

BAYLOR COLLEGE OF MEDICINE - BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) supplements and is made a part of the _____ (“Contract”) dated _____ by and between **BAYLOR COLLEGE OF MEDICINE** (“Covered Entity”) and _____ (“Business Associate”), individually, a “Party,” and collectively, the “Parties.” If there is no separate Contract, this Agreement is between the Parties and effective as of the date of the last dated signature below (the “Effective Date”).

WHEREAS, Covered Entity wishes to disclose certain information to Business Associate under the terms of the Contract and this Agreement, some of which may constitute protected health information (“PHI”);

WHEREAS, Covered Entity and Business Associate intend to protect the privacy and provide the security of PHI disclosed to Business Associate under this Agreement in compliance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164, known collectively as the HIPAA Rules; and those Texas state laws and regulations regarding the privacy and security of PHI that are more stringent than the HIPAA Rules as defined by 45 C.F.R. §160.202; and

WHEREAS, if Covered Entity and Business Associate have previously entered into an Agreement implemented under the HIPAA Rules prior to implementation of the Health Information Technology for Economic and Clinical Health Act (“HITECH”) amending the HIPAA Rules, the Parties now wish to supersede such prior agreement with this Agreement in order to comply with the requirements of HIPAA.

NOW THEREFORE, in consideration of the mutual covenants and representations contained herein, the Parties agree as follows:

- A. **Definitions.** Except as otherwise defined in this Agreement, any and all terms in this Agreement shall have the definitions set forth in the HIPAA Rules. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended from time to time.

- B. **Stated Purpose.** The Parties hereby agree that, except as otherwise limited in this Agreement, Business Associate shall be permitted to use or disclose the minimum PHI provided by Covered Entity necessary to perform any function, activity, or service for or on behalf of Covered Entity as specified in the Contract and this Agreement, or, as required by law, provided that any such use or disclosure would not result in a HIPAA violation if done by Covered Entity. Business Associate may only use or disclose PHI as necessary to perform the services set forth in the Contract for the following purpose(s): _____

- C. **Obligations and Activities of Business Associate.** The provisions set forth in the HIPAA Rules shall apply to Business Associate in the same manner that such sections apply to Covered Entity. The HIPAA Rules made applicable to Covered Entity shall also be applicable to Business Associate and are hereby incorporated into the Contract and this Agreement. Business Associate covenants and agrees that it shall:
 - 1) Not create, receive, maintain, transmit, use or disclose PHI outside of the United States;

- 2) Not use or further disclose PHI other than as permitted or required under the Contract or by this Agreement, or as required by the HIPAA Rules;
- 3) Use appropriate administrative, physical, and technical safeguards to protect the integrity and availability of PHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity pursuant to the HIPAA Rules and to prevent use or disclosure of PHI other than as provided for by the Contract and this Agreement;
- 4) Report to Covered Entity any use or disclosure of PHI not provided for by the Contract and this Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 C.F.R. §164.410, and any security incident. Covered Entity considers “without unreasonable delay” to mean no later than thirty (30) days after discovery of a breach or security incident;
- 5) Make available PHI in a designated record set (“DRS”) to Covered Entity as necessary to satisfy Covered Entity’s obligations under 45 C.F.R. §164.524. If an individual contacts Business Associate to request access to his or her PHI that Business Associate received from Covered Entity, or was created or received by Business Associate on behalf of Covered Entity, Business Associate shall notify Covered Entity of the request within five (5) business days. It shall be Covered Entity’s responsibility to respond to the individual’s request;
- 6) To the extent Business Associate has PHI contained in a DRS, make any such information available to Covered Entity for amendment, at the written request of Covered Entity, in order for Covered Entity to meet the requirements of 45 C.F.R. 164.526;
- 7) To the extent Business Associate makes a disclosure that must be accounted for pursuant to 45 C.F.R. §164.528, maintain and report the requisite account information to Covered Entity upon Covered Entity’s written request for such information; however, if an individual contacts Business Associate to request an accounting of disclosures that Business Associate has made on behalf of Covered Entity, Business Associate shall notify Covered Entity of the request within five (5) business days and Covered Entity shall be responsible for responding to the individual’s request;
- 8) To the extent that Business Associate carries out Covered Entity’s obligations under 45 C.F.R. Part 164 Subpart E, comply with the Privacy Rule requirements that would apply to the Covered Entity;
- 9) Cooperate with and make its internal practices, books, and records available to the Secretary for purposes of determining Business Associate’s and Covered Entity’s compliance with the HIPAA Rules; however, if any information required of Business Associate under this section is in the exclusive possession of any other organization or person and the other organization or person fails or refuses to furnish the information, the Business Associate must so certify and set forth what efforts it has made to obtain the information;
- 10) Make its internal practices, books, and records relating to the use and disclosure of PHI from or on behalf of, or created for Covered Entity available to Covered Entity within ten (10) business days of a written request by Covered Entity and allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, contracts, policies and procedures relating to the use or disclosure of information pursuant to the Contract and this Agreement for the purpose of determining whether Business Associate has complied with the Agreement; provided, however, that (i) Business Associate and

