SUBCONTRACTOR BUSINESS ASSOCIATE ADDENDUM

This Subcontractor Business Associate Addendum (the "Addendum") is entered into this _____ day of _____, 20___, by and between the University of Maine System, acting through the University of _____ ("University") and _____ ("Subcontractor").

WHEREAS, University performs services under a Business Associate Agreement for or on behalf of _____ _____ (the "Covered Entity") and, in connection with those services, Covered Entity discloses to University and/or University discloses and/or uses certain protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA");

WHEREAS, University subcontracts a portion of those services to Subcontractor pursuant to an agreement between University and Subcontractor (the "Underlying Agreement");

WHEREAS, the parties desire to comply with the HIPAA standards for the privacy and security of PHI;

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, University and Subcontractor enter into this Addendum to provide a full statement of their respective responsibilities.

SECTION I - DEFINITIONS

Unless otherwise provided herein, capitalized terms shall have the same meaning as set forth in HIPAA, as amended, and its implementing regulations.

ARRA shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations. References in this Addendum to a section or subsection of title 42 of the United States Code are references to sections of ARRA, and any reference to provisions of ARRA in this Addendum shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective.

Compliance Date shall mean in each case the date by which compliance is required under the referenced provision of ARRA.

HIPAA - The term "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

Individual - The term "Individual" shall have the same meaning as the term "Individual" in 45 CFR Section 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

Privacy Rule - The term "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A, D and E.

Protected Health Information or PHI - The term "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" in 45 CFR §160.103, limited to the information created or received by Subcontractor from or on behalf of University.

Required by Law - The term "required by law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.

Secretary - The term "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his/her designee.

Security Rule - The term "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Parts 160, 162 and 164, Subpart C.

SECTION II - OBLIGATIONS AND ACTIVITIES OF SUBCONTRACTOR

2.1   Performance of Services. Subcontractor, its agents and employees (collectively referred to as "Subcontractor") agrees not to use or further disclose PHI other than as permitted or required by this Addendum or as Required by Law.

2.2   Safeguards for Protection of PHI. Subcontractor shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the use or disclosure of PHI, in any form or media, received from, or created or received by Subcontractor on behalf of, the University, other than as provided for by this Addendum. Subcontractor shall document and keep such security measures current.

2.3   Reporting of Unauthorized Use and/or Security Breach. Subcontractor will promptly report to University any breach of security or use or disclosure of PHI not provided for in this Addendum immediately upon becoming aware of it, and in no case later than sixty (60) calendar days after discovery, and all in accordance with 42 USC § 17932(b) as of its Compliance Date. Subcontractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Subcontractor of a security breach or use or disclosure of PHI by Subcontractor in violation of the requirements of this Addendum.

2.4   Use of Subcontractors. Subcontractor agrees to ensure that any agent and/or subcontractor, to whom it provides PHI received from, or created or received by Subcontractor on behalf of, University, adheres to the same restrictions and conditions that apply through this Addendum to Subcontractor with respect to such information.

2.5   Access to PHI. Subcontractor agrees to provide access to PHI in a Designated Record Set in order to meet the requirements under 45 CFR §164.524 and Maine law. In the event that Subcontractor, in connection with the services, uses or maintains an Electronic Health Record of information of or about an Individual, then the Subcontractor shall upon request by the University provide an electronic copy of the PHI to the University or to the Individual or a third party designated by the Individual, all in accordance with 42 USC §17935(e), as of its Compliance Date.

2.6   Amendments by Subcontractor. Subcontractor agrees to make available for amendment and incorporate any amendment(s) to PHI in a Designated Record Set that the University directs or agrees to pursuant to 45 CFR §164.526.

2.7   Access by DHHS. Subcontractor agrees to make internal practices, books and records including policies and procedures and PHI relating to the use and disclosure of PHI received from, or created or received by Subcontractor on behalf of, University available to the University, or to the Secretary, in a time and manner designated by the University or the Secretary, for the purposes of the Secretary determining University's and Subcontractor's compliance with HIPAA and its implementing regulations.

2.8   Documentation of Disclosures. Subcontractor agrees to document such disclosures of PHI and information related to such disclosures and to make such information available as would be required for University to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528 and, as of its Compliance Date, in accordance with 42 USC §17935(c).

2.9   Security of Electronic PHI. Subcontractor shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronic PHI received from, or created or received by Subcontractor on behalf of, the University, which pertains to an Individual. As of the Compliance Date of 42 USC §17931, Subcontractor shall comply with the requirements set forth in 45 CFR §§164.308, 164.310, 164.312 and 164.316.

2.10   Electronic Transactions and Code Set Standards. If Subcontractor conducts any Standard Transaction for, or on behalf of, the University, Subcontractor shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of 45 CFR Part 162.

2.11   HIPAA Obligation. To the extent Subcontractor is to carry out any of University's obligations under HIPAA, Subcontractor shall comply with the requirements of HIPAA that apply to University in the performance of such obligation.

SECTION III - PERMITTED USES AND DISCLOSURES BY SUBCONTRACTOR

3.1   General. Except as otherwise limited in this Addendum or as provided in section 3.2, Subcontractor may use or disclose PHI to perform functions, activities, or services for, or on behalf of, University as specified in the Underlying Agreement, provided that such use or disclosure would not violate HIPAA if done by the Covered Entity or the "minimum necessary" policies and procedures of the Covered Entity. Except as permitted by this Addendum, the University shall not request or require Subcontractor to use or disclose PHI in any manner that would not be permissible under HIPAA if done by the Covered Entity.

