

# BUSINESS ASSOCIATE AGREEMENT

## HealthARCH And “Covered Entity”

This Business Associate Agreement (“Agreement”) is entered into as of \_\_\_\_\_ (the “Effective Date”) by and between the University of Central Florida Board of Trustees, for the benefit of the College of Medicine d/b/a HealthARCH (“Business Associate”) and \_\_\_\_\_ dba \_\_\_\_\_ (“Covered Entity”). Business Associate and Covered Entity are collectively referred to as the “Parties”.

### 1. SCOPE

Business Associate acknowledges that covered entities are subject to various state and federal laws regarding the confidentiality and security of protected health information such state and Federal laws include but are not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) as amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH” Act), Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act (ARRA) of 2009 (Pub. L. 111-5) and all pertinent regulations (45 CFR Parts 160 and 164 and HITECH Omnibus Rule) issued by the U.S. Department of Health and Human Services (collectively “the HIPAA Rule”).

- a. Covered Entity and Business Associate are parties to one or more contracts involving access to protected health information of Covered Entity (“PHI” as hereafter defined), and may in the future, from time to time, enter into additional such contracts, written or oral (collectively, the “Underlying Contract(s)”).
- b. In the course of performing its obligations under the Underlying Contract(s), Business Associate may be provided with or have access to PHI. Business Associate agrees that any PHI received by it shall be held strictly confidential and shall not be used or disclosed except as specifically provided in this Agreement or as required by the Underlying Contract(s) or law, or as otherwise directed by Covered Entity in a separate writing. This Agreement shall govern Business Associate’s receipt, use, access, maintenance, transmission and creation of PHI under the Underlying Contract(s). This Agreement supplements and/or amends the Underlying Contract(s) as required to comply with the HIPAA Rule. Except as so supplemented and/or amended, the terms of the Underlying Contract(s) shall continue unchanged and shall apply with full force and effect.
- c. The Covered Entity and Business Associate have entered into a *Master Services Agreement* (“Underlying Contract”), under which Business Associate may receive, use, obtain, access, maintain, transmit or create PHI from or on behalf of the Covered Entity in the course of providing services pursuant to the Underlying Contract.
- d. The Covered Entity and Business Associate agree to enter into this Agreement and to comply with the requirements of the HIPAA Rule addressing confidentiality, security, privacy and the use and disclosure of individually identifiable health information created, received, accessed, maintained,

or transmitted by the Business Associate on behalf of the Covered Entity, during the performance of the Underlying Contract(s) and after termination of the contracts. The Parties agree that in the event of any conflict between provisions of the Underlying Contract(s) and this Agreement, the terms of this Agreement will control. Business Associate will appropriately safeguard PHI.

## **2. LIABILITY**

Business Associate acknowledges it is directly (i) liable under the HIPAA Rule and subject to civil and, in some cases, criminal penalties for making uses and disclosures of protected health information that are not authorized under this Agreement or required by law, and (ii) subject to civil penalties for failing to safeguard electronic protected health information in accordance with the HIPAA Security Rule.

## **3. DEFINITIONS**

Unless otherwise defined in this Agreement, terms used herein shall have the same meaning as those terms have under the HIPAA Rule.

Specific definitions:

- a. “Breach” shall have the same meaning as the term “breach” in 45 CFR § 164.402 and shall include unauthorized acquisition, access, use or disclosure of protected health information that compromises the security, confidentiality or privacy of the protected health information.
- b. “Business Associate” means a person or entity, other than a member of the workforce of a covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to protected health information. A “business associate” creates, receives, maintains, or transmits protected health information on behalf of a covered entity.
- c. “Disclosure” means the release, transfer, provision of, access to, or divulging in any manner of protected health information outside the entity holding the information.
- d. “Electronic Health Record” means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff.
- e. “Incident” means (i) a use or disclosure of protected health information that is not authorized by this Agreement or in writing by the Covered Entity; (ii) a complaint by an individual who is the subject of any protected health information created, received, maintained or transmitted by the Business Associate or Subcontractor on behalf of the Covered Entity or Business Associate, respectively; (iii) any Federal HIPAA-related compliance contact, (iv) any attempted, successful or unsuccessful, unauthorized access, modification, or destruction of protected health information, or interference with the operation of any information system that contains protected health information.

- f. “Individual” means the person who is the subject of protected health information or the personal representative of an Individual as defined and provided for under applicable provisions of the HIPAA Rule.
- g. “Protected Health Information (PHI)” means individually identifiable health information, including demographic information, where such information relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, that identifies the individual or provides a reasonable basis to believe that the information can be used to identify an individual.
- h. “Subcontractor” means a person or entity other than in the capacity of a member of the workforce of a business associate to which a business associate delegates a function, activity, or service to be performed by a business associate for a covered entity and who creates, receives, maintains or transmits protected health information on behalf of business associate.
- i. “Unsecured PHI” means Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of technology or methodology specified by the HHS Secretary in guidance issued under §13402(h)(2) of the HITECH Act.

#### **4. PERMITTED USES AND DISCLOSURES**

Business Associate may use and/or disclose PHI only as permitted or required by this Agreement or as otherwise required by law. Business Associate may disclose PHI to, and permit the use of PHI by, its employees, subcontractors, agents, or other representatives only to the extent directly related to and necessary for the performance of the Underlying Contract(s). Business Associate will not use or disclose PHI in a manner (i) inconsistent with Covered Entity’s obligations under the HIPAA Rule or Florida Law, or (ii) that would violate the HIPAA Rule if disclosed or used in such a manner by Covered Entity.

#### **5. SAFEGUARDING AND SECURITY OF PROTECTED HEALTH INFORMATION**

Business Associate understands that pursuant to the HITECH Act and HITECH Omnibus Rule, it is subject to the HIPAA Privacy and Security Rules in a similar manner as the rules apply to Covered Entity. As a result, Business Associate agrees to take all action necessary to comply with the relevant sections of the HIPAA Rule. Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent unauthorized use or disclosure of the PHI. Business Associate agrees to execute with any Subcontractors written contracts that are similar to the business associate agreements between Covered Entity and Business Associate. Each agreement in the business associate chain must be at least as stringent as the initial agreement between Covered Entity and Business Associate with respect to the permitted uses and disclosures of PHI by Subcontractor. Business Associate shall, and shall require Subcontractors to, implement administrative, physical and technical safeguards (including written policies and procedures) that appropriately protect the confidentiality, integrity and availability of electronic PHI that each creates, accesses, acquires, receives, maintains or transmits for or on behalf of Covered Entity as required by the Security Rule at 45 CFR §§ 164.308, 164.310, 164.312, and 164.316.

**6. REPORTING AND MITIGATING THE EFFECT OF UNAUTHORIZED USES AND DISCLOSURES**

If Business Associate has knowledge of any use or disclosure of PHI not provided for by this Agreement or of any Incident, including breaches of unsecured PHI, then Business Associate will immediately notify Covered Entity in accordance with 45 CFR 164.410. Business Associate will follow the following breach notification requirements:

- a. Business Associate shall immediately notify Covered Entity of suspicion of a breach or of a known potential breach. If Business Associate discovers a breach of Unsecured PHI, including breach as defined in Florida Statutes § 501.171, Business Associate shall notify Covered Entity as soon as practicable and in no case later than within 10 calendar days after discovery. For this purpose, discovery means the first day on which the breach is known to Business Associate or by exercising reasonable diligence would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a breach if the breach is known or by exercising reasonable diligence would have been known to any person, other than the person committing the breach, who is an employee, officer, subcontractor or other agent of Business Associate. The notification must include identification of each individual whose Unsecured PHI has been or is reasonably believed to have been accessed, acquired, used or disclosed during the breach and any other available information in Business Associate's possession which Covered Entity is required to include in the individual notice contemplated by 45 CFR § 164.404.
- b. Upon notification by Business Associate to Covered Entity of a breach of Unsecured PHI, the Business Associate shall assist Covered Entity in complying with the notification obligations as set forth under the HIPAA Rule, Florida law, and regulations as amended.
- c. Business Associate shall maintain a log of breaches of Unsecured PHI with respect to Covered Entity and shall submit the log to Covered Entity within 30 calendar days following the end of each calendar year so that Covered Entity may report breaches to the Secretary in accordance with 45 CFR § 164.408.
- d. Covered Entity Contact Information. To direct communications to Covered Entity's staff, the Business Associate shall initiate contact as indicated herein. The Covered Entity reserves the right to make changes to the contact information by giving written notice to the Business Associate.

Contact Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Company: \_\_\_\_\_  
Address: \_\_\_\_\_  
Phone: \_\_\_\_\_  
Fax: \_\_\_\_\_

**7. USE OR DISCLOSURE OF PROTECTED HEALTH INFORMATION BY SUBCONTRACTORS AND AGENTS OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to ensure that any agent or Subcontractor (i) to whom the Business Associate provides PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity, or (ii) who creates, receives, maintains or transmits PHI on behalf of the Business Associate, agrees to the same restrictions, conditions and requirements, in writing, applicable to the Business Associate in this Agreement. The Business Associate shall ensure, that any agent, including a Subcontractor to whom a Business Associate provides such information agrees to implement appropriate safeguards and security measures to protect PHI and report to the Covered Entity any Incident of which it becomes aware.

**8. COMPLIANCE WITH ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS**

If the Business Associate conducts any Standard Transaction for, or on behalf, of a Covered Entity, the Business Associate shall comply, and shall require any Subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of 45 CFR Part 162. The Business Associate shall not enter into, or permit its Subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transactions for or on behalf of Covered Entity that:

- a. Changes the definition, Health Information condition, or use of a Health Information element or segment in a Standard;
- b. Adds any Health Information elements or segments to the maximum defined Health Information Set;
- c. Uses any code or Health Information elements that are either marked “not used” in the Standard’s Implementation Specification(s) or are not in the Standard’s Implementation Specifications(s);
- d. Changes the meaning or intent of the Standard’s Implementations Specification(s).

**9. AMENDMENT OR CORRECTION TO PROTECTED HEALTH INFORMATION**

At the direction of the Covered Entity, the Business Associate agrees to amend or correct PHI held by the Business Associate which the Covered Entity has determined is part of the Covered Entity’s Designated Record Set, in accordance with 45 CFR 164.526.

**10. DOCUMENTATION OF DISCLOSURES OF PROTECTED HEALTH INFORMATION BY THE BUSINESS ASSOCIATE**

The Business Associate agrees to document and make available to the Covered Entity such disclosures of PHI to respond to a proper request by the Individual for an accounting of disclosures of PHI, in accordance with 45 CFR 164.528 and §13405(c) of the HITECH Act and pertinent regulations.

## **11. ACCESS TO PROTECTED HEALTH INFORMATION**

At the direction of the Covered Entity, the Business Associate agrees to make available to the Covered Entity or to an Individual, within three (3) business days following the request, PHI necessary to respond to Individual's request for access to PHI as required under 45 CFR 164.524 and the Information Blocking rule.

## **12. RESTRICTIONS ON DISCLOSURE**

The Business Associate shall comply with any restrictions on disclosures of PHI about which Business Associate is notified by Covered Entity.

## **13. INTERNAL PRACTICES**

The Business Associate agrees to make its internal practices, books, subcontracts, records and policies and procedures, relating to the use and disclosure of PHI available to the Covered Entity, or to the federal Secretary of Health and Human Services (HHS), the Office for Civil Rights ("OCR") or their agents, in a time and manner determined the HHS Secretary or designee, for purposes of determining compliance with the requirements of the HIPAA Rule.

## **14. TERM AND TERMINATION OF AGREEMENT**

- a. This Agreement shall be in effect for the duration of the Underlying Contract(s). However, the Business Associate agrees that if the Covered Entity determines that the Business Associate has materially breached any of its obligations under this Agreement, the Covered Entity may:
  - i. Exercise any of its rights to reports, access and inspection under this Agreement;
  - ii. Require the Business Associate within a 30 day period to cure the breach or end the violation;
  - iii. Terminate this Agreement and the Underlying Contract(s) if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity; or
  - iv. Immediately terminate this Agreement and the Underlying Contract(s) if the Business Associate has breached a material term of this Agreement and cure is not possible.
- b. Before exercising either (ii) or (iii) above, the Covered Entity will provide written notice of preliminary determination to the Business Associate describing the violation and the action the Covered Entity intends to take.

## **15. RETURN OR DESTRUCTION OF PROTECTED HEALTH INFORMATION**

Upon termination, cancellation, expiration or other conclusion of this Agreement, the Business Associate will:

- a. Return to the Covered Entity or, if return is not feasible, destroy all PHI and any compilation of PHI in any media or form. The Business Associate agrees to ensure that this provision also applies to PHI of the Covered Entity in possession of Subcontractors and agents of the Business Associate. The Business Associate agrees that any original record or copy of PHI in any media is included in

and covered by this provision, as well as all original or copies of PHI provided to Subcontractors or agents of the Business Associate. The Business Associate agrees to complete the return or destruction as promptly as possible, but not more than **thirty (30)** business days after the conclusion of this Agreement.

- b. If the Business Associate destroys PHI, it shall be done with the use of technology or methodology that renders the PHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by HHS in HHS guidance. Acceptable methods for destroying PHI include:
  - i. Paper, film, or other hard copy media: shredded or destroyed in order that PHI cannot be read or reconstructed; and
  - ii. Electronic media: cleared, purged or destroyed consistent with the standards of the National Institute of Standards and Technology (NIST).

Redaction is specifically excluded as a method of destruction of PHI, unless the information is properly redacted so as to be fully de-identified.

- c. If the Business Associate believes that the return or destruction of PHI is not feasible, the Business Associate shall provide written notification of the conditions that make return or destruction not feasible. The Business Associate shall extend the protections of this Agreement to PHI and prohibit other further uses or disclosures of the PHI of the Covered Entity without the express written authorization of the Covered Entity. Subsequent use or disclosure of any PHI subject to this provision will be limited to the use or disclosure that makes return or destruction not feasible. Obligations of Business Associate shall survive the termination of this Agreement.

## 16. COMPLIANCE WITH STATE LAW

In the event that Florida law is more stringent than a HIPAA standard, requirement or implementation specification, Business Associate's and Subcontractors' activities and obligations shall be governed by Florida law. For purposes of this paragraph, "more stringent" has the same meaning as the term "more stringent" in 45 CFR § 160.202.

## 17. MISCELLANEOUS PROVISIONS

- a. **Automatic Amendment.** This Agreement shall automatically incorporate any change or modification of applicable state or federal law as of the effective date of the change or modification. The Business Associate agrees to maintain compliance with all changes or modifications to applicable state or federal law.
- b. **Interpretation of Terms or Conditions of Agreement.** Any ambiguity in this Agreement shall be construed and resolved in favor of a meaning that permits the Covered Entity and Business Associate to comply with applicable state and federal law.
- c. **Survival.** All terms of this Agreement that by their language or nature would survive the termination or other conclusion of this Agreement shall survive.

- d. **HIPAA Requirements.** To the extent not incorporated or referenced in this Agreement, all other requirements applicable to business associates under the HIPAA Rule are incorporated by reference herein.
- e. **Beneficiaries.** This Agreement does not and is not intended to confer any rights or remedies upon any person other than Parties.
- f. **Superceding.** This Agreement will supercede any prior business associate agreement(s) entered into between the Parties.

**IN WITNESS WHEREOF**, the undersigned have caused this Agreement to be duly executed by their respective representatives.

**COVERED ENTITY**

Legal Name of Company:

**BUSINESS ASSOCIATE**

University of Central Florida Board of Trustees,  
for the benefit of the College of Medicine  
d/b/a HealthARCH

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: Jeanette C. Schreiber, JD, MSW

Title: \_\_\_\_\_

Title: Senior Associate Vice President for Health Affairs

Date: \_\_\_\_\_

Date: \_\_\_\_\_