

**EXHIBIT H – PROCUREMENT AGREEMENT  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the “**Agreement**”) is effective as of the effective date of the Procurement Agreement executed by the Parties and any SOW thereunder. For purposes of this Agreement, Hitachi shall hereinafter be referred to as “Business Associate,” and Supplier shall hereinafter be referred to as “Subcontractor.”

WHEREAS, Business Associate performs services for one or more Covered Entities involving PHI.

WHEREAS, Business Associate is subject to certain provisions of the HIPAA Privacy Rule, the HIPAA Security Rule, and the HITECH Act and its implementing regulations (collectively the “**HIPAA Regulations**”).

WHEREAS, Subcontractor provides services to Business Associate pursuant to the Procurement Agreement (hereinafter the “**Service Agreement**”). These services may involve Subcontractor creating, receiving, maintaining, and/or transmitting PHI on Business Associate’s behalf.

WHEREAS, this Agreement is intended to ensure that Subcontractor establishes, implements, and maintains appropriate safeguards for and otherwise complies with its obligations towards PHI.

NOW, THEREFORE, in consideration of the mutual promises and obligations set forth below, the adequacy and sufficiency of which is hereby acknowledged, the Parties agree as follows:

**1. Definitions.**

- a. “C.F.R.” means the Code of Federal Regulations. A reference to a C.F.R. section means that section as amended; meaning, if future amendments change the designation of a C.F.R. section or transfer a regulatory provision referred to in this Agreement to different section, the section references shall be automatically updated and amended.
- b. “Data Aggregation Services” means Subcontractor’s combining of the PHI of two or more Covered Entities to permit data analyses that relate to the healthcare operations of the respective covered entities.
- c. “De-Identified Information” means health information stripped of identifiers as required by the HIPAA Privacy Rule that (1) does not identify an Individual and (2) there is no reasonable basis to believe that the Individual could be identified.
- d. “Designated Record Set” means records created, received, maintained, or transmitted by Subcontractor for Business Associate, which Subcontractor or Business Associate uses, in whole or in part, to make decisions about an Individual, including, but not limited to, records relating to enrolment, contributions, claims processing, and claims payment.
- e. “Discovery” with respect to a Security Event, means knowledge by any member of Subcontractor’s workforce (as defined by 45 C.F.R. part 160.103), other than the person responsible for the Security Event, that the Security Event occurred.
- f. “HIPAA Privacy Rule” means the Standards For Privacy Of Individually Identifiable Health Information, codified at 45 C.F.R. Part 160 and Subparts A and E of Part 164, as authorized by the Health Insurance Portability Accountability Act of 1996 (“HIPAA”).
- g. “HIPAA Security Rule” means the Security Standards For Protected Health Information, codified at 45 C.F.R. Parts 160, Subparts A and C of Part 164.
- h. “HITECH Act” means the Health Information Technology For Economic And Clinical Health Act.
- i. “Individual” means any person who is the subject of PHI created, received, maintained, and/or transmitted by, or on behalf of, Covered Entity and/or Business Associate.

