

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into by and between **Peninsula Imaging L.L.C.**, Covered Entity ("CE"), and _____, Business Associate ("BA").

PURPOSE

- A. Covered Entity ("CE"), through its affiliated entities, operates in long-term care facilities licensed and certified to participate in the Medicaid and/or Medicare programs.
- B. Business Associate ("BA") is contractually obligated to provide certain services related to one or more "covered entities" as that term is defined and regulated under HIPAA.
- C. CE and BA intend to protect the privacy of Protected Health Information ("PHI") and electronic Protected Health Information ("e-PHI") disclosed to or created or received by BA pursuant to the Agreement in compliance with applicable provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA") and regulations promulgated there under by the U.S. Department of Health and Human Services, the privacy and security provisions of the American Recovery and Reinvestment Act (Stimulus Act) for Long Term Care, Public Law 111-5, HITECH Act and other applicable laws.
- D. CE and BA agree to comply with the Fair and Accurate Credit Transactions Act of 2003 (FACTA) and its implementing regulations at 16 CFR § 681.1 and 16 CFR § 681.2.
- E. The purpose of this Agreement is to satisfy certain standards and requirements of HIPAA, including the Standards for Privacy of Individually Identifiable Health Information at 45 CFR parts 160 and 164, Subparts A and E, the standards relating to Notification in the Case of Breach of Unsecured Protected health Information at 45 CFR Parts 160 and 164, Subparts A and D, and the Security Standards for the Protection of electronic Protected Health Information at 45 CFR Parts 160 and 164, Subparts A and D, as such regulations may be amended from time to time (including, without limitation any amendments required by the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act") (collectively "HIPAA Regulations")

In consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

- 1. **Definitions:** The following definitions are used by this Agreement:
 - 1.1 **Agreement** – means this Business Associate Agreement, which is an agreement required under 45 CFR § 164.314(a)(2) between a Business Associate and a Covered Entity.
 - 1.2 **Breach** – means the unauthorized acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under the Privacy Rule which compromises the security or privacy of the protected health information.
 - 1.3 **Integrity** – means that data or information have not been altered or destroyed in an unauthorized manner.
 - 1.4 **Data Set** – shall have the same meaning as the term "limited data set" in 45 CFR § 164.514(e)(2).
 - 1.5 **Plan** – means the group health plan(s) identified in the introductory paragraph to this Agreement.
 - 1.6 **Privacy Rule** – means the Standards and Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, subparts A and E and the privacy provisions of HIPAA, as amended.

- 1.7 **Protected Health Information (PHI)** – shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by BA from or on behalf of Covered Entity. PHI includes both Hardcopy and Electronic Protected Health Information (“ePHI”) and means any information, whether oral or recorded in any form or medium, that
- i. Relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present or future payment for the provision of health care to an individual; and,
 - ii. Identifies the individual or there is a reasonable basis to believe the information can be used to identify the individual; and,
 - iii. Is limited to the information created or received by BA from or on behalf of CE.
 - iv. Hardcopy Protected Health Information (“paper”) is a subset of Protected Health Information and means PHI that is maintained as a paper document.
- 1.8 **Electronic Protected Health Information (“e-PHI”)** is a subset of Protected Health Information and means PHI that is transmitted by or maintained in any electronic media.
- 1.9 **Required By Law** – means a mandate contained in law that compels a covered entity to make a use or disclosure of PHI and that is enforceable in a court of law and shall have the same meaning as the term “required by law” in 45 CFR § 164.103.
- 1.10 **Secretary** – means the Secretary of Health and Human Services or any other officer or employee of HHS to whom the authority involved has been delegated.
- 1.11 **Security Incident** – shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR § 146.304.
- 1.12 **Security Rule** – means the Security Standards and Implementation Specifications at 45 CFR Part 160 and Part 164, subpart C and the security provisions of HIPAA, as amended.
- 1.13 **Standards for Electronic Transactions Rule** – means the final regulations issued by HHS concerning standard transactions and code sets under the Administrative Simplification provisions of HIPAA, 45 CFR Part 160 and Part 162.
- 1.14 **Subcontractor** – means an agent of a BA described in 45 CFR § 160.103 to whom the BA provides protected health information that the BA creates, receives, maintains, or transmits on behalf of a Covered Entity.
- 1.15 **Unsecured Protected Health Information** – means Protected Health Information that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary. As of August 24, 2009, the Secretary has specified the following technologies and methodologies that will render Protected Health Information unusable, unreadable, and indecipherable (i.e., secured Protected Health Information): (1) encryption as described in the Secretary’s guidance and determined by the National Institute of Standard and Technology to meet the standards described in such guidance, or (2) destruction, in accordance with the procedures identified in the Secretary’s guidance, of the media on which the Protected Health Information was stored or recorded.
- 1.16 **Use** – means the sharing, employment, application, utilization, examination, or analysis of PHI within the BA’s organization.

