

TRINITY UNIVERSITY
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (BA Agreement"), effective _____ ("Effective Date"), is entered into by and between _____ with an address at _____ (the "Business Associate") and Trinity University, agency and institution of higher education of the State of Texas, with an address at One Trinity Place, San Antonio, TX 78212 (the "Covered Entity") (each a "Party" and collectively the "Parties").

The Parties have an agreement under which the Business Associate may use and/or disclose Protected Health Information (PHI) to perform the following service(s):

Both Parties are committed to complying with the Health Insurance Portability and Accountability Act ("HIPAA" or "Privacy Rule" or "Security Rule" or "Electronic Transactions Rule") and its implementing regulations (45 C.F.R. Parts 160-164) and the requirements of the Health Information Technology for Economic and Clinical Health Act ("HITECH"), as incorporated in the American Recovery and Reinvestment Act of 2009 and the implementing regulations, as issued and amended by the Secretary, that are applicable to Business Associates. Capitalized terms used in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA and/or HITECH which definitions are hereby incorporated by reference.

This BA Agreement sets forth the terms and conditions pursuant to which protected health information ("PHI") that is created, received, maintained, or transmitted by the Business Associate from or on behalf of the Covered Entity, will be handled between the Business Associate and the Covered Entity and with third parties during the term of their Agreement and after its termination. The Parties agree as follows:

ARTICLE I
PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Agreement, Business Associate provides services

("Services") for the Covered Entity that involve the use and/or disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses of PHI necessary to perform its obligations under the Agreement, provided that such use would not violate the Privacy and Security Regulations if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. All other uses not authorized by this BA Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this BA Agreement only to its employees, subcontractors, and agents, in accordance with Section 2.1 (i), or as otherwise permitted by the terms of this BA Agreement including, but not limited to, Section 1.2(b) below.

1.2 Business Activities of the Business Associate. Unless otherwise limited herein, the Business Associate may:

- a. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- b. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to the Covered Entity, in writing, that (i) the disclosures are Required by Law, as that phrase is defined in 45 CFR § 164.103 or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR § 164.504(e)(4), and the third party agrees in writing to notify Business Associate of any instances of which it becomes aware that the confidentiality of the information has been breached.

ARTICLE II
RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- a. Use and/or disclose the PHI only as permitted or required by this BA Agreement or as otherwise required by law.
- b. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s).
- c. Use appropriate safeguards to protect the privacy and security of PHI, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information (E PHI), to prevent use or disclosure of PHI other than as provided for by this BA Agreement.
- d. Business Associate acknowledges its obligations under HIPAA and agrees to comply with any and all privacy and security provisions not otherwise specifically addressed in the BA Agreement made applicable to Business Associate by HIPAA on the applicable effective date and any subsequent regulations promulgated under HIPAA and/or guidance thereto.
- e. Business Associate acknowledges that (i) the foregoing requirements shall apply to Business Associate in the same manner that such requirements apply to Covered Entity, and (ii) Business Associate shall be liable under the civil and criminal enforcement provisions set forth at 42 USC 1320d-5 and 1320d-6, as amended from time to time, for failure to comply with the requirements and any applicable guidance subsequently issued by the Secretary of the Department of Health and Human Services ("Secretary") with respect to such requirements.
- f. Disclose to its subcontractors, agents, or other third parties, and request from the Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- g. Business Associate agrees that any E PHI it creates, receives, maintains, or transmits will be maintained or transmitted in a manner that is rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Public Law 111-5.
- h. Establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of Covered Entity's PHI.
- i. Require all of its subcontractors and agents that receive, use, or have access to PHI under this BA Agreement to agree, in a written Business Associate Agreement, to adhere to the same or more stringent restrictions and conditions on the use and/or disclosure of PHI that apply to the Business Associate pursuant to this BA Agreement.
- j. Make available all records, books, agreements, policies, and procedures relating to the use and/or disclosure of PHI to the Secretary for purposes of investigating or determining compliance with HIPAA.
- k. Upon prior written request, make available to the Covered Entity during normal business hours at Business Associate's offices all records, books, agreements, policies, and procedures relating to the use and/or disclosure of Covered Entity's PHI to determine the Business Associate's compliance with the terms of this BA Agreement.
- l. Business Associate agrees to document any and all disclosures of PHI that require an accounting of disclosures as would be required under 45 CFR § 164.528. Business Associate further agrees, within 30 days of receiving a written request from the Covered Entity, to provide to the Covered Entity such information as is requested by the Covered Entity to permit the Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR § 164.528.
- m. The Business Associate agrees to notify the Covered Entity within five (5) business days of discovery of:
 - (i) any use or disclosure of PHI not provided for by the BA Agreement of which it becomes aware,
 - (ii) any suspected breach of unsecured PHI as defined at 45 CFR § 164.402, and
 - (iii) any Security Incident of which it becomes aware.