- j. “Limited Data Set” means PHI that excludes the following direct identifiers of the Individual and of relatives, employers, or household members of the Individual: (1) names; (2) postal address information other than town or city, state, and zip code; (3) telephone numbers; (4) fax numbers; (5) electronic mail addresses; (6) Social Security numbers; (7) medical record numbers; (8) health plan beneficiary numbers; (9) account numbers; (10) certificate and license numbers; (11) vehicle identifiers and serial numbers, including license plate numbers; (12) device identifiers and serial numbers; (13) web Universal Resource Locators (URLs); (14) Internet Protocol (IP) address numbers; (15) biometric identifiers, including finger and voice prints; and (16) full face photographic images and any comparable images.
- k. “PHI” or “Protected Health Information” means any information related to an Individual’s past, present or future physical or mental health condition; any treatment for that condition; and any payment for that treatment (as well as any related demographic information) that (1) identifies the Individual or could reasonably be used to identify the Individual and (2) is created or received by, or on behalf of, Covered Entity and/or Business Associate.
- l. “Required By Law” means that a legal mandate compels the use or disclosure of PHI, such as a statute, regulation, court order, or subpoena that is enforceable in a court of law.
- m. “Secretary” means the Secretary of the U.S. Department of Health and Human Services and his or her designees.
- n. “Security Event” means (1) the unauthorized access to, or acquisition, use, disclosure, modification, or destruction of Covered Entity and/or Business Associate’s unsecured PHI, whether in paper or electronic form; or (2) the attempted or successful interference with system operations in an information system containing PHI.
- o. “Unsecured PHI” means all PHI except: (1) PHI in electronic form that is encrypted consistent with the regulations promulgated by the U.S. Department of Health and Human Services, or that has been subject to disposal in a manner that renders the information irretrievable, or (2) PHI in paper form that has been shredded, burned, or otherwise rendered irrevocable.
- p. Capitalized terms that are not defined in this Agreement shall have the same meaning as provided in the HIPAA Regulations.

**2. Subcontractor’s Use And Disclosure Of PHI.**

- a. Services Provided. Subcontractor agrees to use, disclose, and request PHI: (1) only to the minimum extent necessary to provide services on behalf of Business Associate consistent with the Service Agreement; (2) only in a manner that is consistent with the HIPAA Regulations and applicable state law; and (3) consistent with the “minimum necessary standard in 45 C.F.R. pt. 164.502(b). Subcontractor agrees not to use or further disclose PHI other than as permitted or required by this Agreement or applicable law.
- b. Proper Management And Administration Of Subcontractor.
  - i. Subcontractor may use PHI for its own proper management and administration or to carry out its legal responsibilities.
  - ii. Subcontractor may disclose PHI for its own proper management and administration, or to carry out its legal responsibilities if: (a) the disclosure is Required By Law; or (b) Subcontractors obtains reasonable written assurances that the person or entity to whom PHI is disclosed under this paragraph will (i) maintain the confidentiality of the information disclosure, (ii) use or further disclose such information only as Required By Law or for the limited purpose for which it was disclosed to Subcontractor, and (iii) immediately notify Subcontractor of any Security Event.
- c. Minimum Necessary. Whenever practicable, Subcontractor will limit its use or disclosure of, or requests for, PHI to the Limited Data Set. If such limitation is not practicable, Subcontractor will limit its use or disclosure of, or its requests for, PHI to the minimum necessary to accomplish the purpose of such use, disclosure, or request. This provision does not apply to the following: (1) disclosures of PHI to the Individual, (2) uses or

disclosures of PHI pursuant to an authorization executed by the Individual or the Individual's personal representative, (3) disclosure of PHI to the Secretary, (4) uses or disclosures of PHI that are Required By Law, or (5) uses or disclosures of PHI that are required for compliance with HIPAA or the HIPAA Regulations. In the event that the Secretary issues final regulations defining what constitutes "minimum necessary," the definition of minimum necessary contained in such final regulations, to the extent applicable, shall supersede and replace this provision.

- d. Data Aggregation Services. Subcontractor may use PHI to provide Data Aggregation Services to Business Associate as permitted by 45 C.F.R. pt. 164.504(e)(2)(i)(B).
- e. De-Identification Of PHI. Subcontractor may use PHI to de-identify PHI in accordance with the HIPAA Privacy Rule. De-identified information is not PHI. Subcontractor may use De-Identified Information only for research, to create comparative databases, to conduct statistical analysis, and to perform other studies.
- f. Prohibited Conduct. Except as permitted by the HIPAA Privacy Rule or pursuant to a HIPAA-compliant authorization obtained by Covered Entity from or on behalf of the Individual, Subcontractor will not receive, directly or indirectly, any remuneration in exchange for any PHI. Subcontractor will not use any Individual's PHI for marketing or research purposes (as those terms are defined by the HIPAA Privacy Rule) without Business Associate's prior, written approval and without obtaining all required authorizations from the Individual.
- g. Genetic Information. Subcontractor will not use or disclose PHI that is Genetic Information for Underwriting Purposes (as those terms are defined by the HIPAA Privacy Rule).
- h. Delegated Duties. To the extent this Agreement requires Subcontractor to carry out one or more of Covered Entity's obligation(s) under the HIPAA Privacy Rule, Subcontractor shall comply with the requirements of the HIPAA Privacy Rule that apply to Covered Entity and/or Business Associate in the performance of such obligation(s).

**3. Subcontractor's Duties Regarding The Exercise Of Individual Rights.**

- a. Requests By An Individual Directed To Subcontractor. Subcontractor shall refer to Business Associate, within three business days of receipt, any request received by Subcontractor directly from an Individual for access to PHI, to amend PHI, or for an accounting of disclosures of PHI. Subcontractor shall wait for instructions from Business Associate before acting upon any request received directly from an Individual.
- b. Individual's Access To PHI. Within ten business days of receiving a request from Business Associate, Subcontractor will make PHI available to, or as directed by, Business Associate, to enable Covered Entity to comply with 45 C.F.R. pt. 164.524 in connection with an Individual's request for access to PHI. The charge for any such copy shall not exceed Subcontractor's reasonable labor and material costs.
- c. Amendment of PHI. Within ten business days of receiving a request from Business Associate, Subcontractor will take all steps necessary to effectuate the amendment of PHI to enable Covered Entity to comply with 45 C.F.R. pt. 164.526 in connection with an Individual's request to amend PHI.
- d. Recording Disclosures Of PHI. For each of Subcontractor's disclosures of an Individual's PHI, other than "excepted disclosures" (as defined below), Subcontractor shall maintain at least the following information:
  - i. The date of the disclosure;
  - ii. A description of the PHI disclosed
  - iii. An identification by name and address of the recipient(s) of the PHI; and
  - iv. An explanation of the purpose(s) for the disclosure

"Excepted disclosures" include the following: (1) disclosures for Treatment, Payment, or Health Care Operations as defined by the HIPAA Privacy Rule, unless Subcontractor maintains an Electronic Health Record

(as defined in 42 U.S.C. §17921), with respect to the Individual created after the effective date in 42 U.S.C. §17935(c)(4) and, in such cases, the disclosures will be retained for three years from the date of disclosure); (2) incidental disclosures; (3) disclosures to an Individual about that Individual's PHI; (4) disclosures with an Individual's authorization pursuant to 45 C.F.R. pt. 164.508 and, in such cases, the authorization shall be retained; (5) disclosures for national security and intelligence purposes; (6) disclosures made more than six years before the request; and (7) any other disclosures excepted by law.

- e. Accountings Of Disclosures Of PHI. Within ten business days of receiving a request from Business Associate, Subcontractor will provide Business Associate with all of the information in Subcontractor's possession – including, but not limited to, the information described in paragraph III.D above – necessary to enable Covered Entity to comply with 45 C.F.R. pt. 164.528 and 42 U.S.C. §17935(c) in connection with an Individual's request for an accounting of disclosures of PHI.
- f. Demands To Produce PHI Directed To Subcontractor. Subcontractor shall (1) immediately notify Business Associate of any judicial or administrative order, subpoena, civil discovery request or other legal process requiring or requesting that Subcontractor produce PHI; and (2) before responding to any such request, permit Business Associate adequate time to exercise its legal obligations to prohibit or limit the disclosure of PHI.