Covered Entity mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon mutually agreed terms by the Parties, if requested by Business Associate;

- 11) Make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures, and disclose to its subcontractors or other third parties only the minimum PHI necessary to perform or fulfill a specific function required or permitted by the Contract or this Agreement;
 - 12) In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), ensure that any subcontractors or other third parties with which Business Associate does business that are provided PHI on behalf of Covered Entity agree, in writing, to implement reasonable and appropriate safeguards and adhere to the same restrictions, conditions, and obligations with respect to the use, disclosure, and protection of PHI that apply to Business Associate under this Agreement, and such written agreement shall identify Covered Entity as a third party beneficiary with rights of enforcement and indemnification from such subcontractors or other third parties in the event of any violation of the written agreement;
 - 13) Except where permitted pursuant to the HIPAA Rules, not receive remuneration, directly or indirectly, in exchange for PHI of any individual unless Covered Entity obtains from such individual a valid authorization that includes, in accordance with the HIPAA Rules, a specification of whether such PHI can be further exchanged for remuneration by the entity receiving PHI of that individual;
 - 14) Notify Covered Entity within ten (10) business days of learning that Business Associate has become the subject of an audit, compliance review, or compliance investigation by the Secretary, the Office for Civil Rights, or the Texas Attorney General regarding HIPAA Rules requirements. Business Associate shall promptly notify Covered Entity of the communications with the Secretary regarding PHI provided by or created by Covered Entity and shall provide Covered Entity with copies of any information Business Associate has made available to the Secretary under this provision; and
 - 15) Acknowledge that Business Associate has no ownership rights with respect to PHI and that Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to Business Associate.
- D. Permitted Uses and Disclosures by Business Associate. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity except for the specific uses and disclosures set forth below.
- 1) Business Associate may use or disclose the minimum PHI necessary for its proper management and administration and to fulfill any of its present or future legal responsibilities.
 - 2) Business Associate may use the minimum PHI necessary to provide data aggregation services relating to the health care operations of Covered Entity as provided for in 45 C.F.R. §164.501.
 - 3) Business Associate may disclose to third parties the minimum PHI necessary for the purpose of its proper management and administration or to fulfill any of its present or

future legal responsibilities provided that (i) the disclosures are required by law, as provided for in 45 C.F.R. §164.501, or (ii) Business Associate has received from the third party written assurances that the PHI will be held confidentially, that the PHI will only be used or further disclosed as required by law or for the purpose for which it was disclosed to the third party, that the third party will adhere to the same restrictions, conditions, and obligations with respect to the use, disclosure, and protection of PHI that apply to Business Associate under this Agreement and that the third party will notify Business Associate upon discovery or reasonable belief that the PHI has been subject to breach, as required under the HIPAA Rules.

4) Business Associate may use or disclose PHI as required by law.