Notification under this section shall include the identification of each Individual whose PHI has been, or is suspected to have been, accessed, acquired, or disclosed. Business Associate further agrees to make available in a reasonable time and manner any information needed by Covered Entity to respond to individual and governmental inquiries regarding any of the notifications received from Business Associate.

- n. Business Associate agrees to indemnify the Covered Entity for the reasonable cost to notify the individuals whose information was the subject of a breach and for any cost or damages, including attorney fees or fines, incurred by Covered Entity as a result of the breach by Business Associate, including but not limited to any identity theft related prevention or monitoring costs.

2.2 Responsibilities of the Covered Entity. With regard to the use and/or disclosure of PHI by the Business Associate, the Covered Entity hereby agrees:

- a. To inform the Business Associate of any changes in the notice of privacy practices ("Notice") that the Covered Entity provides to individuals pursuant to 45 CFR § 164.520 that affect Business Associate's use or disclosure of PHI, and provide to the Business Associate, upon request, a copy of the Notice currently in use.
- b. To inform the Business Associate of any changes in, or revocation of, the authorization provided to the Covered Entity by individuals pursuant to 45 CFR § 164.508, to the extent relevant to the Services being provided under the Staffing Agreement.
- c. To inform the Business Associate of any opt-outs exercised by any individual from fundraising activities of the Covered Entity pursuant to 45 CFR § 164.514(f), to the extent-relevant to the Services being provided under the Staffing Agreement.
- d. To notify the Business Associate, in writing and in a timely manner, of any arrangements permitted or required of the Covered Entity under 45 CFR § part 160 and 164 that may impact in any manner the use and/or disclosure of PHI required by the Business Associate under this BA Agreement, including, but not limited to, agreed upon restrictions regarding the use and/or disclosure of PHI as provided for in 45 CFR § 164.522.

2.3 Additional Responsibilities of the Business Associate with Respect to Handling of Designated Record Set. To the extent the Business Associate creates, receives, maintains, or transmits PHI in a Designated Record Set on behalf of Covered Entity, the Business Associate hereby agrees to do the following:

- a. Within fifteen (15) days of request of the Covered Entity, provide Covered Entity access to the PHI so that Covered Entity can respond to a request for access or request for copies of PHI by an individual who is the subject of the PHI, or his/her personal representative in accordance with 45 CFR § 164.524.
- b. Within thirty (30) days of request of the Covered Entity, provide Covered Entity with access to PHI in the custody of Business Associate so that Covered Entity can make any amendment(s) to the PHI in accordance with 45 CFR § 164.526.

3. REPRESENTATIONS AND WARRANTIES

- 3.1 Mutual Representations and Warranties of the Parties. Each Party represents and warrants to the other party that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed; it has the full power to enter into this BA Agreement and to perform its obligations hereunder; and that the performance by it of its obligations under this BA Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter, or bylaws.

4. TERM AND TERMINATION

- 4.1 Term. This BA Agreement shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 4. In addition, certain

provisions and requirements of this BA Agreement shall survive its expiration or other termination in accordance with Section 6.3 herein.

4.2 Termination by the Covered Entity. As provided for under 45 C.F.R. § 164.504(e)(2)(iii), the Covered Entity may immediately terminate this BA Agreement and any related agreements if the Covered Entity makes the determination that the Business Associate has breached a material term of this BA Agreement. Alternatively, the Covered Entity may choose to: (i) provide the Business Associate with thirty (30) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within thirty (30) days, Business Associate must cure said breach to the satisfaction of the Covered Entity within thirty (30) days. Failure to cure in the manner set forth in this paragraph is grounds for the immediate termination of this BA Agreement.

