Application Service Provider (ASP) Agreement – Solace EMC

This Application Service Provider (ASP) Agreement ("Agreement") is between you (the "Customer") and AXIOM Systems Inc. ("AXIOM") for use of SolAce EMC editions (the "ASP Service") hosted on the Internet. By downloading or installing any AXIOM software or by using the ASP Service, Customer agrees to be bound by all of the terms and conditions of this Agreement. If Customer does not accept these terms, Customer must discontinue use of the ASP Service and notify AXIOM immediately of its intent to terminate this agreement.

1   SERVICE and FEES

1.1   Use

a) Subject to the terms and conditions of this Agreement, AXIOM grants to Customer a limited, non-exclusive, and non-transferable right to use the ASP Service for the agreed upon term (i.e. one year or three year) as outlined on the executed ASP Service Quote Acceptance Form ("Offer" or "Quote").

b) Customer agrees to safeguard the security access codes issued by AXIOM for use of the ASP Service to ensure that only authorized personnel have access to the ASP Service.

c) End-user computer hardware, Internet connectivity, and any other third-party services not provided by AXIOM but used in conjunction with the ASP Service are the responsibility of the Customer and are not covered in any way by this Agreement.

d) Customer shall make no representations or warranties to any other entity with respect to the ASP Service.

e) The ASP Service may include features that Customer cannot access. These features may include administrative features that are only accessible by AXIOM authorized personnel or automated systems, or features that are selectively enabled based upon each Customer's purchase and corresponding fees paid.

1.2   ASP Service

a) AXIOM hosts the ASP Service to enable Customer to conduct electronic business with other companies (the "Trading Partners") including healthcare insurance payers and clearinghouses. AXIOM communicates with Customer's Trading Partners using Electronic Data Interchange (EDI) formats and communications protocols.

b) Customer grants to AXIOM permission to use data, transmissions, source documents, and security access codes related to their PHI in the course of providing the ASP Service to Customer.

c) The electronic services provided by the ASP Service may include but are not limited to: (i) delivery, processing, and management of electronic health insurance claims and other HIPAA-related electronic transactions related to the Health Insurance Portability and Accountability Act ("HIPAA") with Customer's Trading Partners, (ii) automatic translation and manual entry of data to form the electronic transactions, and (iii) delivery, processing, and management of non-standard files and reports related to the electronic transactions.

1.2.1   Editing of Transactions

a) Automated edits will be applied to each transaction based upon the published edit documentation of the appropriate clearinghouse and payer. If the transaction passes the edits, it will be submitted electronically to the appropriate Trading Partner.

b) The systems that comprise the ASP Service may make automated format changes in the information received from Customer, and as such AXIOM reserves the right to modify the submissions in an automated manner, as required or requested by the Trading Partner, into the required HIPAA transaction and code sets format as mandated by 45 CFR 162, subpart K through R.

c) Submitted claim data that does not comply with Trading Partner's published documentation may not be forwarded to the Trading Partner.

d) AXIOM staff may make manual changes to transaction data received from Customer during the course of testing and handling of support matters.

1.2.2   Delivery of Transactions

a) Customer authorizes AXIOM to transmit electronic transactions and act as a business associate of Customer under HIPAA and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"). Customer and AXIOM agree to enter into and comply with a Business Associate Agreement in the form of **Attachment A**. The provisions of the Business Associate Agreement govern in the event of a conflict with this Agreement.

b) AXIOM agrees to forward all transactions in a timely manner (within 15 minutes normally, but allowing for up to two (2) business days of receipt of transactions) and to make commercially reasonable efforts to ensure transactions are consistently and promptly delivered.

c) In rare cases a Trading Partner may not allow for automated delivery of transactions. AXIOM will make a case-by-case decision as to how delivery is to be handled in these cases, which may range from AXIOM support staff performing manual delivery to the Customer being responsible for a portion of the delivery.

d) Customer acknowledges with respect to the ASP Service, that (i) the Trading Partner to which transactions are submitted may reject any transaction that fails to satisfy the Trading Partner's then current standard edits, either undocumented or published in the Trading Partner's relevant technical specifications, and (ii) each Trading Partner has the right to reject any transaction that fails to meet administration criteria then ordinarily employed by that entity.

e) Customer acknowledges that it is the Customer's responsibility to review responses and reports from AXIOM and/or a Trading Partner to determine the status of a submitted transaction. Customer acknowledges that it is Customer's responsibility to repair and resubmit transactions, and to comply with claim filing deadlines.

