**Internal University Use Only
Corresponding Financial Document No.:**

**(i.e., PVA, POT, CPS, etc.)**

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**BUSINESS ASSOCIATE AGREEMENT**

**between**

**Regents of the University of Minnesota**

**by and through its** **(“University”)**

**and**

**(“Business Associate”)**

 ***THIS BUSINESS ASSOCIATE AGREEMENT*** (“Agreement”) by and between University and Business Associate is effective as of the year and date written below (“Effective Date”) and shall remain in effect pursuant to the terms set forth in section 5.1 of this Agreement.

 **WHEREAS,** University is a Covered Entity pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 and its implementing regulations, all as may be amended from time to time (collectively “HIPAA”); and

**WHEREAS,** University and Business Associate have entered into a certain agreement whereby Business Associate is providing certain services to University (“Services Agreement”) which require Business Associate, on behalf of University, to create, receive, maintain or transmit protected health information, as that term is defined under HIPAA (“PHI”), or which otherwise require University to disclose PHI to Business Associate to perform its obligations pursuant to the Services Agreement; and

 **WHEREAS,** University and Business Associate intend to protect the privacy and provide for the security of PHI pursuant to the terms of this Agreement and in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law No. 111-5 and its implementing regulations, all as may be amended from time to time (collectively “HITECH”), and all other applicable laws.

**NOW, THEREFORE,** University and Business Associate agree as follows:

**1.** **Definitions.** Terms used but not otherwise defined in this Agreement shall have the meaning given the terms in HIPAA and HITECH at 45 CFR Parts 160-164.

**2. Permitted Uses and Disclosures of PHI.**

 2.1 Except as otherwise limited in this Agreement, Business Associate may create, receive, maintain, transmit, use or disclose PHI on behalf of, or to provide services to, University to perform its obligations pursuant to the Services Agreement, provided that such action: (a) would not violate HIPAA or HITECH if undertaken by University; and (b) would not violate any policies and procedures of the University, as communicated to and made available to Business Associate by University.

 2.2 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to University as permitted by 45 CFR § 164.504 (e)(2)(i)(B).

 2.3 Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

 2.4 Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

**3. Business Associate agrees that it shall:**

* 1. not use or disclose PHI other than as permitted by this Agreement or as Required By Law;
	2. use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of PHI other than as provided for in this Agreement;
	3. implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI it creates, receives, maintains, transmits, uses or discloses on behalf of University;
	4. 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 this Agreement;
	5. report to University any security incident involving the PHI described in this Agreement of which it becomes aware as soon as is reasonably possible under the circumstances, recognizing the need to minimize damage that could result from a delay in reporting. In any event, Business Associate shall report incidents no later than two (2) business days from the time when it becomes aware of the incident. For purposes of this Agreement, a “security incident” is defined as any use or disclosure of PHI of which Business Associate becomes aware that is not permitted by this Agreement and the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations. A loss of data is considered to be a security incident under this definition. This definition does not include incidents that occur on a daily basis, such as scans, “pings,” or unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate;
	6. report to University in writing any use or disclosure of PHI of which it becomes aware that is not permitted by this Agreement or Required By Law within ten (10) days of becoming aware of such use or disclosure;
	7. ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree in writing to the same restrictions, conditions and requirements that apply to Business Associate with respect to such PHI under this Agreement;
	8. make available PHI in a Designated Record Set to University or such third party as University may direct, at the request of University, and in the time and manner designated by University as necessary to satisfy University’s obligations under 45 C.F.R. § 164.524;
	9. make amendments to PHI in a Designated Record Set as directed or agreed to by University pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy University’s obligations under 45 CFR § 164.526;
	10. maintain and make available the information required to provide an accounting of disclosures to University or to such other party as University may direct, all as necessary to satisfy University’s obligations under 45 CFR § 164.528;
	11. to the extent Business Associate is to carry out one or more of University’s obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to University in the performance of such obligations;
	12. make available to the Secretary of the Department of Health and Human Services Business Associate’s internal practices, books and records for purposes of determining compliance with HIPAA and HITECH;
	13. use standard transactions and code sets for all transactions covered by 45 CFR **§**162; and
	14. in the event that Business Associate pursuant to its obligations under the Services Agreement uses or maintains an Electronic Health Record of information of or about an individual, then Business Associate shall provide an electronic copy (at the request of University, and in the time and manner designated by University) of the PHI to University or, when and as directed by University, to an individual or a third party designated by the individual, all in accordance with 42 U.S.C. § 17935(e).

**4.** **Notice by University**. University shall notify Business Associate of any limitations in its Notice of Privacy Practices, agreed upon restrictions to uses or disclosures of PHI and changes in or revocation of permission by any individual to use and disclose PHI, to the extent that Business Associate’s use or disclosure of PHI is affected.

**5. Term and Termination.**

 **5.1 Term.** The terms of this Agreement shall be effective as of the Effective Date and shall remain in effect until all PHI provided by University to Business Associate, or created or received by Business Associate on behalf of University is destroyed or returned to University. The protections of this Agreement shall apply until all PHI is returned or destroyed in accordance with section 5.3 of this Agreement.

 **5.2 Termination for Cause.** Upon University’s knowledge of a material breach of this Agreement by Business Associate, University shall provide an opportunity for Business Associate to cure the breach or end the violation. If efforts to cure the breach or end the violation are not successful within the time period specified by University, University shall terminate this Agreement. University shall immediately terminate this Agreement if University determines cure of the breach is not possible. If the breach is not cured, University shall be entitled to terminate the Services Agreement. If neither termination nor cure is feasible, University shall report the violation to the Secretary.

 **5.3** **Effect of Termination.**

 (a) Except as provided in paragraph (b) of this section, upon termination of this Agreement for whatever reason, Business Associate shall return or destroy all PHI received from University, or created or received by Business Associate on behalf of University, including PHI in the possession of its subcontractors or agents. No copies of the PHI shall be retained by Business Associate or its subcontractors or agents.

 (b) In the event that Business Associate determines that return or destruction of the PHI is infeasible because of other obligations or legal requirements, Business Associate shall notify University of the conditions that make return or destruction infeasible. Upon mutual agreement of University and Business Associate that return or destruction of PHI is infeasible, the protections of this Agreement shall apply until all PHI is returned or destroyed. Business Associate shall limit further uses or disclosures of PHI to the purposes that make return or destruction of the PHI infeasible.

**6. Amendments.** University and Business Associate agree to take such action as is necessary to amend this Agreement as necessary for University to comply with the requirements of HIPAA and HITECH. Any amendment shall be in writing and executed by authorized representatives of the parties.

**7.** **Penalties, Investigations and Cooperation.** In addition to any damages recoverable under this Agreement, the parties acknowledge that certain breaches or violations of this Agreement may result in litigation or investigations resulting in civil liability and/or criminal penalties pursued by federal or state governmental authorities of the United States. Each party shall cooperate in good faith in all respects with the other party in connection with any request by a federal or state government authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

**8. No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

**9. Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits University to comply with HIPAA and HITECH.

**10.** **Indemnification.** Each party will be responsible for its own acts and behavior and the results thereof. If any claim or cause of action is asserted against a party in connection with the performance of this Agreement, that party shall promptly notify the other party of the claim or cause of action. The parties shall reasonably cooperate with each other in the defense of claims and causes of action arising out of the performance of this Agreement. University’s liability is limited to the extent of its insurance coverage pursuant to the Minnesota State Tort Claims Act, Minn. Stat. § 3.736.

**11. No Agency.** Nothing express or implied in this Agreement or the Services Agreement is intended to create any agency relationship between University and Business Associate. Business Associate has no authority to act as an agent of University, and Business Associate shall not represent itself as acting as an agent of University.

**12. Prior Business Associate Agreements.** The parties agree that this Agreement replaces and supersedes any and all other Business Associate Agreements entered into between the parties prior to the Effective Date hereof.

**13. Survival.** The respective rights and obligations of Business Associate under section 5.3 of this Agreement shall survive the termination of this Agreement.

**14. Notices.** Any notices pertaining to this Agreement shall be given in writing and be deemed duly given when: (a) delivered by facsimile or electronic mail (provided such delivery is confirmed); (b) personally delivered to a party or a party's authorized representative as listed below; (c) sent by means of overnight carrier; or (d) sent by 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 as follows:

 If to University: University of Minnesota

 Attn: Chief Financial Officer

 Office of Academic Clinical Affairs

 420 Delaware Street SE, Mayo Mail Code 501

 Minneapolis, MN 55455

 Facsimile No.: 612-626-2111

 E-mail: privacy@umn.edu

 Phone: 612-624-7447

 If to Business Associate:

 Attn:

 Facsimile No.:

 E-Mail:

 **IN WITNESS WHEREOF**, the authorized representative(s) of the parties hereto execute this Agreement with an Effective Date of       as follows:

|  |  |
| --- | --- |
| By: Name:      Title:      Date:  | **Regents of the University of Minnesota**By: Name:      Title:      Date: By: Name: Lauren PoppTitle: Chief Health Information Compliance OfficerDate:  |

**NOTE: This Agreement should be executed by Business Associate before University begins the execution process.**