

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered between The University of North Carolina at Greensboro ("Covered Entity" or "CE") and _____, ("Business Associate" or "BA"), collectively "the Parties," and agree as follows:

Explanatory Statement

BA shall supply CE with the following services: _____ (e.g., automated claims management services) which services involve the use and/or disclosure by CE of Protected Health Information as herein defined. These services are provided pursuant to a "Services Agreement" between the Parties and this Agreement shall be incorporated as an integral part of the Services Agreement.

The parties acknowledge that this Business Associate Agreement (the "Agreement") is required by the Privacy and Security Rules promulgated pursuant to the regulations issued in connection with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and as amended.

Agreement

Now, therefore, in consideration of the premises and of the mutual promises herein contained, and the Explanatory Statement, which is made a substantive part hereof, the parties hereto agree as follows:

1. Definitions.

- A. *Generally.* Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR Parts 160 and 164.
- B. *Specific Definitions.*
 1. *Covered Entity.* "Covered Entity" or "CE" shall have the same meaning as the term "covered entity" in 45 CFR 160.103 and shall refer more particularly in this Agreement to The University of North Carolina at Greensboro.
 2. *Business Associate.* "Business Associate" or "BA" shall have the same meaning as the term "business associate" in 45 CFR 160.103 and shall refer more particularly in this Agreement to _____.
 3. *Individual.* "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
 4. *Privacy Rule.* "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.
 5. *Security Rule.* "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR 164, Subpart C.
 6. *Protected Health Information.* "Protected Health Information" or "PHI" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, for the purposes of this Agreement limited to the information created or received by Business Associate from or on behalf of CE.

7. *Required by Law*. "Required by Law" shall have the same meaning as the term "Required by Law" in 45 CFR 164.501.
8. *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
9. *Subsequent Recipient*. "Subsequent Recipient" shall mean any person to whom Business Associate discloses PHI, including, without limitation, agents and subcontractors of Business Associate.

2. Obligations and Activities of Business Associate.

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by the Agreement or as Required by Law.
- B. Business Associate agrees not to disclose any PHI to any other person or entity, including any Subsequent Recipient, unless and until Business Associate and Subsequent Recipient have entered into an agreement with the same terms and conditions as this Business Associate Agreement such that the Subsequent Recipient is subject to the same terms and conditions as Business Associate with respect to CE and PHI in accordance with 45 CFR 164.314.
- C. Business Associate agrees to use all safeguards that are reasonable and necessary to prevent use or disclosure of the PHI other than as provided for by this Agreement, and consistent with CE's Security Guidelines.
- D. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of HIPAA and this Agreement.
- E. Business Associate agrees to promptly report to CE any unauthorized use or disclosure of PHI of which it becomes aware in violation of HIPAA or this Agreement. Business Associate, immediately upon becoming aware of such unauthorized use or disclosure, will take all necessary steps to prevent and limit any further improper or unauthorized disclosure or misuse of such information.
- F. Business Associate agrees to provide access, at the request of CE, and in the time and manner designated by CE, to PHI in a Designated Record Set to the extent Business Associate maintains PHI in a Designated Record Set, to CE or, as directed by CE, to an Individual in order to meet the requirements under 45 CFR 164.524.
- G. To the extent Business Associate maintains PHI in a Designated Record Set, Business Associate agrees to make PHI in a Designated Record Set available for amendment as directed by CE pursuant to 45 CFR 164.526, and in the time and manner designated by CE.
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate, on behalf of, CE available to CE, or at the request of CE or the Secretary, in a time and manner designated by the CE or the Secretary, for the purposes of the Secretary determining CE's compliance with the Privacy Rule and the Security Rule.
- I. Business Associate agrees to document such disclosures of PHI as would be required for CE to respond to a request by an Individual for an accounting of disclosures of PHI in

accordance with 45 CFR 164.528 and to provide to CE or an Individual, in a time and manner designated by CE, information to permit CE to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

3. Permitted Uses and Disclosures by Business Associate.

- A. *Specific Purposes.* Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, CE as specified in the Services Agreement, if such use or disclosure of PHI would not violate the Privacy Rule or the Security Rule if done by CE.
- B. *Refer to Underlying Services Agreement.* Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for or on behalf of CE as specified, provided that such use or disclosure would not violate the Privacy Rule or the Security Rule if done by CE.
- C. *Specific Use and Disclosure Provisions.*
 - 1. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 - 2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
 - 3. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to CE as permitted by 42 CFR 164.504(e)(2)(i)(B).

4. Obligations of Covered Entity.

- A. *Provisions for Covered Entity to Inform Business Associate of Privacy and Security Practices and Restrictions.*
 - 1. CE shall provide Business Associate with the notice of privacy and security practices that CE produces in accordance with 45 CFR 164.520 and 164.316, as well as any changes to such notice.
 - 2. CE shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
 - 3. CE shall notify Business Associate of any restriction to the use or disclosure of PHI or to which CE has agreed in accordance with 45 CFR 164.522.
- B. *Permissible Requests by Covered Entity.* CE shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or the Security Rule if done by CE.

5. Term and Termination.

- A. *Term.* The Term of this Agreement shall be effective as of the date of full execution of this Agreement by duly authorized representatives of both Parties, and shall terminate in accordance with the earlier of the termination of the Services Agreement or termination of business associate relationship between the Parties consistent with this Section.
- B. *Termination for Cause.* Upon either party's knowledge of a material breach by the other party, it may terminate the Services Agreement upon thirty (30) days written notice or provide the other party written notice of such breach and terminate the Services Agreement if the other party does not cure the breach or end and remedy the violation within five (5) days of receipt of such notice.
- C. *Termination by Covered Entity.* Covered Entity may terminate this Agreement without liability, penalty or expense in the event of non-appropriation of state funds or upon thirty (30) days prior written notice with or without cause.
- D. *Effect of Termination.*
 - 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from CE, or created or received by Business Associate on behalf of CE. 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.
 - 2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to CE notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate 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, and such provisions shall survive termination of this Agreement.

6. Miscellaneous.

- A. *Regulatory References.* A reference in this Agreement to a section in the Privacy or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- B. *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for CE to comply with the requirements of the HIPAA Privacy and Security Rules.
- C. *Survival.* The respective rights and obligations of Business Associate under Section 5D of this Agreement shall survive the termination of this Agreement.
- D. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits CE to comply with the Privacy and Security Rules.
- E. *Effect of Instrument Under Seal.* This document is an instrument under SEAL and, as such, it is the Parties' intention that the longest possible period of limitations pursuant to North Carolina's applicable Statute of Limitations shall apply to this Agreement.

- F. *Applicable Law.* The law of North Carolina shall be applied in interpreting this Agreement.
- G. *Dispute Resolution.* Any dispute shall be filed in a court of competent jurisdiction in Guilford County, North Carolina.
- H. *Legal Compliance.* Both Parties agree to comply with all applicable Federal and North Carolina laws including, but not limited to, non-discrimination on the basis of race, sex, religion, national origin, age, handicap or sexual orientation.

WE, CE AND BA HEREBY AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT.

Business Associate

The University of North Carolina at Greensboro

By: _____

By: _____

Print: _____

Print: _____

Title: _____

Title: _____

Date: _____

Date: _____