

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

### DONOR 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 DONATION. BY USING THE SIRUM SERVICES (AS DEFINED BELOW), PROCEEDING WITH 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 “DONOR ORGANIZATION”) AND (2) CONSENTING, ON BEHALF OF YOU AND THE DONOR 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) Donor Organization may, from time to time, donate certain Products and/or Equipment by using SIRUM as an information service. Potential recipients 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 (the “Donee Organization”). 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 creating prepaid shipping labels using addresses provided by Donee Organizations and Donor Organizations, mailing such shipping labels to Donor Organizations, and
  - iv) creating, processing, and maintaining donation records and instructions on behalf of and/or provided by Donor Organization and/or Donee Organization.

The services listed in (i), (ii), (iii), and (iv) are hereinafter referred to as the “SIRUM Web Services”.

- b) Donor Organization may, from time to time, donate certain Products and/or Equipment to a Donee Organization that is an Affiliated Party (as defined below) of SIRUM. Donor Organization understands and agrees that any donated Products and/or Equipment are nonsaleable and that, if applicable, it will continue to maintain the same type of records that it maintains with any other reverse distributor and/or returns processor that it uses currently or in the future. When receiving donations, Donee Organization acts as a Returns Processor and processes these nonsaleable

Products and/or Equipment for tax credit on behalf of the Donor Organization. Ownership of a donation shall not transfer from Donor Organization to Donee Organization until such donation is inspected by the Donee Organization and accepted into Donee Organization's inventory. In addition to a returns processor, Donee Organization may be a health care entity that acquires the Products and/or Equipment for its own use or for use by affiliates under common ownership or control. The services listed in this paragraph are hereinafter referred to as the "SIRUM Recipient Services".

- c) Donor Organization understands and agrees that SIRUM and its Affiliated Parties (as defined below), in supplying the SIRUM Web Services, do not act as wholesalers, brokers, jobbers, agents, reverse distributors, returns processors, third-party logistics providers, trading partners, sellers, resellers, distributors, or suppliers for purposes of products liability law or for any other purpose. In no event will Donor Organization deliver any Products and/or Equipment to SIRUM, nor will SIRUM in any event take possession of any Products and/or Equipment, unless Donor Organization chooses to utilize "SIRUM Recipient Services". When providing SIRUM Recipient Services, SIRUM and its Affiliated Parties may take possession of Products and/or Equipment and all provisions of the Agreement shall remain in full force and effect.
  - d) For the purpose of this Agreement, Affiliated Parties shall mean all subsidiaries, 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 Web Services and/or Recipient 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.** Donor Organization agrees that SIRUM, in its sole discretion and for any reason or no reason, may terminate this Agreement and may discontinue the SIRUM Web Services and/or SIRUM Recipient Services at any time, with or without notice. Donor Organization agrees that SIRUM and its Affiliated Parties will not be liable to Donor 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 Web Services and/or SIRUM Recipient 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 and its Affiliated Parties may have at law or in equity.
- 3) **CONFIDENTIALITY.** Donor 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, other donors, donees, and related non-technical business information which SIRUM and/or its Affiliated Parties 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. Donor Organization agrees to require every Donor 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. Donor 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 Donor Organization utilizes to protect its own Confidential Information of a similar nature. Donor Organization agrees to notify SIRUM and/or its Affiliated Parties in writing of any misuse or misappropriation of Confidential Information which may come to Donor Organization's attention. For the avoidance of doubt, PHI (as defined in Appendix 1) shall not be deemed Confidential Information subject to this Section 3.

**4) REPRESENTATIONS, WARRANTIES AND COVENANTS OF DONOR ORGANIZATION.**

- a) Donor Organization hereby represents, warrants and covenants that it complies with, and will continue to comply with, all applicable laws and has obtained all required applicable governmental and regulatory approvals, consents, permits and licenses, including licenses required to manufacture and/or distribute Products and/or Equipment in the United States. 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.
- b) Without limiting the generality of the foregoing, Donor Organization hereby represents, warrants and covenants that it will not donate any Product and/or Equipment unless such Product and/or Equipment meet(s) all of the following criteria:
  - i) The Products and/or Equipment to be donated are set forth in the Donee Organization's developed formulary of medications as appropriate for donation to the Donee Organization and the donation of Product and/or Equipment is pursuant to one or more Donation Distribution Laws; provided, however, that if the donation of Product and/or Equipment by Donor Organization is not expressly authorized pursuant to one or more Donation Distribution Laws, then the donation of Product and/or Equipment is not legally prohibited.
  - ii) It is not adulterated or misbranded, nor stored under conditions contrary to applicable standards of the United States Food and Drug Administration (FDA), the United States Pharmacopeia (USP) or its manufacturer;
  - iii) It does not consist of or contain a controlled substance, as defined by the DEA;
  - iv) It is donated in unopened, tamper-evident packaging or modified unit dose containers that meet USP standards; and
  - v) All donated drug Product must:

- (1) not be expired;
  - (2) be in packaging with expiration or beyond use dates affixed; and
  - (3) be in packaging with lot numbers affixed, if required by applicable Donation Distribution Laws.
- c) Donor Organization understands and agrees that SIRUM has the right, but not the obligation, to request documents from Donor Organization to confirm Donor Organization's compliance with this Section 4, and/or to independently verify Donor Organization's compliance with this Section 4. Donor Organization shall provide to SIRUM any assistance and information reasonably required or requested by SIRUM to confirm Donor Organization's compliance with this Section 4.
- d) HIPAA COMPLIANCE. Donor Organization understands and agrees that by using SIRUM Web and/or Recipient Services it may be accessing information, some of which may PHI (as such term is defined in Appendix 1). Donor Organization represents, warrants and covenants that Donor Organization has all necessary authority to provide all PHI to SIRUM and/or its Affiliated Parties for use and disclosure as described in this Agreement. In addition, the Addendum is attached hereto as Appendix 1 is incorporated into and made a part of this Agreement and shall apply and govern how PHI may be used and disclosed by Donor Organization.
- e) Donor Organization shall (i) ensure that the address on each shipping label that Donor Organization uses to ship any Product or Equipment to any Donee Organization is complete and accurate; (ii) ship Product or Equipment to Donee Organizations only using registered and trackable shipping methods; and (iii) confirm that any Product or Equipment shipped by Donor Organization is successfully delivered to Donee Organization.

## 5) DISCLAIMER OF WARRANTIES.

- a) **DONOR 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 DONOR ORGANIZATION, ITS AGENTS, SUBSIDIARIES, AFFILIATED PARTIES, OWNERS, VOLUNTEERS, OR EMPLOYEES OR ANY THIRD PARTY AS A RESULT OF DONATING PRODUCTS AND/OR EQUIPMENT THROUGH USE OF THE WEB SERVICES AND/OR RECIPIENT SERVICES PROVIDED BY SIRUM AND/OR AFFILIATED PARTIES (INCLUDING THE DONATION OF ANY MANUALS AND INFORMATIONAL MATERIALS ACCOMPANYING THE PRODUCTS AND/OR EQUIPMENT). DONOR ORGANIZATION UNDERSTANDS AND AGREES THAT THE SIRUM WEB SERVICE IS ONLY AN INFORMATION PROVIDER HELPING TO CONNECT DONORS WITH DONEES, ANY SIRUM WEB 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 PRODUCT(S) AND/OR EQUIPMENT DONATED THROUGH THE SIRUM WEB SERVICE OR ANY PHI, EQUIPMENT OR PRODUCT SHIPPED TO ANY DONEE ORGANIZATION BY DONOR ORGANIZATION. DONOR ORGANIZATION UNDERSTANDS AND AGREES THAT THE PRODUCTS AND/OR EQUIPMENT DONATED BY DONOR ORGANIZATION WITH INFORMATION AND SUPPORT PROVIDED BY SIRUM AND/OR AFFILIATED PARTIES ARE DONOR ORGANIZATION'S FULL RESPONSIBILITY.**

- b) **DONOR ORGANIZATION ASSUMES ALL RISKS ASSOCIATED WITH DONEE'S COMPLIANCE WITH THE LAWS AND REGULATIONS APPLICABLE TO DONEE ORGANIZATIONS, AS WELL AS WITH DONEE ORGANIZATION'S COMPLIANCE WITH THE TERMS OF THE DONEE USER AGREEMENT WITH SIRUM OF WHICH DONOR ORGANIZATION IS A THIRD PARTY BENEFICIARY. DONOR ORGANIZATION UNDERSTANDS AND AGREES THAT SIRUM PROVIDES NO WARRANTIES OR ASSURANCES THAT ANY OF THE SIRUM WEB SERVICES, INCLUDING INFORMATION PROVIDED OR MADE AVAILABLE BY SIRUM AND ANY INFORMATION REGARDING DONEE ORGANIZATIONS, IS TRUE OR ACCURATE, AND VERIFICATION OF THE ACCURACY OR COMPLETENESS OF SUCH INFORMATION IS DONOR 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.**

