

SmartServe Master Services Agreement

This Master Services Agreement is made effective as of _____, by and between _____ of _____, _____, _____, and SmartServe LLC ("SmartServe") of 318 Falls Ave., Twin Falls, Idaho 83642.

Whereas Service Recipient is the owner/lessor/licensee of a certain Computer System (hereinafter defined) for which Service Recipient desires Service Provider to perform certain Services (hereinafter defined); and

Whereas Service Provider desires to perform such Services on the terms and conditions set forth in this Agreement.

Now, therefore, in consideration of the mutual promises set forth herein, the parties agree as follows:

DEFINITIONS. For purposes of this Agreement, the following definitions shall apply:

- (a) "Computer System" shall mean the computer hardware, identified by model and serial numbers, and the computer software listed on Exhibit One, attached hereto and made a part hereof.
- (b) "Device" shall mean any computer, tablet, phone, or other electronic device that is capable of management by the Service Provider.
- (c) "Services" shall mean the Operation, Maintenance and Management of the Computer System, specifically defined in Description of Services.
- (d) "Operation" shall mean the operation of the Computer System, including, but not limited to manipulation and computation of data by the Computer System, the outputting of such manipulated and computed data by the Computer System, and communication between elements of the Computer System.
- (e) "Maintenance" shall mean remedial maintenance and preventive maintenance of the Computer System.
- (f) "Management" shall mean the scheduling of the use of the Computer System, procurement of supplies and spare parts therefore, and recommendation of changes and additions thereto.
- (g) "Up-Time" shall mean total time, during any calendar week, that the Computer System is available for Operation during the time scheduled for Operation divided by the total time scheduled for Operation during such calendar week.

- (h) "Hourly Contract" shall mean a contractual relationship between the Service Provider and the Service Recipient transact on an hourly basis for Services and does not include a recurring monthly charge for Services as defined in Description of Services.
- (i) "Recurring Contract" shall mean a contractual relationship between the Service Provider and the Service Recipient that does include a recurring monthly charge for Services as defined in Description of Services.
- (j) "Remote User" shall mean any natural person who requires the use of the Computer System from a location that does not have direct network access to On-site Computer System of that location.
- (k) "On-site" or the "Site" shall mean the physical premises of the Service Recipient as delineated as the combination of a unique street address and Employer Identification Number (EIN) as registered to the entity with the United States Internal Revenue Service (IRS).

DESCRIPTION OF SERVICES. Beginning on _____, SmartServe will provide to Service Recipient the following services (collectively, the "Services"):

1. Hourly Contract Services

- (a) During the term hereof, Service Provider shall perform Services, which shall be subject to Service Recipients written acceptance, and shall be performed by Service Providers employees, acceptable to the Service Recipient, who are skilled in the Operation and Maintenance of the Computer System. Service Recipient may, for any reason, request that such employees be replaced with other skilled employees of Service Provider. Such execution of said replacement does remain at the discretion of the Service Provider.
- (b) The Service Recipient agrees to allow for the installation of remote access and monitoring software and hardware required to provide the Services.
- (c) The Service Recipient acknowledges that no guarantee, warranty, or other commitment of Up-Time shall be given due to the limitations of providing such assurances is hindered by nature of an hourly payment agreement.
- (d) The Service Recipient agrees to pay all invoices presented to the Service Recipient in a timely manner as outlined in this agreement following the rendering of Services by the Service Provider on a per request basis. The Service Provider shall keep accurate records of all billable hours required to complete requested work and will include a summary of such hours within an invoice provided to the Service Recipient. Billable hours shall include costs associated with remote and on-site Services, travel time, and engagement with required third-party vendors.

- (e) The Service Provider is granted permission to construe any written or verbal request for services by authorized representatives of the Service Recipient to be an official and billable request for Services.

