

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**Agreement**”) is entered into as of [REDACTED] (the “**Effective Date**”) by and between [REDACTED] (“**Covered Entity**”) and [REDACTED] (“**Business Associate**”), under the administration of Texas A&M University, a member of The Texas A&M University System, an agency of the state of Texas, and is an integral part of the agreement(s) between the parties as if fully set forth therein. All terms not otherwise defined herein shall have the same meaning as those terms in the HIPAA Rules (as defined below).

WHEREAS, Covered Entity and Business Associate have entered into an agreement (the “**Business Arrangements**”) pursuant to which Business Associate performs functions or activities on behalf of Covered Entity that may require Business Associate to have access to, create, receive, maintain, or transmit Protected Health Information or PHI; and

WHEREAS, Covered Entity and Business Associate desire to comply with the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”), the Health Information Technology for Economic and Clinical Health Act (the “**HITECH Act**”), and other related Texas laws and federal laws and regulations, as applicable, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 (together, the “**HIPAA Rules**”).

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the applicable Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows:

I. Definitions

- a. “**Business Associate**” shall have the same meaning as the term “business associate” at 45 CFR §160.103, and in reference to the party to this Agreement, shall mean Texas A&M University Health Science Center.
- b. “**Covered Entity**” shall have the same meaning as the term “covered entity” at 45 CFR §160.103, and in reference to the party to this Agreement, shall mean [REDACTED].

II. Business Associate Obligations

Business Associate agrees to:

- a. Not use or disclose PHI other than as permitted or required by this Agreement or as required by HIPAA Rules;
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of PHI other than as provided for by this Agreement;

- c. Report to Covered Entity any use or disclosure of PHI not provided for by this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR §164.410, and any security incident of which it becomes aware;
- d. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- e. Make available PHI in a designated record set to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.524;
- f. Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526;
- g. Maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR §164.528;
- h. 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 the Covered Entity in the performance of such obligation(s); and
- i. Make available its internal practices, books, and records relating to the use and/or disclosure of PHI to the Secretary of the Department of Health and Human Services for purposes of determining the Covered Entity's compliance with the HIPAA Rules.

III. Permitted Uses and Disclosures by Business Associate

- a. Business Associate may only use or disclose PHI as necessary to perform the services defined in Business Arrangement.
- b. Business Associate may use or disclose PHI as required by law.
- c. Business Associate agrees to comply with the minimum necessary standard under 45 C.F.R. §164.502(b) when using or disclosing or requesting PHI.
- d. Business Associate may use and disclose de-identified health information, if the de-identification is in compliance with 45 C.F.R. §164.502(d), and the de-identified health information meets the standard and implementation specifications for de-identification under 45 C.F.R. §164.514(a) and (b).
- e. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, provided that Business Associate may use PHI for the proper management and administration of Business Associate or to carry

out the legal responsibilities of Business Associate.

IV. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's Notice of Privacy Practices in accordance with 45 C.F.R. §164.520, to the extent such limitations affect Business Associate's use or disclosure of PHI.
- b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if and to the extent such changes affect Business Associate's use and disclosure of PHI.
- c. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent such restriction may affect Business Associate's use or disclosure of PHI.
- d. Covered entity shall not request Business Associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity, provided that Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate..

V. Termination

- a. Term. The term of this Agreement shall be as of the Effective Date and shall terminate upon the termination of the Business Arrangements or on the date Covered Entity terminates this Agreement for cause in accordance with the provision set forth below, whichever is sooner.
- b. Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement and Business Associate has not cured the violation or breach within a time specified by Covered Entity upon discovery.
- c. Effect of Termination of Agreement. Upon the termination of this Agreement for any reason:
 - i. Business Associate shall return to Covered Entity, or, at Covered Entity's direction, destroy, all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, that Business Associate maintained in any form, recorded on any medium, or stored in any storage system, unless said information has been de-identified and is no longer PHI. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - ii. In the event that Business Associate reasonably determines that returning or destroying the PHI is infeasible, Business Associate shall notify Covered Entity

of the conditions that make return or destruction infeasible, and shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

- d. Survival. The obligations of Business Associate under paragraph c. above shall survive the termination of this Agreement.

VI. Miscellaneous

- a. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules. If there is any direct conflict between this Agreement and the Business Arrangements, the terms and conditions of this Agreement shall control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

BUSINESS ASSOCIATE:

COVERED ENTITY:

Name:
Title:
Date:

Name:
Title:
Date: