**UNIVERSITY OF CONNECTICUT HEALTH CENTER FINANCE CORPORATION (“UCHCFC”)**

**TERMS AND CONDITIONS**

1. STATUTORY AUTHORITY: UCHCFC is a statutorily-created public instrumentality and political subdivision of the State of Connecticut that was established to promote UConn Health’s efficient and effective provision of health care services. In performing its functions pursuant to Connecticut General Statutes §§ 10a-250 through 10a-263, UCHCFC enters into a variety of contracts on behalf of UConn Health’s clinical operations; accordingly, this agreement (“Agreement”) is entered into by UCHCFC on behalf of one or more clinical areas/affiliates of UConn Health.
2. INSTRUCTIONS TO CONTRACTOR:Accepting payment or beginning performance under this Agreement or any purchase order issued in connection with this Agreement shall be acceptance of these terms and conditions. Payment in connection with this Agreement will be remitted only to the contractor named in the Agreement (“Contractor”); payment will not be remitted to any third parties. Any terms or conditions proposed in Contractor’s acceptance, acknowledgment, invoice, or other form that add to, vary from, or conflict with the terms herein are hereby rejected. Time is of the essence in Contractor’s performance of this Agreement. The parties acknowledge that any web addresses listed herein are subject to change, and any new web addresses will be provided to Contractor upon request. Contractor may not ship goods or begin performance of services until it has received a duly issued purchase order against this Agreement for same. Contractor shall reference the relevant purchase order number(s) on all of its packing slips and invoices.
3. GOODS/SERVICES: For the purposes of this Agreement,“goods” shall mean any tangible goods, equipment, parts, supplies, software, manuals, or other items to be delivered, and “services” shall mean any services or other work to be performed, pursuant to this Agreement. The goods and services may also be referred to collectively herein as the “deliverables.” Unless otherwise more specifically set forth herein, this Agreement is neither a requirements contract nor an agreement to purchase any specific quantity of goods or services.
4. DELIVERY: Contractor shall deliver in accordance with the terms stated on the purchase order issued by UConn Health in connection with this Agreement; if no such terms are stated, delivery shall be DAP UConn Health West Loading Dock, 263 Farmington Avenue, Farmington, CT 06030 (Incoterms 2010), and Contractor shall bear risk of loss and insurance until delivery. Upon UConn Health’s request, Contractor shall utilize UConn Health’s inbound freight accounts for the shipment of goods pursuant to this Agreement.
5. PAYMENT: Payment terms are net 45 days from UConn Health’s receipt of Contractor’s invoice and are subject to Connecticut’s prompt payment statute (Conn. Gen. Stat. § 4a-71).Purchases under this Agreement are exempt from Connecticut sales/use tax and certain federal excise taxes. UConn Health’s IRS Tax Identification Number is 52-1725543.
6. CONTRACTOR QUALIFICATIONS AND STATUS:Contractor represents and warrants that it is fully experienced and properly qualified to provide the goods and/or services, and that it is, and will continue to be during the term of this Agreement, properly licensed, equipped, organized and financed. If requested by UConn Health, Contractor shall provide UConn Health with a completed Service Organization Control (“SOC”) Report and copies of any current licenses and registrations relevant to this Agreement.
7. Evaluation of Goods/Performance: Goods/services are subject to return/rejection if inferior to specifications or reasonable standard of quality. Goods/services shall meet or exceed any quality/performance specifications that UCHCFC/UConn Health provide to Contractor. UConn Health or its designee may conduct evaluations of Contractor’s performance. Contractor shall cooperate with UConn Health in any evaluations, and shall work with UConn Health to correct any deficiencies noted. The foregoing shall not relieve Contractor of any of its obligations nor be deemed a waiver of any other rights or remedies available to UCHCFC or UConn Health.
8. No Waiver of Implied Warranty:Contractor does not disclaim, exclude or modify the implied warranty of fitness for a particular purpose or the warranty of merchantability.
