

HITRUST CSF®
ASSURANCE PARTICIPATION AGREEMENT

THIS HITRUST CSF® ASSURANCE PARTICIPATION AGREEMENT (“*Agreement*”) is made by and between _____ (“*Participant*”) and HITRUST SERVICES CORP. (“*HITRUST*”) (collectively the “*Parties.*”)

WHEREAS, Participant has engaged a HITRUST CSF Approved Assessor (“*Assessor*”) to assess its information security systems against the standards of the HITRUST *CSF*, and wishes the Assessor to submit its findings to HITRUST for Validation and possible Certification, according to the terms and conditions of this Agreement.

NOW THEREFORE, in consideration of the following covenants and commitments, the receipt and sufficiency of which are hereby acknowledged and confessed, the Parties agree as follows:

1. **HITRUST Review and Report.**

(a) ***HITRUST Review of Assessor’s Methods and Findings, and Report of Compliance Status.*** Assessor will provide to HITRUST its methods and findings for HITRUST’s review according to the criteria of the HITRUST CSF. HITRUST will then issue a “HITRUST CSF Assurance Program Report” (“*Report*”). The Report will represent only that the Participant has provided the Participant Information (defined below) on which the Report is based; that Assessor has submitted its methods and findings as stated; and that the compliance status announced in the Report (e.g., HITRUST “Validated,” “Certified,” etc.) (“*Compliance Status*”) results from applying these components to the compliance criteria established in the HITRUST CSF.

(b) ***No Independent Review of Findings, Factual Information, or Methods.*** HITRUST will accept materials submitted by Assessor and will not independently review, certify, or validate Assessor’s findings, the underlying information provided by Participant on which the findings are based (“*Participant Information*”), or whether Assessor actually followed the methods stated.

(c) ***Effective Date. Certified Report:*** If the Participant meets the criteria for issuance of a Certified Report, the report will be effective for two (2) years (“*Term*”) after its issuance unless earlier suspended or terminated. In addition, the following two conditions must be met to continue the Term of a Certified Report: (1) an interim report must be performed and completed one (1) year after the issuance of the Certified Report; and (2) satisfactory progress must be made on any Corrective Action Plan(s). ***Validated Report:*** If the Participant does not meet the criteria for a Certified Report, HITRUST will issue a Validated Report which is a point in time report which includes no extended effective date.

(d) ***No Assurances of a Favorable Compliance Status.*** HITRUST makes no guarantee it will issue a Certified Report, or that a Compliance Status will be as favorable as Participant desires. HITRUST may decline to issue a Certified Report, and instead issue a Validated Report if, in its reasonable judgment, flaws or irregularities exist which make this status of Report advisable.

2. **Participant's Responsibilities.**

As conditions of continued HITRUST Compliance Status during the Term, Participant must comply strictly with the following responsibilities:

(a) ***Participant Information Must Be Complete, Truthful, and Accurate.*** Participant Information provided to Assessor and to HITRUST must be complete, truthful, and accurate. Participant shall be solely responsible for any findings, methods, or Compliance Status resulting wholly or partly from faulty Participant Information submitted to HITRUST.

(b) ***HITRUST CSF Subscription and Continuous Monitoring.*** As a condition of participation in the HITRUST CSF Assurance Program, Participant shall obtain a license to use the HITRUST CSF, available at no charge through the HITRUST website. In addition, Participant shall continuously monitor its systems and procedures to ensure effective security and ongoing compliance with the HITRUST CSF, including without limitation (i) documenting any significant changes in business practices or procedures that may impact security, and (ii) keeping security and corrective action plans updated to reflect changes in Participant's systems or security posture.

(c) ***Prompt Reporting of Material Event(s).*** Subject to any legal or contractual restrictions applicable to Participant, Participant shall promptly advise Assessor and HITRUST of (i) any substantial, adverse deviation or departure from the information contained in the HITRUST MyCSF Questionnaire as previously reported to Assessor or HITRUST; (ii) any actual breach of security or combination of actual breaches which Participant recognizes or reasonably should recognize to be significant; or material changes in its systems or procedures; (iii) acquisitions or divestitures which have been publicly announced by Participant and which materially affect its systems or procedures, as determined by Participant in Participant's reasonable discretion; or (iv) any other material event which may reasonably call into question Participant's continued compliance with the HITRUST CSF as announced in the issued Report (any of which being a "***Material Event***"). HITRUST will determine the impact and significance of the Material Event. A material breach of security will be deemed to suspend the Participant's Compliance Status automatically. References to Participant's "systems or procedures" shall be deemed to include only those Participant systems and/or procedures referenced in the Report.

(d) ***"Safe Harbor" for Reporting Gaps in the HITRUST CSF™.*** HITRUST is committed to the continual improvement of the HITRUST CSF and related materials, and recognizes that entities being assessed in accordance with the HITRUST CSF may be a valuable source of information for the HITRUST CSF's improvement. Participant is therefore encouraged to identify "gaps" in the HITRUST CSF or other means for its improvement, and to report those to HITRUST. Reports which identify such "gaps" or otherwise suggest means of improving the HITRUST CSF, as opposed to Material Events as described above, will not jeopardize Participant's Compliance Status.

3. **Restrictions on Use of Report or HITRUST Marks.**

(a) ***Use Only in Term, While in Compliance.*** Participant may only publicize, market, or otherwise promote its HITRUST Compliance Status during the Term, and only provided that (i) Participant has materially complied with its obligations under this Agreement, (ii) its

Compliance Status has not been suspended, downgraded or withdrawn; and (iii) no Material Event has occurred. Upon request, Participant will certify to HITRUST in writing that these conditions continue to be met.

(b) **Full Copies of Report.** If Participant chooses to provide access to the Report to a third-party, Participant must provide a full copy of the Report, or the letter verifying the status of the Report. The Participant may require such third party to hold the Report -in confidence.

(c) **No Alterations.** Participant shall not edit, alter or modify the Report in any way, including without limitation removing, reducing, modifying or obscuring any proprietary legends, trademarks, restrictions or disclaimers which HITRUST may attach.

(d) **No Misrepresentation to Third Parties.** Participant shall not misrepresent to any person or entity the level, effective dates, extent or other material aspect of its HITRUST Compliance Status and/or the scope of the assessment/certification.

4. **Fees.**

Fees for HITRUST's services will be charged according to its pricing schedule in effect when this Agreement is made. A separate fee will be charged for each Report which HITRUST is asked to issue. Participant will be responsible for those fees upon execution of this Agreement. The Fee is for a HITRUST Validated Report, which in some cases will also be a Certified Report. Payment is not contingent upon whether a Participant receives a Validated or Validated and Certified Report.

5. **Exclusive Ownership of the HITRUST CSF.**

Participant acknowledges HITRUST's sole and exclusive right, title and interest in and to the HITRUST CSF and all related documentation, together with all changes, deletions, additions, translations, or derivatives to it made by any party. Participant agrees that any and all rights in or to inventions, discoveries, revisions or derivatives arising out of or related to the HITRUST CSF or related documentation, and all rights to license, market or otherwise develop or dispose of the HITRUST CSF or related documentation, are and shall be the exclusive property of HITRUST. Participant agrees not to challenge or contest the validity or enforceability of HITRUST's intellectual property rights in the HITRUST CSF or related documentation, now or as it may be amended in the future. This commitment is of the essence of this Agreement and will survive its termination or expiration.

6. **Confidential Information.**

(a) **Confidential Information.** Each Party may obtain access to Confidential Information of the other Party, such as (as to HITRUST) certain valuable, confidential information, compilations, methods, techniques, procedures and processes incorporated within the HITRUST CSF or (as to Participant) information regarding Participant's business processes or private healthcare information of its customers, which are not generally known or readily ascertainable by proper means ("**Confidential Information**"). The Parties agree to hold all such Confidential Information in strictest trust and confidence, and not to use or disclose this information except as permitted under this Agreement or with the other party's express prior consent. This obligation

will survive the termination or expiration of this Agreement. Notwithstanding anything herein to the contrary, HITRUST will not access, use or disclose any information retained by Participant that is “protected health information” as that term is defined by the Health Insurance Portability and Accountability Act of 1996, as amended, and the implementing regulations thereof, without Participant’s prior written consent.

(b) Definition of Confidential Information. “Confidential Information” means all information disclosed by a party (“Disclosing Party”) to the other party (“Receiving Party”), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure. Your Confidential Information includes: your data, HITRUST’s Confidential Information and Confidential Information of each party includes the terms and conditions of this Agreement and all related Agreements, as well as business and marketing plans, technology and technical information, product plans and designs, and business processes disclosed by such party. However, Confidential Information does not include any information that (i) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (ii) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (iii) is received from a third party without breach of any obligation owed to the Disclosing Party, or (iv) was independently developed by the Receiving Party.

(c) Protection of Confidential Information. The Receiving Party will use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but not less than reasonable care) (i) not to use and Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement, and (ii) except as otherwise authorized by the Disclosing Party in writing, to limit access to Confidential Information of the Disclosing Party to those of its and its Affiliates’ employees and contractors who need that access for purposes consistent with this Agreement and who have signed confidentiality agreements with the Receiving Party containing protections no less stringent than those herein. Neither party will disclose the terms of this Agreement or an Order Form to any third party other than its Affiliates, legal counsel and accountants without the other party’s prior written consent, provided that a party that makes any such disclosure to its Affiliate, legal counsel or accountants will remain responsible for such Affiliate’s, legal counsel’s or accountant’s compliance with this Section.

(d) Compelled Disclosure. The Receiving Party may disclose Confidential Information of the Disclosing Party to the extent compelled by law to do so, provided the Receiving Party gives the Disclosing Party prior notice of the compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party’s cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party’s Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to that Confidential Information.

(e) **Exclusions.** These prohibitions shall not apply to information, compilations, methods, techniques, procedures or processes that are or have become generally known in the industry through no fault of the receiving party, or which it can show from written records were (i) known to it before entering this Agreement, (ii) independently developed by it without use of or reference to the other party's Confidential Information, or (iii) lawfully obtained by it from a third party not in breach of any obligation to the disclosing party. They will also not apply to residual knowledge retained in intangible, non-electronic form, such as general ideas, concepts and know-how.

7. Representations and Warranties.

HITRUST PROVIDES THE HITRUST CSF AND ITS SERVICES "AS IS," WITH ALL FAULTS. HITRUST AND ITS OFFICERS, EMPLOYEES, AGENTS, REPRESENTATIVES AND AFFILIATES DISCLAIM ALL WARRANTIES AND REPRESENTATIONS, EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NONINFRINGEMENT SECURITY, CONFORMITY TO DESCRIPTION, ACCURACY, COMPLETENESS, OR RESULTS. THE ENTIRE RISK AS TO THE QUALITY OR ARISING OUT OF THE USE OF THE HITRUST CSF OR THE SERVICES CONTEMPLATED HEREUNDER REMAINS AT ALL TIMES WITH THE PARTICIPANT.

8. Exclusion of Incidental and Consequential Damages.

EXCEPT IN EVENT OF WILLFUL OR GROSS MISCONDUCT OR MISUSE OF HITRUST'S INTELLECTUAL PROPERTY, IN NO EVENT SHALL EITHER PARTY OR ANY OFFICER, AGENT, EMPLOYEE, REPRESENTATIVE OR AFFILIATE THEREOF BE LIABLE FOR ANY SPECIAL, INCIDENTAL, PUNITIVE, INDIRECT OR CONSEQUENTIAL DAMAGES WHATSOEVER ARISING FROM OR RELATED TO ITS, HIS OR HER ACTIONS OR INACTIONS IN CONNECTION WITH THIS AGREEMENT, EVEN IN THE EVENT OF ITS, HIS OR HER FAULT, TORT (INCLUDING BUT NOT LIMITED TO NEGLIGENCE), MISREPRESENTATION, STRICT LIABILITY, BREACH OF CONTRACT OR BREACH OF WARRANTY, AND EVEN IF IT, HE OR SHE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

9. Limitation of Liability and Remedies.

(a) **No Liability for Good-Faith Exercise of Judgment.** Under no circumstances will either party or any officer, agent, employee, representative or affiliate thereof be liable to the other party or any person or entity in privity with the other party for any loss, injury, damage, cost, claim or expense arising from or relating directly or indirectly to the good-faith exercise of his or its judgment in connection with this Agreement.

(b) EXCEPT IN EVENT OF WILLFUL OR GROSS MISCONDUCT OR MISUSE OF HITRUST'S INTELLECTUAL PROPERTY, IN NO EVENT WILL THE TOTAL LIABILITY OF EITHER PARTY OR ANY OFFICER, AGENT, EMPLOYEE, REPRESENTATIVE OR AFFILIATE THEREOF EXCEED ONE MILLION DOLLARS.

(c) THESE DISCLAIMERS AND LIMITATIONS SHALL APPLY TO THE MAXIMUM EXTENT PERMITTED BY LAW, EVEN IF ANY REMEDY FAILS OF ITS ESSENTIAL PURPOSE.

10. Indemnification.

Participant will hold harmless, indemnify and defend HITRUST and its officers, directors, shareholders, employees, agents, representatives and affiliates of, from and against any and all suits, claims, actions, losses, costs, penalties and damages of whatsoever kind in nature (collectively, "Costs") directly caused by a material breach of this Agreement by Participant. Notwithstanding the foregoing, except in event of willful or gross misconduct or misuse of HITRUST's intellectual property, the maximum amount of Participant's total indemnification obligation relating in any manner to this Agreement shall not exceed one million dollars.

11. Termination.

(a) **Termination.** Participant may terminate this Agreement at any time for any reason, provided it shall be liable for payment for all fees and expenses accrued up to the time of notification. HITRUST may terminate this Agreement upon breach or threatened breach by Participant (i) which occurs or remains uncured ten (10) days after notice from HITRUST, or (ii) which relates to confidentiality of any HITRUST Confidential Information or HITRUST's intellectual property rights. In the latter event HITRUST may terminate this Agreement immediately upon notice.

(b) **Events upon Termination.** Immediately upon termination or expiration of this Agreement, or upon HITRUST's request, Participant shall cease any external use of the Report, and will remove and return to HITRUST all materials constituting or containing HITRUST's Confidential Information. Provisions related to protection of HITRUST's intellectual property and the Parties' Confidential Information, and other provisions which by their nature should survive, will survive termination or expiration hereof.

12. Miscellaneous.

(a) **Notices.** Notices required or permitted to be given under this Agreement shall be deemed delivered when sent in writing to the address(es) for notices provided below, and shall be deemed to have been delivered and given for all purposes (a) on the delivery date if delivered personally to the Party to whom it is directed; (b) in one (1) business day after deposit with a reputable overnight carrier with written verification of receipt; or (c) in the case of emails, when transmitted without indication of failure in transmission. Either Party may change its address for notices by written notice to the other party at any time as provided herein.

IF TO PARTICIPANT:

IF TO HITRUST:

HITRUST Services Corp.
6175 Main Street, Suite 420
Frisco, Texas 75034
(469) 269-1100 (tel)

with a copy, which is required but shall not constitute notice, to:

notices@hitrustalliance.net.

(b) **Entire Agreement.** This Agreement contains the entire agreement of the Parties relating to the subject matter, superseding all prior written or oral agreements, representations or understandings. It may only be changed in writing signed by the Parties.

(c) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision will be deemed null and void, and the remaining provisions of this Agreement will remain in effect.

(d) **No Waiver.** Failure or delay to require performance by the other party shall not constitute a waiver of such performance, or of any other or later breach of such provision.

(e) **Force Majeure.** A party shall be excused from delay or failure to perform due to causes beyond its reasonable control, provided it acts diligently to remedy the cause. Inability or failure to pay or control one's own affiliates, employees or agents will not be so excused.

(f) **No agency.** Each party is acting as an independent contractor.

(g) **Choice of Law; Jury Waiver.** This Agreement and the Parties' relationship shall be interpreted and governed under Texas law, excluding its choice of law provisions and the U.N. Convention on Contracts for the International Sale of Goods. **THE PARTIES WAIVE JURY TRIAL.**

PARTICIPANT

HITRUST SERVICES CORP.

By _____

By _____

Print Name: _____

Print Name: _____

Title: _____

Title: _____

Date: _____

Date: _____