2. Privacy Provisions

2.1 **Introduction.** Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the use, disclosure, receipt and/or creation of Protected Health Information. The “business associate” provisions of the Privacy Rule govern the terms and conditions under which the BA may use or disclose Protected Health Information. In general, BA agrees and intends to act such that (1) Covered Entity can fulfill its responsibilities under HIPAA; and (2) BA can fulfill its contractual obligations under this Agreement. In addition, BA specifically acknowledges its direct liability for the failure to comply with certain portions of the Privacy Rule as provided under HITECH and the regulations issued thereunder.

2.2 **Permitted Uses and Disclosures by Business Associate.**

2.2.1 Business Associate agrees to not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law. Business Associate shall comply with the provisions of this Agreement relating to privacy and security of PHI on all present and future provisions of HIPAA, the HITECH Act and HIPAA Regulations that relate to privacy and security of PHI and that are applicable to CE and/or BA. Except as otherwise limited in this Agreement, BA may use or disclose Protected Health Information (i) to perform functions, activities, or services for, or on behalf of, Covered Entity pursuant to any services agreement with the BA, (ii) as permitted or required by this Agreement, and (iii) as Required by Law. BA may disclose Protected Health Information to other BAs of Covered Entity, or to BAs of another covered entity that is part of an organized health care arrangement that includes Covered Entity, to the fullest extent allowed under applicable law. If and when BA discloses or makes available Protected Health Information to the sponsor of the Plan, BA agrees to disclose or make available Protected Health Information only to the persons identified in the attached Designated Persons Appendix (which may be updated by Covered Entity and communicated to BA from time to time) for the purpose of performing functions, services, or activities for or on behalf of Covered Entity. Upon Covered Entity’s request, BA will provide Protected Health Information to other BAs of Covered Entity that assist in administering the group health plans and that are authorized to receive such information.

2.2.2 Except as otherwise limited in this Addendum, BA may use or disclose PHI consistent with CE’s minimum necessary policies and procedures to perform functions, activities, or Services for, or on behalf of CE as specified in the Agreement, provided such use or disclosure would not violate the Privacy and Security Rule if done by the CE.

2.2.3 Disclosure for Management and Administration - Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that:

- i. Disclosures are required by law; or
- ii. BA obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and
- iii. The person notifies the BA of any instances of which it is aware in which the confidentiality of the information has been breached.

2.2.4 Data Aggregation - Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation services to CE relating to the health care operations of the CE.

2.2.5 Report Violations of Law - Except as otherwise limited in this Agreement, BA may use PHI to report violations of law appropriate to Federal and State authorities consistent with 45 CFR § 164.502(j)(1).

2.2.6 De-identification. The BA may de-identify any and all PHI that it obtains from the CE, but only if such de-identification is accomplished in accordance with the requirements of 45 CFR § 164.514(a) and (b).

2.2.7 Business Associate will limit the use, disclosure, or request of Protected Health

Information, to the extent practicable, (i) to the Limited Data Set, or (ii) if needed by BA, to the minimum necessary (as determined by BA) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule. BA's ability to satisfy the requirement of this Paragraph III.B.6 by use of the Limited Data Set shall be available until the effective date of subsequent guidance issued by the Secretary regarding what constitutes "minimum necessary," at which time BA will take reasonable efforts to limit the use, disclosure, or request of Protected Health Information to the minimum necessary (as defined by such Secretary's guidance) to accomplish the intended purpose of such use, disclosure, or request, except to the extent a broader use, disclosure, or request of Protected Health Information is allowed by the Privacy Rule.

