

## Business Associate Agreement

This Agreement, effective \_\_\_\_\_, (“Effective Date”) is entered into by **Oregon Health & Science University**, a public corporation (“OHSU”) and \_\_\_\_\_ (“Business Associate”).

- A.** OHSU is an academic medical center that owns and operates hospitals and clinics and engages in teaching, research and other related activities. OHSU Medical Group (“OHSUMG”) is a non-profit corporation that employs members of the OHSU faculty for the provision of clinical care.
- B.** Each of OHSU and OHSUMG is a “health care provider,” and OHSU, OHSUMG and their affiliates that are “health care providers” are “affiliated covered entities” (“ACE”) as those terms are defined in regulations promulgated pursuant to the Health Insurance Portability and Accountability Act (collectively, “HIPAA”).
- C.** Business Associate either (i) performs or assists in performance of certain functions or activities of OHSU, OHSUMG and/or the ACE involving the use or disclosure to Business Associate of Protected Health Information (defined below) or the creation or receipt of PHI by Business Associate; or (ii) provides legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to or for OHSU involving the use or disclosure of PHI to Business Associate.
- D.** HIPAA requires that OHSU (individually and/or on behalf of the ACE) obtain assurances from Business Associate that it will appropriately safeguard all PHI, and the parties intend to enter into this Agreement to comply with this requirement, to protect PHI, and to amend any agreement(s) between them as described below.
- E.** As used herein “Protected Health Information” or “PHI” means Individually Identifiable Health Information (defined below) disclosed to Business Associate by or on behalf of OHSU or the ACE (including disclosures from any other business associate of either of them), or created or received by Business Associate for or on behalf of either of them in the course of providing the services (“Services”) under the Agreements.

### **In consideration of the mutual promises herein, the parties agree as follows:**

- 1. Existing Agreements.** Business Associate has one or more written agreement(s) with OHSU, the performance of which involve the disclosure of PHI to Business Associate and/or the creation or receipt of PHI by Business Associate, (“Existing Agreement(s)”). The terms of this Agreement amend the Existing Agreement(s) and supersede any conflicting terms in any Existing Agreement(s).
- 2. Future Amendments.** OHSU and Business Associate agree to amend this Agreement as necessary to allow each party to comply with (i) the “Privacy Standards” (45 CFR parts 160 and 164), (ii) the Standards for Electronic Transactions (45 CFR parts 160 and 162), and (iii) the “Security Standards” (45 CFR parts 160, 162 and 164), (collectively, the “Standards”), as they are amended from time to time by the Secretary of the U.S. Department of Health and Human Services (“Secretary”).
- 3. Use and Disclosure of PHI.** Business Associate may use and disclose PHI only as required to perform its obligations under the Agreement(s), as permitted herein or as required by law, but shall not do so otherwise. Business Associate shall not, and shall ensure that its directors, officers, employees, contractors and agents do not, use or disclose PHI in any manner that would constitute a violation of the Privacy Standards if so used or disclosed by OHSU, except that Business Associate may use or disclose PHI (i) for its proper management and administration, (ii) to carry out its legal responsibilities, or (iii) to provide data aggregation services relating to the health care operations of OHSU if required or contemplated by the Agreement(s). All PHI (in whatever form) is the exclusive property of OHSU. Business Associate covenants that whenever Business Associate requests that OHSU disclose PHI to Business Associate, Business Associate shall limit such request to the minimum necessary to accomplish a purpose permitted under the respective Agreement(s).
- 4. Safeguards for PHI.** Business Associate agrees that it will use all appropriate safeguards to prevent the use or disclosure of PHI other than as permitted by this Agreement.
- 5. Reporting of Violation.** Business Associate shall immediately notify OHSU in writing of any use or disclosure of PHI in violation of this Agreement by Business Associate, its officers, directors, employees, contractors or agents, and shall mitigate, to the extent practicable, any harmful effect of such use or disclosure.
- 6. Business Associate’s Agreements with Third Parties.** Business Associate shall ensure that each of its agent(s) or subcontractor(s) with access to PHI, agrees to comply with the restrictions and conditions that apply to Business Associate hereunder with respect to such PHI.
- 7. PHI in a Designated Record Set.** If pursuant to the Agreement(s), Business Associate maintains “Records” (defined below) that are part of OHSU’s “Designated Record Set” (defined below), Business Associate agrees that:

**a.** Within 10 business days of a request from OHSU for access to an individual's PHI contained in the Designated Record Set, Business Associate will provide copies of such PHI to OHSU. Business Associate shall within 5 business days of any request directly from an individual for access to PHI, forward such request to OHSU. These obligations shall continue for so long as the PHI requested is maintained in the Designated Record Set.

**b.** Upon receipt of a request from OHSU for an amendment of an identified individual's PHI in a Designated Record Set, Business Associate shall incorporate such amendment of the PHI in the Designated Record Set as required by 45 CFR § 164.526. Within 5 days of Business Associate's receipt directly from an individual of a written request for amendment of PHI, Business Associate will forward that request to OHSU.