1.2.3   Data Limitations and Transformations

a) Transactions are in U.S. dollars only, meaning indirectly that Customer may only use the ASP Service to submit transactions to U.S. payers.

b) The ASP Service imports data and makes a copy of the data separate from any other system Customer may be using. Changing data in Customer's other systems will not affect the ASP Service's copy of the data, unless Customer re-imports the data and deletes the records that were first imported. Customer

or its billing personnel are responsible for ensuring that the data being transmitted with the ASP Service is the most current and accurate copy of Customer's data.

c) The ASP Service may infer data from other data in some cases, or transform one data item into multiple other data items, in order to bridge gaps between different electronic transaction formats. One noteworthy example is translating a CMS-1500 form's Patient Signature and Assigned indicator fields into a HIPAA EDI Patient Signature Source Code and related assignment and release of information codes. In no event shall AXIOM be liable for the financial payments expected by Customer from any entity due to data having been inferred or transformed incorrectly by the ASP Service.

d) If Customer determines that the ASP Service is not forwarding data correctly to the Trading Partner, Customer may request updates to the ASP Service to correct the behavior. AXIOM will satisfy such requests in a timely manner pursuant to its internal scheduling and programming procedures.

1.3 Fees and Invoices

a) Customer agrees to pay AXIOM's Subscription fees for any ASP Services that Customer chooses to use as agreed to by Customer on the Quote.

b) The Quote specifies the annual Subscription fee for an anticipated monthly claim volume range (the Base Tier), incremental fees for exceeding the base tier, the term (length) of the agreement, and any additional charges and provisions that may be applicable.

c) AXIOM reserves the right to change these fees at any time after the initial contract term of the agreement. AXIOM will provide at least two (2) months' notice prior to end of the contract term for any changes to the fees and provisions.

d) At the end of a contract term, the contract shall automatically renew for the same term period as the current agreement unless AXIOM receives notification from Customer of intent to terminate the ASP Service in accordance with Section 6.2.

e) The Quote itemizes the Subscription fee for the base tier and the incremental tier prices for the next two tiers applicable to the term and options that are chosen. If a Customer's claim volume exceeds the base tier price, AXIOM will provide notification of the incremental price of the next two tiers above the new tier. Upon request, AXIOM will provide Customer with incremental tier prices for claim volumes that exceed the range of the two incremental tiers provided on the Quote and those prices will be incorporated into the Quote.

f) Invoices are due and payable upon receipt. AXIOM reserves the right, at its sole discretion and without additional notice, to discontinue service if Customer's invoices are not paid.

g) The costs of any system modifications or enhancements, software, or services that are necessary for Customer to access or use the ASP Service are the sole responsibility of Customer. Customer will be responsible for additional fees, if any, invoiced by AXIOM for new features, modules, or products that may from time to time be announced by AXIOM or requested as custom features by Customer, if accepted by Customer in writing prior to being invoiced by AXIOM.

h) Customer agrees that the ASP Service is a service that can layer on top of traditional electronic claim clearinghouses, and there may be a third party contract or charges from the clearinghouse to the Customer that AXIOM shall not be responsible for paying, or privy to, even though the third party service is used in conjunction with the ASP Service. AXIOM will disclose all known third party contracts and charges when the Customer requests electronic submitter enrollment that may require a relationship with such a third party.

i) Customer shall be responsible for any state, local and federal taxes or levies applicable to the transactions set forth under this Agreement, or imposed on the ASP Service or use thereof by Customer, whether imposed now or later by the applicable taxing authority, even if such imposition occurs after the termination of this Agreement.

2 Service Level Commitment

2.1 Internet Platform

a) The ASP Service is hosted on the global network known as the Internet. AXIOM shall maintain network service level agreements and provision communications channels with network service providers, clearinghouses, insurance companies, and other third parties (the "Downstream Network Providers") that will meet the reasonable needs of Customer.

b) If a Trading Partner charges AXIOM network connectivity fees that are Customer-specific AXIOM reserves the right to invoice Customer for those fees if it is mutually agreed that the network connectivity is necessary.

2.2 System Availability

a) Based on existing service level guarantees from AXIOM' Downstream Network Providers, the ASP Service will be available 99.9% of the time, allowing approximately 45 minutes of downtime per month. AXIOM or the Downstream Network Providers may make changes to these agreements or the services being offered that may result in changes to the service level. AXIOM will provide Customer with notice of any changes that it expects to impact the availability of the ASP Service. AXIOM will make available the current Downstream Network Providers' service level agreements and statements of capacity and availability to Customer upon written request. In situations where we have no service level guarantees from the Downstream Network Provider, or other statement as to their network availability, AXIOM can make no guarantees about the availability of data needing to be transmitted or received from that Downstream Network Provider.

b) Customer agrees to notify AXIOM if Customer suspects the ASP Service is unavailable to Customer due to a fault of AXIOM. Customer agrees to provide information requested by AXIOM reasonably required for the proper diagnosis or repair of the ASP Service.

c) AXIOM reserves the right to amend the service level commitment from time to time effective upon notice to Customer. In the event of any amendment resulting in a material reduction of the service level commitments, Customer may elect to terminate this Agreement without penalty by providing AXIOM with written notice of termination within 30 days following notice of such amendment.

2.3 Scheduled Maintenance

a) AXIOM reserves the right from time to time in its sole discretion to suspend, revise, modify or update any portion of the ASP Service. "Scheduled Maintenance" shall mean any planned

maintenance of the AXIOM server infrastructure or the ASP Service that affects Customer's access to the ASP Service. System downtime due to Scheduled Maintenance is not counted against System Availability.

b) AXIOM will notify by email Customers who have requested advance notification of any Scheduled Maintenance. Email notification will occur not less than 15 minutes prior to a maintenance event that lasts less than 15 minutes. Email notification will occur not less than 24 hours prior to a maintenance event that lasts longer than 15 minutes.

c) AXIOM agrees to make reasonable attempts to perform Scheduled Maintenance during hours where system use is historically low.

2.4 Data Retention

a) With respect to transaction data, AXIOM and Customer agree to maintain back-up data files in accordance with industry standard best practices. AXIOM shall maintain Customer data, including outbound EDI files and inbound Trading Partner files and reports, for a period of six (6) years from the date the data was created or received. Transaction data stored in back-up files shall remain subject to the terms of Section 3 of this Agreement.

b) Data for trial (non-paid) accounts and terminated Customer accounts are limited to a sixty (60) day data retention period from the date the data was created or received.

c) At termination of this Agreement, Customer may request in writing that all data be retained until, or deleted at, a specific date not to exceed 90 days from date of termination.

2.5 Customer Support

a) Customer support is made available by e-mail and telephone during regular office business hours, excluding business holidays as published on the www.solace-emc.com web site to Customers whose fees have been paid in full.

b) The AXIOM web site at http://www.solace-emc.com contains the official support policies which are subject to change outside the scope of this Agreement. Support channels in addition to e-mail and telephone will also be documented on the web site and are available to all Customers.

3 Privacy

3.1 Ownership of Data

a) AXIOM considers all data that Customer enters or creates in the ASP Service, or any data that was migrated from another computer system, to be Customer's personal property.

b) Customer agrees that the features provided by the ASP Service provide the sole and sufficient access to Customer's data and that AXIOM is under no obligation to provide access to the ASP Service or Customer's data if Customer's account is not active and in good standing.

c) Customer acknowledges that AXIOM is under no obligation to provide Customer with a copy of Customer's raw data residing on AXIOM's systems other than via the features provided as part of the ASP Service. AXIOM will reasonably agree to provide Customer's raw data for a fair price equal to the effort required to retrieve and prepare the data. If AXIOM is ordered by a court of competent jurisdiction to provide Customer with a copy of its

data, then Customer agrees to pay AXIOM to prepare a copy of Customer's data at AXIOM's then current hourly rates.

3.2 Analysis

AXIOM reserves the right to perform statistical analysis of all of our ASP Service, websites and computer system infrastructure to, among other things, measure the effectiveness of our web sites, to optimize website performance, and to ensure license compliance.

3.3 Customer's Workstation

Customer acknowledges the sole responsibility to ensure the physical security of all workstations and other areas under its control, including those areas containing PHI and used to access the ASP Service, and the individual user access codes required to access the ASP Service.

