

## Supporting Initiatives to Redistribute Unused Medicine (“SIRUM”)

### DONEE USER AGREEMENT

READ CAREFULLY THE TERMS OF THIS USER AGREEMENT (“AGREEMENT”) GOVERNING THE DONATION OF CERTAIN PRODUCTS AND/OR EQUIPMENT (AS DEFINED BELOW) BEFORE PROCEEDING WITH THE USE OF THE SIRUM SERVICES (AS DEFINED BELOW) OR THE REQUEST OR RECEIPT OF ANY DONATION. BY USING THE SIRUM SERVICES (AS DEFINED BELOW), MAKING ANY REQUESTS OR RECEIVING ANY DONATIONS OR INDICATING YOUR ACCEPTANCE OF THESE TERMS BY SELECTING THE “ACCEPT” BUTTON AT THE END OF THIS AGREEMENT, YOU ARE (1) REPRESENTING THAT YOU ARE OVER THE AGE OF 18 AND HAVE THE LEGAL RIGHT TO LEGALLY BIND YOUR ORGANIZATION (the “DONEE ORGANIZATION”) AND (2) CONSENTING, ON BEHALF OF YOU AND THE DONEE ORGANIZATION, TO BE LEGALLY BOUND BY ALL OF THE TERMS OF THIS AGREEMENT. BY CLICKING YOUR ACCEPTANCE, OR BY ACCESSING OR USING THE SERVICE, YOU AFFIRM THAT YOU ARE ABLE TO MAKE ALL OF THE REPRESENTATIONS IN THIS AGREEMENT AND THAT YOU AGREE TO ALL OF THE TERMS AND CONDITIONS HEREIN.

#### 1. SCOPE.

- a. A donor (“Donor Organization”) may, from time to time, donate certain Products and/or Equipment by using SIRUM as an information service. Donee Organizations having a demand for such Products and/or Equipment may, from time to time, seek to accept such donations of such Products and/or Equipment. SIRUM seeks to (i) make introductions of Donor Organizations and Donee Organizations, (ii) make available information relating to Donor Organizations, Donee Organizations and Products and/or Equipment, and (iii) facilitate the donation of Products and Equipment by Donor Organizations and receipt of such Products and Equipment by Donee Organizations by performing certain purely administrative functions (including, but not limited to, (1) creating prepaid shipping labels using addresses provided by Donee Organizations and Donor Organizations, (2) mailing such shipping labels to Donor Organizations, and (3) processing donation records and instructions provided by Donor Organization) (the services listed in (i), (ii) and (iii) are hereinafter referred to as the “SIRUM Services”).
- b. Donee Organization understands and agrees that SIRUM and its Affiliated Parties (as defined below), in supplying the SIRUM Services, do not act as wholesalers, brokers, jobbers, agents, reverse distributors, sellers, resellers, distributors, or suppliers for purposes of products liability law or for any other purpose, and in no event will SIRUM distribute, or take possession of, any Products and/or Equipment.
- c. For the purpose of this Agreement, Affiliated Parties shall mean all employees, members, advisors, directors, officers, agents, financial contributors, affiliates, or any other individual or entity acting on behalf of SIRUM. For the purpose of this Agreement, “Products and/or Equipment” may include but are not limited to medication, medical supplies, medical pamphlets or information (in electronic, written, or other form),

pharmaceutical products, research supplies, lab equipment, medical devices, transport or storage facilities, and any other materials which a Donor Organization may seek to donate, or which a Donee Organization may seek to receive, through use of the SIRUM Services. The term Products and/or Equipment includes materials that are available by prescription only ("Rx Products"), as well as those that can be obtained without prescription ("OTC Products").

2. **TERM AND TERMINATION.** Donee Organization agrees that SIRUM, in its sole discretion and for any reason or no reason, may terminate this Agreement and may discontinue the SIRUM Services at any time, with or without notice. Donee Organization agrees that SIRUM will not be liable to Donee Organization or any third party for any such termination. Without limiting the foregoing, SIRUM reserves the right to terminate, discontinue and/or suspend the SIRUM Services for any suspected non-compliance with this Agreement, and such non-compliance may be referred to appropriate law enforcement authorities. These remedies are in addition to any other remedies SIRUM may have at law or in equity.
3. **CONFIDENTIALITY.** Donee Organization agrees that neither it nor any of its employees will use or disclose to any third party, except as expressly permitted herein, certain technical information, as well as information about business plans and strategies, promotions, donors, other donees, and related non-technical business information which SIRUM considers to be confidential (collectively, "Confidential Information"). In the event such information is disclosed, the information shall (a) be marked as confidential at the time of disclosure, or (b) if disclosed orally but stated to be confidential, be reduced to a written summary designated as confidential after such oral disclosure. Donee Organization agrees to require every Donee Organization employee who will have access to, use of, or knowledge of the Confidential Information to execute (in advance of and as a condition to such access, use or knowledge) a confidentiality agreement including terms substantially similar to those contained in this Section. Donee Organization agrees that it will take all reasonable measures to protect the secrecy of and avoid disclosure or use of the Confidential Information in order to prevent it from falling into the public domain or the possession of persons other than those persons authorized hereunder to have any such information, which measures shall include the highest degree of care that Donee Organization utilizes to protect its own Confidential Information of a similar nature. Donee Organization agrees to notify SIRUM in writing of any misuse or misappropriation of Confidential Information which may come to Donee Organization's attention. For the avoidance of doubt, PHI (as defined in Appendix 1) shall not be deemed Confidential Information.
4. **REPRESENTATIONS, WARRANTIES AND COVENANTS OF DONEE ORGANIZATION.**
  - a. Donee Organization hereby represents, warrants and covenants that it shall be responsible, at its own expense, for complying with all applicable laws and has obtained all required applicable governmental and regulatory approvals, consents, permits and licenses to use the SIRUM Services hereunder and to request or receive any donations from any Donor Organization, including licenses required to distribute Products and/or

Equipment. Such laws include but are not limited to local, state and federal laws, rules, regulations, and ordinances enacted to permit distribution of Product and/or Equipment (“Donation Distribution Laws”). Donation Distribution Laws have been enacted in many states and vary considerably in scope and content. All regulate the donation of Rx Products; some also permit donation of OTC Products. Donee Organization is solely responsible for determining what it is legally permitted under applicable Donation Distribution Laws and prohibited under any law.

- b. Without limiting the generality of the foregoing, Donee Organization hereby represents, warrants and covenants as follows:
  - i. Donee Organization is authorized to receive donations of Product and/or Equipment for distribution pursuant to one or more Donation Distribution Laws.
  - ii. If the receipt of a donation of Product and/or Equipment is not expressly authorized pursuant to one or more Donation Distribution Laws, then the Donee Organization represents, warrants and covenants that (x) Donee Organization shall only receive donations of Product and/or Equipment consisting solely of OTC Products and/or non Rx Products and (y) Donee Organization is not legally prohibited from receiving any such donations of Product and/or Equipment.
  - iii. In submitting to SIRUM a request for a donation of Product and/or Equipment, Donee Organization shall specify only items that it may lawfully distribute.
  - iv. Upon receipt of donated Product and/or Equipment, authorized personnel of Donee Organization shall use professional judgment to determine whether donated Product and/or Equipment meets the standards and requirements for distribution under applicable law. Donee Organization shall return to Donor Organization any Product and/or Equipment it finds does not meet such standards and requirements and shall be deemed to have accepted for distribution all Product and/or Equipment not so returned within 30 days of receipt.
  - v. If it accepts a donation, including as described in subsection iii. above, Donee Organization will never institute any action or suit at law or in equity against either SIRUM or a Donor Organization, or their agents, volunteers, or employees, nor institute, prosecute or in any way aid in the institution or prosecution of any claim, demand, action, or cause of action for damages, costs, loss of services, expenses, or compensation for or on account of any damage, loss or injury either to person or property, or both, whether developed or undeveloped, resulting or to result, known or unknown, past, present or future, arising out of or associated with a donation by a Donor Organization using SIRUM as an information service, or any other SIRUM Services. **Such a Donor Organization is a third party beneficiary of this covenant with the right to enforce its provisions.**

- vi. Proper distribution of Product and/or Equipment, whether Rx Products or OTC Products, shall entail all of the following:
  - 1. Eligible patients (as defined by the Donee Organization, subject to any applicable Donation Distribution Laws) shall not have to pay unless charging patients is specifically permitted under Donation Distribution Laws.
  - 2. Donated Product and/or Equipment shall be maintained and stored in packaging units or containers prescribed under the applicable Donation Distribution Laws; provided, however, if the Donation Distribution Laws are silent regarding the maintenance and storage of such Product and/or Equipment, such Donated Product and/or Equipment will be maintained and stored in packaging units or containers that meet the United States Pharmacopeia standards, until dispensed to an eligible patient, including a patient who presents a valid prescription when one is required.
  - 3. The privacy of individuals for whom the Product and/or Equipment was originally prescribed shall be maintained.
  - 4. Donee Organization shall adhere to standard pharmacy practices, as required by local, state and federal law, when dispensing Product and/or Equipment.
  - 5. Expired Product and/or Equipment and Rx Products and OTC Products donated in opened containers shall not be dispensed.
  - 6. Any accepted Product and/or Equipment not dispensed to an eligible patient by the Donee Organization or by another permitted organization shall ultimately be properly destroyed by Donee Organization or permitted organization; it shall not be sold, dispensed or transferred to any person or entity unless specifically permitted under Donation Distribution Laws.
- vii. Donee Organization shall keep complete records of the acquisition and disposition of Product and/or Equipment, which records shall be readily available.
- c. Donee Organization understands and agrees that SIRUM has the right, but not the obligation, to request documents from Donee Organization to confirm Donee Organization's compliance with this Section 4, and/or to independently verify Donee Organization's compliance with this Section 4. Donee Organization shall provide to SIRUM any assistance and information reasonably required or requested by SIRUM to confirm Donee Organization's compliance with this Section 4.
- d. **HIPAA COMPLIANCE.** Donee Organization understands and agrees that by using SIRUM Services it may be accessing information, some of which may be PHI (as defined

in Appendix 1). Donee Organization shall ensure that its access, use and any further disclosure of such information, including any PHI complies in all respects with HIPAA (as defined in Appendix 1) and any other state law that may be applicable to Donee Organization, or otherwise protects the privacy and/or security of such information. In addition, the specific terms and conditions of the Addendum attached as Appendix 1 and made a part of this Agreement shall apply and govern how PHI may be used and disclosed by Donee Organization.

## **5. DISCLAIMER OF WARRANTIES.**

- a. DONEE ORGANIZATION ASSUMES ALL RISKS AND IS SOLELY RESPONSIBLE FOR ALL CONSEQUENCES OF ITS ACTIONS, INCLUDING WITHOUT LIMITATION, ANY PERSONAL INJURY OR PROPERTY DAMAGE INCURRED BY DONEE ORGANIZATION, ITS AGENTS, VOLUNTEERS, OR EMPLOYEES OR ANY THIRD PARTY AS A RESULT OF REQUESTING OR RECEIVING PRODUCTS AND/OR EQUIPMENT THROUGH USE OF THE SERVICES PROVIDED BY SIRUM AND/OR AFFILIATED PARTIES. DONEE ORGANIZATION UNDERSTANDS AND AGREES THAT SIRUM IS ONLY AN INFORMATION PROVIDER HELPING TO CONNECT DONORS WITH DONEES, ANY SIRUM SERVICES TO FACILITATE A DONOR ORGANIZATION'S DONATION OF PRODUCTS AND EQUIPMENT OR THE RECEIPT OF SUCH PRODUCTS AND EQUIPMENT BY A DONEE ORGANIZATION ARE PURELY ADMINISTRATIVE IN NATURE, AND SIRUM DOES NOT DISTRIBUTE, TAKE POSSESSION OR IN ANY WAY TAKE RESPONSIBILITY FOR ANY PRODUCTS AND/OR EQUIPMENT REQUESTED OR RECEIVED THROUGH THE SIRUM SERVICE. DONEE ORGANIZATION UNDERSTANDS AND AGREES THAT THE PRODUCTS AND/OR EQUIPMENT REQUESTED OR RECEIVED BY DONEE ORGANIZATION WITH INFORMATION AND SUPPORT PROVIDED BY SIRUM AND/OR AFFILIATED PARTIES ARE DONEE ORGANIZATION'S FULL RESPONSIBILITY.**
- b. DONEE ORGANIZATION ASSUMES ALL RISKS ASSOCIATED WITH DONOR ORGANIZATION'S COMPLIANCE WITH THE LAWS AND REGULATIONS APPLICABLE TO DONOR ORGANIZATION. DONEE ORGANIZATION UNDERSTANDS AND AGREES THAT SIRUM PROVIDES NO WARRANTIES OR ASSURANCES THAT ANY OF THE SIRUM SERVICES, INCLUDING INFORMATION PROVIDED OR MADE AVAILABLE BY SIRUM AND ANY INFORMATION REGARDING DONOR ORGANIZATIONS, IS TRUE OR ACCURATE, AND VERIFICATION OF THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION IS DONEE ORGANIZATION'S FULL RESPONSIBILITY.**
- c. SIRUM PROVIDES NO WARRANTIES OR ASSURANCES (EXPRESS, STATUTORY OR IMPLIED), REPRESENTATIONS, OR CONDITIONS OF**

