

AQURE LEGAL AGREEMENT

YOUR ACCESS TO AND USE OF THE **AQURE** WEB SITE IS SUBJECT TO THE PROVISIONS CONTAINED IN THIS LEGAL AGREEMENT. BY ACCESSING OR USING THIS SITE, YOU AGREE TO ALL OF THESE PROVISIONS AND ENTER INTO A LEGALLY BINDING AGREEMENT WITH **AQURE** (WHICH FOR PURPOSES OF THIS AGREEMENT INCLUDES THE **American College of Chest Physicians (ACCP)**, CECITY.COM, INC., THE HOST OF **AQURE**, AND THEIR RESPECTIVE AFFILIATES) TO ABIDE BY THE PROVISIONS IN THIS LEGAL AGREEMENT. **AQURE** RESERVES THE RIGHT TO MODIFY THIS AGREEMENT BY POSTING SUCH MODIFICATIONS TO THIS WEB SITE. YOUR CONTINUED ACCESS TO OR USE OF THIS WEB SITE AFTER SUCH POSTING WILL SIGNIFY YOUR AGREEMENT TO SUCH MODIFICATIONS, IF ANY.

Use of this Web Site

Services: **AQURE** publishes and maintains this Web Site for the purposes of aggregating and analyzing data and performing related services as referenced to in this agreement (the "Services").

Content and Other Information: The Information accessible on this Web Site, including for example the educational materials, scientific content, graphic designs, video, audio, photographic or literary content, is owned by **AQURE reports**, its business associates, or other third parties. This Information is provided to you solely for your personal use. You may not access or use this Information for commercial, competitive, or any other purposes. You may not modify, republish, post, transmit or distribute any Information without the express written consent of **AQURE**. You may copy this Information only to the extent necessary for your personal use. **AQURE** expressly retains all right, title and interest in and to any proprietary Information. Failure to adhere to these provisions could subject you to serious penalties under federal copyright law.

The **AQURE** Web Site is designed for adult users from the United States. Users from other countries are advised not to disclose personal information to **AQURE** unless they consent to having their information used as set forth in this website's privacy policy rather than under the law of user's home country. You transmit data to a server located in Pennsylvania subject to United States and Pennsylvania law. You should not send any personal information to the **AQURE** Web Site unless you agree to be bound by this privacy policy and by United States and Pennsylvania law.

Password and Security: You are solely responsible for maintaining the confidentiality of any user name and password you use to access the **AQURE** Web Site and are fully responsible for all activities that occur under your password or account. You agree to (i) immediately notify **AQURE** of any unauthorized use of your password or account or any other breach of security, and (ii) ensure that you exit from your account at the end of each session. **AQURE** cannot and will not be liable for any loss or damage arising from your failure to comply with this provision.

Links to Other Web Sites: The Web Site may provide links to the web sites or services of others Third-Party Sites. Links to such Third-Party Sites does not constitute an endorsement by **AQURE** of such Third-Party Sites, or the products, content, materials or information presented or made available by such sites. You acknowledge and agree that **AQURE** is not responsible for any damages or losses caused or alleged to have been caused by the use of any Third-Party Sites, or from the products, content, material or information presented by or available through those sites.

Disclosure of Affiliations: **AQURE** works with a variety of third parties to provide the Services available on this Web Site, and to provide links to other web sites. These third parties include, for example, accrediting bodies, content providers, technology providers, and suppliers of medical products,

information and services. These entities may supply information for posting on or access through this Web Site, and, solely in the case of accrediting bodies, may set standards applicable to certain content, but they do not control the content or the operation of this Web Site.

This Web Site and its content (but not the content of Third-Party Sites) is hosted by CECity.com, Inc., an independent Pennsylvania corporation.

Privacy Policy

Introduction: AQUIRE is concerned about your privacy. We want you to understand what private information we collect about you, and how we use your private information. The nature of the Services that we provide through our Web Site requires that we collect and use information about you as more fully described below. Some of your private information may be disclosed to third parties (for example, accrediting bodies) in order to provide the Information and Services that you request, and may be used by both AQUIRE and third parties to provide that Information and/or perform those Services. In addition, AQUIRE and third parties may use your private information to offer you additional information, products or services that match your areas of interest.

How we collect private information: When you register on our Web Site, we will ask you for certain private information such as, for example, your address, telephone number, and e-mail address. If you send AQUIRE correspondence, such as e-mails or letters, or if other users or third parties such as businesses send us correspondence about your activities in connection with your use of the Web Site, AQUIRE may retain that information. Further, if any third parties provide information to us about you, we will treat that information in accordance with this Privacy Policy.

AQUIRE automatically tracks certain information about you based upon your behavior while visiting the Web Site. This information is used to better understand and serve you by responding to your particular interests. This information may include the Uniform Resource Locator (URL) that you just came from (whether this URL is on the site or not), which URL you next go to (whether this URL is on the site or not), what browser you are using, and your IP address. AQUIRE may collect this information and may store this session information about you on our system. Any such information as associated with you personally is subject to this Privacy Policy.

How we use private information: We use the information you provide through the registration process: to provide you with the Information and Services you request; to communicate with you on matters relating to the Web Site and your account; to provide necessary information to the accrediting bodies and other of our business partners in connection with the Information and Services you request from us; to provide you with information about related services and/or products; publish materials; and to conduct research on quality improvement in healthcare and medical education, resource utilization and related subjects. You may choose to disclose or not disclose the private information we request during the registration process however, if you choose not to disclose the requested information, we may not be able to provide you with some or all of the Information or Services you request.

If you do not wish to receive certain communications from AQUIRE you may have the ability to opt out by declining the service offered or informing us that you no longer wish to receive such communications. We will comply with your request unless such communications are necessary for the administration of your account, required by law, or necessary to protect our rights.

Besides using information to provide our Services, **AQUIRE** uses information maintained about you, and other information obtained from your current and past activities to resolve disputes, troubleshoot problems and enforce our rights. At times, **AQUIRE** may review the information of multiple users to identify problems or to resolve disputes.

Disclosing private information: **AQUIRE** uses commercially reasonable efforts to limit the disclosures of private information. We may disclose your private information to accrediting organizations and other third parties that we work with to the extent necessary to provide the Information and Services you request through **AQUIRE**, and/or to provide you with related information, to communicate with you, and to provide you with information on other products and services in your areas of interest.

Technical and legal circumstances beyond our control prevent **AQUIRE** from ensuring that your information will never be disclosed in ways not otherwise described herein. For example, among other things, we may be required by law, regulation or court order to disclose information to government representatives or third parties under certain circumstances. If **AQUIRE** is requested by law enforcement officials or judicial authorities to provide information on individuals, **AQUIRE** may, without your consent, provide such information. In matters involving claims of personal or public safety or in litigation where the data is pertinent, **AQUIRE** may use or disclose your personal information without your consent or court process. Unauthorized parties may unlawfully intercept or access transmissions despite any commercially reasonable security efforts by **AQUIRE**. Even with such technology, no website is 100% secure. Further, corporate restructuring, sale of assets, merger, divestiture and other changes of control or financial status affecting **AQUIRE** may require disclosure as an incidental result of a transfer of assets by operation of law or otherwise. Therefore, **AQUIRE** and its business partners do not promise, and you should not expect, that your private information shall remain private under all circumstances.

Your rights: You may at any time print, download, or request a printed copy of this Legal Agreement including this privacy policy. You may at any time request access to the personally identifiable information we have collected about you, and may request corrections or updates to that information. **AQUIRE** will make reasonable efforts to respond promptly to all such requests, but reserves the right to limit such requests to two per year per individual.

