BUSINESS ASSOCIATE SCHEDULE

This Business Associate Schedule (the "BA Schedule") is subject to and incorporated by reference into the Agreement between Savvis Communications Corporation and its affiliates ("Savvis" or "Business Associate") and the applicable contractor ("Company"). This BA Schedule contains terms required of any contractor engaged by Savvis when Savvis acts as a Business Associate to a customer who is subject to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and this BA Schedule is effective upon execution of the Agreement.

The parties acknowledge the need for this BA Schedule for the purpose of addressing the "Standards for Privacy of Individually Identifiable Health Information," 45 CFR Part 160 and Part 164, Subparts A and E (the "Privacy Rule"); the "Standards for Electronic Transactions," 45 CFR Part 160, Subpart A, and Part 162, Subpart A and Subparts I through R (the "Electronic Transaction Rule"); and the "Security Standards for the Protection of Electronic Protected Health Information," 45 CFR Part 160, Subpart A, and Part 164, Subparts A and C, (the "Security Rule");

The parties acknowledge the need for this BA Schedule for the purpose of addressing the privacy and security provisions set forth in the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), contained in Title XIII, Subtitle D of the American Reinvestment and Recovery Act of 2009.

Article I – Definitions

1.1 "Breach" shall have the meaning given to it by 45 CFR § 164.402.

1.2 "Breach Notification Rule" shall mean the "Standards for Breach Notification for Unsecured Protected Health Information," 45 CFR Part 164, Subpart D, as may be revised from time to time by the Secretary.

1.3 "Business Associate" shall have the meaning given to it by 45 CFR § 160.103.

1.4 "HIPAA" shall mean, collectively, the Privacy Rule, the Electronic Transaction Rule, the Security Rule, the HITECH Act and/or the HITECH Rules.

1.5 "HITECH Act" shall mean the provisions of Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009. A reference to a section of the HITECH Act shall also include any HITECH Rules related thereto, including any HITECH Rules that may be issued after the effective date of this Agreement.

1.6 "HITECH Rules" shall mean any guidance issued related to the HITECH Act by the Department of Health and Human Services, including the Breach Notification Rule.

1.7 "Individual" shall mean the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.8 "PHI" shall mean any information, whether oral or recorded in any form or medium, that – (i) relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes without limitation Electronic PHI and Unsecured PHI, as defined below.

1.9 "Unsecured PHI" shall mean PHI that is not secured through the use of a technology or methodology that renders such PHI unusable, unreadable or indecipherable to unauthorized individuals as specified in guidance issued pursuant to Section 13402(h) of the HITECH Act, including the Breach Notification Rule.

Other capitalized terms not otherwise defined herein shall have the same meaning as those terms set forth in the Privacy Rule.

Article II – Obligations and Activities of Company

2.1 <u>Status of Company</u>. Company acknowledges and agrees that it is a Business Associate of Savvis for purposes of the Privacy Rule.

2.2 <u>Permitted Uses and Disclosures of PHI</u>.

(a) <u>Permitted Uses</u>. Company shall not use PHI other than as permitted by this BA Schedule. Company may use PHI: (i) for meeting its obligations in this BA Schedule and as set forth in the Agreement which articulates the business relationship and scope of services to be provided by Company; (ii) to report violations of law consistent with 45 CFR § 164.502(j); (iii) to the extent and for any purpose authorized by an Individual under 45 CFR §164.508; and (iv) for any purpose provided that no data is identifiable and has been de-identified pursuant to 45 CFR §164.514(b). Notwithstanding the foregoing, Company shall not use PHI in any manner that violates the Privacy Rule or the HITECH Act (including the restrictions set forth in Sections 13405(d) and 13406 of the HITECH Act, if applicable), or that would violate HIPAA if so used by Savvis or the designated Covered Entity.

(b) <u>Permitted Disclosures</u>. Company shall not disclose PHI other than as permitted by this BA Schedule. Company may disclose PHI: (i) for meeting its obligations in this BA Schedule and the Agreement; (ii) to report violations of law consistent with 45 CFR § 164.502(j); (iii) to the extent and for any purpose authorized by an Individual under 45 CFR §164.508; and (iv) for any purpose provided that no data is identifiable and has been de-identified pursuant to 45 CFR §164.514(b). In addition, Company may also disclose PHI to a third party in its capacity as a Business Associate to Savvis for the proper business management and administration of Company and to carry out Company's legal responsibilities; provided, that the disclosure is Required by Law, or Company obtains, prior to the disclosure – (1) reasonable assurances from the third party that the PHI will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and (2) an agreement from the third party that the third party will notify Company immediately of any instances in which it knows the confidentiality of the information has been breached. Notwithstanding

the foregoing, Company shall not disclose PHI in any manner that violates the Privacy Rule or the HITECH Act (including the restrictions set forth in Sections 13405(d) and 13406 of the HITECH Act), or that would violate HIPAA if so disclosed by Savvis or the designated Covered Entity.

(c) <u>Minimum Necessary</u>. To the extent required by the Privacy Rule, Company shall only request, use and/or disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use and/or disclosure. For this purpose, the determination of what constitutes the minimum necessary amount of PHI shall be determined in accordance with Section 164.502(b) of the Privacy Rule, as amended by Section 13405(b) of the HITECH Act.

(d) <u>Direct Application of Privacy Rules</u>. Company shall not use and/or disclose PHI or provide any services that require the use and/or disclosure of PHI unless such use and/or disclosure directly complies with this Section 2.2 and Section 13404(a) of the HITECH Act.

2.3 <u>Safeguards</u>. Company shall implement, maintain and use appropriate and commercially reasonable technical, organizational and security safeguards to prevent access, use and/or disclosure of PHI.

2.4 <u>Reports of Prohibited Disclosures</u>. If Company becomes aware of a disclosure of PHI by Company and the disclosure violated the provisions of this BA Schedule, Company must promptly inform Savvis regarding the prohibited disclosure. To the extent that a disclosure described in this Section 2.4 also constitutes a Breach of Unsecured PHI, the provisions of this Section 2.4 shall not apply, but rather the provisions of Section 2.8 shall apply.

2.5 <u>Agents</u>. Company shall require each of its representatives, agents, contractors and subcontractors (collectively, "Agents") to whom Company provides PHI on behalf of Savvis to agree to observe the restrictions on use and disclosure of the PHI imposed upon Company by this BA Schedule and HIPAA.

2.6 <u>Access by Secretary</u>. Company shall make available to the Secretary Company's internal practices, books and records (including its policies and procedures) relating to Company's use and disclosure of PHI for the purpose of enabling the Secretary to assess Savvis' and/or Company's compliance with HIPAA. Company shall promptly inform Savvis of any request sent by the Secretary that is received by Company. Company shall, at its expense, consult and cooperate with Savvis in complying with such request, and shall identify for Savvis each book, document or record made available to the Secretary and grant Savvis (and its end customer or Covered Entity as applicable) access thereto for inspection. Company shall ensure that Savvis has the information required to enable it to respond to any appropriate request under HIPAA for an accounting of disclosures of PHI.

2.7 <u>Mitigation</u>. Company agrees to mitigate, to the extent practicable, any harmful effect that is known to Company of a use or disclosure of Protected Information by Company in violation of the requirements of this BA Schedule.

2.8 <u>Notice of Breach of Unsecured PHI</u>.

(a) <u>Requirements</u>. Upon Company's discovery of a Breach of Unsecured PHI by Company Company shall –

(1) Provide written notice of the Breach, on behalf of Savvis, without unreasonable delay but no later than thirty (30) calendar days following the date the Breach is discovered or such later date as is authorized under 45 CFR § 164.412, to:

(i) each Individual whose Unsecured PHI has been, or is reasonably believed by Company to have been, accessed, acquired, used or disclosed as a result of the Breach. All notices shall fully comply with the Breach Notification Rule;

(ii) the media to the extent required under 45 CFR § 164.406; and

(iii) the Secretary to the extent required under 45 CFR § 164.408 (unless Savvis has elected to provide this notification and has informed Company);

(iv) any and all notices shall comply with the Breach Notification Rule. Company shall cooperate with Savvis in all respects regarding the drafting and the content of the notices. To that end, before sending any notice to any Individual or the media under Section 2.8(a)(1)(i) or (ii), Company shall first provide a draft of the notice to Savvis or its designee. Savvis or its designee shall either approve Company's draft of the notice or revise the language of the notice. Alternatively, Savvis or its designee may elect to draft the notice. Upon receipt of the approved notice, Company shall, at its sole expense, send the notice to the Individuals and/or the media based on the requirements of the Breach Notification Rule.

(2) Provide written notice of the Breach to Savvis, as soon as administratively practicable, but no later than three (3) business days after the Breach is discovered. The notice shall include the identity of each Individual whose Unsecured PHI was involved in the Breach and a brief description of the Breach. To the extent that Company does not know the identities of all affected Individuals, Company shall provide such information as soon as administratively practicable after such information becomes available. Upon Savvis' written request, Company shall provide such additional information regarding the Breach as may be reasonably requested from time to time by Savvis.

(3) If the Breach involves less than 500 individuals, maintain a log or other documentation of the Breach which contains such information as would be required to be included if the log were maintained by Savvis pursuant to 45 CFR § 164.408, and provide such log to Savvis within five (5) business days of Savvis' written request.

2.9 <u>Accountings and Requests</u>.

(a) <u>Documentation of Disclosures.</u> Company shall document and maintain a log of any and all disclosures made by Company of PHI in a manner and form that will allow Savvis to provide to an Individual an accounting of disclosures of the Individual's PHI in conformance with 45 CFR § 164.528.

(b) <u>Accounting Requests</u>. Upon request from Savvis, Company shall process and respond to a request by an Individual for an accounting of disclosures of an Individual's PHI pursuant to 45 CFR § 164.528 (an "Accounting Request"). Company shall respond to such Accounting Request within the timeframes required by 45 CFR § 164.528 by furnishing such accounting to Savvis. Thereafter, Savvis shall be responsible for sending such information to the Individual.

(c) <u>Restriction Requests on Uses and Disclosures</u>. Savvis and Company on behalf of Savvis shall not agree to a restriction on the use or disclosure of Protected Information pursuant to 45 CFR § 164.522(a) or Section 13405(a) of the HITECH Act without first consulting with the other party. Company is not obligated to implement any restriction, if such restriction would hinder Health Care Operations or the Services Company provides to Savvis, unless such restriction would otherwise be required by Section 13405(a) of the HITECH Act.

Article III – Electronic Transaction Rule

3.1 <u>Business Associate Requirements</u>. Company acknowledges that it is a Business Associate of Savvis for purposes of the Electronic Transaction Rule. Company agrees that it shall comply with all Electronic Transaction Rule requirements that may be applicable to Company with respect to the services it provides to Savvis. Company shall also require each of its Agents to whom Company provides PHI that is received from, or created or received by Company to comply with the applicable requirements of the Electronic Transaction Rule.

Article IV – Obligations Savvis

4.1 <u>Authorizations</u>. Savvis shall notify Company of any changes in or revocations of Individual authorizations for use or disclosure of PHI to the extent that such changes or revocations may affect Company's use or disclosure of PHI.

Article V – Amendment and Termination

5.1 <u>Amendment</u>. No change, modification, or attempted waiver of any of the provisions of this BA Schedule shall be binding upon any party hereto unless reduced to writing and signed by both parties against whom enforcement is sought. Company agrees to take such action as is necessary to amend this BA Schedule from time to time as Savvis reasonably determines necessary to comply with HIPAA, or any other applicable law, rule or regulation.

5.2 <u>Term</u>. This BA Schedule shall be effective on the date Company executes the applicable Agreement and shall terminate when all of the PHI received from Savvis or a Covered Entity, or created or received by Company on behalf of Savvis or a Covered Entity, is destroyed in accordance with Savvis' authorization or is returned to Savvis (or its designated agents) pursuant to Section 5.4.

5.3 <u>Termination</u>. If one party to this BA Schedule (the "Non-Breaching Party") has knowledge of a material violation of this BA Schedule by the other party to this BA Schedule (the "Breaching Party"), as determined in good faith by the Non-Breaching Party, the Non-Breaching Party shall promptly:

(a) Provide an opportunity for the Breaching Party to end and to cure the material violation within a reasonable time specified by the Non-Breaching Party, and if the Breaching Party does not end and cure the material violation within such time (including reasonable extensions that the Non-Breaching Party determines are necessary) to the satisfaction of the Non-Breaching Party, the Non-Breaching Party shall immediately terminate the Services rendered by Company and any agreement or contract related thereto; or

(b) If a cure is not possible as determined by the Non-Breaching Party in its sole discretion, the Non-Breaching Party shall immediately terminate the Services rendered by Company and any agreement or contract related thereto;

provided, however, if neither termination nor cure are feasible, the Non-Breaching Party shall report the material violation to the Covered Entity and the Secretary.

5.4 <u>Effect of Termination</u>. Upon termination pursuant to Section 5.3, Savvis within a reasonable time thereafter shall inform Company to either destroy or return to Savvis (or any agents designated by Savvis) the PHI that Company and its Agents maintains in any form, and Company and its Agents shall retain no copies of the PHI. However, in many situations Company maintains one or more backup copies of PHI for auditing, data management and other related purposes and Company has determined that destruction of all copies of PHI that it maintains is infeasible. Therefore, after termination of the Agreement and pursuant to 45 CFR § 164.502(e)(2)(ii)(I), this BA Schedule shall remain in effect and Company shall continue to observe and shall ensure that its Agents continue to observe its obligations under this BA Schedule to the extent copies of the PHI are retained by Company and shall limit further uses and disclosures of PHI to the purposes that make its return or destruction infeasible and that are consistent with the Privacy Rule.

BUSINESS ASSOCIATE SCHEDULE

Article VI – Electronic Security Standards

6.1 <u>Definitions</u>. When used in this Article, the following terms shall have the meanings set forth as follows:

    (a) "Electronic Media" shall have the meaning given to it in 45 CFR § 160.103.

    (b) "Electronic Protected Information" shall mean Protected Information received from Savvis or created or received by Company on behalf of Savvis that is transmitted by Electronic Media or maintained in Electronic Media.

    (c) "Security Incident" shall have the meaning given to it in 45 CFR § 164.304.

6.2 <u>Requirements</u>. Pursuant to 45 CFR § 164.314(a)(2)(i), Company shall:

    (a) Implement, maintain and document administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Information to the extent required by the Security Rule;

    (b) Report (pursuant to the terms and conditions of Section 6.3) to Savvis (or such other person designated for this purpose) any Security Incident of which Company becomes aware; and

    (c) Require each of its Agents (including a subcontractor) to whom Company provides Electronic Protected Information on behalf of Savvis to agree to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Information that is provided to the Agent to the extent required by the Security Rule.

6.3 <u>Reporting Protocols</u>. All reports required by Section 6.2(b) shall be provided pursuant to the terms and conditions specified in this Section.

    (a) <u>Attempted Security Incidents</u>. Reporting for any Security Incident involving the attempted unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, an "Attempted Security Incident") shall be provided no more than five (5) business days after any Security Incident.

    (b) <u>Successful Security Incident</u>. Reporting for any Security Incident involving the successful unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, a "Successful Security Incident") shall be provided to Savvis pursuant to the standard reporting protocols of Company (as determined by Company); provided, that (i) the reports shall at a minimum include the date of the incident, the parties involved (if known, including the names of Individuals affected), a description of the Successful Security Incident, a description of the Electronic Protected Information involved in the incident and any action taken to mitigate the impact of the Successful Security Incident and/or prevent its future recurrence and (ii) the reports shall satisfy the minimum requirements for Security Incident reporting that may be required from time to time by the Secretary. In addition, Successful Security Incidents shall be reported to Savvis as soon as administratively practicable after the occurrence of the incident taking into account the severity and nature of the incident. Notwithstanding the foregoing, Savvis may request details about one or more Successful Security Incidents, and Company shall have 10 days thereafter to furnish the requested information.

    (c) <u>Breach of Unsecured PHI</u>. To the extent that a Security Incident described in this Section 6.3 also constitutes a Breach of Unsecured PHI, the provisions of this Section 6.3 shall not apply, but rather the provisions of Section 2.8 shall apply.

6.4 <u>Mitigation</u>. Company agrees to mitigate, to the extent practicable, any harmful effect that is known to Company relating to any Security Incident.

6.5 <u>Access by Secretary</u>. Company shall make available to the Secretary Company's internal practices, books and records (including its policies and procedures) relating to the safeguards established by Company with respect to Electronic Protected Information for the purpose of enabling the Secretary to assess Company and/or Savvis' compliance with the Security Rule. Company shall inform the Privacy Official of any request sent by the Secretary on behalf of Savvis that is received by Company, unless Company is prevented by applicable law from doing so.

6.6 <u>HITECH Act Compliance</u>. With respect to Electronic Protected Information and the requirements set forth in this Article VI, Company shall directly comply with (a) Section 13401(a) of the HITECH Act, including with respect to the administrative, physical and technical safeguards described in 45 CFR §§ 164.308, 164.310, 164.312 and 164.316 of the Security Rule and (b) Section 13401(c) of the HITECH Act (relating to annual technical safeguard guidance to be issued by the Secretary).

Article VII – General

7.1 <u>Other Agreements</u>. Savvis and Company acknowledge and affirm that this BA Schedule is in no way intended to address or cover all aspects of the relationship of Savvis and Company. Rather, this BA Schedule deals only with those matters that are specifically addressed herein. Further, this BA Schedule supersedes any prior business associate agreements entered into by Company and Savvis (or any predecessor to Savvis), and shall apply to all PHI existing as of the effective date of this BA Schedule or created or received thereafter while this BA Schedule is in effect.

7.2 <u>Indemnification</u>. Company shall indemnity, defend and hold Savvis, it affiliates, contractors and customer harmless from any and all liability or claims arising out of or related to Company's actions or inactions under this BA Schedule.

7.3 <u>Severability</u>. The provisions of this BA Schedule shall be severable, and the invalidity or unenforceability of any provision (or part thereof) of this BA Schedule shall in no way affect the validity or enforceability of any other provisions (or remaining part thereof). If any part of any provision contained in this BA Schedule is determined by a court of competent jurisdiction, or by any administrative tribunal, to be invalid, illegal or incapable of being enforced, then the court or tribunal shall interpret such provisions in a manner so as to enforce them to the fullest extent of the law.

7.4 <u>Interpretation</u>. The provisions of this BA Schedule shall be interpreted in a manner intended to achieve compliance with HIPAA. Whenever this BA Schedule uses the term "including" followed by a specific item or items, or there is a passage having a similar effect, such passages of this BA Schedule shall be construed as if the phrase "without limitation" followed such term (or otherwise applied to such passage in a manner that avoids limitations on its breadth of application). Where the term "and/or" is used in this BA Schedule, the provision that includes the term shall have the meaning the provision would have if "and" replaced "and/or," but it shall also have the meaning the provision would have if "or" replaced "and/or."

7.5 <u>Binding Effect</u>. The provisions of this BA Schedule shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns and successors in interest. Savvis shall have the right to assign this BA Schedule to any successor and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by any such assignee.

7.6 <u>No Third-Party Beneficiaries</u>. Nothing express or implied in this BA Schedule is intended to confer, and nothing herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

7.7 <u>Applicable Law</u>. The provisions of this BA Schedule shall be construed and administered to, and its validity and enforceability determined under HIPAA. To the extent that HIPAA is not applicable in a particular circumstance, the laws of the State of Missouri shall govern.