3.2   Specific. Except as otherwise limited in this Addendum, Subcontractor may use PHI if necessary for the proper management and administration of the Subcontractor or to carry out the legal responsibilities of the Subcontractor. Except as otherwise limited in this Addendum, Subcontractor may disclose PHI if necessary for the proper management and administration of the Subcontractor, or to carry out the legal responsibilities of the Subcontractor, provided that disclosure is required by law, or Subcontractor 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 the Subcontractor of any instances of which it is aware in which the confidentiality of the information has been breached. Except as otherwise limited in this Addendum, Subcontractor may use PHI to provide Data Aggregation services to University as permitted by 45 CFR §164.503(e)(2)(i)(B). Subcontractor may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR §164.502(j)(1).

3.3   Minimum Necessary. Subcontractor shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use and/or disclosure; provided that it shall comply with 42 U.S.C. §17935(b) as of it Compliance Date.

3.4   Remuneration. Subcontractor shall not directly or indirectly receive remuneration in exchange for any PHI in accordance with 42 USC §17935(d) as of its Compliance Date.

3.5   Marketing. Subcontractor shall not make or cause to be made any communication about a product or service that is prohibited by 42 USC §17936(a) as of its Compliance Date.

3.6   Fund-Raising. Subcontractor shall not make or cause to be made any written fund-raising communication that is prohibited by 42 USC §17936(b) as of its Compliance Date.

SECTION IV - TERM/TERMINATION

4.1   Term and Termination. The term of this Addendum shall be effective as of _____ and shall terminate when all of the PHI provided by University to Subcontractor, or created or received by Subcontractor on behalf of, University is destroyed or returned to University, or, if it is infeasible to return or destroy the PHI, protections are extended to such PHI in accordance with the termination provisions in this section.

4.2   Termination for Cause. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of this Addendum, then the non-breaching party may either:

            A. Provide an opportunity for the other party to cure the breach or end the violation and terminate this Addendum if the other party does not cure the breach or end the

violation within the time specified; or

B. Immediately terminate this Addendum if the other party has breached a material term of this Addendum and cure is not possible.

Material Breach shall include Subcontractor's improper use or disclosure of PHI and any changes or any diminution of Subcontractor's reported security procedures or safeguards that render any or all of Subcontractor's safeguards unsatisfactory to University. If this Addendum is terminated for cause, the University shall have the right to terminate the Underlying Agreement without penalty. In the event of such termination, University shall not be liable for payment for any services performed by Subcontractor after the effective date of termination.

4.3   Effect of Termination:

4.3.1   Except as provided in Section 4.3.2, upon termination of this Addendum, for any reason, Subcontractor shall cease and desist all uses and disclosures of University's PHI and shall immediately return or destroy (if University gives written permission to destroy) in a reasonable manner consistent with HIPAA, all PHI received from University, or created or received by Subcontractor on behalf of University, provided, however that Subcontractor shall cooperate with University to ensure that no original PHI records are destroyed. This provision shall apply to PHI that is in the possession of subcontractors or agents of Subcontractor. Except as provided in Section 4.3.2, Subcontractor shall retain no copies of the PHI. Except as provided in Section 4.3.2, Subcontractor shall certify to University that all PHI has been returned (or destroyed) within 30 days after termination or expiration of this Addendum.

4.3.2   In the event that Subcontractor determines that returning or destroying the PHI is infeasible, Subcontractor shall provide to University notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Subcontractor shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Subcontractor maintains such PHI.

SECTION V - MISCELLANEOUS

5.1   Priority of Addendum. If any portion of this Addendum is inconsistent with the terms of the Underlying Agreement, the terms of this Addendum shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement shall remain unchanged.

5.2   Documentation. Both parties shall retain all documentation required by HIPAA for six years from the date of its creation or the date when the document was last in effect, whichever is later

5.3   Indemnification. Subcontractor shall indemnify, defend, and hold University and its employees, directors, trustees, officers, representatives and agents (collectively the Indemnitees) harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the Indemnitees and relating to or arising out of any breach or alleged breach of the terms of this Addendum by Subcontractor or any other act or omission of Subcontractor, its employees or agents.

5.4   Construction. This Addendum shall be construed as broadly as necessary to implement and comply with HIPAA, ARRA and the HIPAA regulations. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, ARRA and HIPAA regulations.

5.5   Modification of Addendum. The parties recognize that this Addendum may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to HIPAA. The parties agree to execute any additional amendments to this Addendum reasonably necessary for each party to comply with HIPAA. This Addendum shall not be waived, amended or altered, in whole or in part, except in writing signed by the parties.

5.6   Survival. The respective rights and obligations of Subcontractor under sections 4.3 and 5.3 of this Addendum shall survive the termination of this Addendum.

5.7   Transferability. University has entered into this Addendum in specific reliance on the expertise and qualifications of Subcontractor. Consequently, Subcontractor's interest and obligations under this Addendum may not be transferred or assigned or assumed by any other person, in whole or in part, without the prior written consent of University.

IN WITNESS WHEREOF, the parties hereto have set their hands effective the day and year first above written.

UNIVERSITY OF MAINE SYSTEM   **SUBCONTRACTOR**

                                           _____

By:_____   By: _____

Name: _____   Name:_____

Title: _____   Title:_____

Date: _____   Date: _____

Revised 05/16/2013