9. INTELLECTUAL PROPERTY: (a)All data provided to Contractor by UCHCFC/UConn Health or developed by Contractor pursuant to this Agreement (“UConn Health Data”) shall be treated as property of UConn Health unless UConn Health agrees in writing to the contrary. Upon expiration or termination of this Agreement, Contractor shall, within fifteen (15) days of UConn Health’s request, deliver to UConn Health all UConn Health Data in electronic, magnetic or other intangible form in a non-proprietary format (such as ASCII, .TXT or XML).

(b) If the use or sale of the deliverables described in this Agreement is enjoined by a court, or should Contractor refuse to deliver to avoid potential liability, Contractor shall either (1) secure for UConn Health the right to use or sell such goods; (2) modify or replace the deliverables with equivalent non-infringing goods; or (3) provide such other solution acceptable to UConn Health.

1. Termination:UCHCFC may terminate this Agreement without penalty, by providing Contractor with thirty (30) days written notice, whenever UCHCFC, in its sole discretion, determines that such termination is in the best interests of UCHCFC/UConn Health or the State of Connecticut.
2. Background Checks and Certifications:Contractor shall comply with applicable UConn Health policies and procedures regarding completion of background checks and/or certifications and shall pay all related fees. If UConn Health determines that the results of a background check on any person are unfavorable: (a) UCHCFC may require that person to immediately cease performance hereunder without penalty to UCHCFC or UConn Health, and (b) UCHCFC may still require the Contractor to complete its obligations hereunder. Contractor’s inability to complete its obligations hereunder due to an unfavorable background check will be considered a material breach of this Agreement.
3. PUBLICITY: Contractor shall not make or authorize any news release, advertisement, or other disclosure that uses UCHCFC’s or UConn Health’s name without UConn Health’s prior written consent.
4. Insurance: Contractor will carry sufficient insurance (liability and/or other) as applicable according to the nature of goods provided or work performed so as to “save harmless” UConn Health, UCHCFC and the State of Connecticut from any insurable cause whatsoever. If requested, Contractor will provide certificates of such insurance to UCHCFC or its designee.
5. Indemnification: Contractor shall indemnify and hold harmless UConn Health, UCHCFC, the State of Connecticut, and their agencies, departments, officers and employees, from and against all costs, claims, damages, or expenses, including reasonable attorney’s fees, arising from Contractor’s acts or omissions in connection with this Agreement or any defects in the deliverables.
6. Governing Law:This Agreement shall be construed in accordance with and governed by the laws of the State of Connecticut, without regard to its conflict of law principles. The parties hereto specifically disclaim the United Nations Convention on Contracts for the International Sale of Goods (“CISG”). For purposes of interpretation, any laws or regulations cited herein shall refer to the text of the actual statute or regulation in effect or as amended.
7. SOVEREIGN IMMUNITY AND CLAIMS AGAINST THE STATE: Nothing herein shall be construed as a modification, compromise or waiver of any rights or defenses of immunities provided by federal or state law, which UConn Health, UCHCFC, the State of Connecticut, and/or their agencies, departments, officers or employees may have had, now have or will have with respect to all matters arising out of this Agreement. For avoidance of doubt, neither UConn Health, nor UCHCFC, nor the State of Connecticut shall be required to indemnify Contractor or any other person or entity in connection herewith. Contractor agrees that the sole and exclusive means for the presentation of any claim against UConn Health, UCHCFC, the State of Connecticut, and/or their agencies, departments, officers or employees arising from this Agreement shall be in accordance with Chapter 53 of Connecticut General Statutes (Claims Against the State) and Contractor further agrees not to initiate any legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings. To the extent that this section conflicts with any other terms or provisions of this Agreement, this section shall govern.
8. EXECUTIVE ORDERS:This Agreement may be subject to the provisions of: Executive Order No. 49 of Governor Dannel P. Malloy, promulgated May 22, 2015, mandating disclosure of certain gifts to public employees and contributions to certain candidates for office; Executive Order No. 14 of Governor M. Jodi Rell, promulgated April 17th, 2006, concerning procurement of cleaning products and services; Executive Order No. Sixteen of Governor John G. Rowland promulgated August 4, 1999, concerning violence in the workplace; Executive Order No. Seventeen of Governor Thomas J. Meskill, promulgated February 15, 1973, concerning the listing of employment openings; and Executive Order No. Three of Governor Thomas J. Meskill, promulgated June 16, 1971, concerning labor employment practices. If Executive Order 14 and/or Executive Order 49 are applicable, they are deemed to be incorporated into and are made a part of this Agreement as if they had been fully set forth in it. UConn Health shall provide a copy of these Executive Orders to Contractor upon request.