4 Intellectual Property Ownership

a) This Agreement confers no title or ownership in the ASP Service or any underlying software to Customer, and is not a sale of any rights in the ASP Service or any software owned by AXIOM. AXIOM alone shall own all right, title and interest, including all related intellectual property rights, in and to the ASP Service and its underlying software.

b) Customer agrees that Customer will only use the ASP Service for Customer's internal use. Customer shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the ASP Service or its content in any way; (ii) modify or make derivative works based upon the ASP Service or its content; (iii) create internet "links" to the ASP Service or "frame" or "mirror" any of its content on any other server or wireless or internet-based device; or (iv) decompile, disassemble, reproduce, reverse engineer or access the ASP Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the ASP Service, or (c) copy any ideas, features, functions or graphics of the ASP Service.

5 Export Requirements

Customer agrees not to export the ASP Service in violation of any applicable laws or regulations, including, without limitation, U.S. Encryption Export Control Regulations.

6 Term and Termination

6.1 Term

This Agreement will be effective upon the earlier of acceptance of payment or first use of the ASP Service and shall continue in effect until terminated under Section 6.2.

6.2 Termination

a) Without Cause. Customer shall have the right to terminate this Agreement upon thirty (30) days written notice by first class mail or Internet confirmed email. No refund of fees will be provided. AXIOM will immediately invoice Customer all the remaining License fees due for the remainder of the term of the contract agreed to in the Quote.

b) With Cause. Either party may elect to terminate this Agreement effective upon written notice to the other party of a breach of obligations, including non-payment, by that party regarding this Agreement unless the breach is cured within 30 days after such notice.

c) With or Without Cause Within 30 Days of execution of the ASP Service Quote Acceptance Form. If Customer terminates this Agreement within thirty (30) days of execution of the Quote AXIOM shall refund any Annual Base Tier Subscription fees received from Customer, upon Customer's fulfillment of all of its obligations under this Agreement.

d) Effect of Termination.
   (i) Termination of this Agreement shall terminate all rights and licenses granted to Customer relating to the ASP Service.
   (ii) Upon termination, Customer shall promptly cease all use of the ASP Service, remove all application files related to the ASP Service from Customer's systems, and, if applicable and at Customer's sole expense, cause to be returned to AXIOM all materials provided by AXIOM with respect to the terminated ASP Service.
   (iii) Termination triggers scheduling and execution of data destruction procedures pursuant to the terms outlined in the Business Associate Agreement (Attachment A). It is Customer's responsibility to follow exiting instructions prior to their termination date in order to save out and preserve data from the ASP Service that may be needed for proof of timely filing.

e) Survival. All disclaimers of warranties and limitations of liability shall survive any termination of this Agreement.

7 Applicable Law

Each party hereby: (i) agrees that any legal proceeding arising out of or relating to this Agreement shall be instituted in the United States District Court for the State of Maryland or any court of general jurisdiction in the State of Maryland; (ii) consents to the personal and exclusive jurisdiction of such courts; and (iii) waives any objection that it may have to the laying of venue of any such proceeding and any claim or defense of inconvenient forum.

8 AXIOM Limited Warranty Statement

8.1 Warranty

a) AXIOM warrants that the ASP Services shall perform substantially in accordance with its electronic product documentation.

b) In the event that Customer discovers a documented and reproducible flaw in the ASP Service, AXIOM's sole responsibility shall be to use commercially reasonable efforts to correct such flaw in a timely manner. This warranty does not apply to any media or documentation which has been subjected to damage or abuse or to any claim resulting from changes in the operating characteristics of computer hardware or computer operating systems which are made after the release of the applicable AXIOM software, or which result from problems in the interaction of any AXIOM software with non-AXIOM software.

c) Use of the ASP Service is at Customer's sole risk. AXIOM does not warrant that the service will be uninterrupted or error free, nor does AXIOM make any warranty as to any results that may be obtained by use of the ASP Service. AXIOM makes no other warranties, express or implied, including, without limitation, any implied warranties of merchantability or fitness for a particular purpose, in relation to the ASP Service.

d) The ASP Service may be subject to limitations, delays, and other problems inherent in the use of the Internet and electronic communications. AXIOM is not responsible for any delays, delivery failures, or other damage resulting from such problems.