**ANY KIND, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE AND SIRUM, FOR ITSELF AND ON BEHALF OF ITS AFFILIATED PARTIES, HEREBY DISCLAIMS ANY SUCH WARRANTIES, REPRESENTATIONS OR CONDITIONS.**

**6. LIMITATION OF LIABILITY.**

**TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL SIRUM OR ITS AFFILIATED PARTIES BE RESPONSIBLE FOR ANY DIRECT, INDIRECT, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR OTHER DAMAGES OR LOSS, ARISING OUT OF USE OF THE SIRUM SERVICES, OR THE DONATION, REQUEST, RECEIPT OR USE OF A PRODUCT AND/OR EQUIPMENT, EVEN IF SIRUM OR ITS AFFILIATED PARTIES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR LOSS.**

**7. INDEMNIFICATION.**

Donee Organization agrees to indemnify, defend, and hold SIRUM and its Affiliated Parties harmless from any claims, liability, loss, damage or injury of any kind, including attorney's fees and costs of litigation, directly or indirectly resulting from or associated with (i) Donee Organization's use of the SIRUM Services including the introduction to any Donor Organization; (ii) the Products and/or Equipment requested or received by Donee Organization, (iii) any breach by Donee Organization of this Agreement, including without limitation any breach of Appendix 1 or of Section 4 of this Agreement by Donee Organization, and/or (iv) any non-compliance or alleged non-compliance by Donee Organization with any applicable law. Donee Organization further acknowledges and agrees that it will not seek indemnity or contribution or injunctive relief from SIRUM and/or Affiliated Parties or bring legal action of any kind against SIRUM and/or Affiliated Parties, for damages, injury, or loss of any kind arising out of any Products and/or Equipment, care, information or services provided by Donee Organization to third parties, or the use of the SIRUM Services supplied by SIRUM or Affiliated Parties. Nothing in this clause shall preclude SIRUM from participating in its own defense and Donee Organization agrees to provide SIRUM and/or Affiliated Parties the right to participate in all decisions relating to their defense including appointment of adequate counsel. Should SIRUM and/or Affiliated Parties be required to bring legal action to enforce the terms of this Agreement, it is agreed that SIRUM and Affiliated Parties, if prevailing, shall be entitled to an award of costs and reasonable attorney's fees.

**8. PROMOTION.**

- a. SIRUM may, from time to time, issue press releases or other publicity, marketing or promotional materials and media, including but not limited to (i) an announcement regarding the relationship contemplated by this Agreement and (ii) presentations and marketing materials directed towards potential future partners, potential donor organizations and any other potential donee organizations ("Marketing Release(s)"). In

addition to usage of the Donee Organization's name in such Marketing Releases, Donee Organization understands and acknowledges that SIRUM may use information regarding the names, quantities and other characteristics of Products or Equipment requested or received by Donee Organization or any other non-confidential information related to Donee Organization; provided that in using such information, the information is de-identified. For clarification, "de-identified information" means information regarding the names, quantities and other characteristics of Products or Equipment requested or received by Donee Organization or any other non- confidential information related to Donor Organization, that has been generalized or aggregated such that the information cannot be directly or solely tied to the Donee Organization (i.e. Donee Organization information which is aggregated with the information of other donee organizations and used in charts and statistics to publicize the types and/or quantities of donations received during a specified time period). In the event that SIRUM uses non-de-identified information related to the Donee Organization, SIRUM will request prior written approval (which may be communicated by mail or electronic transmission) in which Donee Organization will have 5 business days to respond. If no response is received after 5 business days, Donee Organization is deemed to have approved such public announcement utilizing the non-de-identified information.

- b. Subject to SIRUM's prior written approval (which may be communicated by mail or electronic transmission), Donee Organization may display and use the logos, trade names, trademarks, and service marks of SIRUM for the purpose of marketing the relationship and philanthropic work of the parties, subject to the following conditions: (i) it shall keep intact any proprietary notices; (ii) it shall comply with SIRUM's trademark use guidelines as communicated to Donee Organization; (iii) it acknowledges that all goodwill generated through its use of SIRUM's logos, trade names, trademarks and service marks will inure to the benefit of SIRUM; (iv) it hereby assigns and agrees to assign to SIRUM any and all goodwill generated through its use of SIRUM's logos, trade names, trademarks and service marks, without any payment or other consideration to it, and further agrees to take all actions necessary to effect such assignment; and (v) upon termination of this Agreement, it shall cease using the logos, trade names, trademarks and service marks of SIRUM.

## 9. MISCELLANEOUS.

- a. **Governing law.** This Agreement shall be governed by the laws of the State of California, without regard to any conflicts of law principles.
- b. **Arbitration.** In the event a dispute arises between the parties hereto arising out of or in connection with or with respect to this Agreement or any breach thereof, such dispute shall be determined and settled by arbitration in Santa Clara County, in accordance with the rules of the American Arbitration Association ("AAA"). The award rendered thereon by the arbitrator shall be final and binding on the parties thereto, and judgment thereon may be entered in any court of competent jurisdiction. Nothing in this Section shall

prevent either party from applying to a court of competent jurisdiction for equitable or injunctive relief.

- c. **Assignment.** This Agreement, or any rights or obligations hereunder, may not be assigned by Donee Organization without the prior written consent of SIRUM. SIRUM may assign this Agreement to any successor of SIRUM by way of merger, consolidation, or the acquisition of all or substantially all of SIRUM's business and assets related to this Agreement without the consent of Donee Organization. Any attempted assignment of this Agreement not in compliance with this Section shall be null and void. This Agreement shall inure to the benefit of and be binding upon each party hereto, its successors and permitted assigns.
- d. **Severability.** If any provision of this Agreement shall be deemed void in whole or in part for any reason whatsoever, the remaining provisions shall remain in full force and effect. The parties shall make a good faith effort to replace any such provision with a valid and enforceable one such that the objectives contemplated by the parties when entering this Agreement may be realized.
- e. **Non-Waiver.** No failure or delay of one of the parties to insist upon strict performance of any of its rights or powers under this Agreement shall operate as a waiver thereof, nor shall any other single or partial exercise of such right or power preclude any other further exercise of any rights or remedies provided by law.
- f. **Survival.** Upon termination of this Agreement, any provision which, by its nature or express terms should survive, will survive such termination or expiration.



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## Appendix 1

### HIPAA BUSINESS ASSOCIATE SUBCONTRACTOR ADDENDUM

This HIPAA Business Associate Subcontractor Addendum (this "Addendum") is by and between Supporting Initiatives to Redistribute Unused Medicine ("SIRUM") and the Donee Organization ("Business Associate") which has accepted the terms and conditions of the underlying Agreement (as defined below) (each a "Party" and collectively the "Parties"). Any term which is not otherwise defined in this Addendum shall have the meaning ascribed to such term in the underlying Agreement, if any, and any capitalized term used in this Addendum, but not defined in either this Addendum or the Agreement shall have the meaning set forth in HIPAA (as defined below).

**WHEREAS**, SIRUM and Donor Organization have entered into an agreement pursuant to which SIRUM may create, receive, transmit and/or maintain certain health information that constitutes PHI on behalf of Donor Organization;

**WHEREAS**, Business Associate may create, receive, transmit and/or maintain that PHI on behalf of SIRUM pursuant to the Donee User Agreement to which this Addendum is attached (the "Agreement"); and

**WHEREAS**, SIRUM and Business Associate desire to modify the Agreement to include certain provisions required by the Health Insurance Portability and Accountability Act of 1996, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, and their implementing regulations as and when compliance with those regulations is required (collectively and individually referred to as "HIPAA");

**NOW THEREFORE**, in consideration of the mutual covenants and conditions contained in the Agreement, the Parties agree as follows:

1. **DEFINITIONS.** For purposes of this Addendum, the terms below shall have the meanings given to them in this Section.
  - a. **Effective Date** means the date on which the Parties enter into the Agreement as reflected in SIRUM's electronic records.
  - b. **Electronic PHI** means PHI that is transmitted by or maintained in electronic media.
  - c. **HHS** shall mean the U.S. Department of Health and Human Services.
  - d. **PHI** means Protected Health Information that is received from, or received, created, maintained or transmitted on behalf of, SIRUM by Business Associate pursuant to the Agreement.

- e. **Privacy Rule** shall mean the regulations set forth at 45 CFR Part 160 and Part 164, Subparts A and E, as amended from time to time.
- f. **Security Rule** shall mean the regulations set forth at 45 CFR Part 164, Subpart C, as amended from time to time.

## **2. USE AND DISCLOSURE OF PHI**

- a. Except as otherwise limited by this Addendum, Business Associate may use or disclose PHI as reasonably necessary to perform its obligations as described in the Agreement, or as otherwise permitted or required of Business Associate by this Addendum or as Required by Law.
- b. Business Associate may not de-identify or aggregate any PHI unless specifically instructed to do so by SIRUM in advance, in writing, provided that Business Associate may remove and destroy all identifying information from any Rx Products or OTC Products received by Business Associate pursuant to the Agreement.
- c. Except as otherwise limited by this Addendum, SIRUM authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate's business and to carry out its legal responsibilities. Business Associate may disclose PHI for its proper management and administration, provided that (i) such disclosures are Required by Law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from such third party that the PHI will be held confidential as provided under this Addendum and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such third party; and (b) an agreement from such third party to notify Business Associate immediately of any breaches of the confidentiality of the PHI or Breach of Unsecured PHI.
- d. Business Associate shall not use or disclose PHI in a manner other than as permitted by this Addendum or as Required by Law, and to the extent that Business Associate is to carry out any of Donor Organization's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Donor Organization in the performance of those obligations.
- e. Upon request, Business Associate shall make available to SIRUM within ten (10) days any PHI that Business Associate, or any of its agents or subcontractors, have in their possession.
- f. Business Associate agrees to comply with "minimum necessary" requirements set forth at 45 C.F.R. § 164.502(b), as may be amended from time to time.

## **3. SAFEGUARDS AGAINST MISUSE OF PHI.** Business Associate shall use appropriate safeguards to prevent the unauthorized use or disclosure of PHI and shall comply with the Security Rule.

**4. BREACHES, SECURITY INCIDENTS AND IMPROPER USES AND DISCLOSURES.**

- a. Business Associate shall report to SIRUM, promptly and in no case later than ten (10) days following discovery: (i) any use and/or disclosure of PHI that is not permitted by this Addendum; and/or (ii) any Security Incident.
- b. Without unreasonable delay and in no case later than five (5) calendar days after discovery, Business Associate shall notify SIRUM of a Breach of any Unsecured PHI all in accordance with 45 C.F.R. § 164.410.
- c. Uses, disclosures, Security Incidents and Breaches giving rise to a notification obligation under Sections 4(a) and/or 4(b) are referred to hereafter as “Events.”
- d. In SIRUM’s or Donor Organization’s discretion and in accordance with their directions, and without limiting in any way any other remedy available to SIRUM or Donor Organization at law, equity, or contract, Business Associate shall (i) take all reasonable and necessary steps, in accordance with SIRUM’s or Donor Organization’s instructions, to negate or mitigate any harmful effect that results from any Event; (ii) conduct, or pay the costs of conducting, an investigation of any Event; (iii) reimburse and pay SIRUM and the applicable Donor Organization, as applicable, for any expenses and costs incurred by SIRUM or the applicable Donor Organization respectively that arise from an investigation of any Event; (iv) provide, and/or pay the costs of providing, at SIRUM’s and Donor Organization’s option, the required notices pertaining to the Event as set forth in the Breach Notification Rule; and (v) defend, hold harmless and indemnify SIRUM and Donor Organization against all expenses, liabilities, damages, claims, costs, penalties and losses (including attorneys’ and consultant fees) reasonably incurred by SIRUM or Donor Organization, as applicable, related to or arising from the Event.

**5. AGREEMENTS WITH AGENTS OR SUBCONTRACTORS.** Business Associate shall ensure that any of its agents or subcontractors that receive, create, maintain or transmit PHI agree in writing to the same restrictions and conditions concerning uses and disclosures of PHI and Electronic PHI contained herein.