9. PREVENTION OF FRAUD, WASTE AND ABUSE: (a) The parties to this Agreement specifically intend to comply with all applicable laws, rules and regulations, including (i) the federal anti-kickback statute (42 U.S.C. 1320a-7(b)) and related safe harbor regulations; and (ii) the Limitation on Certain Physician Referrals, also referred to as the “Stark Law” (42 U.S.C. 1395 (n)). Accordingly, no part of any consideration paid hereunder is a prohibited payment for the recommending or arranging for the referral of business or the ordering of items or services; nor are any payments intended to induce illegal referrals of business. In the event that any part of this Agreement is determined to violate federal, state, or local laws, rules, or regulations, the parties agree to negotiate in good faith revisions to the violative provision(s). If the parties are unable to agree to new or modified terms as required to bring the Agreement into compliance, either party may terminate this Agreement on fifteen (15) days written notice to the other party. Contractor represents and warrants that neither it nor any affiliate of it has entered into any direct or indirect relationship with a third party for the purpose of providing services hereunder wherein such third party is directly or indirectly compensated or receives remuneration of any kind on the basis of the volume or value of referrals that it makes to UConn Health for “designated health services” as defined by 42 CFR § 411.351. Contractor shall indemnify, defend and hold harmless UConn Health, UCHCFC, the State of Connecticut and their respective officers, directors, members, employees, and agents from and against any and all claims, liabilities, obligations, losses, judgments, fines, assessments, penalties, awards, statutory damages, costs or expenses (including, without limitation, reasonable attorneys' fees and expenses) arising out of Contractor’s breach of the representation and warranty made herein.

(b) UConn Health’s Corporate Compliance Program includes policies and procedures mandated by the federal Deficit Reduction Act (“DRA”) of 2005. In accordance with the DRA, any individual or entity that furnishes or authorizes the furnishing of Medicare/Medicaid healthcare items or services, or performs billing or coding functions on behalf of UConn Health, must comply with UConn Health’s Corporate Compliance Program policies and procedures. UConn Health Policy 2007-01, Prevention of Fraud, Waste, and Abuse, summarizes federal and Connecticut state laws aimed at fraud, waste, and abuse in health care programs, and can be reviewed at <http://health.uconn.edu/policies/>.

1. Debarment: Contractor represents and warrants that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any governmental entity in accordance with applicable federal or state laws, and Contractor shall disclose to UConn Health immediately in writing any debarment, suspension, proposal for debarment, voluntary exclusion or other event that makes it or its principals an “Ineligible Person” at any time during the term of this Agreement.An “Ineligible Person” is an individual or entity who: (i) is currently excluded, debarred, suspended, or otherwise ineligible to participate in the federal health care programs or infederal procurement or nonprocurement programs, or (ii) has been convicted of acriminal offense that falls within the ambit of 42 U.S.C. § 1320a-7(a), but has not yetbeen excluded, debarred, suspended, or otherwise declared ineligible.
2. OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION (“OSHA”): Contractor represents and warrants that it complies with all applicable OSHA regulations, and that in the last three (3) years it has not been cited for any willful or serious violations of any occupational safety and health act, standard, order or regulation.
3. Protection of Confidential Information: (a) HIPAA/HITECH Requirements. UCHCFC and UConn Health comply with all applicable laws and regulations, specifically including the privacy and security standards of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as amended and the Health Information Technology for Economic and Clinical Health Act (“HITECH”). UConn Health’s policies regarding HIPAA are located at <http://health.uconn.edu/policies/>. If this Agreement results in Contractor becoming a business associate (as that term is defined by HIPAA) of UConn Health, Contractor will sign a Business Associate Agreement. **[or]** The parties’ Business Associate Agreement is attached hereto as Exhibit \_\_\_.

(b) Other Requirements. Contractor, at its own expense, has a duty to and shall protect any and all confidential information which they come to possess or control pursuant to this Agreement, wherever and however stored or maintained, in a commercially reasonable manner in accordance with current industry standards. In performing services pursuant to this Agreement, Contractor shall comply with all applicable federal and state statutes and regulations, including, but not limited to the Gramm-Leach-Bliley Act and the Family Educational Rights and Privacy Act (“FERPA”) in the protection of all personally identifiable and other protected confidential information and non-directory student or patient data. UConn Health also requires that contractors have policies and procedures to prevent identity theft, and to report any “Red Flags” (as defined by Federal Trade Commission regulations) regarding identity theft to UConn Health promptly upon discovery.

1. AUDIT REQUIREMENTS:Contractor shall, upon request, provide UConn Health an annual financial audit for any expenditure of State of Connecticut or federal funds, which shall include management letters and audit recommendations. Contractor will comply with all applicable federal and state audit standards, which may require Contractor to give Contractor’s records related to this Agreement (or access to such records) to the State of Connecticut Auditors of Public Accounts.
2. FREEDOM OF INFORMATION/Public Records:This Agreement is disclosable under the Connecticut Freedom of Information Act (“FOIA”) and will not be treated as confidential information.Information and documents related to this Agreement may also be subject to FOIA. If Conn. Gen. Stat. § 1-218 is applicable to this Agreement, UCHCFC or its designee is entitled to receive a copy of records and files related to Contractor’s performance, and such records and files are subject to and may be disclosed pursuant to FOIA.
3. Whistleblower: If an officer, employee or appointing authority of a “large state contractor” (as defined by Conn. Gen. Stat. § 4-61dd) takes or threatens to take any personnel action against any employee of the contractor in retaliation for such employee's disclosure of information to any employee of the contracting state or quasi-public agency or the Auditors of Public Accounts or the Attorney General under the provisions of Conn. Gen. Stat. §4-61dd(a), the contractor shall be liable for a civil penalty of not more than $5,000 for each offense, up to a maximum of 20% of the value of the contract. Each violation shall be a separate and distinct offense and in the case of a continuing violation each calendar day's continuance of the violation shall be deemed to be a separate and distinct offense. The executive head of the State of Connecticut or quasi-public agency may request the Attorney General to bring a civil action in the superior court for the judicial district of Hartford to seek imposition and recovery of such civil penalty.
4. Tangible Personal Property:If Conn. Gen. Stat. § 12-411b (Collection of use tax by certain state contractors) applies to this Agreement, Contractor shall comply with the provisions of that statute and the Sales and Use Taxes Act (Chapter 219 of the Connecticut General Statutes).
5. ANTITRUST PROVISION: Contractor hereby irrevocably assigns to the State of Connecticut all rights, title and interest in and to all claims associated with this Agreement that Contractor now has or may or will have and that arise under the antitrust laws of the United States, 15 U.S.C. § 1, *et seq.* and the antitrust laws of the State of Connecticut, Connecticut General Statutes § 35-24, *et seq.*, including but not limited to any and all claims for overcharges*.* This assignment shall become valid and effective immediately upon the accrual of a claim without any further action or acknowledgment by the parties.
6. Non-Discrimination: UConn Health’s Affirmative Action, Non-Discrimination and Equal Opportunity Policy is set forth in Policy 2002-44, which can be reviewed at <http://health.uconn.edu/policies/>. UCHCFC and UConn Health will not knowingly do business with any person or entity that discriminates against members of any class protected under federal law or under sections 4a-60 or 4a-60a of the Connecticut General Statues, and Contractor agrees that it will not discriminate in violation of federal or Connecticut law.
7. Summary of State Ethics Laws:Pursuant to the requirements of Conn. Gen. Stat. § 1‑101qq, the summary of State of Connecticut ethics laws developed by the Office of State Ethics pursuant to Conn. Gen. Stat. § 1-81b is incorporated by reference into and made a part of these terms and conditions as if the summary was fully set forth herein.
