

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered between \_\_\_\_\_ ("Covered Entity" or "CE") and \_\_\_\_\_, ("Business Associate" or "BA"), collectively "the Parties," who agree as follows:

## Explanatory Statement

BA shall supply CE with the following services: \_\_\_\_\_ (e.g., automated claims management services) (the "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 Rules promulgated pursuant to the regulations issued in connection with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended, and the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, and its implementing regulations ("ARRA"). References in this Agreement to a section or subsection of title 42 of the United States Code are references to provisions of ARRA.

## 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, 162 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 \_\_\_\_\_.

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 160.103 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 federal privacy regulations at 45 CFR 160 and subparts A and E of 45 CFR 164.

5. *Security Rule.* "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR 160 and subparts A and C of 45 CFR 164.

6. *"PHI"* shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the Protected Health Information received from, or received or created on behalf of, CE by BA pursuant to the Agreement.

7. *Required By Law.* "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.103.

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 BA discloses PHI, including, without limitation, agents and subcontractors of BA.

## **2. Obligations and Activities of BA.**

With regard to its use and/or disclosure of PHI, BA agrees to:

- A. use and/or disclose PHI only as necessary to provide the Services as permitted or required by this B.A. Agreement and in compliance with each applicable requirement of the Privacy Rule and the Security Rule or as otherwise Required by Law;
- B. implement and use appropriate technical, physical and administrative safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this B.A. Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that it creates, maintains, or transmits on behalf of the CE; and (iii) comply with those requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 that are applicable to BA;
- C. promptly report to CE any use or disclosure of PHI of which it becomes aware that is not permitted by this B.A. Agreement and/or applicable law;
- D. without unreasonable delay and in no case later than sixty (60) calendar days after discovery, BA shall notify CE of a Breach of any Unsecured PHI all in accordance with 42 U.S.C. § 17932(b) and 45 CFR 164.410;
- E. require all of its subcontractors, agents and Subsequent Recipients that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to BA;
- F. make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining CE's compliance with the Privacy Rule and Security Rule;
- G. within thirty (30) days after receiving a written request from CE, make available information necessary for CE to make an accounting of disclosures of PHI about an Individual as provided in 45 C.F.R. § 164.528 and 42 U.S.C. 17935(c), and when directed by CE, make that accounting directly to the Individual;
- H. mitigate, to the extent practicable, any harmful effect that is known to BA of a use or disclosure of PHI by BA that is not permitted by the requirements of this B.A. Agreement;
- I. provide access (at the request of the CE, and in the time and manner designated by CE) to PHI in a Designated Record Set, to CE or, as directed by CE, to an Individual, in accordance with the requirements of 45 C.F.R. § 164.524;
- J. in the event that BA in connection with the Services uses or maintains an Electronic Health Record of information of or about an Individual, then the BA shall provide an electronic copy (at the request of CE, and in the time and manner designated by CE) of the PHI, to CE or, when and as directed by CE, to an Individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e);
- K. make available, within thirty (30) days of a written request by CE, PHI for amendment and incorporate any amendments to the PHI as directed by CE, all in accordance with 45 C.F.R. § 164.526;
- L. to comply with requests for restrictions on certain disclosures of PHI pursuant to 45 CFR 164.522 to which CE has agreed and of which BA is notified by CE;

- M. request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in compliance with 45 CFR 164.502(b), and comply with 45 CFR 514 regarding limited data sets;
- N. not directly or indirectly receive remuneration in exchange for any PHI in compliance with 42 U.S.C. § 17935(d); and
- O. not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).

### **3. Other Permitted Uses and Disclosures by BA.**

A. *Specific Purposes.* Except as otherwise limited in this Agreement, BA 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 Security Rule if done by CE.

#### *B. Specific Use and Disclosure Provisions.*

1. Except as otherwise limited in this Agreement, BA may disclose PHI for the proper management and administration of the BA or to carry out the legal responsibilities of the BA, provided that such disclosures are Required by Law, or BA 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 BA of any instances of which it is aware in which the confidentiality of the information has been breached.
2. Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation services to CE as permitted by 42 CFR 164.504(e)(2)(i)(B).

### **4. Obligations of CE.**

#### *A. Provisions for CE to Inform BA of Privacy and Security Practices and Restrictions*

1. CE shall provide BA 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 BA with any changes in, or revocation of, permission by any Individual or Representative to use or disclose PHI, if such changes affect BA's permitted or required uses or disclosures.
3. CE shall notify BA of any restrictions on to the use or disclosure of PHI or to which CE has agreed in accordance with 45 CFR 164.522.

B. *Permissible Requests by CE.* CE shall not request BA to use or disclose PHI in any manner that would not be permissible under then-current law or regulation.

### **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 the BA relationship between the Parties consistent with this Section.

B. *Termination for Cause.* Upon either party's knowledge of a material breach of this Agreement by the

other party, the non-breaching party may terminate the this Agreement and the Services Agreement upon thirty (30) days written notice or provide the other party written notice of such breach and terminate this Agreement and 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 UNCG.* UNCG 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, BA shall return or destroy all PHI received from CE, or created or received by BA on behalf of CE. This provision shall apply to PHI that is in the possession of subcontractors, agents and Subsequent Recipients of BA. BA shall retain no copies of the PHI.

2. In the event that BA determines that returning or destroying the PHI is infeasible, BA 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, BA 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.

**6. Miscellaneous.**

A. *Regulatory References.* A reference in this Agreement to a section of a statute regulation or 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 them to comply with the requirements of HIPAA, ARRA and their rules and regulations, including, but not limited to, the Privacy Rules. This Agreement may be amended only in a writing signed by both Parties.

C. *Survival.* The respective rights and obligations of BA 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 the parties 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 lawsuit between the parties arising from this Agreement shall be filed solely in a court of competent jurisdiction in Guilford County, North Carolina.

H. *Assignment.* No Party may assign its rights or duties hereunder without the written consent of the other Party.

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 HEREBY AGREE TO ALL TERMS AND CONDITIONS OF THIS AGREEMENT.**

The University of North Carolina at Greensboro \_\_\_\_\_  
(Company or individual name)

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

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

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

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

[Form updated 3.15.10 SS]