Donor 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) Donor Organization's use of the SIRUM Web Services and/or Recipient Services, including the introduction to any Donee Organization; (ii) the Products and/or Equipment delivered by Donor Organization, (iii) any breach by Donor Organization of this Agreement, including without limitation any breach of its representations, warranties and covenants provided in Section 4 this

Agreement, (iv) any non-compliance or alleged non-compliance by Donor Organization with any applicable law, and/or (v) any breach by Donor Organization of this Agreement, including without limitation any breach of Appendix 1 or of Section 4 of this Agreement by Donor Organization. Donor 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 donation by, or information or services provided by, Donor Organization to third parties, or the use of the SIRUM Web Services and/or Recipient Services supplied by SIRUM or Affiliated Parties. Nothing in this clause shall preclude SIRUM and/or its Affiliated Parties from participating in its own defense and Donor 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 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 and its Affiliated Parties 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 donee organizations and any other potential donor organizations ("Marketing Release(s)"). In addition to usage of the Donor Organization's name in such Marketing Releases, Donor Organization understands and acknowledges that SIRUM and its Affiliated Parties may use information regarding the names, quantities and other characteristics of Products or Equipment inputted by or given by Donor Organization or any other non-confidential information related to Donor 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 inputted by or given by Donor 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 Donor Organization (i.e. Donor Organization information which is aggregated with the information of other donor organizations and used in charts and statistics to publicize the types and/or quantities of donations given during a specified time period). In the event that SIRUM and/or its Affiliated Parties uses non- de-identified information related to the Donor Organization, SIRUM and/or its Affiliated Parties will request prior written approval (which may be communicated by mail or electronic transmission) in which Donor Organization will have 5 business days to respond. If no response is received after 5 business days, Donor 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), Donor 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 Donor 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. To the maximum extent permitted by applicable law, SIRUM and its Affiliated Parties shall be covered by the immunity and limited liability provisions under applicable state laws including but not limited to immunity provisions of the Drug Distribution Laws.
- 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 Donor Organization without the prior written consent of SIRUM. SIRUM may assign this Agreement to any subsidiary of SIRUM or 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 Donor 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 ADDENDUM

This HIPAA Business Associate Addendum (this “Addendum”) is by and between Supporting Initiatives to Redistribute Unused Medicine including its subsidiaries (“SIRUM”) and the Donor Organization (“Covered Entity” and together with SIRUM, the “Parties” and each individually, a “Party”) which has accepted the terms and conditions of the underlying Agreement (as defined below). Any capitalized 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**, Covered Entity and SIRUM have entered into the Donor User Agreement to which this Addendum is attached (the “Agreement”); and

**WHEREAS**, Covered Entity and SIRUM desire to modify the underlying 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** shall mean Protected Health Information that is created, maintained, transmitted or received by SIRUM on behalf of Covered Entity 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, SIRUM may use and disclose PHI as necessary to provide the services described in the Agreement, or as otherwise permitted or required of SIRUM by this Addendum or as Required by Law.
- b. Except as otherwise limited by this Addendum, SIRUM may de-identify PHI and that de-identified information shall not be further restricted under this Addendum. SIRUM may, in accordance with HIPAA, use PHI to perform data aggregation services for the healthcare operations of Covered Entity.
- c. Except as otherwise limited by this Addendum, Covered Entity authorizes SIRUM to use the PHI in its possession for the proper management and administration of SIRUM's business and to carry out its legal responsibilities. SIRUM may disclose PHI for its proper management and administration, provided that (i) such disclosures are Required by Law; or (ii) SIRUM 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 SIRUM of any breaches of the confidentiality of the PHI or Breach of Unsecured PHI.
- d. SIRUM 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 SIRUM is to carry out any of Covered Entity's obligations under the Privacy Rule, SIRUM will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations.
- e. Upon request, SIRUM shall make available to the Covered Entity within thirty (30) days any PHI that SIRUM has in its possession.

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

## **4. NOTIFICATIONS.**

- a. SIRUM shall report without unreasonable delay to Covered Entity: (i) any use and/or disclosure of PHI of which it becomes aware that is not permitted by this Addendum; and/or (ii) any Security Incident of which SIRUM becomes aware, provided that the Parties agree that this Section satisfies any notice necessary by SIRUM to Covered Entity, and SIRUM shall not be obliged to further report, any immaterial and unsuccessful Security Incident. For purposes of this Addendum, such unsuccessful, immaterial, Security Incidents include, without limitation, activity such as pings and other broadcast attacks on SIRUM's firewall, port scans, malware (e.g., worms, viruses), unsuccessful log-on attempts, denial-of-service attacks, and any combination of the above.

- b. Without unreasonable delay after discovery, SIRUM shall notify Covered Entity of a Breach of any Unsecured PHI all in accordance with 45 C.F.R. § 164.410.
- 5. **AGREEMENTS WITH AGENTS OR SUBCONTRACTORS.** SIRUM shall ensure that any of its agents or subcontractors that create, receive, transmit or maintain PHI agree in writing to the restrictions and conditions concerning uses and disclosures of PHI and Electronic PHI that are no less restrictive than those contained herein.
- 6. **ACCESS TO PHI BY INDIVIDUALS.**
  - a. In the event that SIRUM maintains a Designated Record Set on behalf of Covered Entity, upon request of Covered Entity, SIRUM will furnish Covered Entity with the requested PHI in compliance 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 SIRUM, SIRUM within five (5) business days after that request, shall forward such request to Covered Entity. Covered Entity shall be solely responsible for responding to the Individual unless otherwise Required by Law. SIRUM shall respond to the Individual's request only upon direction by Covered Entity.
- 7. **AMENDMENT OF PHI.**
  - a. In the event that SIRUM maintains a Designated Record Set on behalf of Covered Entity, upon request and instruction from Covered Entity, SIRUM shall make available the information contained in a Designated Record Set for amendment and incorporate any amendments in accordance with 45 C.F.R. § 164.526. Any request by Covered Entity to amend such information shall be completed by SIRUM within thirty (30) days of Covered Entity's request.
  - b. In the event any Individual requests that SIRUM amend such Individual's PHI in a Designated Record Set, SIRUM within five (5) business days, shall forward such request to Covered Entity.
  - c. Notwithstanding anything to the contrary in this Addendum, the Parties agree that SIRUM does not maintain, and will not be responsible for maintaining, a Designated Record Set under the Agreement or this Addendum and that Covered Entity shall maintain a copy of all PHI to respond to any Individual requests as described in Section 6 and this Section 7.
- 8. **ACCOUNTING OF DISCLOSURES.**
  - a. Within fifteen (15) business days after the receipt of a request from Covered Entity, SIRUM shall make available information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528. SIRUM shall document any disclosures of PHI made by SIRUM, in the same manner required of Covered Entity by 45 C.F.R. § 164.528, as may

be amended from time to time. SIRUM hereby agrees to implement an appropriate record keeping system to enable it to comply with the requirements of this Section. SIRUM agrees to retain such records for a minimum of six (6) years.

- b. SIRUM shall furnish to Covered Entity (or to the Individual requestor only upon Covered Entity's direction) information collected in accordance with this Section, in the time and manner to permit Covered Entity 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 SIRUM, SIRUM shall within five (5) days forward such request to Covered Entity. Covered Entity shall be solely responsible to respond to Individual requestor.

9. **AVAILABILITY OF BOOKS AND RECORDS.** SIRUM shall make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Privacy Rule.

#### 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. Either Party may terminate this Addendum if the other Party breaches this Addendum and fails to cure that breach within thirty (30) days of receipt of written notice of that breach from the first Party, or if the Agreement expires or is terminated.
- c. Upon termination of this Addendum or the Agreement for any reason, if feasible, all PHI maintained by SIRUM shall be returned to Covered Entity or destroyed by SIRUM. If return or destruction of the PHI are not feasible, SIRUM shall extend the protections of this Addendum to such information for as long as SIRUM 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 negotiate modifications to this Addendum in good faith from time to time as may be necessary for Covered Entity 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 contact us at [info@sirum.org](mailto:info@sirum.org) or (650) 488-7434**