8. Campaign Contribution Restrictions: For all State of Connecticut contracts as defined in Conn. Gen. Stat. § 9-612(g), the authorized signatory to this Agreement expressly acknowledges receipt of the Connecticut State Elections Enforcement Commission’s “Notice to Executive Branch State Contractors and Prospective State Contractors of Campaign Contribution and Solicitation Limitations,” and will inform its principals of the contents of the Notice, which is incorporated herein by reference and can be found at <http://www.ct.gov/seec/lib/seec/forms/contractor_reporting_/seec_form_11_notice_only.pdf>.
9. FORCE MAJEURE:If the performance of obligations under this Agreement is rendered impossible or hazardous or is otherwise prevented or impaired due to events beyond the reasonable control of the party asserting that such an event has occurred, including without limitation, accidents, Acts of God, riots, strikes, extraordinary weather conditions, epidemics, earthquakes, insurrection or war (“Force Majeure” events), the non-performing party shall give immediate written notice to the other party (the “performing party”) and each party’s obligations to the other hereunder shall be excused and neither party shall have any liability to the other hereunder during the existence of such event.
10. NOTICES: Any notices in connection with this Agreement shall be delivered by hand, by private overnight carrier (such as FedEx), or by U.S. mail, at the party addresses listed in this Agreement (or such other address(es) as may be designated by notice in writing). Notices to UCHCFC/UConn Health shall be sent to the attention of “Contracts Department, MC-4036.”
11. TRANSITION OBLIGATIONS:Upon termination, cancellation or expiration of this Agreement, Contractor will take reasonable steps to ensure a smooth transition as directed by UConn Health. UConn Health reserves the right to begin the process of transitioning to a different supplier thirty (30) to forty-five (45) days prior to the end of this Agreement (whether due to termination, cancellation or expiration), at no additional cost to UConn Health. Transition steps may include: (a) UConn Health bringing another supplier’s equipment on site for demonstration/testing; (b) Contractor’s attendance at meetings; (c) Contractor’s participation in a phased removal of Contractor’s goods; and (d) Contractor securely eliminating UConn Health electronic data from Contractor’s equipment (collectively, “Transition Work”). Contractor shall not charge for any Transition Work.
12. ASSIGNMENT: This Agreement shall not be assigned by either party without the express written consent of the other.
13. SURVIVAL: The rights and obligations of the parties which by their nature survive termination, cancellation, or completion of this Agreement, including, but not limited to, those relating to intellectual property, indemnification, hold harmless, audit and confidential information, shall remain in full force and effect.
14. SEVERABILITY: If any term or provision of this Agreement or its application is held to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforced to the fullest extent possible by law.
15. ENTIRE AGREEMENT: This Agreement and any changes, amendments or modifications (which shall not be valid unless reduced to writing and signed by authorized representatives of both parties) constitutes the entire agreement between UCHCFC and Contractor on the matters specifically addressed herein.

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**EXHIBIT \_\_\_**

**BUSINESS ASSOCIATE AGREEMENT**

* 1. The University of Connecticut Health Center and/or one or more of its component entities (including, but not limited to, the UConn School of Medicine, UConn School of Dental Medicine, John Dempsey Hospital, UConn Medical Group, UConn Health Partners, University Physicians, University Dentists and UConn Health Pharmacy Services Inc.) (collectively, “UConn Health”) is a “covered entity” as that term is defined in 45 C.F.R. § 160.103.
	2. If performance of this Agreement results in Contractor becoming a “business associate” of UConn Health under the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), Contractor must comply with all terms and conditions of this Business Associate Agreement section of the Agreement (this “BAA”). If Contractor is not UConn Health’s “business associate” under HIPAA, this BAA does not apply to Contractor.
	3. Contractor is required to safeguard the use, publication and disclosure of information about individuals that it creates, maintains, transmits or receives pursuant to this Agreement, in accordance with all applicable federal and state laws regarding confidentiality, including, without limitation, HIPAA and more specifically the Privacy and Security Rules at 45 C.F.R. part 160 and part 164, subparts A, C, and E; and
	4. Contractor and UConn Health agree to this BAA in order to comply with HIPAA, the requirements of Subtitle D of the Health Information Technology for Economic and Clinical Health Act (Pub. L. 111-5, §§ 13400 to 13423) (“HITECH Act”), and more specifically with the Privacy and Security Rules at 45 C.F.R. part 160 and part 164, subparts A, C, D and E (collectively referred to herein as the “HIPAA Standards”).
	5. Definitions.
	6. “BAA” refers to this Business Associate Agreement section of the Agreement, in its entirety. Where the term “Agreement” is used in this BAA, it means the Agreement in its entirety, including this BAA.
	7. “Business Associate,” as that term is defined in 45 C.F.R. § 160.103, shall mean Contractor.
	8. “Covered Entity” shall mean UConn Health and/or one or more of its component entities.
	9. “Designated Record Set” shall have the same meaning as the term “Designated record set” in 45 C.F.R. § 164.501.
	10. “Electronic Health Record” shall have the same meaning as the term is defined in section 13400 of the HITECH Act (42 U.S.C. § 17921(5)).
	11. “HIPAA Breach” shall have the same meaning as the term “Breach” in 45 C.F.R. § 164.402, and shall also include any use or disclosure of PHI that violates the HIPAA Standards.
	12. “Individual” shall have the same meaning as the term “Individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative as defined in 45 C.F.R. § 164.502(g).
	13. “More Stringent” shall have the same meaning as the term “More stringent” in 45 C.F.R. § 160.202.
	14. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
	15. “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected health information” in 45 C.F.R. § 160.103, and includes electronic PHI, as defined in 45 C.F.R. § 160.103, limited to information created, maintained, transmitted or received by Business Associate from or on behalf of Covered Entity or from another business associate of Covered Entity.
	16. “Required by Law” shall have the same meaning as the term “Required by law” in 45 C.F.R. § 164.103.
	17. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
	18. “Security Incident” shall have the same meaning as the term “Security incident” in 45 C.F.R. § 164.304.
	19. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. part 160 and part 164, subpart A and C.
	20. “Unsecured Protected Health Information” shall have the same meaning as the term as defined in 45 C.F.R. § 164.402.
	21. Obligations and Activities of Business Associate.
	22. Business Associate agrees not to use or disclose PHI other than as permitted or required by this Agreement or any other duly executed agreement with Covered Entity, or as Required by Law.
	23. Business Associate agrees to use and maintain appropriate safeguards and comply with applicable HIPAA Standards with respect to all PHI and to prevent use or disclosure of PHI other than as provided for in this Agreement and in accordance with HIPAA standards.
	24. Business Associate agrees to use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic protected health information that it creates, receives, maintains, or transmits on behalf of Covered Entity.
	25. Business Associate agrees to 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 this Agreement.
	26. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this Agreement, or any security incident of which it becomes aware.
	27. Business Associate agrees, in accordance with 45 C.F.R. §§ 502(e)(1)(ii) and 164.308(d)(2), if applicable, to ensure that any subcontractors that create, receive, maintain or transmit protected health information on behalf of Business Associate, agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.
	28. Business Associate agrees to provide access (including inspection, obtaining a copy or both), at the request of Covered Entity, and in the time and manner designated by Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524. Business Associate shall not charge any fees greater than the lesser of the amount charged by Covered Entity to an Individual for such records; the amount permitted by state law; or Business Associate’s actual cost of postage, labor and supplies for complying with the request.
	29. Business Associate agrees to make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity, and in the time and manner designated by Covered Entity.
	30. Business Associate agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created, maintained, transmitted or received by, Business Associate on behalf of Covered Entity, available to the Secretary in a time and manner agreed to by the Parties or designated by the Secretary, for purposes of the Secretary investigating or determining Covered Entity’s compliance with the HIPAA Standards.
	31. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
	32. Business Associate agrees to provide to Covered Entity, in a time and manner designated by Covered Entity, information collected in accordance with subsection 18.6.10 of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder. Business Associate agrees at Covered Entity’s direction to provide an accounting of disclosures of PHI directly to an Individual in accordance with 45 C.F.R. § 164.528 and section 13405 of the HITECH Act (42 U.S.C. § 17935) and any regulations promulgated thereunder.
	33. Business Associate agrees to comply with any state or federal law that is More Stringent than the Privacy Rule.
	34. Business Associate agrees to comply with the requirements of the HITECH Act relating to privacy and security that are applicable to Covered Entity and with the requirements of 45 C.F.R. §§ 164.504(e), 164.308, 164.310, 164.312, and 164.316.
	35. In the event that an Individual requests that Business Associate:
		1. restrict disclosures of PHI;
		2. provide an accounting of disclosures of the Individual’s PHI;
		3. provide a copy of the Individual’s PHI in an electronic health record; or
		4. amend PHI in the Individual’s designated record set,

Business Associate agrees to notify Covered Entity, in writing, within five (5) business days of the request.

* 1. Business Associate agrees that it shall not, and shall ensure that its subcontractors do not, directly or indirectly, receive any remuneration in exchange for PHI of an Individual without:
		1. the written approval of Covered Entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this Agreement; and
		2. the valid authorization of the Individual, except for the purposes provided under section 13405(d)(2) of the HITECH Act (42 U.S.C. § 17935(d)(2)) and in any accompanying regulations.
	2. Obligations in the Event of a HIPAA Breach.
		1. Business Associate agrees that, following the discovery by Business Associate or by a subcontractor of Business Associate of any use or disclosure not provided for by this Agreement, any HIPAA Breach of Unsecured Protected Health Information, or any Security Incident, it shall notify Covered Entity of such HIPAA Breach in accordance with 45 C.F.R. part 164, subpart D, and this BAA.
		2. Such notification shall be provided by Business Associate to Covered Entity without unreasonable delay, and in no case later than five (5) business days after the HIPAA Breach is discovered by Business Associate, or a subcontractor of Business Associate, except as otherwise instructed in writing by a law enforcement official pursuant to 45 C.F.R. § 164.412. A HIPAA Breach is considered discovered as of the first calendar day on which it is, or reasonably should have been, known to Business Associate or its subcontractor. The notification shall include the identification and last known address, phone number and email address of each Individual (or the next of kin of the Individual if the Individual is deceased) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such HIPAA Breach.
		3. Business Associate agrees to include in the notification to Covered Entity at least the following information:
			1. A description of what happened, including the date of the HIPAA Breach; the date of the discovery of the HIPAA Breach; the unauthorized person, if known, who used the PHI or to whom it was disclosed; and whether the PHI was actually acquired or viewed.
			2. A description of the types of Unsecured Protected Health Information that were involved in the HIPAA Breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
			3. The steps Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the HIPAA Breach.
			4. A detailed description of what Business Associate is doing or has done to investigate the HIPAA Breach, to mitigate losses, and to protect against any further HIPAA Breaches.
			5. Whether a law enforcement official has advised Business Associate, either verbally or in writing, that he or she has determined that notification or notice to Individuals or the posting required under 45 C.F.R. § 164.412 would impede a criminal investigation or cause damage to national security and, if so, contact information for said official.
		4. If directed by Covered Entity, Business Associate agrees to conduct a risk assessment using at least the information in subparagraphs 18.6.16.3.1-4 of this BAA and determine whether, in its opinion, there is a low probability that the PHI has been compromised. Such recommendation shall be transmitted to Covered Entity within ten (10) business days of Covered Entity’s direction to assess risk.
		5. If Covered Entity determines that there has been a HIPAA Breach by Business Associate or a subcontractor of Business Associate, Business Associate, if directed by Covered Entity, shall provide all notifications required by 45 C.F.R. §§ 164.404 and 45 C.F.R. 164.406.
		6. Business Associate agrees to provide appropriate staffing and have established procedures to ensure that individuals informed of a HIPAA Breach have the opportunity to ask questions and contact Business Associate for additional information regarding the HIPAA Breach. Such procedures shall include a toll-free telephone number, an e-mail address, a posting on its website and a postal address. Business Associate agrees to include in the notification of a HIPAA Breach by Business Associate to Covered Entity, a written description of the procedures that have been established to meet these requirements. Costs of such contact procedures will be borne by Business Associate.
		7. Business Associate agrees that, in the event of a HIPAA Breach, it has the burden to demonstrate that it has complied with all notifications requirements set forth above, including evidence demonstrating the necessity of a delay in notification to Covered Entity.
	3. Business Associate agrees that it shall obtain permission from Covered Entity prior to: (a) transmitting, or allowing the transmission of, any PHI to an offshore location; or (b) utilizing an offshore entity to perform services on behalf of Covered Entity. For the purposes of this section, “offshore” means any country that is not one of the fifty United States or one of the United States Territories (American Samoa, Guam, Northern Marianas, Puerto Rico, and Virgin Islands).
	4. Permitted Uses and Disclosure by Business Associate.
	5. General Use and Disclosure Provisions. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Agreement, provided that such use or disclosure would not violate the HIPAA Standards if done by Covered Entity.
	6. 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 Business Associate or to carry out the legal responsibilities of Business Associate.
		2. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of 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 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 Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).
	7. Obligations of Covered Entity.
	8. Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices of Covered Entity, in accordance with 45 C.F.R. § 164.520, or to the extent that such limitation may affect Business Associate’s use or disclosure of PHI.
	9. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual(s) to use or disclose PHI, to the extent that such changes may affect Business Associate’s use or disclosure of PHI.
	10. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of PHI.
	11. Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Standards if done by Covered Entity, except that Business Associate may use and disclose PHI for data aggregation, and management and administrative activities of Business Associate, as permitted under this Agreement.
	12. Term and Termination.
	13. Term. This BAA shall be effective as of the date the Agreement is effective and shall continue for as long as Business Associate has possession of or access to Covered Entity’s PHI. This BAA may be terminated only after the information collected in accordance with provision 18.6.10 of this BAA is provided to Covered Entity and all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, 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.
	14. Termination for Cause. Upon Covered Entity’s knowledge of a HIPAA Breach or of a violation of the terms of this BAA by Business Associate, Covered Entity shall either:
		1. Provide an opportunity for Business Associate to cure the HIPAA Breach or end the violation and terminate the Agreement if Business Associate does not cure the Breach or end the violation within the time specified by Covered Entity; or
		2. Immediately terminate the Agreement if Business Associate has violated a material term of this BAA and cure is not possible; or
		3. If neither termination nor cure is feasible, Covered Entity shall report the HIPAA Breach and/or violation to the Secretary.
	15. Effect of Termination.
		1. Upon termination of the Agreement for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity. Business Associate shall also provide the information collected in accordance with Section 18.6.10 of this BAA to Covered Entity within ten (10) business days of the notice of termination. This section shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate and its subcontractors shall retain no copies of the PHI, except as provided in Section 18.10.3.2 of this BAA.
		2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon documentation by Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of PHI to those purposes that make return or destruction infeasible, for as long as Business Associate maintains such PHI. Infeasibility of the return or destruction of PHI includes, but is not limited to, requirements under state or federal law that Business Associate maintains or preserves the PHI or copies thereof.
	16. Miscellaneous.
	17. Regulatory References. A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended.
	18. Amendment. The Parties agree to take such action as in necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104‑191.
	19. Survival. The respective rights and obligations of the Parties under this BAA shall survive the Termination, Cancellation or Expiration of this Agreement.
	20. Effect on Agreement. Except as specifically required to implement the purposes of this BAA, all other terms of the Agreement shall remain in force and effect.
	21. Construction. This BAA shall be construed as broadly as necessary to implement and comply with the Privacy Standard. Any ambiguity in this BAA shall be resolved in favor of a meaning that complies, and is consistent with, the Privacy Standard.
	22. Disclaimer. Covered Entity makes no warranty or representation that compliance with this BAA will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made, and actions taken, by Business Associate regarding the safeguarding, use and disclosure of PHI within its possession, custody or control.
	23. Indemnification. Business Associate shall indemnify and hold Covered Entity harmless from and against any and all claims, liabilities, judgments, fines, assessments, penalties, awards and any statutory damages that arise from the unauthorized use or disclosure of PHI by Business Associate or any of its officers, directors, employees, contractors, subcontractors or agents, or any third party to whom Business Associate has disclosed PHI contrary to this Agreement or applicable law, including, without limitation, attorney’s fees, expert witness fees, costs of investigation, litigation or dispute resolution, and costs awarded under HIPAA, the HITECH Act, or the HIPAA Standards.

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