#### **4. Subcontractor's Duties Regarding Safeguards For PHI.**

- a. Safeguards. Subcontractor shall maintain a comprehensive written information privacy and security program that includes reasonable and appropriate measures – including technical, physical, and administrative safeguards appropriate to the size and complexity of Subcontractor's operations and the nature and scope of its activities – to protect against reasonably foreseeable risks to the security, confidentiality and integrity of PHI that could result in the unauthorized disclosure, use, alteration, acquisition, destruction or other compromise of PHI. Subcontractor represents and warrants that its program will fully comply with the requirements contained in 42 parts 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.314 (Organizational Requirements), and 164.316 (Policies and Procedures) of the HIPAA Security Rule.
- b. Security Program. Upon reasonable request, Subcontractor will provide Business Associate with information concerning its information security program and notify Business Associate about any Addressable safeguards Subcontractor evaluated and did not implement.
- c. Transmission And Storage Of PHI. Subcontractor will not transmit any PHI over the Internet in unencrypted form. Subcontractor will not store any PHI on a portable electronic storage device (e.g., laptop, smartphone, or USB drive).
- d. Subcontractor's Agents And Subcontractors. Subcontractor will not disclose PHI to any agent or subcontractor without Business Associate's prior written consent. Subcontractor shall obtain reasonable assurances in writing from any agent or subcontractor to whom Subcontractor discloses PHI, or who creates, receives, maintains, or transmits PHI on Subcontractor's behalf, that the agent or vendor: (1) will comply with the restrictions and conditions on the use and disclosure of PHI contained in this Agreement, (2) will implement appropriate safeguards to protect PHI, and (3) will promptly notify Subcontractor of any Security Event. Subcontractor shall implement and maintain sanctions against agents and subcontractors that violate these restrictions and conditions. Subcontractor shall mitigate the harmful effects of any violation.
- e. Security Event Response Plan. Subcontractor will develop, implement, and maintain a written security event response plan to ensure that any Security Event will be promptly discovered and reported to Business Associate.
- f. Reporting Security Events. Subcontractor shall report to Business Associate any Security Event, whether involving PHI in electronic or paper form, which Subcontractor discovers, regardless of whether the Security Event results from the acts or omissions of Subcontractor or its agents or subcontractors. Subcontractor will make an oral report to Business Associate within forty-eight hours of Subcontractor's Discovery of the Security Event, or of any event that might, upon further investigation, constitute a Security Event. Subcontractor will follow up with a written report (facsimile or e-mail is acceptable) within seventy-two hours

of the initial oral report. The written report shall include, at a minimum and subject to the availability of necessary information, the following: (1) a description of the event, (2) the date the event occurred, (3) the date the event was discovered, (4) the identity and last known mailing address of affected Individuals (5) the affected categories of information for each affected Individual, (6) a description of the steps taken to mitigate the incident, (7) an identification of any law enforcement agency that has been contacted about the incident and contact information for the relevant law enforcement official, (8) a description of the steps that have been, and will be, taken to prevent a recurrence, and (9) contact information for the person at Subcontractor principally responsible for handling the Security Event. Subcontractor will update the written report as new information becomes available.

Any required notice under this paragraph shall be provided to:

Hitachi Digital LLC  
Attn: Privacy Officer, Legal Department  
2535 Augustine Drive  
Santa Clara, CA 95054  
privacy@hitachi-digital.com  
Telephone: 800.227.1930  
Facsimile: 408.727.8036

- g. Pings And Other Unsuccessful Interference. Subcontractor is not required to report to Business Associate any attempted but unsuccessful interference with Subcontractor's information systems, such as pings, pursuant to paragraph 4.f. However, Subcontractor shall document and maintain records of unsuccessful interference so that Subcontractor will be able to provide a report in response to Business Associate's request.
- h. Mitigation Of Damages By Subcontractor. Subcontractor agrees to take, at its own expense, measures reasonably necessary to mitigate any harmful effect of a Security Event.
- i. Cooperation In Investigations. Subcontractor agrees to cooperate, at its own expense, with Business Associate in its investigation of, and response to, any Security Event.
- j. Reimbursement Of Costs. In the event of a Security Event resulting from Subcontractor's acts or omissions, or the acts or omissions of one of Subcontractor's agents or vendors, Subcontractor will promptly reimburse Business Associate for all costs reasonably incurred by Business Associate in connection with any Security Event, including, but not limited to, costs incurred under Business Associate's obligation to reimburse or indemnify Covered Entity for Covered Entity's costs incurred in connection with a Security Event and credit monitoring services.
- k. Notifications Related To A Security Event. Subcontractor acknowledges that Business Associate shall determine (i) whether Business Associate will provide notice to Covered Entity with respect to any Security Event; (ii) the content of any such notice(s); and (iii) the timing for, and method of, delivery of any such notice.
- l. Internal Practices. Subcontractor agrees to make its internal practices, books, and records, including but not limited to, policies and procedures and information relating to the use and disclosure of Covered Entity's PHI, available in response to the Secretary's written request or a subpoena so that the Secretary may evaluate Covered Entity's and/or Business Associate's compliance with the HIPAA Regulations. Subcontractor shall respond to the Secretary within the time frame established by the Secretary, including any extensions. If the Secretary contacts Subcontractor directly, Subcontractor shall notify Business Associate about the request within three business days of receiving the request. Unless otherwise required by law, Subcontractor shall provide to Business Associate with a copy of any information that Subcontractor provides to the Secretary concurrently with providing such information to the Secretary.
- m. Employees With Access To PHI. Subcontractor represents and warrants that it will not permit any workforce member to access PHI unless Subcontractor has taken reasonable steps to ensure that the employee can be trusted to safeguard PHI in accordance with Business Associate's policies and procedures.
- n. Compliance With HIPAA Transaction Rule. Subcontractor and its agents or subcontractors shall conduct every Transaction (as that term is defined in 45 C.F.R. pt. 160.103) subject to the Standards for Electronic

Transactions codified at 45 C.F.R. pt. 162.900-162.1802 (the "HIPAA Transaction Rule") in compliance with the HIPAA Transaction Rule.

**5. Term And Termination.**

- a. Term. This Agreement shall become effective on the effective date stated on page 1. This Agreement shall remain in effect until the termination of the Service Agreement, unless terminated sooner pursuant to paragraph 5.b below.
- b. Termination. Notwithstanding anything in the Service Agreement to the contrary, upon becoming aware of a material breach of this Agreement, the non-breaching party may elect to immediately terminate the Service Agreement or provide the breaching party with a written notice of the breach and an opportunity to cure the breach. If the breaching party fails to cure the material breach within the time specified by the non-breaching party, the Service Agreement shall terminate on the deadline for curing the breach. For purposes of this Agreement, "material breach" shall include, but is not limited to, a successful Security Event.
- c. Return Or Destruction Of PHI. Within fifteen business days of the termination of this Agreement, Subcontractor shall, at Business Associate's election, return to Business Associate, or destroy, all PHI (including copies thereof) in Subcontractor's possession, or in the possession of Subcontractor's agents or subcontractors created, received maintained, or transmitted pursuant to the Service Agreement. If Business Associate consents to Subcontractor's destruction of PHI, Subcontractor shall destroy all PHI in a manner that ensures that recovery of the PHI would be impracticable. Within three business days after destruction, Subcontractor shall provide Business Associate with a written certification that (i) the PHI has been destroyed and (ii) describes the method of destruction.
- d. Survival. Subcontractor's obligations and duties under this Agreement with respect to PHI created, received, maintained, or transmitted by Subcontractor or by Subcontractor's agents or subcontractors, shall survive the termination of the Service Agreement and this Agreement, and shall continue for as long as the PHI remains in the possession of Subcontractor and/or its agents and subcontractors.

**6. Notices And Supplying Information.**

- a. Any notice or information required by this Agreement shall be given in writing (except where oral notice is expressly permitted) as follows:

**If To Business Associate:**

Hitachi Digital LLC  
Attn: Privacy Officer, Legal Department  
2535 Augustine Drive  
Santa Clara, CA 95054  
[privacy@hitachi-digital.com](mailto:privacy@hitachi-digital.com)  
Facsimile: 408.727.8036

**If To Subcontractor:** notice shall be provided to the Subcontractor at the contact information listed on page 1 of the Service Agreement.

**7. Miscellaneous Provisions.**

- a. Construction. This Agreement and the Service Agreement shall be interpreted to permit the Parties to comply with HIPAA and the HIPAA Regulations.
- b. Cooperation. Subcontractor shall make itself, and any workforce members, agents, or subcontractors assisting Subcontractor in performing its obligations under this Agreement available to Business Associate as witnesses, or otherwise, in the event civil litigation, administrative proceedings, and/or criminal prosecution are commenced against Covered Entity and/or Business Associate, or their/its directors, officers, or workforce members based upon alleged violations of HIPAA or the HIPAA Regulations, or other laws relating to privacy

or security; except where Subcontractor and/or its workforce members, agents, or subcontractors are an adverse party.

- c. Relationship To Service Agreement. In the event of any inconsistency between the terms of this Agreement and the terms of the Service Agreement, the terms of this Agreement shall control any matter falling within the scope of this Agreement.
- d. No Limitation Of Liability. Any limitation of Subcontractor's liability in the Service Agreement shall be inapplicable to any breach by Subcontractor of this Agreement.
- e. Indemnification. Subcontractor shall defend and indemnify Business Associate, its parent and subsidiary corporations, officers, directors, employees and agents from any and all claims, inquiries, investigations, costs, reasonable attorneys' fees, monetary penalties, and damages incurred by them arising out of any acts or omissions of Subcontractor, its agents or subcontractors with respect to Covered Entity and/or Business Associate's PHI, including but not limited to any Security Event. Such indemnification shall include, but shall not be limited to, the reasonable attorneys' fees and other expenses (including the cost of any credit monitoring or other services offered in a security breach notification) incurred by Business Associate with respect to any notice provided in connection with such a Security Event.

This paragraph shall survive the termination of this Agreement.

- f. Modification. This Agreement may be modified only by a writing signed by both Parties. The parties agree to amend this Agreement and/or the Service Agreement from time to time as may be necessary to permit Business Associate to remain in compliance with HIPAA and the HIPAA Regulations.
- g. Waiver. No provision of this Agreement, or any breach thereof, shall be deemed waived unless such waiver is in writing and signed by the party claimed to have waived such provision or breach. No waiver of a breach shall waive or excuse any different or subsequent breach.
- h. Assignment. This Agreement may not be assigned without the consent of all parties to this Agreement.
- i. Severability. A determination that any provision of this Agreement is invalid or unenforceable shall not invalidate or affect the validity or enforceability of the remaining provisions of this Agreement.
- j. Governing Law, Jurisdiction And Venue. Any provision of this Agreement not governed by HIPAA, the HIPAA Regulations, or other federal law shall be governed by, and interpreted in accordance with, the laws of the State of California, excluding its conflict of laws provision. Jurisdiction for any dispute relating to this Agreement shall exclusively rest in the State of California. Venue shall be proper only in the courts serving Santa Clara, California.
- k. Equitable Relief. Subcontractor understands and acknowledges that any use or disclosure of PHI in violation of this Agreement will cause Business Associate irreparable harm, the amount of which maybe difficult to ascertain. Subcontractor agrees that Business Associate shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further use or disclosure and for such other relief as the court shall deem appropriate. Such right of Business Association is in addition to the remedies otherwise available to it at law or in equity. Subcontractor expressly waives the defence that a remedy in damages is adequate. Subcontractor also waives any requirement in an action for specific performance, or, in an action for a temporary or permanent injunction, for the posting of a bond by Business Associate.
- l. Nature Of Agreement. Nothing in this Agreement shall be construed to create: (1) a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates, or (2) a relationship of employer and employee between the Parties. This Agreement does not express or imply any commitment to purchase or sell goods or services.