If you have any questions that are not answered elsewhere on this site, if you would like to review the personally identifiable information we have collected about you, or if you believe that this policy has been violated, please contact us at jbruno@chestnet.org. Our response to such inquiries may be limited to information under our direct control.

This privacy policy only applies to information collected by **AQUIRE**. Any information you provide to, or that is collected by, Third-Party Sites may be subject to the privacy policies of those sites, if any. It is the sole responsibility of such third parties to adhere to any applicable restrictions on the disclosure of your private information, and **AQUIRE** and its business partners shall not be liable for wrongful use or disclosure of your private information by any third party.

HIPAA matters: Certain information which may be input by you into **AQUIRE** could be protected health information under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). The further disclosure of such information is covered by the HIPAA Business Associate Addendum set forth at the end of this end user license agreement. **AQUIRE IS NOT A "COVERED ENTITY" AS THAT PHRASE IS DEFINED UNDER HIPAA (PUB. L. 104-191) AND/OR THE PRIVACY AND SECURITY RULES, 45 C.F.R. PARTS 160 & 164 SUBPARTS C AND E. AS SUCH, AQUIRE IS NOT SUBJECT TO HIPAA OR THE PRIVACY AND SECURITY RULES. AQUIRE MAKES NO WARRANTY OR REPRESENTATION THAT THE BUSINESS ASSOCIATE**

ADDENDUM IS NECESSARY AND/OR SUFFICIENT FOR THE COMPLIANCE BY YOU OR ANY HEALTH CARE PROFESSIONAL WITH HIPAA, THE PRIVACY AND SECURITY RULES, AND/OR ANY OTHER APPLICABLE LAW OR REGULATION PERTAINING TO THE CONFIDENTIALITY, USE OR SAFEGUARDING OF HEALTH INFORMATION. **AQuIRE** MAKES NO WARRANTY OR REPRESENTATION THAT THE DISCLOSURES OF INFORMATION BY YOU OR ANY HEALTH CARE PROFESSIONAL TO **AQuIRE** ARE PERMISSIBLE UNDER HIPAA AND/OR THE PRIVACY AND SECURITY RULES. YOU AND EACH HEALTH CARE PROFESSIONAL IS SOLELY RESPONSIBLE FOR ALL DECISIONS IT MAKES REGARDING THE USE, DISCLOSURE OR SAFEGUARDING OF "PROTECTED HEALTH INFORMATION."

General Terms and Conditions

Accreditation: **AQuIRE** IS NOT RESPONSIBLE FOR: ENSURING THE VALIDITY OF ANY CONTINUING EDUCATION OR MAINTENANCE OF CERTIFICATION CREDITS; ISSUING NOTIFICATION OF CREDITS OR CERTIFICATION; ENSURING THE SUFFICIENCY OF CREDITS FOR LICENSE RENEWAL; ENSURING THE SUFFICIENCY OF CREDITS FOR MAINTENANCE OF CERTIFICATION; ENSURING PROGRAM CONTENT IS SUFFICIENT TO EARN CONTINUING EDUCATION CREDIT; OR ENSURING THE ACCURACY OR COMPLETENESS OF PERSONAL TRANSCRIPTS.

No Medical Advice: THE INFORMATION MADE AVAILABLE THROUGH THIS WEB SITE IS INTENDED FOR USE AS CONTINUING EDUCATION ONLY AND SHOULD NOT BE CONSTRUED AS MEDICAL ADVICE. SUCH INFORMATION SHOULD NOT BE USED IN PLACE OF SEEKING PROFESSIONAL OPINIONS BY LICENSED PRACTITIONERS. **AQuIRE** DOES NOT PRACTICE MEDICINE OR LAW, AND DOES NOT OFFER ANY OTHER PROFESSIONAL ADVICE OR SERVICES. YOU ASSUME FULL RESPONSIBILITY FOR APPROPRIATE USE OF THE INFORMATION AVAILABLE THROUGH THIS WEB SITE.

Performance Payment Programs: IF DATA BEING INPUT BY YOU INTO **AQuIRE** IS IN CONNECTION WITH ANY "PERFORMANCE PAYMENT PROGRAM," YOU SHOULD BE AWARE THAT (A) THE SUBMISSION OF DATA VIA THE WEBSITE DOES NOT GUARANTEE THAT THE RECEIVING ENTITY WILL PAY AND (B) THE SUBMISSION OF DATA VIA THE WEBSITE DOES NOT GUARANTEE THAT YOU ARE ELIGIBLE FOR PAYMENT BY THE RECEIVING ENTITY, AS SUCH MATTERS ARE WHOLLY IN CONTROL OF THE PAYING ENTITY. THE CALCULATION OF THE DATA THAT IS BEING SENT TO THE RECEIVING ENTITY MAY HAVE ERRORS AND **AQuIRE** IS NOT RESPONSIBLE FOR ANY FAILURE OF PAYMENT OR INCORRECT PAYMENT.

Disclaimer of Warranty: THIS WEB SITE AND ALL SERVICES AND INFORMATION MADE AVAILABLE ON OR THROUGH THIS WEB SITE ARE PROVIDED ON AN "AS IS", "WHERE IS" AND "AS AVAILABLE" BASIS WITHOUT REPRESENTATIONS OR WARRANTIES OF ANY KIND WHATSOEVER, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, NON-INFRINGEMENT, MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR ACCURACY OF INFORMATIONAL CONTENT.

AQuIRE DOES NOT WARRANT THAT THIS WEB SITE OR ANY SERVICES OR INFORMATION MADE AVAILABLE ON OR THROUGH THIS WEB SITE, INCLUDING WITHOUT LIMITATION ANY THIRD-PARTY SOFTWARE, PRODUCTS, ITEMS OR OTHER MATERIALS USED IN CONNECTION WITH THIS WEB SITE, WILL BE TIMELY, SECURE, UNINTERRUPTED OR ERROR FREE, OR THAT DEFECTS WILL BE CORRECTED.

ANY INFORMATION DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THIS WEB SITE IS DONE AT YOUR OWN DISCRETION AND RISK. YOU SHALL BE SOLELY RESPONSIBLE FOR ANY DAMAGE OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOADING OR USE OF THE INFORMATION AND FOR ANY RESULTS OR LACK OF RESULTS FROM THE USE OF SUCH DATA.

Limitation of Liability: IN NO EVENT SHALL **AQuIRE** BE LIABLE FOR ANY CLAIMS OR LOSSES WHATSOEVER OF ANY KIND, WHETHER DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL OR PUNITIVE, AND WHETHER ARISING FROM AN ACTION IN CONTRACT, TORT, OR OTHERWISE, RELATED TO OR IN CONNECTION WITH THIS WEB SITE OR ANY SERVICES OR INFORMATION MADE AVAILABLE ON OR THROUGH THIS WEB SITE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, **AQuIRE** SHALL NOT BE LIABLE FOR ANY CLAIMS OR LOSSES IN CONNECTION WITH ERRORS, OMISSIONS, OR INACCURACIES OF INFORMATIONAL CONTENT, OR ANY DECISION MADE IN RELIANCE ON THE INFORMATION CONTAINED ON OR ACCESSIBLE THROUGH THE WEB SITE.

YOUR SOLE REMEDY FOR ANY CLAIMS IN CONNECTION WITH THIS WEB SITE IS TO DISCONTINUE USING THIS WEB SITE AND THE RELATED CONTENT AND SERVICES. THE FOREGOING LIMITATION SHALL APPLY AND SURVIVE NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES OR THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES. ACCORDINGLY, SOME OF THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

Indemnification: YOU AGREE TO INDEMNIFY, DEFEND AND HOLD HARMLESS **AQuIRE** FROM ANY AND ALL CLAIMS OR LOSSES ARISING FROM YOUR USE OF OR RELIANCE ON THIS WEB SITE OR ANY SERVICES OR INFORMATION MADE AVAILABLE ON OR THROUGH THIS WEB SITE.

Choice of Law: This Legal Agreement shall be governed by and interpreted in accordance with laws of the Commonwealth of Pennsylvania, without giving effect to any conflict of laws provisions. The parties hereby consent to the exclusive jurisdiction of and agree that venue is proper and convenient in the state and federal courts situated in Allegheny County, Pennsylvania.

Severability: If any provision of this Legal Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision shall be enforced to the maximum extent permissible so as to affect the intent of this Legal Agreement, and the remainder of this Legal Agreement shall continue in full force and effect.

Waiver: The failure of **AQuIRE** to exercise or enforce any right or provision of this Legal Agreement will not be deemed a waiver of such right or provision.

Survival: The provisions of this Legal Agreement which by their nature would continue beyond termination or expiration of this Legal Agreement shall survive such termination or expiration.

**HIPAA BUSINESS ASSOCIATE ADDENDUM
(Privacy & Security)**

I. DEFINITIONS

- A. Business Associate.** “Business Associate” shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 C.F.R. § 160.103, and in this case shall include **AQUIRE** the **ACCP**, CECity.com, Inc. and their respective affiliates.
- B. Covered Entity.** “Covered Entity” shall have the meaning given to such term under the Privacy and Security Rules, including, but not limited to, 45 C.F.R. § 160.103, and in this case shall include any user of the website to which this Addendum relates.
- C. Designated Record Set.** “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, codified at 45 C.F.R. § 164.501.
- D. Electronic Protected Health Information or “EPHI”.** “Electronic protected health information” or “EPHI” shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. § 160.103.
- E. HIPAA.** “HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.
- F. Individual.** “Individual” shall have the meaning given to such term under the Privacy Rule, codified at 45 C.F.R. § 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).
- G. Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and 164, subparts A and E.
- H. Privacy and Security Rules.** “Privacy and Security Rules” shall mean the federal regulations set forth at 45 C.F.R. Parts 160 and 164 issued pursuant to HIPAA.
- I. Protected Health Information or “PHI”.** “Protected Health Information” or “PHI” shall have the meaning given to such term under the Privacy and Security Rules, codified at 45 C.F.R. § 160.103.
- J. Required by Law.** “Required by Law” shall have the meaning given to such term under the Privacy Rule, codified at 45 C.F.R. § 164.103.
- K. Security Rule.** “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information, codified at 45 C.F.R. § 164 Subparts A and C.
- L. Secretary.** “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

