

TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER
(“Covered Entity”)
AGREEMENT
with
BUSINESS ASSOCIATE

This Agreement is entered into by and between TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER (“TTUHSC”) and **[insert LEGAL name of BA]** (“Business Associate”).

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and its regulations, Title 45, Parts 160, 162 and 164 of the Code of Federal Regulations, implement requirements to protect the security and confidentiality of health or health-related information; and

TTUHSC as a Covered Entity will provide Protected Health Information to a Business Associate, who on behalf of, or provides services to, TTUHSC as follows; and

WHEREAS, both parties desire to safeguard Protected Health Information under applicable privacy and security regulations to the maximum extent allowed by law;

NOW THEREFORE, to fulfill the purposes of this agreement, the parties agree as follows:

I. DEFINITIONS

- A. Business Associate. "Business Associate" shall mean **[insert LEGAL Name of BA]**.
- B. Covered Entity. "Covered Entity" shall mean TTUHSC. (The terms "Covered Entity" and "TTUHSC" may be used interchangeably.)
- C. Designated Record Set. "Designated Record Set" shall mean a group of records maintained by or for TTUHSC that is medical and billing records about individuals, information maintained by or for a health care provider, or is used, in whole or part, by TTUHSC to make decisions about individuals.
- D. Electronic Protected Health Information. "Electronic Protected Health Information" (hereinafter EPHI) shall have the same meaning as the term "electronic protected health information" is defined in 45 CFR 160.103.
- E. 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) and state law.
- F. Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164.
- G. Protected Health Information. "Protected Health Information" ("PHI") shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of TTUHSC.
- H. Required By Law. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.
- I. Secretary. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

- J. Security Incident. "Security Incident" shall have the same meaning as the term "security incident" is defined in 45 CFR 164.304 (i.e., the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system).
- K. Security Rule. "Security Rule" shall mean the HIPAA security regulations set forth in 45 CFR Parts 160, 162 and 164.
- L. Terms used in this Agreement, and not otherwise defined in this section, shall have the same meaning as those terms in 45 CFR 160.103, 160.202, 160.302, 164.304, 164.501, and 164.504.

II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

A. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, TTUHSC for the following purpose(s), and to the extent that such use or disclosure of PHI would not violate the Privacy Rule or applicable state law if done by TTUHSC:

[List and describe Purposes:]

OR

[To fulfill (title and start date of other agreement) between TTUHSC & Business Associate.]

B. 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 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 TTUHSC as permitted by 42 CFR 164.504(e)(2)(i)(B).

III. PRIVACY OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.
- B. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees that it will train all persons who act on its behalf, including employees, agents, and others in its workforce who have access to PHI, on policies and procedures with respect to the uses and disclosures of PHI so as to carry out their function within the Business Associate.

- C. Business Associate agrees to mitigate, to the extent practicable, any breach that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- D. Business Associate agrees to promptly report to the TTUHSC Institutional Privacy Officer, 806-743-4007 any use or disclosure of the PHI not provided for by this Agreement. The TTUHSC Institutional Privacy Officer will investigate the breach and take necessary action which may include a recommendation under Section VI, Termination. Such recommendation shall be directed through the TTUHSC Contracting or Purchasing Office for final action by the appropriate official.
- E. Business Associate agrees that it will require any agent, including a subcontractor, to whom it provides PHI received from TTUHSC, or created or received by Business Associate on behalf of TTUHSC, to agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to the PHI.
- F. If applicable, Business Associate agrees to provide access, at TTUHSC's request and in the time and manner designated by TTUHSC, to PHI in a Designated Record Set. Such access will be provided to TTUHSC or, as directed by TTUHSC, to an Individual in order to meet the requirements under 45 CFR 164.524.
- G. If applicable, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that TTUHSC directs or agrees to pursuant to 45 CFR 164.526 at the request of TTUHSC or an Individual, and in the time and manner designated by TTUHSC.
- H. Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of TTUHSC available to TTUHSC, or at the request of TTUHSC to the Secretary, in a time and manner designated by TTUHSC or the Secretary, for purposes of the Secretary determining TTUHSC's compliance with the Privacy Rule.
- I. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for TTUHSC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.
- J. Business Associate agrees to provide to TTUHSC or a designated Individual, in a time and a manner designated by TTUHSC, information collected in accordance with Section II of this Agreement, in order to permit TTUHSC to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

IV. SECURITY OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- A. Business Associate agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity. Business Associate shall document and keep such security measures current and available for inspection by the Covered Entity upon request. Business Associate certifies that its security measures shall be consistent with the Security Rule.
- B. Business Associate represents and warrants that it will require any agent, including a subcontractor, to whom it provides EPHI to protect such information by implementing reasonable and appropriate safeguards to protect such information which meet at least minimum standards required by the Security Rule.

