

HENRY FORD HEALTH SYSTEMS - Business Associate Agreement

This Business Associate Agreement (the "BAA") is made and entered into effective as of _____ [DATE], by and between HENRY FORD HEALTH SYSTEM ("Covered Entity"), and _____, ("Business Associate"). Covered Entity shall include any business unit, subsidiary or affiliate entity of Henry Ford Health System. In consideration of the mutual promises below, the parties agree as follows:

1. PREVIOUS AGREEMENTS

In the event Covered Entity and Business Associate have entered into a previous Business Associate Agreement or Addendum, this BAA shall supersede and replace such agreement or addendum in its entirety. This Agreement contains the entire understanding between the parties.

2. DEFINITIONS Terms used in this Agreement that are specifically defined in HIPAA and related HIPAA regulations (Public Law 104-91, as amended, and 45 CFR. Parts 160-164) and/or HITECH (found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005), shall have the same meaning as set forth in HIPAA and/or HITECH. A change to HIPAA and/or HITECH which modifies any defined HIPAA and/or HITECH term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

3. BUSINESS ASSOCIATE OBLIGATIONS

3.1 Business Associate agrees that it shall only use and disclose PHI in accordance with the terms of this Agreement or as is Required by Law.

3.2 Business Associate shall not use or disclose PHI except for the purpose of performing Business Associate's obligations to Covered Entity, as such use or disclosure is limited by this Agreement.

3.3 Business Associate shall not use or disclose PHI in any manner that would constitute a violation of the Privacy Rule. So long as such use or disclosure does not violate the Privacy Rule or this Agreement, Business Associate may use PHI: (a) as is necessary for the proper management and administration of Business Associate's organization, or (b) to carry out the legal responsibilities of Business Associate, as provided in 45 CFR § 164.504(e)(4).

3.4 Business Associate will ensure that any agents, including subcontractors, to whom it provides PHI agree in writing to the same restrictions and conditions, including but not limited to those relating to termination of the contract for improper disclosure, that apply to Business Associate with respect to such information. Further, Business Associate shall implement and maintain sanctions against agents and subcontractors, if any, that violate such restrictions and conditions. Business Associate shall terminate any agreement with an agent or subcontractor, if any, who fails to abide by such restrictions and obligations. Business Associate shall not provide any PHI to any third party or subcontract any Services without Covered Entity's express written permission.

3.5 Business Associate shall develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI or EPHI other than as provided by this Agreement, and to implement administrative, physical, and technical safeguards as required by sections 164.308, 164.310, 164.312 and 164.316 of title 45, Code of Federal Regulations and HITECH in order to protect the confidentiality, integrity, and availability of EPHI or PHI that Business Associate creates, receives, maintains, or transmits, to the same extent as if Business Associate were a Covered Entity. See HITECH § 13401.

3.6 The additional requirements of Title XIII of HITECH that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate and shall be and by this reference hereby incorporated into this Agreement.

3.7 Business Associate agrees to adopt the technology and methodology standards provided in any guidance issued by the Secretary pursuant to HITECH §§ 13401-13402.

3.8 Business Associate agrees to mitigate 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 Agreement and to promptly notify covered entity of any breach of unsecured PHI, as required under HITECH § 13402.

3.9 Business Associate shall report, in writing, to Covered Entity any use or disclosure of PHI that is not authorized by the Agreement. Such written notice shall be provided to Covered Entity within five (5) business days of becoming aware of such use or disclosure.

3.10 In the case of a breach of Unsecured PHI, Business Associate shall, following the discovery of a breach of such information, notify

Henry Ford Health System's Director of Information Security by electronic mail at hipasec@hfhs.org and by telephone at (248) 853-4900 within twenty-four (24) hours of any suspected or actual Security Incident or breach of security, intrusion or unauthorized use or disclosure of PHI or EPHI. The notice shall include the identification of each individual whose Unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during the breach.

3.11 Business Associate must obtain, prior to making any permitted disclosure as set forth in Section 3.2 of this Agreement, reasonable assurances from such third party that such PHI will be held secure and confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and that any breaches of confidentiality of the PHI which becomes known to such third party will be immediately reported to Business Associate. As part of obtaining this reasonable assurance, Business Associate agrees to enter into a BAA with each of its subcontractors pursuant to 45 CFR § 164.308(b)(1) and HITECH § 13401.

3.12 Business Associate shall make PHI in Designated Record Sets that are maintained by Business Associate or its agents or subcontractors, if any, available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy rule, including, but not limited to, 45 CFR § 164.524.