2.2.8 Except as otherwise authorized by the Privacy Rule, BA shall not directly or indirectly receive remuneration (whether financial or nonfinancial) in exchange for any Protected Health Information of a Covered Individual unless Covered Entity has received a valid authorization from the Covered Individual that includes a specification of whether the Protected Health Information can be further exchanged for remuneration by the entity receiving Protected Health Information of that Covered Individual. This Paragraph III.B.7 shall apply to exchanges of Protected Health Information occurring on or after the compliance date applicable under the final regulations issued under HITECH that address this restriction.

3. Limitations on Business Associate's Uses and Disclosures. With respect to Protected Health Information that Covered Entity discloses to BA or BA creates, receives, maintains, or transmits on behalf of Covered Entity, BA will not use or further disclose the Protected Health Information other than as permitted or required by this Agreement (including, but not limited to, any restrictions described in Section III.E.4) or as Required by Law.

4. Additional Obligations of Business Associate. Except as otherwise specified in this Agreement, the provisions of this paragraph apply only to Protected Health Information that Covered Entity discloses to BA or BA creates, receives, maintains, or transmits on behalf of Covered Entity.

4.1 Safeguards. BA agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing sentence, BA must comply with the Security Rule by:

4.1.1 Implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI and ePHI as required by the Agreement, and as required by 45 CFR §§ 164.308, 164.310, 164.312, and 164.316 that the BA receives, creates, maintains, or transmits to the same extent as if the BA were a CE. The BA shall undertake such actions in a manner that is consistent with any guidance issued by the Secretary pursuant to the HITECH Act.

4.1.2 Ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of the BA agree to comply with the applicable requirements of the Privacy and Security Rules by entering into a contract or other arrangement that complies with the Privacy and Security Rules.

4.1.3 Promptly report to CE any Security Incident of which BA becomes aware. In addition, BA agrees to promptly notify CE following the discovery of a Breach of Unsecured PHI. A Breach is considered "discovered" as of the first day on which the Breach is known, or reasonably should have been known, to BA or any employee, officer or agent of BA, other than the individual committing the Breach.

4.1.4 BA shall protect PHI from any improper oral or written disclosure by enacting and enforcing safeguards to maintain the security of and to prevent any Use or Disclosure of PHI other than is permitted by this Agreement.

4.2 Reporting and Mitigation. Business Associate will report to Covered Entity any acquisition, access, use, or disclosure of Protected Health Information of which BA becomes aware, or that is reported to BA by an agent or Subcontractor, that is in violation of this Agreement.

BA agrees to mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA or its employees, officers or agents in violation of the requirements of this Agreement (including, without limitation, any Security Incident or Breach of Unsecured PHI). BA agrees to reasonably cooperate and coordinate with CE in the investigation of any violation of the requirements of this Agreement and/or any Security Incident or Breach. BA shall also reasonably cooperate and coordinate with CE in the preparation of any reports or notices to the individual, a regulatory body or any third party required to be made under HIPAA Regulations, the HITECH Act, or any other Federal or State laws, rules, or regulations, provided that any such reports or notices shall be subject to the prior written approval of CE.

- 4.3 **Agents and Subcontractors.** BA agrees to enter into an agreement with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and HITECH 13401. BA shall monitor and ensure, in accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), that any agents, including subcontractors and subcontractors of subcontractors, that create, received, maintain, or transmit PHI on behalf of the BA agree to the same restrictions, conditions, and requirements that apply to the BA through this Agreement with respect to such information.
- 4.4 **Access to Designated Record Sets.** To the extent that BA possesses or maintains PHI in a Designated Record Set, BA agrees to provide access, at the request of CE, and in the time and manner designated by the CE, to PHI in a Designated Record Set, to Covered Entity or, as directed by CE, to an Individual in order to meet the requirements under HIPAA Regulations. If an Individual makes a request for access to PHI directly to BA, BA shall notify CE of the request within three (3) business days of such request and will cooperate with CE and allow CE to send the response to the Individual.
- 4.5 **Amendment of Designated Record Sets.** To the extent that BA possesses or maintains PHI in a Designated Record Set, BA agrees to make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to pursuant to HIPAA Regulations at the request of CE or an Individual, and in the time and manner designated by the CE. If an Individual makes a request for an amendment to PHI directly to BA, BA shall notify CE of the request within three (3) business days of such request and will cooperate with CE and allow CE to send the response to the Individual.
- 4.6 **Disclosure Accounting.** BA agrees to document disclosures of Protected Health Information and information related to such disclosures as is necessary to enable Covered Entity to respond to a request by a Covered Individual for an accounting of disclosures of PHI in accordance with HIPAA Regulations and the HITECH Act. BA agrees to provide to CE or an Individual, in the time and manner designated by the CE, information to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with HIPAA Regulations and the HITECH Act. If an Individual makes a request for an accounting directly to BA, BA shall notify CE of the request within three (3) business days of such request and will cooperate with CE and allow CE to send the response to the Individual. At a minimum, Business Associate shall provide Covered Entity with the following information: (i) the date of the disclosure; (ii) the name of the entity or person who received the Protected Health Information, and if known, the address of such entity or person; (iii) a brief description of the Protected Health Information disclosed; and, (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. BA hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this section and applicable law. It shall be CE's responsibility to promptly notify BA of the request for an accounting, and to prepare and deliver any such accounting requested. In addition to the forgoing, BA shall track other disclosures and/or make available to CE such information as is necessary for Covered Entity to comply with any additional accounting requirements.
- 4.7 **Access to Business Associate's Internal Records.** BA shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, CE available to CE or the Secretary, for the purposes of the Secretary's determining compliance with HIPAA for Covered Entity and/or BA.

- 4.8 **Electronic Transactions.** In the event the BA transmits or receives any Covered Electronic Transaction on behalf of CE, it shall comply with all applicable provisions of the Standards for Electronic Transactions Rule to the extent Required by Law, and shall ensure that any agents and Subcontractors that assist BA in conducting Covered Electronic Transactions on behalf of CE agree in writing to comply with the Standards for Electronic Transactions Rule to the extent Required by Law.
- 4.9 **GINA.** BA agrees not to use or disclose Protected Health Information that contains genetic information if such use or disclosure would violate GINA.

5. Obligations and Rights of Covered Entity.

- 5.1 **Notice of Privacy Practices.** CE shall provide BA with the notice of privacy practices that CE produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.
- 5.2 **Requests by Covered Entity.** CE shall not request or direct BA to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by CE. This includes, but is not limited to, requests or directions for disclosure of Protected Health Information to the Plan sponsor in a capacity other than acting on behalf of the Plan as CE. To the extent a dispute or difference of opinion exists between the BA and CE regarding whether a use or disclosure is permissible, BA may disclose the Protected Health Information under objection pursuant to the specific, written direction of CE. Any disclosures made pursuant to such specific, written direction shall be subject to the indemnification provisions of the Agreement.
- 5.3 **Authorizations.** CE shall notify Business Associate of any authorization provided by an Individual to use or disclose Protected Health Information (and any changes in or revocation of such an authorization),, to the extent that such information may affect Business Associate's use or disclosure of Protected Health Information. Upon receipt of such notification, BA shall use or disclose Protected Health Information in accordance with the authorization or changes thereto.
- 5.4 **Restrictions.** CE shall notify BA of any restriction on the use or disclosure of Protected Health Information to which CE has agreed in accordance with 45 CFR § 164.522 or is required to agree under HITECH (and any changes to or termination of such a restriction), to the extent that such restriction may affect BA's use or disclosure of Protected Health Information. Such restrictions include, but are not limited to, a Covered Individual's request not to disclose Protected Health Information for purposes of payment or health care operations where the Protected Health Information relates solely to a health item or service for which the health care provider has been paid in full out-of-pocket by, or on behalf of, the Covered Individual. Upon receipt of such notification, BA shall comply with such a restriction.
- 5.5 **Agreement Breaches by Business Associate.** If CE obtains knowledge of a pattern of activity or practice of BA that constitutes a material breach or violation of BA's obligations under this Agreement, CE will take reasonable steps to cure such breach or end such violation. If CE cannot successfully cure the breach or end the violation, CE shall terminate the Agreement in accordance with Section VI.B if feasible.