4.3 Termination by Business Associate. If the Business Associate makes the determination that a material condition of performance has changed under the Staffing Agreement or this BA Agreement, or that the Covered Entity has breached a material term of this BA Agreement, Business Associate may provide thirty (30) days notice of its intention to terminate this BA Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this BA Agreement so long as the Staffing Agreement is in effect.

4.4 Automatic Termination. This BA Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Staffing Agreement between the Parties.

4.5 Effect of Termination. Upon the event of termination pursuant to this Section 4, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(J) and retain no copies (which for purposes of this BA Agreement shall mean, without limitation, the destruction of all backup media), Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents, and upon request agrees to provide a certificate of destruction for all PHI stored or otherwise backed up by Business Associate or agents, subcontractors, or third parties providing storage or back up services on behalf of Business Associate. If the Business Associate determines that it is not feasible to return or destroy said PHI, the Business Associate will notify the Covered Entity In writing. Upon mutual agreement of the Parties that the return or destruction is not feasible, Business Associate further agrees, and will require its subcontractors and agents to agree, to extend any and all protections, limitations, and restrictions contained in this BA Agreement to the use and/or disclosure of any PHI retained after the termination of this BA Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

5. CONFIDENTIALITY

5.1 Confidentiality Obligations. In the course of performing under this BA Agreement, each Party may receive, be exposed to, or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables, and studies, whether written or oral, fixed in hard copy, or contained in any computer database or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other Party. For purposes of this BA Agreement, "Confidential information" shall not include PHI, the security of which is the subject of this BA Agreement and is provided for elsewhere. The Parties, including their employees, agents, or representatives, (i) shall not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this BA

Agreement, (it) only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under this BA Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either Party, (b) which is later publicly released by either Party in writing, (c) which is lawfully obtained from third parties without restriction, or (d) which can be shown to be previously known or developed by either Party independently of the other Party.

6. MISCELLANEOUS

- 6.1 Covered Entity. For purposes of this BA Agreement, Covered Entity shall include all entities covered by the notice of privacy practices (or privacy notice).
- 6.2 Business Associate. For purposes of this BA Agreement, Business Associate shall include the named Business Associate herein. However, in the event that the Business Associate is otherwise a hybrid entity under the Privacy Regulation, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.105(a), as the Business Associate for purposes of this BA Agreement.
- 6.3 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.5, and Section 2.1 solely with respect to PHI Business Associate retains in accordance with Sections 2.1 and 4.5 because it is not feasible to return or destroy such PHI, shall survive termination of this BA Agreement.
- 6.4 Amendments Waiver. This BA Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- 6.5 No Third Party Beneficiaries. Nothing expressed or implied in this BA Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- 6.6 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail, electronic mail, or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

If to Covered Entity, to:

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

- 6.7 Counterparts: Facsimiles and Electronic Copies. This BA Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile and electronic copies hereof shall be deemed to be originals.

6.8 Disputes. If any controversy, dispute, or claim arises between the Parties with respect to this BA Agreement, the Parties shall make good faith efforts to resolve such matters informally.

7. DEFINITIONS

7.1 Designated Record Set. Designated Record Set shall have the meaning set out in its definition at 45 CFR § 164.501 as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.2 Health Care Operations. Health Care Operations shall have the meaning set out in its definition at 45 CFR § 164.501 as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.3 Privacy Officer. Privacy Officer shall mean the privacy official referred to in 45 CFR §164.530 (a)(1) as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.4 Protected Health Information ("PHI"). Protected Health Information shall have the meaning as set out in its definition at 45 CFR § 160.103, as such provision is currently drafted and as it is subsequently updated, amended, or revised.

7.5 Security Incident. Security Incident shall have the meaning set out in its definition at 45 CFR § 164.304, as it is subsequently updated, amended, or revised. For purposes of notification to the Covered Entity, an attempted unauthorized access means any attempted unauthorized access that prompts Business Associate to investigate the attempt, or review or change its current security measures.

IN WITNESS WHEREOF, each of the undersigned has caused this BA Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

Business Associate

Trinity University

Signature

Signature

Name

Name

Title

Title

Date

Date