3.13 Within five (5) days of receipt of a request from Covered Entity for an amendment of PHI or a record about an Individual contained in a Designated Record Set, Business Associate or its agents or subcontractors, if any, shall make such PHI available to Covered Entity for amendment and shall incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.524. If an Individual requests an amendment of PHI directly from Business Associate or its agents or subcontractors, if any, Business Associate must notify and refer all such requests to Covered Entity in writing within five (5) days of the request. Any denial of amendment of PHI maintained by Business Associate or its agents or subcontractors, if any, shall be the responsibility of Covered Entity. Upon the approval of Covered Entity, Business Associate shall appropriately amend the PHI maintained by it, or any agents or subcontractors.

3.14 Within five (5) days of notice by Covered Entity of a request for an accounting of disclosures of PHI, Business Associate and any agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 CFR § 164.528. Except in the case of a direct request from an Individual for an accounting related to treatment payment or operations disclosures through an electronic health record, if the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, if any, Business Associate shall within five business (5) days of a request notify Covered Entity about such request. Covered Entity shall either inform Business Associate to provide such information directly to the Individual, or it shall request the information to be immediately forwarded to Covered Entity for compilation and distribution to such Individual. In the case of a direct request for an accounting from an Individual related to treatment, payment or operations disclosures through electronic health records, Business Associate shall provide such accounting to the Individual in accordance with HITECH § 13405(c). Business Associate shall not disclose any PHI unless such disclosure is Required by Law or is in accordance with this Agreement. Business Associate shall document such disclosures. Notwithstanding Section 5.4 of this Agreement, Business Associate and any agents or subcontractors shall continue to maintain the information required for purposes of complying with this Section 3.14 for a period of six (6) years after termination of the Agreement.

3.15 Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule. Business Associate shall notify Covered Entity regarding any PHI that Business Associate provides to the Secretary concurrently with providing such PHI to the Secretary, and upon request by Covered Entity, shall provide Covered Entity with a duplicate copy of such PHI.

3.16 Business Associate and its agents or subcontractors, if any, shall only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure. Business Associate agrees to comply with the Secretary's guidance on what constitutes minimum necessary. See HITECH § 13405.

3.17 Business Associate acknowledges that Business Associate has no ownership rights related to the PHI.

3.18 Business Associate and its subcontractors or agents, if any, shall retain any PHI throughout the term of the Agreement.

3.19 Unless greater coverage is required under any other agreement between Covered Entity and Business Associate for the provision of services related to this Agreement, Business Associate shall maintain or cause to be maintained the following insurance covering itself and each subcontractor or agent, if any, through whom Business Associate provides services; (i) a policy of commercial general liability and property damage insurance, and electronic data processing insurance, with limits of liability not less than two million dollars (\$2,000,000) per occurrence and two million dollars (\$2,000,000) annual aggregate and (ii) such other insurance or self insurance as shall be necessary to insure it against any claim or claims for damages arising under this Agreement or from violating Business Associate's own obligations under HIPAA and HITECH (see HITECH § 13404), including but not limited to, claims or the imposition of administrative penalties and fines on Business Associate or its subcontractors or agents, if any, arising from the loss, theft, or unauthorized use or disclosure of PHI. Such insurance coverage shall apply to all site(s) of Business Associate and to all services provided by Business Associate or any subcontractors or agents under this Agreement.

3.20 Within five (5) business days of a written request by Covered Entity, Business Associate and its agents or subcontractors, if any, shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with this Agreement and HITECH; provided, however, that (i) Business Associate and Covered Entity mutually agree in advance upon the scope, location and timing of such an inspection; and (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection.

3.21 Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(I)(B).

3.22 If Business Associate knows of a pattern of activity or practice by the Covered Entity that constitutes a material breach or violation of the Covered Entity's obligations under this Agreement, Business Associate will take reasonable steps to cure the breach or end the violation. If such steps are unsuccessful within a period of 30 days, Business Associate will either: 1) terminate this Agreement, if feasible; or 2) report the problem to the Secretary.

4. COVERED ENTITY OBLIGATIONS

4.1 Covered Entity shall provide Business Associate with the notice of any privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

4.2 Covered Entity shall provide Business Associate with notice of any changes to, revocation of, or permission by Individual to use or disclose PHI, if such changes affect Business Associate's permitted uses or disclosures, within a reasonable period of time after Covered Entity becomes aware of such changes to or revocation of permission.

