies.
- (e) This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The parties hereto agree that facsimile signatures or authorized representatives of the parties shall legally bind the parties to the terms and conditions of this Agreement as if the signatures were original, and that the signed facsimile Agreement with authorized facsimile signatures is admissible in any court of competent jurisdiction as evidence of the fully executed Agreement in the event that the Agreement with original signatures is not available.
- (f) The obligations sets forth in Sections _____ shall survive the termination or expiration of this Agreement.

IN WITNESS WHEREOF, the parties have duly executed this Agreement as of the day and year set forth below.

MaineHealth

Consultant: _____

By: _____

By: _____

Title: _____

Date: _____

Date: _____

Attachment – Business Associate Agreement
Attachment- MMC Reimbursement of Travel and Expenses for Consultants
Attachment Statement of Work

DRAFT

[EXAMPLE OF STATEMENT OF WORK –

- PROVIDE SUFFICIENT DETAIL FOR A THIRD PARTY TO UNDERSTAND WHY THE SERVICE IS NEEDED
- IDENTIFY THE GOAL TO BE ACHIEVED ON BEHALF OF MaineHealth AND
- STATE THE COMPENSATION METHOD (PREFERABLY A FLAT FEE LIMITING EXPOSURE) AND/OR HOURLY WAGE
- DELINEATE, WITH SPECIFICITY, THE SERVICES TO BE PROVIDED BY CONSULTANT TO MEET THE STATED GOAL

STATEMENT OF WORK SHOULD BE SUFFICIENTLY DEFINED TO AVOID QUESTIONS OF RESPONSIBILITY/ PERFORMANCE AT A LATER DATE.]

Statement of Work

MaineHealth and its corresponding member organizations require ...

Fees

Services

Describe specific services to be provided by consultant:

- a. Confirm Project Scope & Team
- b. Define Expected Outcome
- c. Define Timeline and Key Milestones
- d. Discuss and define other issues impacting Vendor Selection
 - i. Price Tolerance
 - ii. Business Case
 - iii. Implementation Timeline(prioritize immediate, short and long-term requirements)
 - iv. Risk Tolerance

**** NOTE: Any changes in this Statement of Work valued at \$_____ or higher must be preceded by a formal amendment to the Consultant Services Agreement**

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Addendum (“Addendum”) is entered into by Entity and (“Business Associate”) on the Effective Date, under which Business Associate uses, discloses, or has access to Protected Health Information (“PHI”), in its performance of services for Entity.

RECITALS

The purpose of this Addendum is to comply with all applicable federal and state laws governing the privacy of personal health information PHI. As used herein, the Privacy Rule and the Security Rule are each deemed to include the amendments thereto that are included in the Modifications to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Privacy, Security, Enforcement and Breach Notification Rules Under the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act”) and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules; Final Rule (the “Omnibus Rule”), 78 Fed. Reg. 5565, collectively referred to as “HIPAA/HITECH Final Omnibus Rule”. Notwithstanding the terms of this or any other agreement between Entity and Business Associate, Business Associate shall comply with all of its statutory and regulatory obligations stated under the HIPAA/HITECH Final Omnibus Rule. The terms stated herein shall have the same definitions as provided in HIPAA.

The parties hereto agree as follows:

1. Permitted Uses and Disclosures. Except as described in the enumerated subparagraphs below, Business Associate shall not use or disclose PHI received from Entity or created on behalf of Entity. Exceptions:
 - 1.1 As reasonably necessary to provide the services in the Agreement;
 - 1.2 As otherwise permitted or required by this Addendum;
 - 1.3 As required by law; and
 - 1.4 For the proper management and administration of Business Associate’s business and to disclose PHI in connection with such management and administration, and to carry out the legal responsibilities of the Business Associate, provided Business Associate obtains reasonable assurances from the recipient that the PHI shall be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and Business Associate requires the recipient to notify it of any instances of which it is aware in which the confidentiality of the PHI has been breached.
2. Disclosure to Third Parties. Business Associate shall ensure that any third party to whom it provides PHI agrees to the same restrictions and conditions that apply to Business Associate.
3. Minimum Necessary. Business Associate shall limit the use or disclosure of PHI received or created from or on behalf of Entity to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request consistent with 45 C.F.R. § 164.502(b) and as may be amended from time to time.
4. Safeguards. Business Associate shall implement appropriate administrative, technical, and physical safeguards to protect PHI and prevent its use or disclosure except as provided by the Agreement or this Addendum, including, at a minimum, the administrative safeguards set forth at 45 C.F.R. § 164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, and the technical safeguards set forth at 45 C.F.R. § 164.312, as they may be amended from time to time, and the organizational requirements of the Security Rule described in (45 C.F.R. §§164.306-316) that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of the Entity. Additionally, Business Associate shall implement reasonable and appropriate policies and procedures to comply with all standards, implementation specifications and other requirements of the HIPAA Security Rule, and shall comply with the policy and procedure documentation requirements set forth at 45 C.F.R. § 164.316.

5. Reporting. Business Associate shall notify Entity within five (5) days: (a) when it discovers a breach of PHI including Breaches of Unsecured PHI as required by 45 C.F.R. §164.410; , (b) upon becoming aware of any use or disclosure of PHI not permitted by the Agreement or this Addendum, (c) upon becoming aware of any security incident involving electronic PHI, or (d) in the event of any other unauthorized use, disclosure, acquisition or access to PHI that may require Entity, under applicable federal or state law to make a notification to any third party including, without limitation, to any patient (a “Triggering Event”). Such report shall include the identification of each individual whose PHI has been, or is reasonably believed to have been accessed, acquired, or disclosed during such breach, unauthorized use or disclosure, or security incident involving electronic PHI. Entity shall be solely responsible for making any required notification to the individual(s) whose PHI is affected, including determining the content, methods, and means of such notification. Business Associate shall not make any such notification at its own initiative without Entity’s prior written authorization. Notwithstanding the foregoing, Business Associate shall reasonably cooperate with Entity in formulating its notification. Business Associate shall pay the costs and expenses incurred by or on behalf of Entity for investigation, remediation, notification and penalties to the extent that the Triggering Event is caused by the acts or omissions of Business Associate or any of its affiliates, contractors or personnel or by a material breach of the Agreement or this Addendum by Business Associate or any of its affiliates, contractors or personnel. Notwithstanding anything contained herein to the contrary, the provisions provided herein are not intended to restrict or prevent Business Associate from fulfilling its obligation, if any, to make certain disclosures to public officials (including CMS), in cases of immediate jeopardy/imminent harm or a good faith belief that the Business Associate has engaged in conduct that is unlawful, violates professional or clinical standards or potentially endangers one or more patients, workers or the public as allowable under the Privacy Rule (45 C.F.R. §164.502 (j)).

5.1 Business Associate shall report to Entity, and cause each subcontractor of Business Associate to promptly report to Entity, any breach of unprotected PHI, or unauthorized acquisition, access, use or disclosure of PHI or any other health care or personal information in violation of the terms of this Agreement, the HIPAA Rules or other applicable law. Such report shall be in writing and shall be made as soon as reasonably possible but in no event later than five (5) days after discovery by Business Associate, or by any subcontractor of Business Associate, of such breach, or unauthorized acquisition, access, use or disclosure. Each report shall include, to the extent possible, the following information: (i) a description of the facts pertaining to the breach, unauthorized acquisition, access, use or disclosure, including, without limitation, the date of occurrence thereof and the date of discovery; (ii) the identification of the individuals whose information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during such breach; (iii) the nature, types and extent of PHI and other health care and personal information involved in such breach; (iv) the names of the unauthorized individuals and/or entities to whom PHI and other health care and personal information has been disclosed; (v) whether PHI was acquired or viewed; (vi) the extent to which the risk to PHI and other health care and personal information has been mitigated; (vii) any action Business Associate recommends that affected individuals should take to protect themselves from potential harm resulting from such breach; (viii) a description of the action being taken by Business Associate to investigate the breach; and (ix) such other information and/or data that Entity may reasonably request. Business Associate further shall report instances of targeted attacks on Business Associate’s network, system, application or data where there is a reasonably detectable pattern of three or more such incidents within a fourteen (14) day period, including without limitation pings and other broadcast attacks on its firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above even if such incidents do not result in the unauthorized access, use or disclosure of PHI.

5.2 Entity shall be solely responsible for making any required notifications to affected individuals, including determining the content, methods, and means of such notification. Business Associate shall not make any such notification without Entity's prior written authorization. Notwithstanding the foregoing, Business Associate shall reasonably cooperate with Entity to facilitate its notification of all

affected individuals and others as required by Applicable Law. Business Associate shall pay the costs and expenses incurred by or on behalf of Entity in connection with its investigation, remediation, and breach notifications, and all fines and penalties incurred by Entity to the extent that such costs, expenses, fines and penalties arise out of any willful or negligent acts or omissions of Business Associate, and/or any officer, director, employee, contractor, subcontractor or agent thereof, or any breach of any material provision of this Agreement. Notwithstanding anything contained herein to the contrary, the provisions provided herein are not intended to restrict or prevent Business Associate from fulfilling any obligation it may have to make certain disclosures to public officials (including CMS), in cases of immediate jeopardy/imminent harm, or a good faith belief that the Business Associate has engaged in conduct that is unlawful, or violates professional or clinical standards or potentially endangers one or more patients, workers or the public as allowable under the Privacy Rule (45 C.F.R. §164.502 (j)). The respective rights and obligations under this paragraph 5 shall survive expiration or termination of this Agreement.

6. Accounting of Disclosures. Business Associate shall document and provide to Entity, within fifteen (15) days of Entity's written request, any information relating to disclosures of PHI as necessary for Entity to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528.
7. Subcontracts. Business Associate shall not enter any subcontract for another party to provide to or for the benefit of Entity the services contemplated by the Agreement that involve PHI without prior written approval of Entity. In the event that Entity provides such written approval, Business Associate shall require any subcontractor that creates, receives, maintains or transmits PHI on its behalf to comply with the same conditions and restrictions that apply to Business Associate with respect to such PHI in accordance with the applicable requirements of the Privacy Rule and the Security Rule. In no event shall Business Associate, without Entity's prior written approval, provide PHI created, received, maintained or transmitted by, Business Associate on behalf of Entity to any employee, agent including a subcontractor, if such employee, agent or subcontractor receives, processes, or otherwise has access to the PHI outside of the United States.
8. Access by Department of Health and Human Services. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI, security safeguards and breach notification available to the Secretary of the Department of Health and Human Services or other entity authorized to enforce federal or state laws governing confidentiality of PHI in a timely manner to determine compliance with such legal requirements.
9. Mitigation. Business Associate shall mitigate promptly the effects of any unauthorized or improper use or disclosure of PHI.
10. Medical and Billing Records. If Business Associate creates or maintains any medical or billing records that would be considered a Designated Record Set under HIPAA in any medium necessary to provide services under the Agreement, then Business Associate shall:
 - 10.1. Comply with the applicable provisions concerning PHI in such records;
 - 10.2. Provide Entity access to such PHI within fifteen (15) days of Entity's written request; and
 - 10.3. Amend such PHI to provide updated or corrected information within fifteen (15) days of Entity's written request.
11. Privilege. No statutory or common law privilege, including privileges established or recognized by the Maine Health Security Act or attorney-client privilege, shall be deemed waived by virtue of this Addendum.
12. Identity Theft Indicators. To the extent required by law, Business Associate shall maintain appropriate policies and procedures to detect relevant indicators of identity theft ("red flags") that may arise in the

performance of the Business Associate's services for Entity and immediately shall report such "red flags" to Entity and take appropriate steps to prevent or mitigate identify theft.

13. Ownership and Use of PHI. As between the parties, Entity shall be the sole and exclusive owner of all PHI that Business Associate obtains from or on behalf of, or possesses or otherwise has access to in connection with its performance of the Services. Entity hereby authorizes Business Associate to have access to and utilize the PHI solely as a Business Associate of Entity to the extent necessary and appropriate to perform the Services and for no other purpose whatsoever and in all other respects in strict accordance with this Addendum. Except as otherwise provided in this Addendum, Business Associate shall not, directly or indirectly: a) use or disclose PHI in exchange for remuneration from any person or entity, with the sole exception of any consideration received from Entity in exchange for services provided by Business Associate in accordance with the Agreement between the parties; b) sell, assign, license, lease or otherwise use or commercially exploit PHI; (c) possess or assert any lien or other right or interest against or to any PHI; or (d) de-identify and/or aggregate PHI for uses except as provided in the Agreement.
14. Termination. Entity may in its sole discretion immediately terminate the Agreement in the event of a violation of this Addendum. Unless otherwise agreed by Entity, within thirty (30) days of expiration or termination of the Agreement, Business Associate shall return the originals and all copies of such records, or shall destroy such originals and copies and certify in writing to Entity that it has destroyed the originals and all copies. The provisions of this section shall survive the expiration or termination of the Agreement.
15. Amendment; Interpretation. The parties shall modify this Addendum to comply with subsequent changes in the HIPAA/HITECH Final Omnibus Rule or other laws and regulations governing the privacy and non-disclosure of PHI. Any ambiguity in this Addendum shall be resolved in a manner that brings the Addendum into compliance with the then current version of the HIPAA/HITECH Final Omnibus Rule and or other laws and regulations governing the privacy and non-disclosure of PHI.
16. Insurance. Business Associate shall purchase and maintain insurance coverage in form and amount acceptable to Entity including any necessary data riders to cover data loss and/or damage or the unauthorized disclosure and/or fraudulent use of data and provide Entity with a Certificate of Insurance evidencing such coverage upon request.
17. Indemnification. Business Associate shall indemnify and hold Entity harmless from any claims, cost, liability, and expense arising from or attributable to any acts or omissions of Business Associate, or its agents, employees or subcontractors in carrying out its obligations under this Addendum.
18. Independent Contractor. The parties hereto agree that Business Associate shall at all times be an independent contractor in performing services pursuant to this Addendum and that the relationship between the parties shall not constitute a partnership or a joint venture. The parties hereto further agree that this characterization of their relationship is consistent with the HIPAA/HITECH Final Omnibus Rule as described in the commentary at 78 Fed. Reg. 5581-5582.

(The remainder of this page has been left blank intentionally. The next page is the signature page.)

IN WITNESS WHEREOF, the parties have caused this Addendum to be executed by their duly authorized officers as of the day and year first above written.

Entity

By:
Title:

Date

Business Associate

By:
Title:

Date

DRAFT