

**ACCIDENT INVESTIGATION SERVICES
HIPAA BUSINESS ASSOCIATE AGREEMENT
ECRI INSTITUTE – _____**

(Covered Entity)

This Agreement is made effective this _____ day of _____, 20_____ by and between _____ with a primary address of _____, hereinafter referred to as (“Covered Entity”), and the ECRI Institute (“ECRI Institute”) a non-profit organization with a primary address of 5200 Butler Pike Plymouth Meeting, PA 19462, hereinafter referred to as (“Business Associate”). For purposes of this Agreement Covered Entity and Business Associate may be referred to collectively as the (“Parties”).

WITNESSETH

WHEREAS, the Parties desire to enter into, or have entered into, one or more arrangements for Business Associate to provide certain accident investigation services to the Covered Entity and, pursuant to such arrangement(s), Business Associate may be considered a “Business Associate” of Covered Entity as defined in the HIPAA Rules (the agreements evidencing such arrangement are entitled the accident investigation Agreement and are hereby referred to as the (“Arrangement Agreements”)); and

WHEREAS, the Business Associate may have access to Protected Health Information (as defined by the HIPAA privacy rule and which definition is incorporated herein) in fulfilling its responsibilities under such arrangement;

NOW THEREFORE, in consideration of the Parties’ continuing obligations under the Arrangement Agreements, compliance with the HIPAA Rules, and for other good and valuable consideration, the receipt and sufficiency of where is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Rules and to protect the interest of both Parties.

1. **Definitions.** Initial-capitalized terms not otherwise defined in this Agreement shall have the meaning as defined in the HIPAA Rules.

a. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 and the HITECH Act.

b. “Protected Health Information” is defined at 45 CFR 160.103, and in reference to this Agreement, is limited to the information received by Business Associate from Covered Entity. All references to Protected Health Information shall be deemed to include Electronic Protected Health Information.

2. **Obligations and Activities of Business Associate.** Business Associate agrees to:

a. Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.

b. Use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent the use or disclosure of, other than as provided by this Agreement.

c. Report to the Covered Entity within five (5) business days of the Business Associate becoming aware, of any use or disclosure of Protected Health Information not provided for by the Agreement, including breaches of unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware; provided however, this subsection constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to

Covered Entity shall be required. “Unsuccessful Security Incidents” means, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Protected Health Information. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

d. In accordance with 45 CFR 164.502(e) (1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

e. Make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy the Covered Entity’s obligations under 45 CFR 164.524.

f. Make any amendment(s) to the Protected Health Information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity’s obligations under 45 CFR 164.526.

g. Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity’s obligations under 45 CFR 164.528.

h. In the event that the Business Associate receives a request from an individual for the information in subsections (f) or (g) above, Business Associate will notify the Covered Entity of the individual’s request within ten (10) business days of the receipt of the request, and Covered Entity shall be responsible for responding to the Individual.

i. Make its internal practices, books, and records available to the Secretary for purposes of compliance with the HIPAA Rules.

3. Permitted Uses and Disclosures by Business Associate. Business Associate may use and disclose Protected Health Information as follows:

a. As necessary (i) to perform its obligations in the Arrangement Agreements, as permitted herein, (ii) to carry out its legal responsibilities, and (iii) as Required By Law;

b. For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to such disclosure:

i. The disclosure is required by law, unlawful conduct, or violations of professional or clinical standards that potentially endanger one or more patients, workers or the public, consistent with § 164.502(j)(1); or

ii. Business Associate obtains reasonable assurances from the person or entity to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware that the confidentiality of the information has been breached; and

c. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the uses and disclosures specified in this Agreement.

d. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with the minimum necessary requirements of the Privacy Rule.

e. In addition to other permissible uses, Business Associate is authorized to use Protected Health Information to de-identify the Information in accordance with 45 CFR §164/514(a-c).

4. Obligations of Covered Entity.

a. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use of disclosure of Protected Health Information.

5. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except with regard to Data Aggregation services, or management, administration, and legal responsibilities of Business Associate.

6. Term and Termination.

a. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, 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.

b. Termination for Cause. If either party violates a material term of this Agreement and fails to remedy the violation within thirty (30) calendar days after it receives written notice of breach from the non-breaching party, the non-breaching party may immediately terminate this Agreement and any portions of the Arrangement Agreements that require the use or disclosure of Protected Health Information. If Covered Entity alleges a breach of this Agreement by Business Associate, Covered Entity may immediately suspend access to Protected Health Information by Business Associate, pending analysis of the alleged breach and possible cure by Business Associate.

7. Effect of Termination.

a. Upon written notification of termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

- i. Excluding Protected Health Information contained in work product created by Business Associate related to its investigation for the Covered Entity, return to Covered Entity or destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, including without limitation, retaining a copy of the Protected Health Information for anticipated legal defense purposes; and
- ii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate retains the Protected Health Information;

iii. Not use or disclose the Protected Health Information retained by Business Associate other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out in Section Three (3) of this BAA which applied prior to termination.

b. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon notification to Covered Entity that the destruction is infeasible, Business Associate 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 as long as Business Associate maintains such Protected Health Information.

c. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

8. Miscellaneous.

a. A reference in this Agreement to a section in the HIPAA Rules means the section as currently in effect or as amended. The Parties agree to take such action as is necessary to amend this Agreement from time-to-time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. This Agreement may be amended or modified only in a writing signed by both Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the Commonwealth of Pennsylvania. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall it prohibit the enforcement of any obligation, on any other occasion.

b. The Parties agree that, in the event that the Arrangement Agreements contain provisions relating to the use or disclosure of Protected Health Information which are different from the provisions of this Agreement, the provisions of the more restrictive document will control.

c. In the event that any provisions of this Agreement are held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY

BUSINESS ASSOCIATE

ECRI Institute

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____