- C. Business Associate agrees to promptly report to the Covered Entity and the TTUHSC Information Security Officer (806-743-2870) any and all security incident(s) of which it becomes aware and will indemnify and hold Covered Entity harmless from all liabilities, costs and damages arising out of or in any manner connected with the security incident(s). Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a security incident(s).
- D. Business Associate agrees to make its policies and procedures, and documentation required by the Security Rule available to the Secretary of the Department of Health and Human Services for purposes of determining the Covered Entity's compliance with the Security Rule.

V. ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS FOR BUSINESS ASSOCIATE

- A. If Business Associate conducts any Standard Transaction for, or on behalf of, the Covered Entity, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirements of 45 CFR Part 162.
- B. Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transaction for, or on behalf of, the Covered Entity that:
 - (1) would change the definition, data condition or use of a data element or segment in a standard;
 - (2) add any data elements or segments to the maximum defined data set;
 - (3) use any code or data elements that are either marked "not used" in the standards' implementation specification or are not in the standard's implementation specification(s);
or
 - (4) change the meaning or intent of the standard's implementation specification(s).

VI. OBLIGATIONS OF TTUHSC

- A. TTUHSC shall provide Business Associate with TTUHSC's Notice of Privacy Practices that TTUHSC produces in accordance with 45 CFR 164.520, as well as any changes to such notice to the extent that such limitation may affect the Business Associate's use or disclosure of PHI.
- B. TTUHSC 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.

VII. PERMISSIBLE REQUESTS BY TTUHSC

- A. TTUHSC shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule or applicable state law if done by TTUHSC.
- B. TTUHSC may request Business Associate to use or disclose PHI, if applicable and in accordance with the purpose of this agreement or an agreement for services between TTUHSC and Business Associate, for data aggregation or management and administrative activities of Business Associate.

VIII. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of **[Insert Effective Date]** and continue until **[insert date]**, and shall be automatically renewed for one year periods so as not to terminate until all of the PHI provided by TTUHSC to Business Associate, or created or received by Business Associate on behalf of TTUHSC, is destroyed or returned to TTUHSC, or, if it is

infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon TTUHSC's knowledge of a breach by Business Associate:

- (1) In coordination with Business Associate, TTUHSC may investigate the breach and provide an opportunity for Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by TTUHSC, TTUHSC may terminate this Agreement and any Agreement identified in Section II, A.
- (2) TTUHSC may immediately terminate this Agreement and any Agreement identified in Section II, A, if Business Associate has breached a material term of this Agreement and cure of the breach is not possible. Or,
- (3) If neither termination nor cure are feasible, TTUHSC shall report the violation to the Secretary.

C. Effect of Termination.

- (1) Except as provided in paragraph (b) (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from TTUHSC, or created or received by Business Associate on behalf of TTUHSC. 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 not feasible, Business Associate shall provide to TTUHSC notification of the conditions that make return or destruction infeasible. Upon mutual agreement in writing between TTUHSC and the Business Associate 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.

IX. DISCLAIMER

COVERED ENTITY MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES OR THAT ANY INFORMATION IN THE POSSESSION OF BUSINESS ASSOCIATE OR SUBJECT TO ITS CONTROL, OR TRANSMITTED OR RECEIVED BY THE BUSINESS ASSOCIATE, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PHI OR EPHI.

X. MISCELLANEOUS

- A. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or 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 TTUHSC to comply with the requirements of the Privacy Rule, Security Rule, and the Health Insurance Portability and Accountability Act, Public Law 104-191 and applicable state law. Any amendment shall be in writing and attached to this Agreement.
- C. Survival. The respective rights and obligations of Business Associate under Section VII, C, 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 TTUHSC to comply with the Privacy Rule.
- E. Assignment. Business Associate shall not have the right to assign or transfer its rights and obligations under this agreement to any third party without prior written consent of TTUHSC.
- F. Severability. If any term or provision of this agreement is held to be invalid for any reason, the invalidity of that section shall not affect the validity of any other section of this agreement, provided that any invalid provision is not material to the overall purpose and operation of this agreement, and the remaining provisions of this agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated.
- H. Binding Effect. This Agreement shall be binding upon, and shall extend to the benefit of, the parties hereto and their respective permitted successors and assigns.
- I. Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.
- J. Independent Contractor. Nothing in this agreement is intended nor shall be construed to create an employer/employee relationship between TTUHSC and Business Associate. The sole interest and responsibility of the parties is to perform services and obligations under this agreement in a competent, efficient, and satisfactory manner.
- K. Venue. This agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. Venue will be in accordance with the Texas Civil Practice & Remedies Code and any amendments thereto.

**[INSERT LEGAL NAME OF
BUSINESS ASSOCIATE]**

Signature

Printed Name

Title

Date: _____