TARC
Service. Support. Advocacy.

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BUSINESS ASSOCIATE PRIVACY AND SECURITY AGREEMENT

THIS BUSINESS ASSOCIATE PRIVACY AND SECURITY AGREEMENT (the "Agreement") is made and effective this ____ day of _____, 20__ (the "Effective Date"), by and between CONSULTANT and TARC, Inc. The purpose of this Agreement is to set forth the mutual obligations of the parties regarding the protection of the privacy of medical information subject to the Standards for Privacy of Individually Identifiable Health Information (the "Privacy Rule") and the Security Standards and Implementation Specifications (the "Security Rule"), under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended ("HIPAA") and the regulations promulgated thereunder.

ARTICLE I. DEFINITIONS

"Breach" shall have the same meaning as the term "Breach" in 45 CFR § 164.402, limited with respect to Protected Health Information.

"Data Aggregation" means the combining of Protected Health Information created or received by CONSULTANT in its capacity as a business associate of TARC, Inc with the Protected Health Information received by CONSULTANT in its capacity as a business associate of another covered entity to permit data analyses that relate to the health care operations of the respective covered entities.

"Designated Record Set" means a group of records maintained by or for TARC, Inc that is (i) the medical records and billing records about individuals maintained by or for a covered health care provider; (ii) the enrollment, payment, claims adjudication and case or medical management record systems maintained by or for a health plan; or (iii) Used, in whole or in part, by or for TARC, Inc to make decisions about individuals. For the purposes of this definition, "record" means any item, collection, or grouping of information that includes Protected Health Information and is maintained, collected, Used, or disseminated by or for TARC, Inc.

"Disclose" or "Disclosure" means release, transfer, provision of access to, or divulging in another manner, of information outside the entity holding the information.

"Discovery" shall mean the first day on which such specified fact or condition (e.g., a Breach) is known to applicable person or, by exercising reasonable diligence would have been known to the applicable person. A person shall be deemed to have knowledge of a specified fact or condition (e.g., a Breach) if such fact or condition is known, or by exercising reasonable diligence would have been known, to any person, other than the person causing or committing the fact or condition, who is an agent of the applicable person (determined in accordance with the federal common law of agency).

"Electronic Media" means (i) electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card, or (ii) transmission media used to exchange information already in electronic storage media. For the purposes of this definition, "transmission media" include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dialup lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

"Electronic PHI" means individually identifiable health information that is transmitted by or maintained in any medium described in the definition of Electronic Media.

"Individual" means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

"Protected Health Information" or "PHI" means information that is created or received by CONSULTANT from or on behalf of the TARC, Inc and is information about an individual, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual or the provision of health care to an individual or the past, present or future payment for the provision of healthcare to an individual and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be Used to identify the individual. PHI does not include individually identifiable health information in: (i) education records covered by the Family

Educational Right and Privacy Act, as amended, 20 U.S.C. 1232g; and (ii) records described at 20 U.S.C. 1232g(a)(4)(B)(iv). PHI also does not include individually identifiable health information maintained by an entity in its role as an employer.

"Required By Law" means a mandate contained in law that compels TARC, Inc to make a Use or Disclosure of Protected Health Information and that is enforceable in a court of law. Required By Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing health benefits.

"Executive Director" means the Executive Director of TARC, Inc or any other officer or employee of TARC, Inc to whom the authority involved has been delegated.

"Security Incident" means the attempted or successful unauthorized access, Use, disclosure, modification, or destruction of information or interference with system operations in an information system. Inconsequential incidents that occur on a daily basis, such as scans, pings or unsuccessful attempts to penetrate CONSULTANT's networks or servers containing electronic PHI shall not be considered a Security Incident subject to reporting, unless so required by the Privacy Rule.

"Use" means the sharing, employment, application, utilization, examination, or analysis of individually identifiable health information within the entity that maintains such information.

All other terms used, but not otherwise defined in this Agreement, shall have the same meaning as those in the Privacy Rule, Security Rule (45 CFR Parts 160, 164) and subtitle D of the Health Information Technology for Economic and Clinical Health Act (HITECH) codified at 42 U.S.C. 17921-17954 and any accompanying regulations.

ARTICLE II. OBLIGATIONS AND ACTIVITIES OF CONSULTANT

2.1 CONSULTANT agrees to not Use or Disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law.

2.2 CONSULTANT agrees to use appropriate safeguards to prevent the Use or Disclosure of the Protected Health Information other than as provided for by this Agreement.

2.3 CONSULTANT agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI that it creates, receives, maintains, or transmits on behalf of TARC, Inc. CONSULTANT further agrees to mitigate, to the extent practicable, any harmful effect that is known to CONSULTANT of a Use or Disclosure of Protected Health Information by CONSULTANT in violation of the requirements of this Agreement, the Privacy Rule or the Security Rule.

2.4 CONSULTANT agrees to report to TARC, Inc any Use or Disclosure of the Protected Health Information of which CONSULTANT is aware and which is not provided for by this Agreement or the Privacy Rule, as well as any Security Incident of which it becomes aware. CONSULTANT agrees to notify TARC, Inc in writing, of the Discovery of any potential Breach of unsecured PHI. Such notice shall be provided within five (5) business days after Discovery and thereafter upon TARC, Inc's request and shall include, to the extent possible, information then-known or then-available to CONSULTANT that TARC, Inc is required to include in notification to the Individual under 45 CFR 164.404, or any notification to the Executive Director of TARC, Inc, including, without limitation, the date of Discovery of such Breach. If the parties collaboratively determine the Breach has occurred, CONSULTANT will comply with its obligations under 45 CFR Part 164, Subpart D, and will provide any required notifications within the time frame specified thereunder if TARC, Inc so requests. If TARC, Inc makes notification, CONSULTANT will reimburse TARC, Inc for all reasonable out-of-pocket expenses relating to such notification. If CONSULTANT makes notification, it will seek approval of TARC, Inc on all notification materials prior to mailing.

2.5 In the event CONSULTANT should seek the assistance of any agent or subcontractor in the provision of services to or for TARC, Inc, CONSULTANT agrees to ensure that any such agent or subcontractor, to whom it provides Protected Health Information received from, or created or received by CONSULTANT on behalf of TARC, Inc, agrees in writing to the same restrictions and conditions that apply through this Agreement to CONSULTANT with

respect to such information. Moreover, CONSULTANT agrees in writing to ensure that any such agent or subcontractor agrees to implement reasonable and appropriate administrative, physical, and technical safeguards to protect the confidentiality, integrity and availability of TARC, Inc's PHI that CONSULTANT creates, receives, maintains or transmits.

2.6 CONSULTANT agrees to provide access within ten (10) business days, at the request of TARC, Inc, to Protected Health Information in a Designated Record Set, to TARC, Inc or, as directed by TARC, Inc, to an Individual in order to meet the requirements under 45 CFR 164.524.

2.7 CONSULTANT agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that TARC, Inc directs or agrees to pursuant to 45 CFR 164.526 within ten (10) business days of the request. CONSULTANT shall amend all health information in its possession promptly and provide verification to TARC, Inc. In the event that an Individual contacts CONSULTANT directly about making amendments to Protected Health Information, CONSULTANT will not make any amendments, but shall forward such request to TARC, Inc.

2.8 CONSULTANT agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the Use and Disclosure of Protected Health Information received from, or created or received by CONSULTANT on behalf of TARC, Inc available to the Executive Director, within ten (10) business days of request or as designated by the Executive Director, for purposes of the Executive Director determining TARC, Inc's compliance with the Privacy Rule.

2.9 CONSULTANT agrees to document such Disclosures of Protected Health Information and information related to such Disclosures as would be required for TARC, Inc to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR 164.528 and make available information for an accounting of disclosures through the use of an electronic health record as required by HITECH and implementing regulations.

2.10 CONSULTANT agrees to provide to TARC, Inc or an Individual, within ten business (10) days of the request, information collected in accordance with Section 2.9 of this Agreement, to permit TARC, Inc to respond to a request by an Individual for an accounting of Disclosures of Protected Health Information in accordance with 45 CFR 164.528.

2.11 CONSULTANT will comply with the requirements of HITECH, codified at 42 U.S.C. 17921-17954, which is applicable to CONSULTANT as a business associate of TARC, Inc, and will comply with all regulations issued by TARC, Inc to implement these referenced statutes, as of the date by which CONSULTANT is required to comply with such referenced statutes and TARC, Inc regulations.

2.12 HITECH Amendments. The parties acknowledge and agree that the HITECH Act imposes new requirements with respect to privacy, security, and breach notification and contemplates that such requirements shall be implemented by regulations to be adopted by TARC, Inc. The HITECH Act provisions and regulations implemented hereunder applicable to CONSULTANT (whether directly or through a Business Associate agreement) will be collectively referred to as the "HITECH CONSULTANT Provisions". The provisions of the HITECH Act and the HITECH CONSULTANT Provisions are hereby incorporated by reference into this Addendum as if set forth in this Addendum in their entirety, and, if required by the HITECH CONSULTANT Provisions, the parties agree to amend the Agreement to incorporate those provisions or portion of those provisions required to be incorporated into this Agreement.

2.13 CONSULTANT will utilize encryption and destruction methodologies as specified by the Executive Director in notices, rules or regulation or utilize substantially equivalent methodologies to render PHI unusable, unreadable or indecipherable.

2.14 CONSULTANT acknowledges that failure to properly secure Electronic PHI or to have agents or subcontractors properly secure Electronic PHI may be grounds of immediate termination of this Agreement.

ARTICLE III. PERMITTED USES AND DISCLOSURES BY CONSULTANT

3.1 Except as otherwise limited in this Agreement, CONSULTANT may Use or Disclose Protected Health Information on behalf of, or to provide services to, TARC, Inc for the following purposes, if such Use or Disclosure of Protected

Health Information would not violate the Privacy Rule if done by TARC, Inc or the minimum necessary policies and procedures of TARC, Inc as communicated to CONSULTANT by TARC, Inc or the restrictions relating to fundraising activities, marketing activities, and research activities found in the Privacy rule:

(1) Except as otherwise limited in this Agreement, CONSULTANT may Use Protected Health Information for the proper management and administration of CONSULTANT or to carry out the legal responsibilities of CONSULTANT;

(2) Except as otherwise limited in this Agreement, CONSULTANT may Use Protected Health Information to provide Data Aggregation services to the TARC, Inc as permitted by 45 CFR 164.504(e)(2)(i)(B);

(3) Except as otherwise limited by this Agreement, CONSULTANT may Disclose Protected Health Information for the proper management and administration of CONSULTANT, provided that Disclosures are Required By Law, or CONSULTANT obtains reasonable assurances from the person to whom the information is Disclosed that it will remain confidential and Used or further Disclosed only as Required By Law or for the purpose for which it was Disclosed to the person, and the person notifies CONSULTANT of any instances of which it is aware in which the confidentiality of the information is breached: and

(4) CONSULTANT may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

3.2 CONSULTANT may not otherwise use or disclose Protected Health Information obtained from TARC, Inc in exchange for remuneration unless TARC, Inc obtains proper authorization or is otherwise authorized by 45 CFR 164.508(a)(4).

3.3 CONSULTANT may not de-identify any Protected Health Information obtained from TARC, Inc and disclose it directly or indirectly to any other person or entity, including through any process generally known as data mining, without explicit written approval of TARC, Inc.

ARTICLE IV. OBLIGATIONS OF TARC, INC

4.1 TARC, Inc shall provide CONSULTANT with the notice of privacy practices that TARC, Inc produces in accordance with 45 CFR 164.520, as well as any changes to such notice.

4.2 TARC, Inc shall provide CONSULTANT with any changes in, or revocation of, permission by an Individual to Use or Disclose Protected Health Information, if such changes affect CONSULTANT's permitted or required Uses and Disclosures.

4.3 TARC, Inc shall notify CONSULTANT of any restriction to the Use or Disclosure of Protected Health Information that TARC, Inc has agreed to in accordance with 45 CFR 164.522.

ARTICLE V. PERMISSIBLE REQUESTS BY THE TARC, INC

5.1 TARC, Inc shall not request CONSULTANT to use or Disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by TARC, Inc, except that CONSULTANT may Use PHI in its possession (i) for CONSULTANT's proper management and administrative services, or (ii) to provide Data Aggregation services to TARC, Inc as permitted by 45 CFR 164.504(e)(2)(i)(B).

ARTICLE VI. TERM AND TERMINATION OF THE AGREEMENT

6.1 Term. This Agreement shall be effective as of the Effective Date. This Agreement shall terminate when all of the Protected Health Information provided by TARC, Inc to CONSULTANT, or created or received by CONSULTANT on behalf of TARC, Inc, is destroyed or returned to TARC, Inc, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions of this Article.

6.2 Termination for Cause. Upon TARC, Inc's knowledge of a material breach of this Agreement by CONSULTANT, TARC, Inc shall either:

(1) Provide an opportunity for CONSULTANT to cure the breach, end the violation, or terminate this Agreement if CONSULTANT does not cure the breach or end the violation within the time period specified by TARC, Inc;

(2) Immediately terminate this Agreement if CONSULTANT has breached a material term of this Agreement and CONSULTANT and TARC, Inc agree that cure is not possible; or

(3) If neither termination nor cure is feasible, TARC, Inc shall report the violation to the Executive Director.

6.3 Effect of Termination.

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, CONSULTANT shall return or destroy all Protected Health Information received from TARC, Inc, or created or received by CONSULTANT on behalf of TARC, Inc. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of CONSULTANT. CONSULTANT shall retain no copies of the Protected Health Information.

(2) In the event that CONSULTANT determines that returning or destroying the Protected Health Information is infeasible, CONSULTANT shall provide to TARC, Inc notification of the conditions that make return or destruction infeasible. Upon CONSULTANT's determination that return or destruction of Protected Health Information is infeasible, CONSULTANT shall 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 CONSULTANT maintains such Protected Health Information.

ARTICLE VII. MISCELLANEOUS PROVISIONS

7.1 Regulatory Reference. A reference in this Agreement to a section in the Security or Privacy Rule means the section as in effect or as amended, and for which compliance is required.

7.2 Amendment. TARC, Inc and CONSULTANT agree to take such action as is necessary to amend this Agreement from time to time as is necessary for TARC, Inc to comply with the applicable laws and regulations, including the provisions of HITECH and the regulations issued thereunder. Until amended, the parties agree to comply with all regulations applicable to the provision of this Agreement as they become effective. This Agreement may be amended by TARC, Inc and CONSULTANT by the express mutual written agreement of both parties. This Agreement contains the entire Business Associate Privacy and Security Agreement between the parties and supersedes all other understandings and agreements, oral or written, between the parties regarding privacy of Protected Health Information.

7.3 Survival. The respective rights and obligations of CONSULTANT under Section 6.3 of this Agreement shall survive the termination of this Agreement.

7.4 Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits TARC, Inc to comply with the HIPAA Security Rule, HIPAA Privacy Rule, and HITECH. When a section of the Agreement calls for CONSULTANT to respond to a request from TARC, Inc in conjunction with a regulation specifically cited in the section, CONSULTANT may rely on TARC, Inc's request as verification by TARC, Inc that the request is made in compliance with the regulation. CONSULTANT is not responsible for confirming that TARC, Inc's request is made in compliance with the specific regulation.

7.5 This Agreement shall be governed by HIPAA, HITECH, and any other applicable federal laws or regulations and, to the extent not covered by federal law, the laws of the State of Kansas. Headings or titles of sections are for general information only and this Agreement shall not be construed by reference to such titles.

7.6 This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and permitted assigns. If any provision of this Agreement is held invalid or unenforceable, such invalidity or unenforceability shall not affect any other provision, and this Agreement shall be construed and enforced as if such provision had not been included.

7.7 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CONSULTANT, or TARC, Inc and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

7.8 The parties hereto have executed this Agreement as of the Effective Date set forth above, and understand that it is a binding, legal contract.

ARTICLE VIII. CONTACT PERSON

8.1 TARC, Inc designates its Human Resources Director as the contact person.

8.2 The Business Associate designates the following staff position as the contact person: _____

This Agreement is executed and effective on the Effective Date first written above.

CONSULTANT		TARC, Inc	
Signature		Signature	
Printed Name		Printed Name	
Title		Title	
Date		Date	