8.2 Limitation of Liability

To the maximum extent permissible by applicable law, in no event shall AXIOM be liable for any special, incidental, or consequential damages whatsoever (including, without limitation, damages for loss of business profits) arising out of the use or inability to use the ASP Service, even if AXIOM has been advised of the possibility of such damages. In any case, AXIOM's entire liability under any provision of this Agreement shall be limited to the amount actually paid by Customer for use of the ASP Service in the three (3) month period immediately preceding the event giving rise to such claim.

8.3 Indemnification

Notwithstanding any other section of this Agreement, Customer shall indemnify, defend, and hold AXIOM and its subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising in whole or in part out of or in connection with:
   (i) a claim alleging that use of the Customer's data infringes the rights of, or has caused harm to, a third party;
   (ii) a claim, which if true, would constitute a violation by Customer of Customer's representations and warranties; or
   (iii) a violation of any law or regulation, breach of this Agreement, or negligent or wrongful act or omission by Customer or its employees, officers, agents, or subcontractors. This Section survives termination or expiration of this Agreement for any reason.

9 Non-Waiver

The waiver by either party of any default or breach under this Agreement shall not constitute a waiver of any subsequent default or breach of the same or of a different kind.

10 Entire Agreement

a) This Agreement supersedes any prior oral or written statements, agreements, or representations and can be changed only by an amendment designated as such and signed by an authorized officer of both parties. In the event that one or more of the provisions of this Agreement shall be found illegal or unenforceable, then such provisions shall be deemed struck and other provisions of the Agreement shall remain in force and effect.

b) Preprinted terms and conditions of a purchase order from Customer that is in addition or inconsistent with this Agreement shall not be binding and shall not modify this Agreement.

11   Amendments

AXIOM and Customer agree to mutually amend this Agreement to the extent required by the provisions of HIPAA and regulations promulgated there-under, in order to assure that this Agreement is maintained consistent therewith.

12   Notices

AXIOM may give notices related to the ASP Service by means of a general notice on the ASP Service, electronic mail to Customer's email address on record in AXIOM' account information, or by written communication sent by first class mail or pre-paid post to Customer's address on record in AXIOM's account information. If Customer has questions regarding this Agreement or wishes to obtain additional information, please send e-mail to solace.sales@axiom-systems.com or call 602-439-2525. If Customer needs to submit written notices or documentation to AXIOM, Customer may send facsimiles to 602-439-0808 or mail AXIOM Systems at 16020 North 35th Avenue, Suite 1, Phoenix, AZ 85053-3817.

13   Acceptance and Signatures

AXIOM Systems, Inc.

Printed Name: Richard A. Howe

Title: CEO

Date:

Customer

Company Name

Signature

Printed Name

Title

Date

Attachment A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this "Agreement") is entered into between you the Covered Entity and AXIOM Systems Inc. ("AXIOM") ("Business Associate") with an Effective Date set forth on the signature page hereof. This Agreement sets out the responsibilities and obligations of Business Associate as a business associate of Covered Entity under the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act").

RECITALS:

A. Business Associate provides software and services ("Services") to Covered Entity for the purpose of conducting electronic business with other companies including health care payers and clearinghouses.

B. Covered Entity may make available and/or transfer to Business Associate Protected Health Information ("PHI") of Individuals in conjunction with Services, which Business Associate will Use or Disclose only in accordance with this Agreement.

AGREEMENT:

Business Associate and Covered Entity agree to the terms and conditions of this Agreement in order to comply with the rules on handling of Protected Health Information ("PHI") under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E ("Privacy Standards"), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C ("Security Standards"), and the HIPAA Breach Notification Regulations, 45 C.F.R. Part 164, Subpart D ("Breach Notification Regulations"), all as amended from time to time.

1. **DEFINITIONS**

   a. **Terms Defined in Regulation:** Unless otherwise provided, all capitalized terms in this Agreement will have the same meaning as provided under the Privacy Standards, the Security Standards and the Breach Notification Regulations.

   b. **Protected Health Information or PHI**: Protected Health Information or PHI, as defined by the Privacy Standards, for this Agreement means PHI that is received or created on behalf of Covered Entity by Business Associate.

