

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement ("BA AGREEMENT") supplements and is made a part of the [INSERT Contract Title] Agreement(s) ("Agreement") entered into by and between the Regents of the University of California on behalf of UCR Health ("BUSINESS ASSOCIATE") and [INSERT Contracting Party Name] ("CONTRACTOR") and is effective as of [INSERT Effective Date] ("Effective Date").

RECITALS

- A. CONTRACTOR and BUSINESS ASSOCIATE desire to protect the privacy and provide for the security of Protected Health Information (as that term is defined herein) used by or disclosed to BUSINESS ASSOCIATE in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and 164, the "HIPAA Regulations"), and the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"). The purpose of this BA AGREEMENT is to satisfy certain standards and requirements of HIPAA, the HIPAA Regulations, including 45 CFR § 164.504(e), and the HITECH Act, including Subtitle D, part 1, each as in effect on the Effective Date.
- B. Pursuant to the Agreement, BUSINESS ASSOCIATE will provide services to CONTRACTOR, involving access to, receipt of, and the use or disclosure of Protected Health Information in the course of providing such services.
- C. CONTRACTOR wishes to disclose to BUSINESS ASSOCIATE certain information, some of which may constitute Protected Health Information.

Therefore, intending to be legally bound hereby, the parties agree as follows:

1. EFFECT OF AGREEMENT. To the extent that the terms of the Agreement (inclusive of all subsequent agreements between CONTRACTOR and BUSINESS ASSOCIATE) are inconsistent with the terms of this BA AGREEMENT, the terms of this BA AGREEMENT shall control, but only to the extent necessary to satisfy the purposes of this BA AGREEMENT.

2. DEFINITIONS.

2.1 "Breach," solely for purposes of Section 3.6 of this BA AGREEMENT (including its subsections), shall have the meaning given to such term in 45 CFR §164.402 (including all of its subsections) of the Regulations; with respect to all other uses of the word "breach" in this Agreement (e.g., section 4), the word has its ordinary contract meaning.

2.2 "Electronic Health Record" shall have the meaning given to such term in Section 13400(5) of the HITECH Act.

2.3 "Electronic PHI" shall have the meaning given to such term in 45 CFR § 160.103. but limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of

CONTRACTOR.

2.4 "Information System" shall have the meaning given to such term in 45 CFR § 164.304.

2.6 "Protected Health Information" ("PHI") shall have the meaning given to such term in 45 CFR § 160.103, but limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of CONTRACTOR.

2.7 "Required By Law" shall have the meaning given to such term in 45 C.F.R. § 164.103.

2.8 "Secretary" means the Secretary, Department of Health and Human Services, or his or her designee.

2.9 "Security Incident" shall have the meaning given to such term in 45 CFR § 164.304.

2.10 "Unsecured PHI" shall have the meaning given to such term in 45 CFR § 164.402, but limited to the information created or received by BUSINESS ASSOCIATE from or on behalf of CONTRACTOR.

2.11 "Encryption" shall have the meaning given to such term in 45 CFR § 164.304.

3. RESPONSIBILITIES OF BUSINESS ASSOCIATE.

3.1 Permitted Uses and Disclosures of PHI. BUSINESS ASSOCIATE may use or disclose PHI received by BUSINESS ASSOCIATE solely for the purpose of performing services, a function or activity for or on behalf of the CONTRACTOR in connection with the Agreement or any subsequent agreements between BUSINESS ASSOCIATE and the CONTRACTOR, or as required by law, provided that such use or disclosure would not violate Subpart E of 45 C.F.R. Part 164 if done by the CONTRACTOR, including the minimum necessary standard set forth at 45 C.F.R. § 164.502(b). To the extent the BUSINESS ASSOCIATE carries out one or more of the CONTRACTOR'S obligation(s) under Subpart E of 45 CFR Part 164, BUSINESS ASSOCIATE must comply with the requirements of Subpart E that apply to the CONTRACTOR in the performance of such obligation(s).

3.2 Nondisclosure of PHI. BUSINESS ASSOCIATE is not authorized and shall not use or further disclose CONTRACTOR's PHI other than as permitted or required under any agreement it has with CONTRACTOR, including this BA AGREEMENT, or as Required By Law.

3.3 Prohibition on Sale of PHI for Remuneration. BUSINESS ASSOCIATE will not sell PHI or receive any direct or indirect remuneration in exchange for PHI except as permitted by this BA AGREEMENT, the Agreement, or federal law.

3.4 Security Standards. BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BA AGREEMENT or the Agreement. In addition, BUSINESS ASSOCIATE agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity

and availability of CONTRACTOR's Electronic PHI information that it creates receives, maintains, or transmits on behalf of the CONTRACTOR, including BUSINESS ASSOCIATE'S compliance with the safeguards specified in Subpart C of 45 CFR Part 164 of the HIPAA Security Rule.

3.5 Notification of Breaches and Security Incidents.

3.5.1 Following BUSINESS ASSOCIATE's discovery of a Breach of Unsecured PHI, BUSINESS ASSOCIATE will notify the CONTRACTOR of such Breach in accordance with 45 C.F.R. §§ 164.410 and 164.412. BUSINESS ASSOCIATE agrees to report to the CONTRACTOR any Security Incident respecting Electronic PHI in BUSINESS ASSOCIATE's possession or control of which BUSINESS ASSOCIATE becomes aware.

3.5.2 BUSINESS ASSOCIATE agrees to report to the CONTRACTOR any Security Incident respecting Electronic PHI in BUSINESS ASSOCIATE's possession or control, of which BUSINESS ASSOCIATE becomes aware

3.6 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 the requirements of this BA AGREEMENT.

3.7 Regulatory Compliance. BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use, disclosure or security of PHI received from CONTRACTOR (or created or received by BUSINESS ASSOCIATE on behalf of CONTRACTOR) available to the Secretary, for purposes of the Secretary determining CONTRACTOR's compliance with the HIPAA Regulations.

3.8 Rights of Individuals. Individual's Request for an Accounting of Disclosures of PHI. Within a reasonable time after receipt of a written request, BUSINESS ASSOCIATE shall make available to CONTRACTOR, and, if authorized in writing by CONTRACTOR, to the subject of the PHI, such information maintained by BUSINESS ASSOCIATE or its agents as may be required for CONTRACTOR to respond to an Individual's request that the CONTRACTOR provide an accounting of disclosures under 45 CFR § 164.528.

3.9 BUSINESS ASSOCIATE agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by BUSINESS ASSOCIATE on behalf of the CONTRACTOR agrees to the same or similar restrictions and conditions that apply through this BA AGREEMENT to BUSINESS ASSOCIATE with respect to such information.

4. TERMINATION AND OTHER REMEDIES.

4.1 Termination for Cause.

4.1.1 By The CONTRACTOR. Upon the CONTRACTOR's knowledge of a material breach by BUSINESS ASSOCIATE of this BA AGREEMENT, the CONTRACTOR may:

4.1.1.1 Provide a reasonable opportunity for BUSINESS ASSOCIATE to cure the material breach or end the material violation and if BUSINESS ASSOCIATE does not cure the material breach or end the material violation within a reasonable time, the CONTRACTOR may terminate this BA AGREEMENT and the provisions of the Agreement that require or permit BUSINESS ASSOCIATE to access Protected Health Information;

4.1.1.2 If BUSINESS ASSOCIATE has breached a material term of this BA AGREEMENT and cure is not possible, immediately terminate this BA AGREEMENT and the provisions of the Agreement that require or permit BUSINESS ASSOCIATE to access Protected Health Information; or

4.1.1.3 If neither termination nor cure is feasible, report the violation to the Secretary.

4.1.2 By BUSINESS ASSOCIATE. Upon BUSINESS ASSOCIATE's knowledge of a material breach by the CONTRACTOR of this BA AGREEMENT, BUSINESS ASSOCIATE may:

4.1.2.1 Provide a reasonable opportunity for the CONTRACTOR to cure the material breach or end the material violation and if the CONTRACTOR does not cure the material breach or end the material violation within a reasonable time, BUSINESS ASSOCIATE may terminate this BA AGREEMENT and the provisions of the Agreement that require or permit BUSINESS ASSOCIATE to access Protected Health Information;

4.1.2.2 If the CONTRACTOR has breached a material term of this BA AGREEMENT and cure is not possible, immediately terminate this BA AGREEMENT and the provisions of the Agreement that require or permit BUSINESS ASSOCIATE to access Protected Health Information; or

4.1.2.3 If neither termination nor cure is feasible, report the violation to the Secretary.

4.2 Effect of Termination.

4.2.1 Except as provided in 4.2.2, upon termination of this BA AGREEMENT, for any reason, BUSINESS ASSOCIATE will return or destroy all PHI received from the CONTRACTOR, or created or received by BUSINESS ASSOCIATE on behalf of the CONTRACTOR. This provision applies to PHI that is in the possession of subcontractors or agents of BUSINESS ASSOCIATE. BUSINESS ASSOCIATE will retain no copies of the PHI.

4.2.2 In the event that BUSINESS ASSOCIATE determines that returning or destroying the PHI is infeasible, BUSINESS ASSOCIATE will provide to the CONTRACTOR notification of the conditions that make return or destruction infeasible. In such event, BUSINESS ASSOCIATE will extend the protections of this BA AGREEMENT to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as BUSINESS ASSOCIATE maintains such PHI.

5. CHANGES TO THIS BA AGREEMENT.

If the HIPAA Regulations are amended, including by way of anticipated regulations yet to be promulgated as provided in the HITECH Act, in a manner that would alter the obligations of BUSINESS ASSOCIATE as set forth in this BA AGREEMENT, then the parties agree in good faith to negotiate mutually acceptable changes to the terms set forth in this BA AGREEMENT.

6. MISCELLANEOUS PROVISIONS.

6.1 Independent Contractor. BUSINESS ASSOCIATE is an independent contractor and nothing in this BA AGREEMENT is intended to create or imply an agency or employment relationship between CONTRACTOR and BUSINESS ASSOCIATE.

6.2 No Third-Party Beneficiaries. Nothing express or implied in this BA AGREEMENT is intended to confer, nor shall anything herein confer, any rights, remedies, obligations or liabilities whatsoever upon any person or entity other than CONTRACTOR, BUSINESS ASSOCIATE and their respective agents, successors or assigns.

6.3 Number. Where the context admits, words in the plural include the singular, and the singular includes the plural.

6.4 Survival. The respective rights and obligations of BUSINESS ASSOCIATE and the CONTRACTOR under Section 4 of this BA AGREEMENT survive the termination of this BA AGREEMENT.

6.5 Notices. Any notices to be given to either party shall be made via U.S. Mail or express courier to the address given below and/or via facsimile to the facsimile telephone numbers listed below and or email, each with a confirmation of transmission.

If to CONTRACTOR: _____

If to BUSINESS ASSOCIATE: _____

Each party may change its address and that of its representative for notice by giving notice in the manner provided above.

IN WITNESS WHEREOF, the parties hereto have duly executed this BA AGREEMENT.

The Regents of The University
of California, on behalf of The University
of California, Riverside, UCR Health

[INSERT Contracting Party Name]

Signature

Deborah Deas, MD, MPH
Printed Name

Vice Chancellor, Health Sciences
Dean, School of Medicine

Date

Signature

Printed Name

Title

Date