**8. Accounting of Disclosures.** Within 10 days of notice from OHSU of OHSU's receipt of a request for an accounting of disclosures, Business Associate shall make available to OHSU such information in Business Associate's possession as is required for OHSU to make the accounting required by 45 CFR § 164.528, including the following information: (i) the date of the disclosure occurring after April 14, 2003, but no more than 6 years prior to the request date; (ii) the name and (if known) the address of the party who received the PHI; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose and basis of the disclosure ("Disclosure Information"). If the request for accounting is delivered directly to Business Associate, then Business Associate shall within 5 business days of receipt forward such request to OHSU. Business Associate agrees to implement an appropriate record keeping process to enable it to comply with this Paragraph, and shall maintain a record of the Disclosure Information for a period of 6 years from the date of each disclosure. Business Associate may elect to satisfy its obligations under this Paragraph by entering the Disclosure Information directly into an OHSU web-based accounting-of-disclosures tool ("Accounting of Disclosures System"). To so elect, Business Associate must contact the OHSU Privacy Officer at (503-494-8849), obtain access to the Accounting of Disclosures System and thereafter input into that system, all information required under this Paragraph in conformance with instructions provided by OHSU.

**9. Books and Records.** Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining OHSU's compliance with HIPAA.

**10. Compliance with Security Regulations.** Beginning no later than April 21, 2005 and continuing thereafter, with respect to any electronic PHI that Business Associate creates, receives, maintains, or transmits, Business Associate shall:

**a.** Implement Administrative Safeguards, Physical Safeguards and Technical Safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the electronic PHI, as required by the Security Standards;

**b.** Ensure that any agent, including a subcontractor, to whom it provides such electronic PHI agrees to implement reasonable and appropriate safeguards to protect it;

**c.** Report to OHSU any attempted or successful unauthorized access, use, disclosure, modification, or destruction of electronic PHI, or interference with system operations in an Information System, of which it becomes aware; and

**d.** Authorize termination of the Existing Agreements, if OHSU determines that the Business Associate has violated a material term of this Agreement.

Capitalized terms used in this Paragraph 10 shall have the meaning given them in the Security Standards.

**11. Term; Termination.** The term of this Agreement shall commence on the Effective Date and, unless earlier terminated pursuant to this Paragraph, continue for so long as Business Associate performs any function described in Recital C above and/or any Existing Agreement(s) remain in effect. This Agreement and any or all of the Existing Agreement(s) may be terminated by OHSU upon 10 days notice to Business Associate if OHSU determines, in its sole discretion, that Business Associate has breached a material term of this Agreement and such breach is not cured within such 10 day period. Upon termination of an Agreement, if feasible, Business Associate shall either return or destroy all PHI received from OHSU or created or received by Business Associate on behalf of OHSU and maintained by Business Associate in any form pursuant thereto, retaining no copies. If return or destruction of the PHI is not feasible, Business Associate shall extend the protections of this Agreement to that PHI and limit uses or disclosures of that PHI solely to the purpose(s) that make return or destruction infeasible.

**12. Notices and/or Responses to Requests for Information.** Any notice contemplated hereunder and any response to a request for information from OHSU pursuant to paragraphs 7 or 8 above, shall be in writing, and shall be effective when personally delivered or within 3 business days of its deposit in the U.S. mail, postage prepaid and addressed to OHSU at the Office of Information and Privacy, 2525 S.W. 1<sup>st</sup> Avenue, Suite 140, Portland, OR 97201, to Business Associate at the address set out in the Agreement(s), or to such other address of a party hereto as set out in a notice from that party given in accordance with this paragraph.

**13. No Third Party Beneficiaries.** Nothing in this Agreement confers on any person other than OHSU, OHSUMG and Business Associate and their respective successors and assigns, any rights, remedies, obligations or liabilities.

**13. Indemnification.** Notwithstanding any limitation on damages contained in any Existing Agreement(s), Business Associate shall indemnify and hold OHSU harmless from and against any and all liability and costs, including attorneys fees, arising out of or related to a breach of this Agreement by Business Associate, its agents or subcontractors.

The parties have caused this Agreement to be executed by their respective, duly authorized representatives.

**OHSU: Oregon Health & Science University**

**Business Associate: [Name of Business Associate]**

By: \_\_\_\_\_

By: \_\_\_\_\_

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

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

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

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

## Schedule 1

### Definitions

**“Data Aggregation”** means the combining of PHI by Business Associate with individually identifiable health information received by Business Associate in its capacity as a business associate of another health care provider, health plan or health care clearinghouse, to permit data analyses that relate to the health care operations of those respective entities.

**“Designated Record Set”** means the group of records maintained by or for OHSU or the ACE that is (i) the medical records and billing records about individuals maintained by or for OHSU, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for an OHSU health plan, or (iii) used, in whole or in part, by or for OHSU or the OHCA to make decisions about individuals.

**“Individually Identifiable Health Information”** means any information, whether oral or recorded in any form or medium, (i) that is created or received by or on behalf of OHSU or the ACE; (ii) 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 past, present or future payment for the provision of health care to an individual; and (iii) identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual.

**“Record”** means any item, collection or grouping of information that includes individually identifiable health information (other than employment records, records covered by the Family Educational Right and Privacy Act (FERPA), or records described in 20 USC 1232g(a)(4)(B)(iv)) and is maintained, collected, used or disseminated by or for OHSU.