4.3 Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to or must comply with in accordance with 45 CFR § 164.522 and HITECH § 13405(a).

4.4 Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

5. TERMINATION

5.1 The term of this Agreement shall be effective as of the date of this Agreement and continue until terminated by Covered Entity or any underlying Services Agreement expires or is terminated. Any provision related to the use, disclosure, access, or protection of EPHI or PHI or that by its terms should survive termination of this Agreement shall survive termination.

5.2 A breach by Business Associate, or its agents or subcontractors, if any, of any provision of this Agreement, as determined by Covered Entity, shall constitute a material breach of this Agreement. If Business Associate breaches this Agreement, Covered Entity may, in its discretion: (i) immediately terminate this Agreement; (ii) provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement if Business Associate does not promptly cure the breach or end the violation within a period not to exceed 30 days; or (iii) report the violation to the Secretary if neither termination nor cure is feasible.

5.3 Covered Entity may terminate this Agreement effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, HITECH, or other security or privacy laws or (ii) there is a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH, or other security or privacy laws in any administrative or civil proceeding in which Business Associate is involved.

5.4 Upon termination of this Agreement for any reason, Business Associate shall return, or at Covered Entity's request, destroy all PHI that Business Associate or its agents or subcontractors, if any, still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall explain to Covered Entity why conditions make the return or destruction of such PHI not feasible. If Covered Entity agrees that the return or destruction of PHI is not feasible, Business Associate shall retain the PHI, subject to all of the protections of this Agreement, and shall make no further use of such PHI. If Business Associate elects to destroy the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

5.5 If this Agreement is terminated for any reason, Covered Entity may also terminate the Services Agreement between the parties. This provision shall supersede any termination provision to the contrary which may be set forth in the Services Agreement.

6. MISCELLANEOUS

6.1 A reference in this Agreement to a section in the Privacy Rule means the Privacy Rule section as in effect or as amended.

6.2 Business Associate and any of its subcontractors and agents shall indemnify, hold harmless and defend Covered Entity and its employees, officers, directors, agents, and contractors from and against any and all claims, losses, liabilities, costs, attorneys' fees, and other expenses incurred as a result of or arising directly or indirectly out of or in connection with Business Associate's or its subcontractors' or agents' breach of this Agreement, violation of HIPAA, HITECH or other applicable law, or otherwise related to the acts or omissions of Business Associate or its subcontractors or agents.

6.3 Covered Entity may invoice Business Associate for costs associated with complying with HIPAA and/or HITECH requirements as the result of a breach or security incident resulting from the acts or omissions of Business Associate.

6.4 Business Associate may not subcontract any Services or assign any rights, nor may it delegate its duties, under this Agreement without the express written consent of Covered Entity.

6.5 Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate, or their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

6.6 If any modification to this Agreement is Required By Law or required by HITECH or any other federal or state law affecting this Agreement, or if Covered Entity reasonably concludes that an amendment to this Agreement is needed because of a change in federal or state law or changing industry standards, Covered Entity shall notify Business Associate of such proposed modification(s)

("Legally-Required Modifications"). Such Legally Required Modifications shall be deemed accepted by Business Associate and this Agreement so amended.

6.7 Business Associate will comply with all appropriate federal and state security and privacy laws, to the extent that such laws apply to Business Associate or are more protective of Individual privacy than are the HIPAA laws.

6.8 All notices which are required or permitted to be given pursuant to this Agreement shall be in writing and shall be sufficient in all respects if delivered personally, by electronic facsimile (with a confirmation by registered or certified mail placed in the mail no later than the following day), or by registered or certified mail, postage prepaid, addressed to a party as indicated below:

If to Business Associate:

If to Covered Entity, to:

[INSERT ADDRESS]

Corporate Legal Affairs
HENRY FORD HEALTH SYSTEM
1 Ford Place, Suite 4B
Detroit, MI 48202

Notice shall be deemed to have been given upon transmittal thereof as to communications which are personally delivered or transmitted by electronic facsimile and, as to communications made by United States mail, on the third (3rd) day after mailing. The above addresses may be changed by giving notice of such change in the manner provided above for giving notice.

6.9 If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions hereof shall continue in full force and effect.

6.10 This Agreement shall be governed by the laws of the state of Michigan without respect to its conflict of law principles and the parties agree that Wayne County, Michigan shall be the proper venue.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their respective duly authorized representatives as of the dates set forth below.

BUSINESS ASSOCIATE

COVERED ENTITY

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____