

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “Agreement”) is made and entered into by and between Intelrad Medical Systems Incorporated (“Business Associate”) and the relevant Covered Entity which has entered into a Software Services Agreement with Intelrad (the “Supplier Agreement”), unless such Supplier Agreement explicitly provides otherwise. This Agreement is effective as of the effective date of the Supplier Agreement (the “Effective Date”).

In consideration of the foregoing, and the mutual promises contained herein and other valuable consideration, the legal sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

1. Introduction

- 1.1. Pursuant to the Supplier Agreement, the Business Associate performs functions and/or provides services to or on behalf of Covered Entity.
- 1.2. In connection with the Supplier Agreement, Covered Entity may disclose to Business Associate, and/or Business Associate may access or use, certain Protected Health Information (“PHI”) in connection with performing those services, including information from clients of Covered Entity or customers of clients of Covered Entity (“Covered Entities”).
- 1.3. Such PHI is subject to the Health Insurance Portability and Accountability Act of 1996, and its implementing regulations as amended by the Health Information Technology for Economic and Clinical Health (HITECH) Act of the American Recovery and Reinvestment Act of 2009 (collectively, “HIPAA”), and to such future changes or versions of such laws and related regulations.
- 1.4. Covered entity and Business Associate hereby agree to the terms and conditions of this Agreement in compliance with HIPAA.

2. Definitions

- 2.1. Unless otherwise specified, all terms used but not otherwise defined in this Agreement shall have the same meaning for those terms as set forth under HIPAA.

3. Business Associate Obligations

- 3.1. **Permitted Uses and Disclosures.** Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose PHI accessed, created, received, maintained or transmitted by or for the Covered entity in any manner that would violate HIPAA. Business Associate agrees that it shall comply with the HIPAA Security Rule. Business Associate agrees that it will not use or disclose PHI other than i) as permitted or required by this Agreement and/or the Supplier Agreement, ii) as required by law, or iii) in accordance with Covered entity’s written instructions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, the Covered entity as specified in the Supplier Agreement, provided that such use or disclosure would not violate the HIPAA Privacy Rule if done by Covered entity.
- 3.2. **Use/Disclosure for Administrative Activities.** Notwithstanding Section 3.1, Business Associate may use and/or disclose PHI for management and administrative activities of Business Associate or to comply with the legal responsibilities of Business Associate

pursuant to this Agreement and the Supplier Agreement; provided, however, that with respect to any such disclosure: (i) the disclosure is required by law; or (ii) Business Associate obtains reasonable assurances from the third party that receives the PHI that the third party will treat the PHI confidentially and will only use or further disclose the PHI in a manner consistent with the purposes that the PHI was provided by Business Associate, will respect the HIPPA Security Rule, and promptly report any breach of the confidentiality of the PHI to Business Associate.

- 3.3. Use of PHI for Data Aggregation. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered entity consistent with 45 C.F.R. §164.504(e)(2)(i)(B).
- 3.4. Use of PHI for Deidentification. Except as otherwise limited in this Agreement, Business Associate may use PHI to de-identify PHI in accordance with the standards set forth in 45 CFR § 164.514(b), and to use de-identified data solely and exclusively as permitted by applicable law.
- 3.5. Safeguards. Business Associate will i) implement appropriate safeguards and, with respect to Electronic PHI, comply with the applicable provisions of 45 C.F.R Part 164, Subpart C, to prevent any use or disclosure of PHI other than as provided for by this Agreement, and ii) ensure the secure transfer of PHI between Business Associate and any external party. Notwithstanding the generality of the preceding, Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that the Business Associate creates, receives, maintains or transfers to any external party pursuant to the Supplier Agreement.
- 3.6. Subcontractors of Business Associate. Business Associate agrees to enter into written contracts with any agent, subcontractor or independent contractor that creates, receives, maintains or transfers PHI (including transfers to any external party) on behalf of the Business Associate with regard to services provided by Business Associate pursuant to the Supplier Agreement (collectively, "Subcontractors"). Such contracts shall obligate Subcontractor to abide by terms and conditions which are substantially the same as those set out in this Agreement.
- 3.7. Restrictions. Business Associate agrees to comply with any requests for restrictions on certain disclosures of PHI to which Covered entity has agreed in accordance with 45 C.F.R. § 164.522 and of which Business Associate has been notified by Covered entity.
- 3.8. Performance of Covered entity's Obligations. To the extent Business Associate has agreed to carry out one or more of Covered entity's obligations under 45 C.F.R. Part 164, Subpart E, Business Associate shall comply with the requirements of Subpart E that apply to Covered entity in the performance of such obligations.
- 3.9. Access and Amendment. Business Associate shall notify the Covered entity of receipt of a request received by Business Associate for access to, or amendment of, PHI; provided the Business Associate has enough information to identify Covered entity as the source of the PHI. The Covered entity shall be responsible for responding, or objecting, to such requests.
 - 3.9.1. Access. Upon request, Business Associate agrees to furnish Covered entity with copies of the PHI maintained by Business Associate in a Designated Record Set in the time and manner designated by Covered entity to enable Covered entity to respond to an individual request for access to PHI under 45 C.F.R. § 164.524; provided, however, that Business Associate is not required to provide such access

