

## **HIPAA BUSINESS ASSOCIATE AGREEMENT**

-between-

University of North Carolina at Asheville

-and-

Mission Health Systems

This Business Associate Agreement ("Agreement") is entered into between Mission Health Systems ("Covered Entity") and the University of North Carolina at Asheville ("University"), with an effective date of \_\_\_\_\_ ("Effective Date"). This Agreement sets out the responsibilities and obligations of University as a business associate of Covered Entity under the Health Insurance Portability and Accountability Act ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH Act").

### **RECITALS:**

- A. University provides the following services ("Services") to Covered Entity, including but not limited to the following, and as may change from time to time:
  - a. Merging of health care data from Covered Entity and multiple sources into a repository to produce useful analyses concerning the provision of health care services;
  - b. Providing of information to improve the health care operations of covered entities, so that those entities can identify ways to improve services and reduce costs;
  - c. Conducting of studies on behalf of the Covered Entity and/or other entities on mutually agreed upon topics(s) that can be generated by University within available resources.
- B. Covered Entity may make available and/or transfer to University Protected Health Information ("PHI") of Individuals in conjunction with Services, which University will Use or Disclose only in accordance with this Agreement.

### **AGREEMENT:**

University and Covered Entity agree to the terms and conditions of this Agreement in order to comply with the rules on handling of PHI under the HIPAA Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subpart E ("Privacy Standards"), the HIPAA Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C ("Security Standards"), and the HIPAA Breach

Notification Regulations, 45 C.F.R. Part 164, Subpart D (“Breach Notification Regulations”), all as amended from time to time.

## 1. DEFINITIONS

- a. *“Business Associate”* shall have the same meaning given in 45 CFR §160.103.
- b. *“Covered Entity”* shall have the same meaning given in 45 CFR §160.103.
- c. *“Breach”* means the unauthorized acquisition, access, use or disclosure of PHI without regard to whether such access, use, or disclosure compromises the security or privacy of the PHI such that the Breach poses a significant risk of financial, reputational, or other harm to the individual, as provided in 45 CFR §164.402.
- d. *“HIPAA” or Health Insurance Portability and Accountability Act of 1996* is the law under which the Privacy and Security Rules were promulgated.
- e. *“HITECH Act” or “Health Information Technology for Economic and Clinical Health Act”* are those provisions set forth in Title XIII of Public Law 111-5 as enacted on February 17, 2009.
- f. *“Individual”* shall have the same meaning as the term “individual” in 45 CFR §164.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- g. *“Protected Health Information” (PHI) and “Electronic Protected Health Information (ePHI)”* shall have the meaning given to such terms in 45 CFR §160.103, limited to the information created or received by Business Associate from, or on behalf of, Covered Entity.

## 2. USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION

- a. **Performance of Services:** University will Use or Disclose PHI only for those purposes necessary to perform Services, or as otherwise expressly permitted in this Agreement or required by law, and will not further Use or Disclose such PHI. To the extent University is to carry out the Covered Entity’s obligations under the Privacy Standards, University will comply with the requirements applicable to Covered Entity in the performance of those obligations.
- b. **Subcontractor Performance of Services:** University agrees that, when one of its subcontractors creates, maintains, transmits or receives PHI on behalf of University, University first will enter into a contract or confidentiality

agreement with such subcontractor that contains substantially the same terms, conditions, and restrictions on the Use and Disclosure of PHI as contained in this Agreement.

**c. University Management, Administration and Legal Responsibilities:**

University may Use or Disclose PHI for University's management and administration, or to carry out University's legal responsibilities. University may Disclose PHI received from Covered Entity to a third party for such purposes only if: (1) the Disclosure is required by law; or (2) University secures assurance from the receiving party that the receiving party will: (i) hold the PHI confidentially; (ii) Use or Disclose the PHI only as required by law or for the purposes for which it was Disclosed to the recipient; and (iii) notify the University of any known instances in which the confidentiality of the PHI has been breached.

**d. Data Aggregation:** University may Use PHI to perform data aggregation services as permitted by 45 CFR § 164.504(e)(2)(i)(B). University may also de-identify PHI in accordance with 45 C.F.R. 164.514.

**3. SAFEGUARDS FOR PROTECTED HEALTH INFORMATION**

**a. Adequate Safeguards:** University will implement and maintain appropriate safeguards to prevent any Use or Disclosure of PHI for purposes other than those permitted by this Agreement, including administrative, physical and technical safeguards to protect the confidentiality, integrity, and availability of any electronic protected health information ("ePHI"), if any, that University creates, receives, maintains, and transmits on behalf of Covered Entity.

**b. Compliance with HIPAA Security Standards:** University will comply with the requirements of the HIPAA Security Standards applicable to University.

**4. REPORTS OF IMPROPER USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION, SECURITY INCIDENTS AND BREACHES**

**a. Use or Disclosure Not Permitted by This Agreement:** University will report in writing to Covered Entity any Use or Disclosure of PHI for purposes other than those permitted by this Agreement within 10 (ten) business days of University's learning of such Use or Disclosure.

**b. Security Incidents:** University will report to Covered Entity any Security Incident of which University becomes aware within ten (10) business days of University learning of such Security Incident.

- c. **Breaches of Unsecured PHI:** University will report Breaches of Unsecured PHI, as defined in the Breach Notification Regulations, in compliance with 45 C.F.R. § 164.410. Specifically, University will report in writing to Covered Entity any Breach of Unsecured Protected Health Information within ten (10) business days of the date University learns of the incident giving rise to the Breach. University will provide such information to Covered Entity as required in the Breach Notification Regulations.

## 5. ACCESS TO PROTECTED HEALTH INFORMATION

- a. **Covered Entity Access:** Within ten (10) business days of receipt of a request by Covered Entity, University will make PHI held in a Designated Record Set, if any, available to Covered Entity in accordance with 45 C.F.R. § 164.524.
- b. **Individual Access:** If an Individual makes a request for access directly to University, University will within ten (10) business days forward such request in writing to Covered Entity. Covered Entity will be responsible for making all determinations regarding the grant or denial of an Individual's request for PHI and University will make no such determinations. Only Covered Entity will release PHI to an Individual pursuant to such a request.
- c. **Form and Format.** If University maintains PHI received from Covered Entity electronically in one or more Designated Record Sets and an Individual requests an electronic copy of such information from either University or Covered Entity, University will provide Covered Entity with an electronic copy of such PHI in the form and format requested by Covered Entity, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual.

## 6. AMENDMENT OF PROTECTED HEALTH INFORMATION

- a. **Covered Entity Request:** Within twenty (20) business days of receiving a request from Covered Entity to amend an Individual's PHI within an existing Designated Record Set maintained by University, University will either provide such Designated Record Set, if any, to Covered Entity for amendment or amend the Designated Record Set, if any, in accordance with Covered Entity's instructions.
- b. **Individual Request:** If an Individual makes a request for an amendment directly to University, University will within twenty (20) business days forward such request in writing to Covered Entity. Covered Entity will be

responsible for making all determinations regarding amendments to PHI and University will make no such determinations.

## **7. ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- a. Disclosure Records:** University will keep a record of any Disclosure of PHI that University makes to its subcontractors or other third parties, to enable Covered Entity to fulfill its obligations to provide an accounting of such Disclosures to Individuals in accordance with 45 C.F.R. § 164.528.
- b. Data Regarding Disclosures:** For each Disclosure for which it is required to keep a record under paragraph 7(a), University will record and maintain the following information: (1) the date of Disclosure; (2) the name of the entity or person who received the PHI and the address of such entity or person, if known; (3) a description of the PHI Disclosed; and (4) a brief statement of the purpose of the Disclosure.
- c. Provision to Covered Entity:** Within ten (10) business days of receiving a notice from Covered Entity, University will provide to Covered Entity its Disclosure records.

## **8. ACCESS TO BOOKS AND RECORDS**

University will make its internal practices, books and records on the Use and Disclosure of PHI available to the Secretary of the Department of Health and Human Services to the extent required for determining compliance with the Privacy Standards, Security Standards, or Breach Notification Regulations. Notwithstanding this provision, no attorney-client, accountant-client, work product protection or other legal privilege will be deemed waived by University or Covered Entity as a result of this Section.

## **9. TERMINATION**

Covered Entity or University may terminate this Agreement upon breach of a material term of this Agreement. The party providing notice of breach will provide the breaching party with written notice of the breach and afford the opportunity to cure the breach to the satisfaction of noticing party within 30 days of the date of such notice. If the breaching party fails to timely cure the breach, the noticing party may terminate this Agreement. In addition, either party may terminate the Agreement, subject to the requirements of Section 10, by providing the other party with sixty (60) days prior written notice of such termination.

## **10. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION**

Within forty-five (45) business days of termination of this Agreement, University will return to Covered Entity all PHI possessed by University. Alternatively, University may destroy all such PHI (or destroy part and return the remaining PHI) and provide written documentation of such destruction. If University believes that returning or destroying PHI at the termination of this Agreement is infeasible, it will extend all protections, limitations and restrictions of this Agreement to University's Use or Disclosure of PHI retained after termination of this Agreement, and its agreement will limit further Uses or Disclosures to those purposes that make the return or destruction of the PHI infeasible.

## **11. COMPLIANCE WITH HITECH ACT AND REGULATIONS**

University will comply with the requirements of Title XII, Subtitle D of the Health Information Technology for Economic and Clinical Health (HITECH) Act, codified at 42 U.S.C. §§ 17921-17954, which are applicable to University, and will comply with all regulations issued by the Department of Health and Human Services (HHS) to implement these referenced statutes, as of the date by which University is required to comply with such referenced statutes and HHS regulations.

## **12. STATE PROVISIONS**

- a. Nondiscrimination.** The parties agree to comply with all applicable state and federal laws, rules, regulations and executive orders governing equal employment opportunity, immigration and nondiscrimination, including the Americans with Disabilities Act.
- b. Conflict of Interest.** University's participation in this Agreement is subject to NCGS §138A, *et. seq.*, which provides that this Agreement may be cancelled if any person significantly involved in initiating, negotiating, securing, drafting or creating this Agreement on behalf of University is, at any time while this Agreement or any extension thereof is in effect, an employee or agent of the other party to this Agreement in any capacity or a consultant to any other party with respect to the subject matter of this Agreement.
- c. North Carolina Public Records Act.** Any other provision of this Agreement to the contrary notwithstanding, the parties acknowledge that University is a public institution, and as such is subject to the North Carolina Public Records Act, NCGS §132, *et seq.* To the extent not limited by HIPAA and NCGS §130A, *et seq.*, any provision regarding confidentiality is limited to the extent necessary to comply with the provisions of state law.

- d. **Failure of Internal / External to Provide Financial Support.** If University's performance under this Agreement depends upon the funding from internal and/or external entities, and if those entities fail to provide the funding necessary for performance, then University may provide written notice of this to Covered Entity and cancel this Agreement without further obligation of University. Appropriation and external sponsor funding is beyond the control of the University.

### 13. MISCELLANEOUS

- a. **Compliance with Laws:** The parties are required to comply with federal and state laws. If this Agreement must be amended to secure such compliance, the parties will meet in good faith to agree upon such amendments. If the parties cannot agree upon such amendments, then either party may terminate this Agreement upon ten (10) business days' written notice to the other party.
- b. **Construction of Terms:** The terms of this Agreement will be construed in light of any applicable interpretation or guidance on the Privacy Standards, Security Standards or Breach Notification Regulations issued by the Department of Health and Human Services.
- c. **No Third Party Beneficiaries:** Nothing in this Agreement will confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- d. **Notices:** All notices required under the Agreement will be given in writing and will be delivered by (1) personal service, (2) first class mail, or (3) messenger or courier. All notices shall be addressed and delivered to the contact designated in the signature block, or other address provided by the party from time to time in writing to the other party. Notices delivered by mail or any other authorized means will be deemed to have been given upon actual delivery.
- e. **Entire Agreement:** This Agreement constitutes the entire agreement between the parties with regard to the Privacy Standards, Security Standards and Breach Notification Regulations, there are no understandings or agreements relating to this Agreement that are not fully expressed in this Agreement and no change, waiver or discharge of obligations arising under this Agreement will be valid unless in writing and executed by the party against whom such change, waiver or discharge is sought to be enforced. Nothing in this Agreement shall be construed to apply to information received by University from sources other than Covered Entity or its business associates.

- g. Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original and when taken together shall constitute one agreement. Facsimile and electronic signatures shall be deemed to be original signatures for all purposes of this Agreement.

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**COVERED ENTITY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**UNIVERSITY**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

**Contacts for Notices under this Agreement:**

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Phone: \_\_\_\_\_

**With Copies to:**

\_\_\_\_\_

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