



LUMINARE

Business Associate Agreement

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into this 2017-12-13, by and between Garrett’s Company (“Covered Entity”), and Luminare Incorporated (“Business Associate”).

RECITALS:

- A. Covered Entity, including facilities/agencies owned and operated by Covered Entity or its affiliates, is designated as an “Affiliated Covered Entity,” as defined by the federal Health Insurance Portability and Accountability Act of 1996 and its promulgating regulations (“HIPAA”), and as amended by the regulations promulgated pursuant to the Health Information Technology for Economic and Clinical Health Act (“HITECH”).
- B. Business Associate has an underlying business relationship (“Underlying Contract”) with Covered Entity, in which Business Associate performs functions or activities, or provides certain services, on behalf of Covered Entity.
- C. In the course of providing such services, Business Associate may have access to, receive from, maintain, transmit, create, and/or receive on behalf of Covered Entity, Protected Health Information (“PHI”).
- D. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to this Agreement and in order to comply with HIPAA and its implementing regulations including the Privacy Rule (defined below), the Security Rule (defined below) and the Breach Notification Rule (defined below).

NOW, THEREFORE, in consideration of these recitals and the mutual promises contained in this Agreement and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covered Entity and Business Associate, intending to be legally bound, agree as follows:



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AGREEMENT:

I. DEFINITIONS

- A. "Breach" shall have the meaning given to such term at 45 C.F.R. 164.402.
- B. "Breach Notification Rule" shall mean the rule related to breach notification for Unsecured Protected Health Information at 45 C.F.R. Parts 160 and 164.
- C. "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 limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- D. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules.
- E. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information, codified at 45 C.F.R. Parts 160 and Part 164, Subparts A and E.
- F. "Protected Health Information" or "PHI" shall have the meaning given to such phrase under the Privacy and Security Rules at 45 C.F.R. 160.103, limited to the information created or received by Business Associate from or on behalf of the Covered Entity.
- G. "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.
- H. "Unsecured PHI" shall have the meaning given to such phrase under the Breach Notification Rule at 45 C.F.R. 164.402.
- I. Other terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy, Security or Breach Notification Rules and the Underlying Contract. Where there is a conflict between meanings in either this Agreement together with the Privacy, Security or Breach Notification Rules and the Underlying Contract, then the meanings in this Agreement together with the Privacy, Security or Breach Notification Rules shall govern.

II. OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.

A. Obligations of Business Associate. Business Associate shall:

- 1. Not use or disclose PHI other than as permitted or required by the Underlying Contract or as required by law;
- 2. Not use or disclose PHI in a manner that would violate the Privacy Rule if done by the Covered Entity, unless expressly permitted to do so pursuant to the Privacy Rule and this Agreement, provided that if Business Associate carries out one or more of Covered Entity's obligations under the Privacy Rule pursuant to the Underlying Contract, Business Associate shall fully comply with the Privacy Rule requirements that would apply to Covered Entity in the performing those obligations;
- 3. Use appropriate safeguards, and comply with the Security Rule at Subpart C of 45 CFR Part 164 with respect to EPHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;
- 4. Report to Covered Entity immediately, and in no case later than five (5) calendar days of Business Associate's discovery, any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, any Breaches of Unsecured PHI as required at 45 CFR 164.410, any security incident of which it becomes aware, or any breach as such may be defined under relevant state data breach laws ("State Law Breach"). Any notice of a Breach or State Law Breach referenced in this Section IV will include the results of the risk assessment of whether there is a low probability that the PHI has been compromised based on the required factors set forth in 45 CFR 164.402 if the Breach is discovered on or after September 23, 2013, and to the extent possible, the identification of each individual whose Unsecured PHI has been,



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or is reasonably believed by Business Associate to have been accessed, acquired, used, or disclosed during such Breach. Notwithstanding anything set forth in this Agreement or the Underlying Contract, Business Associate shall be responsible for the cost of the risk assessment and any breach mitigation expenses and shall indemnify, defend and hold Covered Entity and its officers, directors, affiliates, employees, agents, successors and assigns harmless, from and against any and all losses, claims, actions, demands, liabilities, damages, costs and expenses (including costs, expenses incurred in notifying individuals, the media or government agencies in connection therewith) and any judgments, settlements, court costs and reasonable attorneys' fees actually incurred (collectively, "Breach Claims") arising from or related to: (i) the use or disclosure of PHI in violation of the terms of this Agreement or applicable law, and (ii) whether in oral, paper or electronic media, any HIPAA Breach of unsecured PHI and/or State Law Breach. If Business Associate assumes the defense of a Breach Claim, Covered Entity shall have the right, at its expense, to participate in the defense of such Breach Claim. Business Associate shall not take any final action with respect to any Breach Claim without the prior written consent of Covered Entity. To the extent permitted by law, Business Associate shall be fully liable to Covered Entity for any acts, failures or omissions of its agents and subcontractors in furnishing the services as if they were the Business Associate's own acts, failures or omissions;

5. Make available PHI in a designated record set to Covered Entity in the form and format as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524 within five (5) business days of receiving a request from Covered Entity;
6. Provide access, at the request of Covered Entity, and in no case later than five (5) business days after such request, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual or third party designated by the Individual, in the form or format requested if it is readily producible in such form or format in order for the Covered Entity to meet the requirements under the Privacy Rule;
7. Make any PHI contained in a Designated Record Set available to Covered Entity (or an Individual as directed by Covered Entity) within five (5) business days of a request for purposes of amendment per 45 C.F.R. 164.526. If an Individual requests an amendment of PHI directly from Business Associate or its Subcontractors, Business Associate shall forward the request to Covered Entity within two business days;
8. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528. If an accounting of disclosures is requested by an individual directly to Business Associate, the Business Associate will forward the request to Covered Entity within two (2) business days;
9. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s) and to the extent any such obligations involve disclosures of PHI to health plans, comply with the requirements of 45 CFR 164.522 regarding requested restrictions on health plan disclosures;
10. Make its internal practices, books and records, including policies and procedures, relating to the use and disclosure of PHI available to the Secretary of HHS and to Covered Entity for purposes of determining Covered Entity's compliance with the HIPAA Rules;
11. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Implement administrative, physical, and technical safeguards that reasonably and appropriately



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protect the confidentiality, integrity, and availability of EPHI as required by 45 C.F.R. Part 164 Subpart C (“Security Rule”). With respect to EPHI, Business Associate shall comply with all applicable state laws governing information security breaches;

12. Ensure that any agents and Subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate shall ensure that any agent or Subcontractor to whom Business Associate provides EPHI agrees to implement reasonable and appropriate safeguards to protect EPHI.
13. To the extent permitted by law, cooperate with Covered Entity to ensure that legal process conforms with the applicable requirements of the HIPAA Rules, or, if necessary in Covered Entity’s opinion, obtain a qualified protective order to limit or prevent the disclosure of PHI in the event of the receipt of a subpoena, court or administrative order or other discovery request.

B. Permitted Uses or Disclosures by Business Associate. Business Associate may use or disclose PHI only:

1. As necessary to perform the services set forth in the Underlying Contract, provided that Business Associate must be specifically authorized in writing by an authorized representative of Covered Entity to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c);
2. As required by law;
3. If uses and disclosures and requests for PHI are consistent with Covered Entity’s minimum necessary policies and procedures;
4. In a manner that would not violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except that Business Associate may use PHI to carry out the legal responsibilities of the Business Associate only if Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
5. To provide data aggregation services relating to the health care operations of Covered Entity only if authorized to do so in the Underlying Contract.

C. Covered Entity Privacy Practices and Restrictions.

1. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.
2. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.
3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.



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III. TERM AND TERMINATION.

A. Term. This Agreement shall be effective as of the date set forth above and shall continue until Business Associate ceases to perform the services defined in the Underlying Contract.

B. Termination for Cause. Covered Entity may immediately terminate this Agreement in the event that Business Associate materially breaches any provision of this Agreement or the Underlying Contract.

In its sole discretion, Covered Entity may permit Business Associate the opportunity to cure or to take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity.

C. Obligations of Business Associate upon Termination. Upon the expiration or termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, shall:

1. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to Covered Entity or destroy all PHI in any form, including such information in possession of Business Associate's Subcontractors, and retain no copies, if it is feasible to do so;
3. If return or destruction is not feasible, extend all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any retained PHI, and to limit further uses and/or disclosures to only those purposes that make the return or destruction of the PHI infeasible;
4. Not use or disclose PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth above in section B under "Permitted Uses and Disclosures by Business Associate" which applied prior to termination.
5. Return to Covered Entity the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

This provision and the breach reporting provisions in Section II (A)(4) shall survive the termination or expiration of this Agreement and/or any Underlying Contract.

IV. MISCELLANEOUS.

A. Amendment. Amendments to this Agreement may be necessary to comply with modifications to the HIPAA Rules. Covered Entity and Business Associate agree to use good-faith efforts to develop and execute any amendments to this Agreement as may be required for compliance the HIPAA Rules. This Agreement may be amended or modified only in writing signed by Covered Entity and Business Associate.

B. Severability. In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of the Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

C. Independent Contractor. For purpose of its obligations under this Agreement, Business Associate is an independent contractor of Covered Entity and shall not be considered an agent of Covered Entity.

D. Limited Liability Exclusion. To the extent that Business Associate has limited its liability under the terms of the Underlying Contract, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate's breach of its obligations relating to the use and disclosure of PHI.

E. Equitable Remedies. Business Associate stipulates that its unauthorized use or disclosure of PHI would cause irreparable harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.



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F. Ownership of PHI. Under no circumstances shall Business Associate be deemed in any request to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity.

G. No Third Party Beneficiaries. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein actually confer, upon any person other than Covered Entity, Business Associate and, to the extent specified above, their respective parent entities, subsidiaries, affiliates, facilities, insurers, employees, directors, officers, subcontractors, agents or other members of their respective workforces, successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

H. 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 constitute a waiver of or excuse any different or subsequent breach.

I. Assignment. Neither Party may assign (whether by operating or law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other party. Notwithstanding the foregoing, Covered Entity shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Covered Entity, without the prior approval of Business Associate.

J. Counterparts. This Agreement may be executed in multiple counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. Facsimile or electronic signatures shall be treated as original signatures.

K. Construction. This Agreement shall be construed as broadly as necessary to implement and comply with the HIPAA Rules. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.



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IN WITNESS WHEREOF, Covered Entity and Business Associate have executed this Agreement as of 2017-12-13 first set forth above.

Company:	Luminare Inc.
By: _____	By: _____
Job Title:	Job Title:CEO
Date:	Date:2017-12-13
Print Name:	Print Name:Garrett Thomas Miller