6. Electronic Security Provisions

- 6.1 **Introduction.** This section applies where Business Associate, on behalf of Covered Entity, performs or assists in the performance of functions and activities that may involve the creation, maintenance, receipt, or transmission of Electronic Protected Health Information. This Section IV along with the other sections of the BA Agreement are (1) intended to meet the requirements of the "business associate" provisions of Security Rule, and (2) govern the terms and conditions under which the BA may create, maintain, receive, and transmit Electronic Protected Health Information on behalf of CE. In general, BA agrees and intends to act such that (1) CE can fulfill its responsibilities under HIPAA; (2) BA can fulfill its responsibilities under HIPAA; and (3) BA can fulfill its contractual obligations under this Agreement.

- 6.2 **Obligations of Business Associate.** In accordance with the Security Rule, BA agrees to:
- 6.2.1 Conduct a security risk assessment (in accordance with 45 CFR § 164.308(a)(1)(ii)(A)) and adopt and implement policies and procedures designed to ensure compliance with the Security Rule and this Agreement including, but not limited to, identifying a security officer and training personnel. This Paragraph IV.B.1 shall be effective as of the compliance date applicable under the final regulations issued under HITECH that address this requirement.
 - 6.2.2 Implement administrative, physical and technical safeguards (including written policies and procedures) that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that BA creates, maintains, receives, or transmits on behalf of CE.
 - 6.2.3 Enter into a written contract with any agent or Subcontractor to whom BA provides Electronic Protected Health Information that requires such agent or Subcontractor to comply with the same restrictions and conditions that apply under this Section IV to BA, including, but not limited to, implementing reasonable and appropriate safeguards to protect such information.
 - 6.2.4 Report to CE any Security Incident of which BA becomes aware. BA shall provide such notification on a quarterly basis, unless a more prompt notice is otherwise required by this Agreement (e.g., under Section III.D.2. or Article V). With respect to Security Incidents that result from an unsuccessful attempt to access, use, disclose, modify, or destroy Electronic Protected Health Information or interfere with system operations in an information system containing Electronic Protected Health Information, the notification required hereunder need only report the aggregate number of such incidents.
 - 6.2.5 Promptly mitigate, to the extent practicable, any harmful effect of a Security Incident that is known to BA.
- 6.3 **Obligations of Covered Entity.** CE shall not request or direct BA to create, maintain, receive, or transmit Electronic Protected Health Information in any manner that would not be permissible under the Security Rule.

7. Breach Notification Requirements

- 7.1 **Breach Notification.** To the extent BA accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds, uses, or discloses Unsecured Protected Health Information, as set forth in Section 13402(h) of HITECH, BA shall promptly report to CE any Breach of such Unsecured Protected Health Information by it, its subcontractors or agents of which it becomes aware. Prior to notifying CE of the Discovery of a Breach, BA shall take reasonable steps to satisfy itself based upon reasonable diligence that the acquisition, access, use or disclosure of PHI was not unintentional or inadvertent and that it poses a significant risk of financial, reputational, or other harm to the individual. Notification to CE shall be made without unreasonable delay and in no case later than fifteen (15) business days after the earlier of: (i) the first day on which such Breach is known to BA; or (ii) the first day on which such Breach, by exercising reasonable diligence, would have been known to any person (other than the person committing the Breach) who is an employee, officer or other agent of BA. Notification of the Breach may only be delayed if such delay is required by law enforcement purposes as set forth in 45 CFR § 164.412. If BA has been requested orally or in writing by law enforcement officials that notification of affected individuals may impede a criminal investigation, BA shall inform CE within 24 hours of receiving the request. BA shall exercise reasonable diligence and promptly supplement its report with any additional information as may be obtained by BA. BA, its affiliates, agents and subcontractors shall not provide any notification or information regarding any Breach to any person other than CE, except to the extent such action is: (i) required by law, (ii) required under this Agreement, or (iii) taken pursuant to a prior written consent of Covered Entity. Notwithstanding the foregoing, BA may provide information regarding a Breach to its legal counsel.

- 7.2 **Content of Report.** Notification to CE of a Breach shall include, at a minimum, the following:
- 7.2.1 A brief description of what happened, including the date of the incident and the date of the discovery of the incident, if known;
 - 7.2.2 A description of the types of Unsecured PHI that were involved in the incident (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information) and that were or are reasonably believed by BA to have been impermissibly accessed, acquired, used or disclosed;
 - 7.2.3 A fact-specific and detailed risk assessment of whether the incident poses a significant risk of financial, reputational, or other harm to the individual whose Unsecured PHI has been (or is reasonable believed by BA to have been) acquired, accessed, used or disclosed;
 - 7.2.4 Identification of the Individuals whose Unsecured PHI has been, or is reasonably believed by BA to have been, accessed, acquired, used or disclosed;
 - 7.2.5 Any steps Individuals should take to protect themselves from potential harm resulting from the incident;
 - 7.2.6 A brief description of what BA is doing to investigate the incident, to mitigate harm to Individuals, and to protect against any further incidents; and
 - 7.2.7 Any other information reasonably requested by CE to be included in the report.
- 7.3 **Documentation and Retention.** BA will document all actions described in this Section V and maintain such documentation for at least six years from the date the documentation is created or the date it was last in effect, whichever is later.
- 7.4 **Reimbursement, Mitigation and Cooperation.** BA will reimburse CE for all reasonable and necessary out-of-pocket costs incurred (including without limitation costs associated with providing required notices) as a result of a Breach by the BA, its affiliates, subcontractors or agents. Business Associate further agrees to cooperate with CE as reasonably requested, to mitigate, to the extent practicable, any harmful effect of such a Breach or other use or disclosure of Protected Health Information in violation of the terms and conditions of this Agreement, and fully cooperate with CE on all matters relating to such incident and associated notifications by CE to Individuals, the media, the Secretary, the Federal Trade Commission, or any other governmental entity.
- 7.5 **Continuing Duty to Report.** Nothing in this Agreement shall be construed to relieve BA of its existing reporting obligations under the Agreement and BA shall continue to report to CE in the time and in the manner provided for in the Agreement. The occurrence of a Security Incident of a use or disclosure of PHI in a manner that is not provided for in the Agreement shall not discharge BA's obligations under this Agreement to report a Breach unless such reporting fully and completely satisfies all of the Breach reporting requirements of this Agreement.

8. Term and Termination

- 8.1 **Term.** The Term of this Agreement will begin and become effective on the Effective Date and shall terminate when all of the Protected Health Information provided by CE to BA, or created or received by BA on behalf of CE is destroyed or returned to CE, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section VI.
- 8.2 **Termination.** Upon CE's knowledge of a material breach by BA of the terms of this Agreement, CE shall either:
- 8.2.1 Provide an opportunity for BA to cure the breach or end the violation. If BA does not cure the breach or end the violation within the time specified by CE, CE shall terminate this Agreement;
 - 8.2.2 If BA has breached a material term of this Agreement and cure is not possible, immediately terminate this Agreement; or
 - 8.2.3 If neither termination nor cure is feasible, CE shall report the violation to the Secretary.

8.3 Effect of Relationship Termination.

- 8.3.1 Except as provided in paragraphs (b) and/or (c) of this sub-section, upon termination of the Agreement, for any reason, BA shall return or destroy all Protected Health Information received from, or created or received by it on behalf of CE. This provision shall apply to Protected Health Information that is in the possession of Business Associate and/or its Subcontractors or agents. BA will not retain any copies of Protected Health Information.
- 8.3.2 In the event that BA determines that returning or destroying Protected Health Information is infeasible, BA will notify CE of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of Protected Health Information is infeasible; BA will extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as BA maintains such Protected Health Information.
- 8.3.3 Should Covered Entity notify Business Associate that the information necessary to comply with the recordkeeping requirements under other applicable law includes the Protected Health Information, BA shall return or provide to CE such information, including Protected Health Information.

9 Compliance with HIPAA Transaction Standards

- 9.1 When providing its services and/or products, BA shall comply with all applicable HIPAA standards and requirements (including, without limitation, those specified in 45 CFR Part 162) with respect to the transmission of health information in electronic form in connection with any transaction for which the Secretary has adopted a standard under HIPAA ("Covered Transactions"). BA represents and warrants that it is aware of all current HIPAA standards and requirements regarding Covered Transactions, and BA shall comply with any modifications to HIPAA standards and requirements which become effective from time to time. BA agrees that such compliance shall be at its sole cost and expense, which expense shall not be passed on to CE in any form, including, but not limited to, increased fees. BA shall require all of its agents and subcontractors (if any) who assist BA in providing its services and/or products to comply with these terms.

9. General Provisions

- 9.1 **Regulatory References.** Any reference in this Agreement to a section in HIPAA, HIPAA Regulations, or the HITECH Act means the section as in effect or amended or modified from time to time, including any corresponding provisions of subsequent superseding laws or regulations.
- 9.2 **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CE and/or BA to comply with the requirements of HIPAA and the HITECH Act, as those statutes and their implementing regulations may be amended from time to time. No amendment to this Agreement shall be effective until reduced to writing and duly signed by the authorized representatives of the parties.
- 9.3 **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit each party to comply with HIPAA and the HITECH Act, as those statutes and their implementing regulations may be amended from time to time. The provisions of this Agreement shall prevail over any provision of any other agreement between the BA and the CE that may conflict or be inconsistent with any provision in this Agreement.
- 9.4 **Survival.** The respective rights and obligations of BA under this Agreement shall survive the termination of this Agreement and any related agreement, including a services agreement.
- 9.5 **Indemnity.** The BA agrees to indemnify, hold harmless, and defend the CE and its officers, directors, employees or agents from any claim, cause of action, liabilities, damages, penalties, fines, costs, expenses or other losses (including attorneys fees) arising out of any use or disclosure of PHI by BA or its agents or subcontractors in breach of this Agreement or in violation of State or Federal

Law, including without limitation, HIPAA, the HITECH Act, the Privacy Rule, or the Security Rule.

- 9.6 **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties hereto, any rights, remedies, obligations, or liabilities whatsoever.
- 9.7 **Disputes.** If any dispute or claim arises between the parties with respect to this Agreement, the parties will make a good faith effort to resolve such matters informally, it being the intention of the parties that they reasonably cooperate with each other in the performance of the mutual obligations under this Agreement.
- 9.8 **Conformance with Law.** The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for the parties to comply with the requirements of HIPAA as they apply to each party.
- 9.9 **Action.** For purposes of this Agreement, whenever action is required by a party to this Agreement, such action must be taken by a person or persons with authority to act on behalf of such party to this Agreement.
- 9.10 **Severability.** The invalidity or unenforceability of any provision of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- 9.11 **Notices.** All notices and communications required by this Agreement shall be in writing and shall be effective upon receipt. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing. Neither party shall refuse delivery of any notice hereunder.
- 9.12 **Nature of Agreement.** Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the parties or any of their affiliates, or a relationship of employer and employee between the parties. Rather, it is the intention of the parties that their relationship shall be that of independent contractors.
- 9.13 **Entire Agreement.** This Agreement constitutes the entire agreement between the BA and the CE relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.
- 9.14 **Counterparts.** This Agreement may be executed in counterparts, each of which so executed shall be construed to be an original, but all of which together shall constitute one agreement binding on all parties, notwithstanding that all parties are not signatories to the same counterpart. Transmission by facsimile or electronic mail of an executed counterpart of this Agreement shall be deemed to constitute due and sufficient delivery of such counterpart. This Agreement and any amendment or modification may not be denied legal effect or enforceability solely because it is in electronic form, or because an electronic signature or electronic record was used in its formation.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date set forth below.

COVERED ENTITY:

Peninsula Imaging L.L.C.

Sign: _____

Print Name: Coleen Chew

Title: HIPAA Privacy Officer

Date: _____

BUSINESS ASSOCIATE:

Sign: _____

Print Name: _____

Title: _____

Date: _____

Send copy of signed Agreement notice to:

ATTN: Privacy Officer

Email: cchew@peninsulaimaging.com