- M. Other terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in the Privacy and Security Rules.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. **Limitations on Disclosure.** Business Associate agrees to not use or disclose PHI other than as permitted or required by this Addendum or as Required by Law. Business Associate shall not use or disclose PHI in a manner that would violate the Privacy Rule if done by Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule and this Addendum.
- B. **Safeguards.** Business Associate agrees to use appropriate safeguards to prevent use of disclosure of PHI other than as provided for by this Addendum or as required by law.
- C. **Mitigation.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Addendum.
- D. **Reporting of Disclosures.** Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Addendum of becoming aware of such disclosure.
- E. **Agents and Subcontractors.** Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Addendum to Business Associate with respect to such information.
- F. **Access.** To the extent Business Associate has PHI in a Designated Record Set, Business Associate agrees to provide access to Covered Entity, at the request of Covered Entity, to PHI in a Designated Record Set, in order to meet the requirements under 45 C.F.R. § 164.524.
- G. **Amendment.** To the extent Business Associate has PHI in a Designated Record Set and to the extent applicable, Business Associate agrees to make PHI in a Designated Record Set available to Covered Entity for purposes of amendment, per 45 C.F.R. § 164.526.
- H. **Accounting.** To the extent applicable, Business Associate agrees to document disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- I. **Availability of Books and Records.** Business Associate 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 Business Associate on behalf of, Covered Entity available to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- A. **Uses and Disclosures of PHI.** Except as provided in Paragraphs B, C, D and E, below, Business Associate may only use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity to provide the features, information and services offered through **AQUIRE** and for the purposes of analysis, research and publication.
- B. **Use for Management and Administration.** Except as otherwise limited in this Addendum, Business Associate may, consistent with 45 C.F.R. § 164.504(e)(4), use PHI if necessary (i) for the proper management and administration of the Business Associate, or (ii) to carry out the legal responsibilities of the Business Associate.
- C. **Disclosure for Management and Administration.** Except as otherwise limited in this Addendum, Business Associate may, consistent with 45 C.F.R. § 164.504(e)(4), disclose PHI for the proper management and administration of the Business Associate, provided that (i) the disclosures are Required By Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed (“Person”) that it will remain confidential and be 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 Business Associate in writing of any instances of which it becomes aware in which the confidentiality of the information has been breached.
- D. **Data Aggregation.** Except as otherwise limited in this Addendum, Business Associate may use PHI to provide Data Aggregation services as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).
- E. **De-Identification.** Business Associate may de-identify PHI received from Covered Entity, consistent with the Privacy Rule’s standards for de-identification. 45 C.F.R. § 164.514.
- F. **Reporting Violations.** Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. § 164.502(j)(1).

IV. SECURITY RULE OBLIGATIONS

- A. **Business Associate Obligations.** Business Associate shall implement the requirements set forth in this Section IV with regard to EPHI.
- B. **Safeguards.** Business Associate shall have in place Administrative, Physical, and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the EPHI that it creates, receives, maintains or transmits on behalf of Covered Entity pursuant to the Addendum.
- C. **Subcontractors.** Business Associate shall ensure that any agent, including a subcontractor, to whom it provides EPHI agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- D. **Security Incident Reporting.** Business Associate shall report any Security Incident promptly upon becoming aware of such incident.

V. TERM AND TERMINATION

- A. Term.** The Term of this Addendum shall terminate when all of the PHI 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 PHI (as provided in Paragraph V(C) below), protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause.** Upon Covered Entity's knowledge of a material breach of the terms of this Addendum by Business Associate, Covered Entity:
1. Shall provide an opportunity for Business Associate to cure, and, if Business Associate does not cure the breach within 30 days, Covered Entity may immediately terminate this Addendum;
 2. May immediately terminate this Addendum if Covered Entity has determined that (a) Business Associate has breached a material term of this Addendum, and (b) cure is not possible; or
 3. If Covered Entity determines that neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.
- C. Effect of Termination.**
1. Except as provided below in Paragraph 2 of this Section, upon termination of this Addendum, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate and Business Associate is obligated to ensure that such PHI is returned or destroyed consistent with this Addendum. Business Associate and its subcontractors or agents shall retain no copies of the PHI.
 2. Where Business Associate asserts that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Business Associate's good faith representations that return or destruction of PHI is infeasible, Business Associate 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 Business Associate maintains such PHI.

VI. MISCELLANEOUS

- A. Regulatory References.** A reference in this Addendum to a section in the Privacy or Security Rule means the section as in effect at the relevant time.
- B. No Third Party Beneficiaries.** Nothing expressed or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity and Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities whatsoever.

- C. Disclaimer.** Business Associate expressly disclaims that it is subject to HIPAA and/or the Privacy and Security Rules, since it is not a “Covered Entity” as that term is defined under HIPAA. Business Associate makes no warranty or representation that compliance by Covered Entity with this Addendum is satisfactory for Covered Entity to comply with any obligations it may have under HIPAA, the Privacy and Security Rules Rule, or any other applicable law or regulation pertaining to the confidentiality, use or safeguarding of health information. Covered Entity is solely responsible for all decisions it makes regarding the use, disclosure or safeguarding of PHI.