2. Shield Full-Service Services

- (a) During the term hereof, Service Provider shall perform remote and on-site Services, which shall be performed by Service Providers employees, acceptable to the Service Recipient, who are skilled in the Operation and Maintenance of the Computer System. Service Recipient may, for any reason, request that such employees be replaced with other skilled employees of Service Provider. The implementation of said replacement of staff does remain at the discretion of the Service Provider.
- (b) The Service Recipient agrees to allow for the installation of remote access and monitoring software and hardware required to provide the Services.
- (c) The Computer System shall be available for Operation, during the term hereof, with an Up-Time of 99.99 percent, during the hours of 9:00 AM (MST) through 5:00 PM (MST), Monday through Friday, excluding legal holidays recognized in the city where Service Recipient company is located.
- (d) The preventive maintenance and, whenever possible, the remedial maintenance portions of the Maintenance shall be performed during the times that the Computer System is not scheduled for Operation. To the extent any Maintenance is required to be performed during the times that the Computer System is scheduled for Operation, Service Provider shall provide, at no additional cost to Service Recipient, a back-up capability for that portion of the Computer System for which Maintenance is being perform
- (e) The performance of Service Provider shall include Service Providers procurement of supplies and spare parts sufficient to ensure that the Operation of the Computer System is uninterrupted. Such costs associated with the procurement, logistics, and value of supplies and spare parts may be included in the Service Recipient's monthly fees or as a separate invoice at the discretion of the Service Provider.
- (f) The Service Provider shall provide up to 5 Remote User licenses for remote access as defined in the section Anywhere Remote Access Services.
- (g) The Service Provider shall provide on-site and remote backup services as required by HIPAA standards. The Service Recipient agrees to provide all required access and assistance to the Site required to provide backup services.
- (h) During the term hereof Service Recipient shall provide Service Provider with sufficient workspace to perform Services.

3. Shield Remote Services

- (a) During the term hereof, Service Provider shall perform remote and on-site Services, which shall be performed by Service Providers employees, acceptable to the Service Recipient, who are skilled in the Operation and Maintenance of the Computer System. Service Recipient may, for any reason, request that such employees be replaced with other skilled employees of Service Provider. Implementation of said replacement of staff does remain at the discretion of the Service Provider.
- (b) The Service Recipient agrees to allow for the installation of remote access and monitoring software and hardware required to provide the Services.
- (c) The Computer System shall be available for Operation, during the term hereof, with an Up-Time of 99.99 percent, during the hours of 9:00 AM (MST) through 5:00 PM (MST), Monday through Friday, excluding legal holidays recognized in the city where Service Recipient company is located. The Service Provider agrees to maintain this Up-Time to the extent that issues are able to be resolved without the need for on-site access, in which event, a best attempt will be made to coordinate remediation steps with assistance from the Service Recipient.
- (d) In the event that an issue cannot be remediated via remote means including on-site assistance from the Service Recipient, the Service Provider may provide on-site assistance at the standard rate as defined in Hourly Contract Services of this agreement or make a recommendation of local on-site service provider(s) available in the Service Recipient's area.
- (e) The Service Provider shall provide up to 5 Remote User licenses for remote access as defined in the section Anywhere Remote Access Services.
- (f) The Service Provider shall provide on-site and remote backup services as required by HIPAA standards. The Service Recipient agrees to provide all required access and assistance to the Site required to provide backup services.
- (g) The performance of Service Provider shall include Service Providers procurement of supplies and spare parts sufficient to ensure that the Operation of the Computer System is uninterrupted. Such costs associated with the procurement, logistic, and value of supplies and spare parts may be included in the Service Recipient's monthly fees or as a separate invoice at the discretion of the Service Provider.

4. Anyware Remote Access Services

- (a) During the term hereof, Service Provider shall provide access to a remote access system that allows Remote Users to access the Computer System from locations other than the on-site premises of which the Computer System is accessible via local network means.
- (b) The Service Recipient agrees to allow for the installation of remote access software and hardware required to provide the Services.
- (c) The Service Provider shall ensure that remote access system is available with an Up-Time of 99.99 percent, during the hours of 9:00 AM (MST) through 5:00 PM (MST), Monday through Friday, excluding legal holidays recognized in the city where Service Recipient company is located. The Service Provider agrees to maintain this Up-Time to the extent that issues are able to be resolved without the need for on-site access, in which event, a best attempt will be made to coordinate remediation steps with assistance from the Service Recipient.

PAYMENT Payment shall be made to:

SmartServe LLC
ATTN: Accounting
318 Falls Ave.
Twin Falls, Idaho 83301
OR
Digitally sent from accounting@smartsolve.it

For assistance, please email or call:

accounting@smartsolve.it

OR

(208) 366-4618 ext 1008

Your Billing Officer's Name: _____

Your Billing Officer's Phone: _____

Your Billing Officer's Email: _____

Service Recipient agrees to pay:

(select all that apply)

- Hourly Contract - \$150 per hour for Services as defined in Hourly Contract Services section of Description of Services,
- SmartServe Shield (Remote Only) Recurring Contract - \$_____ one-time installation cost and \$35 per Device per month for Services as defined in Shield Remote Services section of Definition of Services,
- SmartServe Shield (Full-Service) Recurring Contract - \$_____ one-time installation cost and \$50 per Device per month for Service as defined in Shield Full-Service Services section of Definition of Services,
- SmartServe Anywhere Recurring Contract - \$_____ one-time installation cost and \$25 per Remote User per month for Services as defined in Anywhere Remote Access Services section of Definition of Services,
- Starlink Internet Access - \$600 one-time equipment cost, \$_____ one-time installation cost, and \$140 per month for internet access as defined in Starlink's Terms of Service available at <https://www.starlink.com/legal>.

Resulting in a total of \$_____ per month and an initial one-time charge of \$_____ at the beginning of the first contract term.

If any invoice is not paid when due, interest will be added to and payable on all overdue amounts at 12 percent per year, or the maximum percentage allowed under applicable laws, whichever is less. Service Recipient shall pay all costs of collection, including without limitation, reasonable attorney fees.

In addition to any other right or remedy provided by law, if Service Recipient fails to pay for the Services when due, SmartServe has the option to treat such failure to pay as a material breach of this Agreement and may cancel this Agreement and/or seek legal remedies.

TERM. This Agreement will remain in effect for a period of 12 months and will continue to renew for additional 12-month period indefinitely unless either party provides written notice of a request for termination/cancellation at least 30 days prior to any upcoming renewal date.

In the event of any termination/cancellation of this Agreement, Service Provider may:

- (a) Declare all amounts owed to it hereunder to be immediately due and payable;
- (b) Enter Service Recipient's premises and repossess all supplies, spare parts and other items supplied by Service Provider hereunder for which payment has not been received by Service Provider; and
- (c) Cease performance of all Services hereunder without liability to Service Recipient.
- (d) The foregoing rights and remedies of each party hereto shall be in addition to all other rights and remedies available to them in law and in equity; but the liquidated damages as stated below shall be Service Recipient's exclusive remedy for Service Provider's failure to maintain the Up-Time of 99.99.

WORK PRODUCT OWNERSHIP. Any copyrightable works, ideas, discoveries, inventions, patents, products, or other information (collectively the "Work Product") developed in whole or in part by SmartServe in connection with the Services will be the exclusive property of SmartServe. Upon request, Service Recipient will execute all documents necessary to confirm or perfect the exclusive ownership of SmartServe to the Work Product.

CONFIDENTIALITY. SmartServe, and its employees, agents, or representatives will not at any time or in any manner, either directly or indirectly, use for the personal benefit of SmartServe, or divulge, disclose, or communicate in any manner, any information that is proprietary to the Service Recipient. SmartServe and its employees, agents, and representatives will protect such information and treat it as strictly confidential. This provision will continue to be effective for 36 months after the termination of this Agreement.

Upon termination of this Agreement, SmartServe will return to the Service Recipient all records, notes, documentation, equipment and other items that were used, created, or controlled by SmartServe and owned by the Service Recipient during the term of this Agreement.

WARRANTY. SmartServe shall provide its services and meet its obligations under this Agreement in a timely and workmanlike manner, using knowledge and recommendations for performing the services which meet generally acceptable standards in SmartServe's community and region, and will provide a standard of care equal to, or superior to, care used by service providers similar to SmartServe on similar projects.

Service Provider warrants that the Services shall be of good quality and workmanship and in accordance with acceptable procedures for the Computer System, and that the Computer system will meet the specifications therefor.

EXCEPT TO THE EXTENT EXPRESSLY PROVIDED HEREIN, SERVICE PROVIDER DOES NOT WARRANT THE SERVICES PERFORMED HEREUNDER OR THE ACCURACY OR CORRECTNESS OF THE RESULTS OF THE SERVICES, AND THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY AND ALL IMPLIED WARRANTIES, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF: 1) MERCHANTABILITY; 2) FITNESS FOR PARTICULAR PURPOSE; 3) EFFORT TO ACHIEVE PURPOSE; 4) QUALITY; 5) ACCURACY; 6) NON-INFRINGEMENT; 7) TITLE; 8) MARKETABILITY; 9) PROFITABILITY; 10) SUITABILITY; AND/OR 11) ANY TYPE ARISING FROM COURSE OF PERFORMANCE, COURSE OF DEALING OR USAGE OF TRADE

DEFAULT. The occurrence of any of the following shall constitute a material default under this Agreement:

- a. The failure to make a required payment when due.
- b. The insolvency or bankruptcy of either party.
- c. The subjection of any of either party's property to any levy, seizure, general assignment for the benefit of creditors, application or sale for or by any creditor or government agency.
- d. The failure to make available or deliver the Services in the time and manner provided for in this Agreement.

REMEDIES

In addition to any and all other rights a party may have available according to law, if a party defaults by failing to substantially perform any provision, term or condition of this Agreement (including without limitation the failure to make a monetary payment when due), the other party may terminate the Agreement by providing written notice to the defaulting party. This notice shall describe with sufficient detail the nature of the default. The party receiving such notice shall have 30 days from the effective date of such notice to cure the default(s). Unless waived by a party providing notice, the failure to cure the default(s) within such time period shall result in the automatic termination of this Agreement.

LIQUIDATED DAMAGES

Service Provider and Service Recipient agree that it may be difficult, if not impossible, to accurately determine the amount of damages that Service Recipient may incur, if Service Provider fails to maintain the Up-Time required hereunder. Accordingly, it is agreed that \$100 for each percentage point that the Up-Time of the Computer System is below the Up-Time of 99.99 percent as stated in the above Description of Service Section

shall be deemed to be the weekly liquidated damages and limited to one months Recurring Contract value for such failures and shall be payable to Service Recipient in the form of a credit in the following month the month in which such failure(s) occurred.

FORCE MAJEURE

If performance of this Agreement or any obligation under this Agreement is prevented, restricted, or interfered with by causes beyond either party's reasonable control ("Force Majeure"), and if the party unable to carry out its obligations gives the other party prompt written notice of such event, then the obligations of the party invoking this provision shall be suspended to the extent necessary by such event. The term Force Majeure shall include, without limitation, acts of God, plague, epidemic, pandemic, outbreaks of infectious disease or any other public health crisis, including quarantine or other employee restrictions, fire, explosion, vandalism, storm or other similar occurrence, orders or acts of military or civil authority, or by national emergencies, insurrections, riots, or wars, or strikes, lock-outs, work stoppages, or other labor disputes, or supplier failures. The excused party shall use reasonable efforts under the circumstances to avoid or remove such causes of non-performance and shall proceed to perform with reasonable dispatch whenever such causes are removed or ceased. An act or omission shall be deemed within the reasonable control of a party if committed, omitted, or caused by such party, or its employees, officers, agents, or affiliates.

ARBITRATION

Any controversies or disputes arising out of or relating to this Agreement shall be resolved by binding arbitration in accordance with the then-current Commercial Arbitration Rules of the American Arbitration Association. The parties shall select a mutually acceptable arbitrator knowledgeable about issues relating to the subject matter of this Agreement. In the event the parties are unable to agree to such a selection, each party will select an arbitrator and the two arbitrators in turn shall select a third arbitrator, all three of whom shall preside jointly over the matter. The arbitration shall take place in the State of Idaho. All documents, materials, and information in the possession of each party that are in any way relevant to the dispute shall be made available to the other party for review and copying no later than 30 days after the notice of arbitration is served. The arbitrator(s) shall not have the authority to modify any provision of this Agreement or to award punitive damages. The arbitrator(s) shall have the power to issue mandatory orders and restraint orders in connection with the arbitration. The decision rendered by the arbitrator(s) shall be final and binding on the parties, and judgment may be entered in conformity with the decision in any court having jurisdiction. The agreement to arbitration shall be specifically enforceable under the prevailing arbitration law. During the continuance of any arbitration proceeding, the parties shall cease to perform their respective obligations under this Agreement until a decision is reached.

ENTIRE AGREEMENT

This Agreement contains the entire agreement of the parties, and there are no other promises or conditions in any other agreement whether oral or written concerning the subject matter of this Agreement. This Agreement supersedes any prior written or oral agreements between the parties.

SEVERABILITY

If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

AMENDMENT

This Agreement may be modified or amended in writing, if the writing is signed by the party obligated under the amendment.

GOVERNING LAW

This Agreement shall be construed in accordance with the laws of the State of Idaho.

NOTICE

Any notice or communication required or permitted under this Agreement shall be sufficiently given if delivered in person or by certified mail, return receipt requested, to the address set forth in the opening paragraph or to such other address as one party may have furnished to the other in writing.

WAIVER OF CONTRACTUAL RIGHT

The failure of either party to enforce any provision of this Agreement shall not be construed as a waiver or limitation of that party's right to subsequently enforce and compel strict compliance with every provision of this Agreement.

SmartServe Master Service Agreement
Business Associate Agreement

Both parties agree as follows:

I. DEFINITIONS

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Standards for Privacy of Individually Identifiable Health Information, at 45 Code of Federal Regulations (“CFR”) part 160 and part 164 subpart E (the “Privacy Rule”), the Security Standards issued at 45 CFR part 160 and part 164 subpart C (the “Security Rule”), and the breach notification rules at 45 CFR Part 164, subpart D (“Breach Rules”) as they may be amended from time to time.

The following capitalized terms shall have the following meaning when used in this Agreement:

- a. “Breach” shall have the same meaning as the term “Breach” in 45 CFR 164.402.
- b. “Designated Record Set” shall mean a group of records maintained for Provider that are the medical and/or billing records that refer to an individual Patient.
- c. “Electronic PHI” shall mean the PHI that is transmitted or maintained by Business Associate on behalf of Provider in electronic media, including, but not limited to, hard drives, disks, on the internet, or on an intranet.
- d. “HITECH Act” shall mean the “Health Information Technology for Economic and Clinical Health Act” set forth within P.L. 111-5, and all relevant regulations promulgated thereunder, as amended from time to time.
- e. “Patient” shall mean the individual whose PHI is contained in a specific medical or billing record that Business Associate maintains on behalf of Provider, or that person’s duly appointed guardian or qualified personal representative.
- f. “PHI” shall have the same meaning as the term “protected health information” in 45 CFR 160.103, limited to the information created or received by Business Associate from or on the behalf of Provider.
- g. “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his designee.

- h. “Unsecured PHI” shall have the same meaning as the term “Unsecured Protected Health Information” as defined in 45 CFR 164.402.