**6. ACCESS TO PHI BY INDIVIDUALS.**

- a. Upon request of SIRUM or Donor Organization, Business Associate agrees to furnish SIRUM or Donor Organization with any PHI in the time and manner designated by SIRUM or Donor Organization to allow Donor Organization to comply with 45 C.F.R. § 164.524.
- b. In the event any Individual (or the personal representative (as defined by applicable state law) of any Individual) requests access to the Individual’s PHI directly from Business Associate, Business Associate within five (5) business days of that request, shall forward such request to SIRUM. Business Associate shall respond to the Individual's request only upon direction by SIRUM.

**7. AMENDMENT OF PHI.**

- a. Upon request and instruction from SIRUM or Donor Organization, Business Associate shall amend PHI about an Individual in a Designated Record Set that is maintained by, or otherwise within the possession of, Business Associate as directed by SIRUM or Donor Organization in accordance with procedures established by 45 C.F.R. § 164.526. Any amendment requested by SIRUM or Donor Organization shall be completed by Business Associate within thirty (30) days of the receipt of the request.
- b. In the event any Individual requests that Business Associate amend such Individual's PHI in a Designated Record Set, Business Associate within five (5) business days, shall forward such request to SIRUM. Business Associate shall not correspond directly with the Individual unless directed to do so by SIRUM or Donor Organization or Required by Law.

## **8. ACCOUNTING OF DISCLOSURES.**

- a. Within five (5) business days of a request by SIRUM or the Donor Organization, Business Associate shall make information related to such disclosures as would be required for Donor Organization to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 available to Donor Organization or SIRUM. Business Associate shall document any disclosures of PHI made by Business Associate, in the same manner required of Donor Organization by 45 C.F.R. § 164.528, as may be amended from time to time. Business Associate hereby agrees to implement an appropriate recordkeeping system to enable it to comply with the requirements of this Section. Business Associate agrees to retain such records for a minimum of six (6) years.
- b. Business Associate shall furnish to Donor Organization or SIRUM (or to the Individual requestor only upon SIRUM's or Donor Organization's direction) information collected in accordance with this Section, in the time and manner to permit Donor Organization to comply with 45 C.F.R. § 164.528, as may be amended from time to time.
- c. In the event an Individual delivers the request for an accounting directly to Business Associate, Business Associate shall within five (5) days forward such request to SIRUM.

9. **AVAILABILITY OF BOOKS AND RECORDS.** Business Associate shall make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI to SIRUM and HHS for purposes of determining Donor Organization's compliance with the Privacy Rule. Notwithstanding the foregoing, prior to any such disclosure to HHS or any other federal or state agency, Business Associate shall notify SIRUM and Donor Organization immediately of such request and shall furnish SIRUM and Donor Organization with copies of such request. Business Associate agree to work together with SIRUM and Donor Organization in responding to such request.

## **10. TERM AND TERMINATION.**

- a. This Addendum shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met under the Agreement and under this Addendum.

- b. SIRUM may terminate immediately this Addendum if SIRUM makes a determination that Business Associate has breached this Addendum or if the Agreement is terminated or expires.
  - c. Upon termination of this Addendum or the Agreement for any reason, Business Associate shall destroy all PHI maintained by Business Associate, or, if so directed by SIRUM or Donor Organization, return the PHI to SIRUM or Donor Organization as directed. If destruction or return of the PHI is not feasible, Business Associate shall furnish SIRUM and Donor Organization with notification, in writing, of the conditions that make return or destruction infeasible, and Business Associate will extend the protections of this Addendum to such information for as long as Business Associate retains such information and will limit further uses and disclosures to those purposes that make the return or destruction of the information not feasible. This Section shall survive any termination of this Addendum.
11. **EFFECT OF ADDENDUM.** Except as expressly stated herein or as provided by law, this Addendum shall not create any rights in favor of any third party.
12. **NOTICES.** All notices, demands and other communications to be made under this Addendum shall be made in accordance with the notice provisions in the underlying Agreement.
13. **AMENDMENTS; WAIVER.** Except as otherwise provided herein, this Addendum may not be modified, nor shall any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. The Parties agree to modify this Addendum from time to time as necessary for SIRUM and Donor Organization to comply with the Privacy Rule or Security Rule. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
14. **SURVIVAL.** Sections 10, 11 and 14 shall survive the termination for any reason or expiration of this Addendum.

**For inquiries please email [info@sirum.org](mailto:info@sirum.org) or call (650) 488-7434**