2. **USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

   a. **Performance of Services:** Business Associate will Use or Disclose PHI only for those purposes necessary to perform Services, or as otherwise expressly permitted in this Agreement or required by law, and will not further Use or Disclose such PHI.

   b. **Subcontractor or Agent Performance of Services:** Business Associate agrees that anytime it provides PHI to a subcontractor or agent to perform Services for Covered Entity, Business Associate first will enter into a contract or confidentiality agreement with such subcontractor or agent that contains the same terms, conditions, and restrictions on the Use and Disclosure of PHI as contained in this Agreement.

   c. **Business Associate Management, Administration and Legal Responsibilities:** Business Associate may Use or Disclose PHI for Business Associate's management and administration, or to carry out Business Associate's legal responsibilities. Business Associate may Disclose PHI received from Covered Entity to a third party for such purposes only if: (i) the Disclosure is required by law; or (ii) Business Associate secures written assurance from the receiving party that the receiving party will:
      • hold the PHI confidentially;
      • Use or Disclose the PHI only as required by law or for the purposes for which it was Disclosed to the recipient; and
      • notify the Business Associate of any other Use or Disclosure of PHI.

   d. **Data Aggregation:** Business Associate may Use PHI to perform data aggregation services as permitted by 45 CFR § 164.504(e)(2)(i)(B).

3. **SAFEGUARDS FOR PROTECTED HEALTH INFORMATION**

   a. **Adequate Safeguards:** Business Associate will implement and maintain appropriate safeguards to prevent any Use or Disclosure of PHI for purposes other than those permitted by this Agreement, including administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any electronic protected health information ("ePHI"), if any, that Business Associate creates, receives, maintains, and transmits on behalf of Covered Entity.

   b. **Compliance with HIPAA Security Standards:** Business Associate will comply with 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316, as of the date by which Business Associate is required to comply with such regulations.

4. **REPORTS OF IMPROPER USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION, SECURITY INCIDENTS AND BREACHES**

   a. **Use or Disclosure Not Permitted by This Agreement:** Business Associate will report in writing to Covered Entity any Use or Disclosure of PHI for purposes other than those permitted by this Agreement within 10 business days of Business Associate's learning of such Use or Disclosure.

   b. **Security Incidents:** Business Associate will report to Covered Entity any successful Security Incident of which Business Associate becomes aware within 10 business days of Business Associate learning of such Security Incident.

   c. **Breaches of Unsecured PHI:** Business Associate will report in writing to Covered Entity any Breach of Unsecured Protected Health Information, as defined in the Breach Notification Regulations, within 10 business days of the date Business Associate learns of the incident giving rise to the Breach. Business Associate will provide such information to Covered Entity as required in the Breach Notification Regulations.

5. COVERED ENTITY ACCESS TO PROTECTED HEALTH INFORMATION

Upon request, Business Associate will make available to Covered Entity PHI maintained in a Designated Record Set in Business Associate's possession so that Covered Entity can respond to individual requests for access to PHI.

6. AMENDMENT OF PROTECTED HEALTH INFORMATION

Within 10 business days of receiving a request from Covered Entity to amend an Individual's PHI, Business Associate will incorporate such amendment into the PHI held by Business Associate.

7. ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION

a. **Disclosure Records**: Business Associate will keep a record of any Disclosure of PHI that Business Associate makes to its agents, subcontractors or other third parties, if Covered Entity is required to provide an accounting to Individuals of such Disclosures under 45 C.F.R. § 164.528. Business Associate will maintain its record of such Disclosures for six years from the termination of this Agreement.

b. **Data Regarding Disclosures**: For each Disclosure for which it is required to keep a record under paragraph 7(a), Business Associate will record and maintain the following information: (i) the date of Disclosure; (ii) the name of the entity or person who received the PHI and the address of such entity or person, if known; (iii) a description of the PHI Disclosed; and (iv) a brief statement of the purpose of the Disclosure.

c. **Provision to Covered Entity**: Within 10 business days of receiving a notice from Covered Entity, Business Associate will provide to Covered Entity its Disclosure records.

8. ACCESS TO BOOKS AND RECORDS

Business Associate will make its internal practices, books and records on the Use and Disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining compliance with the Privacy Standards, Security Standards, or Breach Notification Regulations. Notwithstanding this provision, no attorney-client, accountant-client or other legal privilege will be deemed waived by Business Associate or Covered Entity as a result of this Section.