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- a. Business Associate agrees to comply with those provisions of the Security Rule that are set forth at 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316, as amended from time to time, with respect to the security of PHI, in the same manner that such regulations apply to the Provider. Any additional requirements of the HITECH Act that relate to security of PHI and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into this Business Associate Agreement.
- b. Business Associate agrees to comply with the Privacy Rule at 45 C.F.R. § 164.504(e), as amended from time to time, with respect to its use and disclosure of PHI, in the same manner that such regulation applies to Provider. The additional requirements of the HITECH Act that relate to privacy and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby are incorporated into the Business Associate Agreement.
- c. Business Associate agrees to not use or further disclose PHI other than as specifically permitted or required by this Agreement or as required by law.
- d. Business Associate agrees to use appropriate Administrative, Technical, and Physical Safeguards to (1) prevent use or disclosure of PHI other than as provided for by this Agreement; and (2) reasonably and appropriately protect the Confidentiality, Integrity and Availability of Electronic PHI.
- e. 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 the Agreement.
- f. Business Associate agrees to report to Provider if it becomes aware of any (1) use or disclosure of PHI not provided for by this Agreement; (2) unauthorized access of Electronic PHI; (3) unauthorized destruction or modification of Electronic PHI; or (4) unauthorized interference with the systems operations of Business Associate’s electronic information systems containing Electronic PHI. Notwithstanding anything herein to the contrary, the parties acknowledge and agree that this Agreement shall constitute notice to Provider that Business Associate may periodically experience broadcast attacks on its firewall, port scans, unsuccessful log-on attempts, denials of service and similar unsuccessful security incidents, and Business Associate need not further report such incidents to Provider so long as such incidents do not result in unauthorized access, use or disclosure of PHI.
- g. Business Associate agrees to ensure that any agent, including a sub-contractor, to whom it provides PHI created or received by Business Associate on behalf of Provider, agrees to substantially the same

restrictions and conditions that apply through this Agreement to Business Associate with respect to such information, including, without limitation, implementation of appropriate safeguards to protect the security of Electronic PHI.

- h. Upon written request of Provider, Business Associate agrees to provide Provider with information collected in accordance with this Agreement to permit Provider to respond to a request by Patient for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- i. Business Associate agrees to notify Provider without unreasonable delay, but in no event more than 60 days after Business Associate becomes aware of an unauthorized use or disclosure by or on behalf of Business Associate which constitutes a Breach of Unsecured PHI. Such notification shall include a list of impacted Patients and describe the Breach in such reasonable detail.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

- a. Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Provider, in accordance with the contractual or other arrangements between Provider and Business Associate.
- b. Except as otherwise specifically permitted by Section IV of this Agreement, Business Associate shall limit its use and disclosure of PHI to only the minimum necessary PHI required by Business Associate to furnish services on behalf of Provider.

IV. SPECIFIC USE AND DISCLOSURE PROVISIONS

- a. Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- b. Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom PHI is disclosed 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 of any instances of which it is aware in which the confidentiality of PHI has been breached.
- c. Business Associate may use PHI to provide data aggregation services as permitted by 45 CFR 164.504(e)(2)(i)(B) (i.e. the combining PHI received from Provider with PHI received by Business Associate in its capacity as the business associate of another practice for the purpose of conducting data analyses that relate to health care operations of various practices).

- d. Business Associate may use PHI to create de-identified health information to the extent permitted by the Privacy Rule. There will be no restrictions on Business Associate's use or disclosure of the de-identified health information once it is so de-identified.

V. OBLIGATIONS OF PROVIDER

- a. Provider represents and warrants to Business Associate that its Notice of Privacy Practices permits Provider to disclose PHI to Business Associate, and that the Notice of Privacy Practices used by Provider incorporates the terms and statements required by the Privacy Rule. Provider agrees that it Provider shall not modify such notice or its privacy procedures in any manner that may affect Business Associate's authority to use or disclose PHI pursuant to this Agreement without the consent of Business Associate, except as may be required by applicable law.
- b. If applicable, Provider shall notify Business Associate of any changes in, or revocation of, permission by a Patient to use or disclose PHI, to the extent that such changes may affect the permitted uses or disclosures of such PHI by Business Associate.
- c. Provider shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under the Privacy Rule, Security Rule or other applicable law or its Notice of Privacy Practices if done by Provider except the uses specifically permitted under Section IV above, where Business Associate may use or disclose PHI for data aggregation or management and administrative activities of Business Associate.
- d. Provider represents and warrants to Business Associate that Provider shall comply with all requirements of the Privacy Rule, Security Rule, and any similar federal or state requirements relating to privacy concerns.

VI. MUTUAL OBLIGATIONS

The parties agree that they will neither directly nor indirectly receive remuneration in exchange for any PHI of a Patient, unless a valid authorization, pursuant to 45 CFR 164.508, is executed by that Patient. The parties agree that they may receive remuneration in accordance with the exceptions listed in 42 USC § 17935(d)(2).

VII. TERM AND TERMINATION

- a. The Term of this Agreement shall be effective as of the date set forth above and shall remain effective so long as a relationship between the Provider and the Business Associate shall persist. This Agreement shall terminate when all of the PHI provided by Provider to Business Associate or created or received by Business Associate on behalf of Provider is destroyed or returned to Provider or, if it is infeasible to return or destroy PHI, protections are extended to such information in accordance with the termination provisions in Section VII below.

- b. Upon Provider's knowledge of a material breach of this Agreement by Business Associate, Provider shall provide written notice to Business Associate identifying the breach, and permit the Business Associate 30 days to cure the breach; if Business Associate does not cure the breach or end the violation within the time specified, or if cure is not possible, Provider may immediately terminate this Agreement.
- c. Upon Business Associate's knowledge of a material breach of this Agreement by the Provider, the Business Associate shall provide written notice to the Provider identifying the breach, and may permit the Provider the opportunity to cure the breach within 30 days; if Provider does not cure the breach or end the violation within the time specified, or if cure is not possible, Business Associate may immediately terminate this Agreement, and/or report the event to the Secretary.
- d. Effect of Termination.
 - 1. Except as provided in Section VII.d.2. below, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Provider, or created or received by Business Associate on behalf of Provider. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - 2. In the event the Business Associate determines that the returning of or destroying of the PHI is infeasible, Business Associate shall provide to Provider notification of the conditions that make return or destruction infeasible, and thereafter, Business Associate shall extend the protections of this Agreement 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.

VIII. NOTICE

Any and all notices, requests, or reports, required or permitted to be given under any provision of this Agreement shall be in writing and shall be deemed given upon the mailing thereof by first class certified mail, return receipt requested, postage prepaid, or by overnight mail. If such notice is to the Business Associate, then it shall be sent to

SmartServe LLC
ATTN: Legal
318 Falls Ave
Twin Falls, Idaho 83301
(208) 366-4618
legal@smartserve.it

If such notice is to the Provider, then it shall be sent to the address that the Business Associate then has on file for the Provider.

IX. MISCELLANEOUS

- a. This Agreement is between Provider and Business Associate and shall not be construed, interpreted, or deemed to confer any rights whatsoever to any third party, including Patients.
- b. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with Health Insurance Portability and Accountability Act, the Transaction Standards, Security Standards, the Privacy Rules, and the HITECH Act.
- c. This Agreement shall be governed by and construed in accordance with the laws of the state of Idaho, without regard to the conflicts of law principles of such state.
- d. Provider and Business Associate agree to negotiate in good faith if, in either party's reasonable judgment, modification of this Agreement becomes necessary due to legislative or regulatory amendments to the Privacy Rule, the Security Rule, or the HITECH Act.

SIGNATURES

This Agreement shall be signed on behalf of _____ (company name) by _____ (representative), and on behalf of SmartServe LLC by _____, Head of Service.

Provider / Service Recipient

I am an authorized agent of the Provider / Service Recipient and attest that I have the authority to enter into this agreement on behalf of _____ (company name) with Tax Employer Identification Number (EIN) _____.

Printed Name: _____

Signature: _____

Title: _____

Date: _____ / _____ / 20_____

Business Associate / Service Provider

I am an authorized agent of the Business Associate / Service Provider and attest that I have the authority to enter into this agreement on behalf of SmartServe LLC.

Printed Name: _____

Signature: _____

Title: Head of Service

Date: _____ / _____ / 20_____

