

**LAKE SUPERIOR SOFTWARE INC. d/b/a LSS DATA SYSTEMS  
BUSINESS ASSOCIATE AGREEMENT**

Lake Superior Software, Inc. d/b/a LSS Data Systems, 6423 City West Parkway, Eden Prairie, Minnesota, 55344 acknowledges that its United States Customers are subject to and must comply with the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191, as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and regulations promulgated pursuant to authority granted therein as set forth at 45 CFR Part 160 and Part 164, Subparts A, C, D and E. Further, LSS Data Systems acknowledges that for its Customers to achieve such compliance they must document, by written contract or other written agreement or arrangement, certain satisfactory assurances that LSS Data Systems will appropriately safeguard certain information, including Electronic Protected Health Information, which it receives from its Customers. THEREFORE, it is agreed that:

**1. Definitions:**

a. "Breach" means the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under subpart E of 45 CFR Part 164 which compromises the security or privacy of the Protected Health Information. For purposes of this definition, compromises the security or privacy of the Protected Health Information means poses a significant risk of financial, reputational, or other harm to the individual. A use or disclosure of Protected Health Information that does not include the identifiers listed in 45 CFR 164.514(e)(2), date of birth, and zip code does not compromise the security or privacy of the Protected Health Information. Breach excludes:

- (i) any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Customer or LSS Data Systems, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under 45 CFR Part 164 Subpart E.
- (ii) any inadvertent disclosure by a person who is authorized to access Protected Health Information at Customer's facility(ies) or LSS Data Systems to another person authorized to access Protected Health Information at the same Customer or LSS Data Systems, or organized health care arrangement in which the Customer participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under 45 CFR Part 164 Subpart E.
- (iii) A disclosure of Protected Health Information where Customer or LSS Data Systems has a good faith belief than an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. "Customer" shall mean any licensee of LSS Data Systems software duly organized and existing under the laws of the United States of America.

c. "HITECH Policies and Standards" means the standards set forth for a Business Associate in regards to the privacy and security Breach notification provisions as outlined in Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, which is Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

d. "License Agreements" shall mean all license agreements for LSS Data Systems software executed by and between LSS Data Systems and Customer. Associated Maintenance service contracts, if in effect, shall also be deemed included under the term License Agreements.

e. "Privacy Rule" shall mean the standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

f. All capitalized terms used but not otherwise defined in this Business Associate Agreement shall have the same meaning as provided in the Definitions of 45 CFR Part 160 and Part 164, Subparts A, C, D and E.

## **2. Obligations and Activities of LSS Data Systems:**

a. LSS Data Systems shall not use or further disclose Protected Health Information other than as required for performance under the License Agreements, as Required By Law, or as permitted under the Business Associate Agreement.

b. LSS Data Systems shall use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for herein or under Customer's License Agreement.

c. LSS Data Systems shall report to Customer any use or disclosure of Protected Health Information not provided for by this Business Associate Agreement of which it becomes aware.

d. LSS Data Systems shall ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by LSS Data Systems on behalf of, Customer agrees to the same restrictions and conditions that apply through this Business Associate Agreement to LSS Data Systems with respect to such Protected Health Information.

e. LSS Data Systems shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by LSS Data Systems on behalf of, Customer available to the Secretary for the purposes of the Secretary determining Customer's compliance with the Privacy Rule.

f. LSS Data Systems agrees to document such disclosures of Protected Health Information made by LSS Data Systems and information related to such disclosures as would be required for Customer to respond to a request by an Individual for an

accounting of disclosures of Protected Health Information in accordance with the Privacy Rule and the HITECH Policies and Standards.

g. LSS Data Systems will implement Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Customer. LSS Data Systems will require that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information agrees to implement reasonable and appropriate safeguards to protect such information. LSS Data Systems will report to Customer any Security Incident of which it becomes aware.

h. In accordance with the HITECH Policies and Standards, following LSS Data Systems' discovery of a Breach of Unsecured Protected Health Information, LSS Data Systems shall notify Customer without unreasonable delay and in no case later than 60 calendar days following the discovery of such Breach in accordance with the requirements of 45 CFR Part 164.410.

### **3. Other Permitted Uses and Disclosures by LSS Data Systems:**

LSS Data Systems may use and disclose Protected Health Information (i) for the proper management and administration of LSS Data Systems, (ii) to provide Data Aggregation Services relation to the Health Care Operations of Customer, and (iii) to report violations of law to appropriate Federal and State authorities, all as provided in the Privacy Rule.

### **4. Term and Termination:**

a. This Business Associate Agreement shall be effective February 10<sup>th</sup>, 2010 with respect to Protected Health Information and Electronic Protected Health information, contained in the database(s) used by or for any item of LSS Data Systems software included in the License Agreements for which LSS Data Systems maintenance service is in effect.

b. If Customer determines that LSS Data Systems has violated a material term of this Business Associate Agreement, then Customer shall provide LSS Data Systems written notice of the existence of the alleged violation and shall allow LSS Data Systems thirty (30) calendar days to cure the violation. If at the end of this 30-day period LSS Data Systems has not cured the violation, then Customer shall have the option to terminate this Business Associate Agreement and the License Agreements. Upon termination, if feasible, LSS Data Systems shall return or destroy all Protected Health Information received from, or created or received by LSS Data Systems on behalf of, Customer. This provision also shall apply to Protected Health Information that is in the possession of subcontractors or agents of LSS Data Systems and LSS Data Systems shall retain no copies of the Protected Health Information. In the event that LSS Data Systems determines that returning or destroying the Protected Health Information is infeasible LSS Data Systems shall provide to Customer notification of the conditions that make return or destruction infeasible and LSS Data Systems shall extend the protections of this Business Associate Agreement to such Protected Health Information and limit further

uses and disclosures thereof to those purposes that make the return or destruction infeasible.

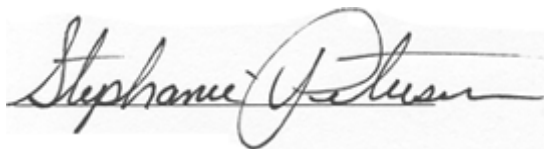
c. Termination of the License Agreements will require Customer to immediately cease using all LSS Data Systems software licensed thereunder and return to LSS Data Systems or destroy all physical embodiments thereof and documentation therefor. Further, Customer shall remain responsible for any amounts properly due and payable to LSS Data Systems under the License Agreements as of the date of termination.

## **5. General**

a. Certain databases located at Customer's facility and used for operation of LSS Data Systems software licensed to Customer constitute a Designated Record Set which includes Individuals' Protected Health Information, and possession and control of said Designated Record Set lies with Customer and not with LSS Data Systems. At no time will LSS Data Systems have possession and control of Customer's original Designated Record Set or any copies thereof. Any Protected Health Information held by LSS Data Systems merely duplicates the information maintained by Customer. Consequently, 45 CFR Part 164.524 and 164.526 (and therefore 45 CFR Part 164.504 (e)(2)(ii) subparts (E) and (F)) are not applicable to LSS Data Systems.

b. LSS Data Systems shall not be responsible for access to or use of Protected Health Information maintained in or by LSS Data Systems software by entities other than LSS Data Systems. Any such access or use is not included in the permitted use of LSS Data Systems software granted under the License Agreements. LSS Data Systems will accordingly advise the Secretary in the event of any inquiry. The foregoing does not apply to information exchanged through the use of interface software licensed from LSS Data Systems.

Executed this 10th day of February, 2010 by Lake Superior Software, Inc. d/b/a LSS Data Systems.

A handwritten signature in black ink, appearing to read "Stephanie V. Petersen", is written over a light gray rectangular background.

Stephanie V. Petersen  
President and Chief Operating Officer