where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered entity.

- 3.9.2. Amendment. Upon request and instruction from Covered entity, Business Associate shall make available PHI for amendment and incorporate any amendments to such PHI in accordance with 45 C.F.R. § 164.526. The content of any amendments to PHI made by Business Associate at the direction of Covered entity shall be the responsibility of the Covered entity.
- 3.10. Accounting. Business Associate agrees to document disclosures of PHI as would be required for Covered entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and, if required by and upon the effective date of, Section 13405(c) of the HITECH Act and related regulatory guidance; and provide to Covered entity information collected in accordance with this Section. In the event an individual delivers the initial request for an accounting directly to Business Associate, Business Associate shall forward such request to a Covered entity; provided the Business Associate has enough information to identify Covered entity as the source of the PHI.
- 3.11. Marketing. Business Associate shall not use or disclose PHI for “marketing” (as defined in 45 C.F.R. § 164.501) without obtaining an authorization for such use or disclosure pursuant to 45 C.F.R. § 164.508(a)(3).
- 3.12. Sale of PHI. Business Associate shall not disclose PHI in a manner that constitutes a “sale of PHI” (as defined in 45 C.F.R. § 164.502(a)(5)(ii)(B)).
- 3.13. Fundraising. To the extent otherwise permitted by this Agreement, Business Associate agrees that with respect to any fundraising communication made to an Individual, Business Associate shall provide the Individual with a clear and conspicuous opportunity to elect not to receive any further fundraising communications. The method for an Individual to elect not to receive further fundraising communications may not cause the Individual to incur an undue burden or more than a nominal cost. Business Associate shall not make any fundraising communications to any Individual that has elected not to receive such communications.
- 3.14. Security Obligations. Business Associate shall implement the administrative, physical, and technical safeguards set forth in 45 C.F.R. §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered entity, and, in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable Business Associate to comply with the requirements set forth in Sections 164.308, 164.310, and 164.312.
- 3.15. Access by Secretary of Health Human Services. Business Associate agrees to allow the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) access to its books, records and internal practices with respect to the disclosure of PHI for the purposes of determining the Covered entity’s or Business Associate’s compliance with HIPAA.
- 3.16. Access by Covered entity. In the event Business Associate or any of its agents reports to Covered entity a Use or Disclosure of PHI not authorized by this Agreement, Covered entity shall have the right, upon notice to Business Associate, to inspect copies of those portions of the books and/or records of Business Associate related to the unauthorized Use or Disclosure of PHI. Copies of the relevant portions of such books and/or records will be provided to Covered entity by Business Associate for inspection at a mutually-agreeable location. Notwithstanding the foregoing, no Covered entity inspection will be permitted until: (a)

Covered entity and Business Associate mutually agree, in advance, in writing, to the timing and scope of such inspection and (b) Covered entity executes a Non-Disclosure Agreement provided by Business Associate. It is understood and agreed that Business Associate may redact from such copies any confidential information or protected health information of a third party. The fact that Covered entity inspects, or fails to inspect, or has the right to inspect, copies of portions of Business Associate's related books and/or records does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered entity's (i) failure to detect or (ii) detection relieve Business Associate of its responsibility to comply with this Agreement. In any event, Business Associate shall promptly remedy any violation of any term of this Agreement and shall certify the same to Covered entity in writing.