9. TERMINATION

a. Covered Entity may terminate this Agreement upon written notice to Business Associate if Covered Entity determines that the Business Associate or its subcontractors or agents has breached a material term of this Agreement. Covered Entity will provide Business Associate with written notice of the breach of this Agreement and afford Business Associate the opportunity to cure the breach within 30 days of the date of such notice. If Business Associate or its subcontractors or agents fail to timely cure the breach, Covered Entity may terminate this Agreement.

b. Either party may terminate this Agreement without cause by providing 60 days written notice to the other party.

10. DESTRUCTION OF PROTECTED HEALTH INFORMATION

a. **Return of PHI Is Infeasible.** It is not feasible for Business Associate to return PHI received from, or created or received by Business Associate on behalf of Covered Entity. Therefore, except as stated in subsection (b), below, within 90 days of termination of this Agreement, Business Associate will destroy all PHI received from, or created or received by Business Associate on behalf of Covered Entity that Business Associate maintains in any form or format and retain no copies of the PHI. This Agreement constitutes Covered Entity's written consent for Business Associate to destroy all such PHI.

b. **Retention of PHI if Destruction Is Infeasible.** If Business Associate believes that destroying PHI at the termination of this Agreement is infeasible, it will keep the PHI but will extend all protections of this Agreement to Business Associate's Use or Disclosure of PHI retained after termination of this Agreement and will limit further Uses or Disclosures to those purposes that make the destruction of the PHI infeasible.

c. **Survival.** This Section survives termination of this Agreement.

11. COMPLIANCE WITH HITECH ACT AND REGULATIONS

Business associate will comply with the requirements of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954, which are applicable to Business Associate, and will comply with all regulations issued by the Department of Health and Human Services (HHS) to implement these referenced statutes, as of the date by which Business Associate is required to comply with such referenced statutes and HHS regulations.

12. MISCELLANEOUS

a. **COMPLIANCE WITH LAWS:** The parties are required to comply with federal and state laws. If this Agreement must be amended to secure such compliance, the parties will meet in good faith to agree upon such amendments. If the parties cannot agree upon such amendments, then either party may terminate this Agreement upon 30 days' written notice to the other party.

b. **CONSTRUCTION OF TERMS:** The terms of this Agreement will be construed in light of any applicable interpretation or guidance on the Privacy Standards, Security Standards or Breach Notification Regulations issued by the Department of Health and Human Services.

c. **NO THIRD PARTY BENEFICIARIES:** Nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

d. **NOTICES:** All notices required under the Agreement will be given in writing and will be delivered through: (i) secure electronic messaging system with capability of confirming receipt, (ii) by personal service, (iii) by first class mail, or (iv) by messenger or courier. Notices given through a secure electronic messaging system will be deemed given on the date the Covered Entity receives the electronic message. Notices given by mail will be deemed for all purposes to have been given forty-eight hours after deposit with the United States Postal Service. Notices delivered by personal service or messenger courier will be deemed to have been given upon actual delivery.

e. **ENTIRE AGREEMENT:** This Agreement constitutes the entire agreement between the parties with regard to the Privacy Standards, Security Standards and Breach Notification Regulations, there are no understandings or agreements relating to this Agreement that are not fully expressed in this Agreement and no change, waiver or discharge of obligations arising under this Agreement will be valid unless in writing and executed by the party against whom such change, waiver or discharge is sought to be enforced.

f. **COUNTERPARTS AND SIGNATURE:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement. Facsimile and electronic signatures shall be deemed to be original signatures for all purposes of this Agreement.

g. **CHOICE OF LAW:** The validity, construction and effect of this Agreement will be governed by the laws of the State of Maryland, without giving effect to that state's conflict of laws rules. Any Dispute will be resolved in a forum located in the State of Maryland.

13. Acceptance and Signatures

BUSINESS ASSOCIATE

Company Name: <u>AXIOM Systems, Inc.</u>

By: _____

Print Name: _____Richard A. Howe_____

Title: _____CEO_____

Effective Date: _____

Contacts for Notices under this Agreement:

Print Name:___Angela Waters_____

Title: Director of Administrative Services

Address: 241 East 4th Street, Ste. 200

   Frederick, MD 21701-3602

Phone: 301-815-5220

Fax: 301-815-5221

COVERED ENTITY

Company Name: _____

By: _____

Print Name: _____

Title: _____

Date: _____

Contacts for Notices under this Agreement:

Print Name: _____

Title: _____

Address: _____

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