E. Obligations of Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under 45 C.F.R. Part 164 Subpart E if done by Covered Entity. Covered Entity shall:

- 1) Notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity, under 45 C.F.R. §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI;
- 2) Notify Business Associate of any changes in, revocation of, permission by an individual, including authorization, to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI;
- 3) Notify Business Associate of any restrictions to the use and/or disclosure of PHI to which Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522 to the extent that such restriction may affect Business Associate's use or disclosure of PHI;
- 4) To the extent that Business Associate maintains a DRS, provide Business Associate with a copy of Covered Entity's policies and procedures related to an individual's right to request access to and a copy of PHI, request an amendment to PHI, request confidential communications of PHI, request an accounting of disclosures of PHI or an access report of accesses to an electronic DRS, revoke authorization for disclosure and/or use of PHI, and request restrictions of disclosures to a health plan concerning treatment for which the individual has paid out of pocket in full;
- 5) Notify Business Associate of any amendment to PHI to which Covered Entity has agreed that affects a DRS maintained by Business Associate; and
- 6) Notify individuals of breach of unsecured PHI when required by and in accordance with the HIPAA Rules.

F. Audits, Inspections, and Enforcement. Upon reasonable notice, Covered Entity may inspect the facilities, systems, books, and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect Business Associate's facilities, systems, and procedures does not relieve Business Associate of its responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Agreement.

G. Return or Destruction of PHI. Upon termination, cancellation, or expiration of this Agreement, Business Associate shall return to Covered Entity any and all PHI received from,

or created by, Business Associate on behalf of Covered Entity that is maintained by Business Associate in any form whatsoever, including any and all copies or replicas.

- 1) If returning the PHI to Covered Entity is not feasible, Business Associate shall destroy any and all PHI maintained by Business Associate in any form whatsoever, including all copies or replicas.
- 2) Should the return or destruction of the PHI be reasonably determined by Business Associate not to be feasible, the Parties agree that the terms of this Agreement shall extend to the PHI until otherwise indicated by Covered Entity, and any further use or disclosure of the PHI by Business Associate shall be limited to that purpose, which renders the return or destruction of the PHI infeasible.
- 3) Destruction of PHI must be in accordance with industry standards and processes for ensuring that reconstruction, re-use, and/or re-disclosure of PHI is prevented after destruction, using a method effective on the media in which the PHI is contained.
- 4) Business Associate shall complete such return or destruction as promptly as possible, but not later than thirty (30) days after the effective date of termination, cancellation, or expiration of this Agreement. Within such thirty (30) days, Business Associate shall certify in writing to Covered Entity that such return or destruction has been completed, will deliver to Covered Entity the identification of any PHI for which return or destruction is infeasible and, for that PHI, will certify that it will use or disclose such PHI only for those purposes that make return or destruction infeasible.
- 5) Transmit PHI Upon Termination. Business Associate will transmit the PHI to another Business Associate of Covered Entity at termination if Covered Entity notifies Business Associate of this requirement in writing.

H. Assistance in Litigation or Administrative Proceedings. Business Associate shall make itself, and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under this Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon claimed violation of the HIPAA Rules or other state or local laws relating to security and privacy of PHI, except where Business Associate or its subcontractor, employee, or agent is a named adverse party.

I. Term and Termination.

- 1) Term. This Agreement shall become effective on the Effective Date and shall expire when all of the PHI provided by Covered Entity to Business Associate is destroyed or returned to Covered Entity pursuant to Section G. The Parties agree that Sections B, C, D, and R of this Agreement shall survive the termination or expiration of this Agreement.
- 2) Termination. Notwithstanding any other provision under this Agreement and pursuant to federal law, this Agreement may be terminated by either Party without penalty should that Party, in its sole discretion; determine that the other Party has violated a material obligation under the HIPAA Rules or this Agreement which has not been cured in the timeframe specified in writing by the non-breaching Party.