4. Notification Obligations

- 4.1. Unauthorized Use or Disclosure of PHI. Business Associate shall report to Covered entity in writing, without unreasonable delay and as and when required by 42 U.S.C. § 17932, any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware.
- 4.2. Security Incident. Business Associate shall report to Covered entity in writing, without unreasonable delay and as and when required by 42 U.S.C. § 17932, any Security Incident affecting Electronic PHI of Covered entity of which Business Associate becomes aware. The Parties agree that this Section satisfies any notice requirements by Business Associate of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to Covered entity shall be required. For purposes of this Agreement, "Unsuccessful Security Incidents" include: (a) "pings" on an information system firewall; (b) port scans; (c) attempts to log on to an information system or enter a database with an invalid password or user name; (d) denial-of-service attacks that do not result in a server being taken offline; or (e) malware (e.g., a worm or virus) that does not result in unauthorized access, use, disclosure, modification, or destruction of Electronic PHI.
- 4.3. Breach of Unsecured PHI. Business Associate will notify Covered entity of any Breach of Unsecured PHI in accordance with 45 C.F.R. § 164.410. The notice required by this Section will be written in plain language and will include, to the extent possible or available, the following:
 - 4.3.1. The identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used or disclosed during the Breach;
 - 4.3.2. A brief description of what happened, including the date of the Breach and the date of discovery of the Breach, if known;
 - 4.3.3. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - 4.3.4. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - 4.3.5. A brief description of what is being done to investigate the Breach, mitigate the harm and protect against future Breaches; and

- 4.3.6. Contact procedures for Individuals to ask questions or learn additional information which shall include a toll-free number, an e-mail address, Web site, or postal address, if Covered entity specifically requests Business Associate to establish contact procedures.

5. Covered entity's Obligations

- 5.1. Limitations In Notice of Privacy Practices. Covered entity shall, without undue delay, notify Business Associate of any limitations in the notice of privacy practices of Covered entity under 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 5.2. Changes in or Revocation of Authorization. Covered entity shall, without undue delay, notify Business Associate of any changes, revocations or restrictions of the use or disclosure of PHI if such changes affect Business Associate's permitted or required uses and disclosures of PHI hereunder.
- 5.3. Restrictions. Covered entity shall, without undue delay, notify Business Associate of any restriction on the use or disclosure of PHI that Covered entity has agreed to or is required to abide by under 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.
- 5.4. Unsecured PHI. Covered entity shall not transmit Unsecured PHI to Business Associate.
- 5.5. Covered entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HIPAA Final Rule if done by Covered entity.

6. Term and Termination

- 6.1. Term. This Agreement shall be effective as of the Effective Date and shall terminate as provided in this Section or contemporaneously with the Supplier Agreement.
- 6.2. Termination upon Material Breach. Upon Covered entity's knowledge of a material breach of this Agreement by Business Associate, Covered entity shall notify Business Associate of such breach in reasonable detail, and provide an opportunity for Business Associate to cure the breach or violation, or if cure is not possible, Covered entity may immediately terminate this Agreement.
- 6.3. Return or Destruction of PHI. Upon termination of this Agreement, Business Associate will return to Covered entity all PHI received from or through Covered entity or Covered Entities, or created or received by Business Associate on behalf of Covered entity, which Business Associate maintains in any form or format, and Business Associate will not maintain or keep in any form or format any portion of such PHI. Alternatively, Business Associate may destroy all such PHI and provide written documentation of such destruction.
- 6.4. Alternative Measures. If the return or destruction of PHI is not feasible upon termination of the Agreement, then Business Associate agrees that it shall extend its obligations under this Agreement to protect the PHI and limit the use or disclosure of PHI to those purposes that make the return or destruction of PHI infeasible.

7. Modification and Amendment. This Agreement contains the entire understanding of the parties regarding the privacy and security obligations of Business Associate under HIPAA and will be modified

only by a written document signed by each party. The provisions of this Agreement shall control with respect to PHI that Business Associate receives from or on behalf of Covered entity or its Covered Entities, and the terms and provisions of this Agreement shall supersede any conflicting or inconsistent terms and provisions of the Supplier Agreement, including all exhibits or other attachments thereto and all documents incorporated therein by reference, to the extent of such conflict or inconsistency. This Agreement shall not modify or supersede any other provision of the Supplier Agreement.

- 8.** Relationship of the Parties. The Parties hereto acknowledge that Business Associate shall be and have the status of independent contractor in the performance of its obligations under the terms of this Agreement as to Covered entity. Nothing in this Agreement shall be deemed or construed to create a joint venture or Business Associateship between Covered entity and Business Associate.
- 9.** Reimbursement. Business Associate shall be responsible for any and all reasonable additional incremental costs above Covered entity's standard operating costs related to notification of individuals, as set forth by 45 CFR § 164.404 (or next of kin if the individual is deceased) and costs of investigation or other related costs of any unauthorized use or disclosure of PHI reported by Business Associate to Covered entity.
- 10.** Notice. Except as otherwise provided in this Agreement, any notice permitted or required by this Agreement will be considered made on the date personally delivered in writing or mailed by certified mail, postage prepaid, to the other party at the address set forth below, in the Supplier Agreement, in a relevant Order, or as either party may designate in writing, whatever the case may be:

If to the Business Associate:

Intelerad Medical Systems Incorporated
800 Blvd. De Maisonneuve E., 14th Floor
Montreal (Québec)
H2L 4L8
Canada

11. Miscellaneous

- 11.1.** Integration with Supplier Agreement. This Agreement is being implemented in conjunction with the Supplier Agreement and by their executions to the Supplier Agreement the parties are binding themselves to the provisions of this Agreement. To the extent any provision of this Agreement is inconsistent with any provision in the Supplier Agreement, the terms of this Agreement shall govern and control in all respects.
- 11.2.** Limitation of Liability. The total and aggregated limitation of liability of the Supplier Agreement shall also apply to this Agreement and include any claim related to this Agreement
- 11.3.** Severability and Compliance. The parties hereto shall comply with applicable laws and regulations governing their relationship, including, without limitation, HIPAA, and any other federal or state laws or regulations governing the privacy, confidentiality or security of patient health information. If a provision of this Agreement is held invalid under any applicable law, such invalidity will not affect any other provision of this Agreement that can be given effect without the invalid provision. Further, all terms and conditions of this Agreement will be deemed enforceable to the fullest extent permissible under applicable law, and, when necessary, the court is requested to reform any and all terms or conditions to give them such effect. The parties shall comply with applicable state and federal statutes and regulations as of the date by which they are required to comply with applicable statutes and regulations.

Any ambiguity in this Agreement shall be resolved to permit Covered entity and Business Associate to comply with HIPAA and other federal or state laws or regulations governing the privacy, confidentiality or security of patient health information.

- 11.4. Waiver. The waiver by Business Associate or Covered entity of a breach of this Agreement will not operate as a waiver of any subsequent breach. No delay in acting with regard to any breach of this Agreement will be construed to be a waiver of the breach.
- 11.5. Assignment. This Agreement will not be assigned by either party without the prior written consent of the other party. This Agreement will be for the benefit of, and binding upon, the parties hereto and their respective successors and permitted assigns.
- 11.6. Governing Law. The interpretation and enforcement of this Agreement will be governed by the laws of the State of New York. If any use or disclosure of PHI in performing the obligations under this Covered entity Agreement is outside the jurisdiction of the United States, the Business Associate agrees to be subject to the jurisdiction of the US Secretary, the laws and courts of the United States, and waive any available jurisdictional defenses that pertain to the obligations under this Covered entity Agreement, HIPAA or the HITECH Act
- 11.7. No Third Party Beneficiary Rights. Nothing express or implied in this Agreement is intended or shall be interpreted to create or confer any rights, remedies, obligations or liabilities whatsoever in any third party.
- 11.8. Headings. The section headings contained in this Agreement are for reference purposes only and will not affect the meaning of this Agreement.

The parties have caused this Agreement to be executed by their acceptance of the terms of the Supplier Agreement.