

Attachment 1

BUSINESS ASSOCIATE AGREEMENT

1. WHEREAS, the University of Connecticut's Division of Public Safety (DPS) provides services as outlined in the attached *FY20 "One UConn" Memorandum of Understanding* between the University of Connecticut and UConn Health to or on behalf of UConn Health 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, and University Dentists (collectively, "UConn Health")); and
2. WHEREAS, UConn Health, a State of Connecticut agency, is a Covered Entity as that term is defined in 45 C.F.R. § 160.103 and DPS is a Business Associate of UConn Health under the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"); and
3. WHEREAS, DPS is required to safeguard the use, publication and disclosure of information about individuals that it creates, maintains, transmits or receives pursuant to this Business Associate Agreement (this "BAA") and any other contract or arrangement pursuant to which DPS provides services to or on behalf of UConn Health (referred to herein as an "underlying contract"), 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. NOW, THEREFORE, DPS and UConn Health agree to enter into 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.
 - 5.1 "Breach" shall have the same meaning as the term is defined in section 45 C.F.R. 164.402 and shall also include any use or disclosure of PHI that violates the HIPAA Standards.
 - 5.2 "Business Associate," as that term is defined in 45 C.F.R. § 160.103, shall mean DPS.
 - 5.3 "Covered Entity" shall mean UConn Health.
 - 5.4 "BAA" shall mean this Business Associate Agreement between UConn Health and DPS.
 - 5.5 "Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.
 - 5.6 "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)).
 - 5.7 "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(9).
 - 5.8 "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.
 - 5.9 "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.
 - 5.10 "Required by Law" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103.
 - 5.11 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
 - 5.12 "More stringent" shall have the same meaning as the term "more stringent" in 45 C.F.R. § 160.202.
 - 5.13 "Security Incident" shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.

- 5.14 "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.
 - 5.15 "Unsecured Protected Health Information" shall have the same meaning as the term as defined in 45 C.F.R. 164.402.
6. Obligations and Activities of Business Associate.
- 6.1 Business Associate agrees not to use or disclose PHI other than as permitted or required by this BAA or any underlying contract, or as Required by Law.
 - 6.2 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 BAA and in accordance with HIPAA standards.
 - 6.3 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.
 - 6.4 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 BAA.
 - 6.5 Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA or any underlying contract, or any security incident of which it becomes aware.
 - 6.6 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.
 - 6.7 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.
 - 6.B 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.
 - 6.9 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.
 - 6.10 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.
 - 6.11 Business Associate agrees to provide to Covered Entity, in a time and manner designated by Covered Entity, information collected in accordance with subsection 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.

- 6.12 Business Associate agrees to comply with any state or federal law that is more stringent than the Privacy Rule.
- 6.13 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.
- 6.14 In the event that an Individual requests that Business Associate:
 - 6.14.1 restrict disclosures of PHI;
 - 6.14.2 provide an accounting of disclosures of the Individual's PHI;
 - 6.14.3 provide a copy of the Individual's PHI in an electronic health record; or
 - 6.14.4 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.
- 6.15 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:
 - 6.15.1 the written approval of Covered Entity, unless receipt of remuneration in exchange for PHI is expressly authorized by this BAA or any underlying contract; and
 - 6.15.2 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.
- 6.16 Obligations in the Event of a Breach.
 - 6.16.1 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 BAA, any Breach of Unsecured Protected Health Information, or any Security Incident, it shall notify Covered Entity of such Breach in accordance with 45 C.F.R. part 164, subpart D, and this BAA.
 - 6.16.2 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 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 Breach is considered discovered as of the first 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 Breach.
 - 6.16.3 Business Associate agrees to include in the notification to Covered Entity at least the following information:
 - 6.16.3.1 A description of what happened, including the date of the Breach; the date of the discovery of the 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.
 - 6.16.3.2 A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 - 6.16.3.3 The steps Business Associate recommends that Individual(s) take to protect themselves from potential harm resulting from the Breach.

7.2.3 Except as otherwise limited in this BAA, 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).

8. Obligations of Covered Entity.

8.1 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.

8.2 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.

8.3 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.

9. 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 BAA.

10. Term and Termination.

10.1 Term. This BAA shall have the same effective date as the *FY20 "One UConn" Memorandum of Understanding* 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 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.

10.2 Termination for Cause. Upon Covered Entity's knowledge of a Breach or of a violation of the terms of this BAA by Business Associate, Covered Entity shall either:

10.2.1 Provide an opportunity for Business Associate to cure the Breach or end the violation and terminate Business Associate's provision of services as well as any applicable underlying contract if Business Associate does not cure the Breach or end the violation within the time specified by Covered Entity; or

10.2.2 Immediately terminate Business Associate's provision of services as well as any applicable underlying contract if Business Associate has violated a material term of this BAA and cure is not possible; or

10.2.3 If neither termination nor cure is feasible, Covered Entity shall report the Breach and/or violation to the Secretary.

10.3 Effect of Termination.

10.3.1 Upon termination of Business Associate's provision of services 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 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 10.3.2 of this BAA.

10.3.2 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.

11. Miscellaneous.

- 11.1 Regulatory References. A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended.
- 11.2 Amendment. The parties agree to take such action as is 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.
- 11.3 Survival. The respective rights and obligations of the parties under this BAA shall survive the termination of Business Associate's provision of services to or on behalf of Covered Entity and any underlying contract for such services.
- 11.4 Effect on Other Contract(s). Except as specifically required to implement the purposes of this BAA, all other terms of any other duly executed underlying contract shall remain in force and effect. The parties agree that this BAA is incorporated into any underlying contract under which DPS is a Business Associate of UConn Health.
- 11.5 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.
- 11.6 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.
- 11.7 [INTENTIONALLY BLANK]
- 11.8 Governing Law, Venue and Claims Against the State. Except to the extent preempted by federal law, this BAA and any disputes arising herefrom shall be governed by the laws of the State of Connecticut, without giving effect to its conflicts of laws principles. Business Associate agrees that the sole and exclusive means for the presentation of any claim against Covered Entity arising from this BAA shall be in accordance with Chapter 53 of the Connecticut General Statutes (Claims Against the State) and Business Associate further agrees not to initiate legal proceedings in any state or federal court in addition to, or in lieu of, said Chapter 53 proceedings. Notwithstanding and without waiving the foregoing, and without waiving or compromising the State of Connecticut's sovereign immunity or immunity provided under the Eleventh Amendment of the Constitution in any way, to the extent that any immunities provided by state or federal law do not bar an action against Covered Entity, and to the extent that these courts are courts of competent jurisdiction, for the purpose of venue, any permitted action against Covered Entity shall be brought only in the Judicial District of Hartford or the United States District Court for the District of Connecticut, and shall not be transferred to any other court. Business Associate waives any objection it may have to the laying of venue of any claims in any forum and further irrevocably submits to such jurisdiction in any suit, action or proceeding.
- 11.9 No Third Party Beneficiaries. No other person or entity shall have any rights, interest or claims hereunder or be entitled to any benefits under or on account of this BAA as a third-party beneficiary or otherwise.