- 3) Judicial or Administrative Proceedings. Either Party may terminate this Agreement, effective immediately, if (i) the other Party is named as a defendant in a civil or criminal proceeding for a violation of the HIPAA Rules or (ii) a finding or stipulation that such Party has violated any standard or requirement of the HIPAA Rules is made in any administrative or civil proceeding in which either Party has been joined.
- J. Notices. Any notice pertaining to this Agreement shall be given in writing and deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail shall be deemed given on the date of receipt or refusal of receipt. All notices shall be addressed to the appropriate Party as set forth on the signature page to this Agreement.
- K. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decision made by Business Associate regarding the safeguarding of PHI. Nothing in this Agreement is intended nor shall be construed to i) create an employer/employee relationship, a joint venture relationship, a partnership or other joint business relationship between Business Associate and Covered Entity or any of their affiliates, or ii) any fiduciary duty owed by one Party to the other or any of its affiliates.
- L. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties; provided, however, that if the HIPAA Rules or other applicable state laws are modified in any way impacting this Agreement, Covered Entity and Business Associate shall, prior to the compliance date for such modifications, amend this Agreement, as appropriate, to ensure compliance with such modifications.
- M. Choice of Law; Venue. This Agreement and the rights and obligations of the Parties shall be governed by and construed under the laws of the State of Texas without regard to applicable conflict of laws principles. Any suit, action or proceeding against either Party with respect to this Agreement shall be brought in the state or federal courts located in Harris County, Texas, and the other Party hereby submits to the non-exclusive jurisdiction of such courts for the purpose of any such suit, action or proceeding.
- N. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations, or disabilities whatsoever.
- O. Waiver. No provision of this Agreement may be waived by either Party except by a writing signed by an authorized representative of the Party making the waiver.
- P. Equitable Relief. Any disclosure or misappropriation of PHI by Business Associate in violation of this Agreement may cause Covered Entity irreparable harm, the amount of which may be difficult to ascertain. Business Associate therefore agrees that Covered Entity shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining Business Associate from any such further disclosure of breach, and for such other relief as Covered Entity shall deem appropriate. Such rights are in addition to any other remedies available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be

adequate, and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

- Q. Severability. The provisions of this Agreement shall be severable, and if any provision of this Agreement shall be held or declared to be illegal, invalid or unenforceable, the remainder of this Agreement shall continue in full force and effect as though such illegal, invalid or unenforceable provision had not been contained herein.
- R. Indemnification. Business Associate agrees to indemnify, defend, and hold harmless Covered Entity and its respective affiliates, subsidiaries, employees, directors, agents and assigns from and against all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, reasonable attorneys' fees, defense costs, and equitable relief), which may be asserted or for which it may now or hereafter become subject arising out of, resulting from, or attributable to: (i) any misrepresentation, breach of warranty, negligence, omission or non-fulfillment of any undertaking on the part of Business Associate, Business Associate's workforce, agents, assigns and/or subcontractors under this Agreement and (ii) any claims, demands, awards, judgments, actions, and proceedings made by any person, organization or entity arising out of or in any way connected with the Business Associate's workforce, agents', assigns' and/or subcontractors' performance under this Agreement.
- S. Conflict of Terms. If any conflict exists between the terms of the original Contract and this Agreement, the terms of this Agreement shall govern. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- T. Entire Agreement. This Agreement together with the Contract, all Exhibits, and amendments, if any, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties with respect to the subject matter and supersedes all previous written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the parties with respect to the subject matter. This Agreement may be executed in counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed and delivered on the Effective Date.

COVERED ENTITY	BUSINESS ASSOCIATE
Baylor College of Medicine	
By:	By:
Print name:	Print name:
Title:	Title:
Date of Signature:	Date of Signature:
Contact Information of Signatory:	Contact Information of Signatory:

Address for Compliance Notices: Baylor College of Medicine Chief Compliance Officer One Baylor Plaza MS BCM280 Houston, Texas 77030	Address for Compliance Notices: