



HIPAA POLICY REGARDING BUSINESS ASSOCIATES

SCOPE OF POLICY:

What Units Are Covered by this Policy?: This policy applies to the following units of Emory University: School of Medicine; School of Nursing; School of Public Health; Yerkes National Primate Research Center; Emory University Student Health Service; Psychological Center; University Counseling Center; and Oxford College Student Health Service and Counseling Center. All of these units are collectively referred to in this policy as “Emory Covered Component.”

What Personnel Are Covered by this Policy?: This policy applies to all personnel in units covered by this policy including administrative personnel.

PURPOSE OF POLICY:

The purpose of this policy is to ensure (a) that all Emory University units within the Emory Covered Component identify Business Associates (defined below); (b) that appropriate contractual requirements are in place with Business Associates governing Business Associates’ use and disclosure of protected health information (PHI) that concerns a patient or a subject (the “Individual”); and (c) that appropriate actions are taken with regard to Business Associates that the Emory Covered Component determines to be in breach of such contractual requirements.

DEFINITIONS:

Health Information: Any information, whether oral or recorded in any form, that is created or received by the Emory Covered Component that relates to an Individual’s past, present or future physical or mental health, or to the payment for such health care.

Individually Identifiable Health Information: Health Information, including demographic information, that 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.

Protected Health Information (PHI): Individually Identifiable Health Information that is transmitted by electronic media, or transmitted or maintained in any other form or medium.

Covered Entity: A health plan; healthcare clearinghouse; or health care provider that transmits any health information in electronic form in connection with a transaction covered under the HIPAA regulations.

Covered Functions: Functions that the Emory Covered Component performs that make it a Covered Component/Covered Entity under HIPAA (i.e. health care provider, health care clearinghouse and/or health plan functions).

Business Associate: A person or organization (a) who performs for the Emory Covered Component, or assists in the performance of, managerial, administrative or consultative-type tasks that help the Emory Covered Component to carry out its Covered Functions; and (b) who requires access to PHI from the Emory Covered Component in order to perform the services that the Business Associate is performing for the Emory Covered Component. Examples of administrative, managerial or consultative-type services that a Business Associate might perform for the Emory Covered Component to assist the Emory Covered Component in performing its Covered Functions include claims processing, utilization review, quality assurance, billing benefit management, legal services, accounting, consulting, data aggregation, management administration, accreditation, or financial services.

POLICY:

Each unit of the Emory Covered Component will identify those persons, companies and other entities that work for it as a Business Associate and obtain from these persons and entities a contractual agreement that they will handle PHI in accordance with applicable requirements of the HIPAA Privacy Regulations. All Business Associates and their agents and subcontractors will be required to handle PHI in accordance with the Privacy Regulations.

If the Emory Covered Component determines that a Business Associate (or its agents or subcontractors) have violated or breached their obligation to handle the PHI in accordance with HIPAA regulations, then the Emory Covered Component will take reasonable steps to ensure that the violation or breach is cured. If the Business Associate cannot or will not remedy the breach, then the Emory Covered Component: (a) will terminate its contract with the Business Associate, if feasible; or (b) if termination is not feasible, then report the problem to the Office of Research Compliance, which, in turn, will report the problem to the Secretary of the U.S. Department of Health and Human Services.

PROCESS:

1. **Identify Business Associates** – Each unit of the Emory Covered Component will examine all relationships that it has with vendors, consultants, etc. to determine those persons/entities to whom it must disclose PHI in order for those persons/entities to assist the unit by performing administrative, managerial or consultative-type tasks. In identifying Business Associates it is important to remember that the

following relationships are not characterized under HIPAA as Business Associate relationships:

- a. A relationship in which one health care provider discloses PHI to another health care provider is not characterized under HIPAA as a Business Associate Relationship; and
- b. A relationship in which the Emory Covered Component is disclosing PHI to another person or entity who/that is not a Covered Entity for the benefit of the non-Covered Entity (e.g., disclosure of PHI to a research sponsor pursuant to subject authorization) is not characterized under HIPAA as a Business Associate Relationship.

Once all Business Associates have been identified, the Emory unit should make a list of the names and contact information for each Business Associate, along with a description of the services performed by the Business Associate, the PHI disclosed to the Business Associate, and the beginning and termination dates of any contracts in place with the Business Associate. This list should be maintained with the unit's HIPAA documentation.

2. **Contract** – Enter into a contract with the Business Associate or amend an existing contract to define the permitted and required uses and disclosures of PHI by the Business Associate. The contract must confine the Business Associate's use and disclosure of PHI to those uses and disclosures that are necessary for the Business Associate to perform its services on behalf of the Emory Covered Component. The contract must prohibit the Business Associate from making any use or disclosure of the information that would exceed the scope of the contract or otherwise violate the HIPAA privacy rule. **[Note:** The standard Business Associate Agreement form that is attached hereto as **Appendix 1** should be used for this contract or contract amendment. Any changes to this standard Agreement must be approved in writing by Emory University legal department or the Office of Research Compliance.]
3. **Termination of Business Associate Agreement for Material Violation of Contract Term(s)** – If the Business Associate violates the Contract, the Emory Covered Component should follow the terms of the Contract governing breach and cure; provided, however, that the Contract between the Emory Covered Component and the Business Associate must authorize termination of the contract by Emory Covered Component if the Emory Covered Component determines that the Business Associate has violated a material term of the Contract.
4. **Confidentiality Agreement** – All employees, agents and subcontractors of the Business Associate who will be performing services under the Business Associate Agreement for the Emory Covered Component should be required to execute the Confidentiality Agreement attached hereto as **Appendix 2**.

APPLICABILITY OF MINIMUM NECESSARY AND ACCOUNTING RULES:

Minimum Necessary Rule – The Emory Covered Component should only disclose the minimum necessary type and amount of PHI that is required to permit the Business Associate to perform the service on behalf of the Emory Covered Component.

Accounting Rule – Unless the Individual specifically authorizes a particular disclosure, the Emory Covered Component, the Business Associate and the Business Associate's agents and subcontractors must document any disclosures of PHI that may be made for purposes other than purposes of treatment, payment or health care operations. The Emory Covered Component must keep this documentation for six years after the disclosure.

References: 45 C.F.R. Sections 160.103; 164.501; 164.502(e)(2); 164.504(e)(1) [primary reference section]; 164.524; 164.526; and 164.528.

Date of Policy: April 14, 2003

APPENDIX 1

BUSINESS ASSOCIATE AGREEMENT

**Emory University and/or
Emory Healthcare, Inc. (“Emory”)**

and

_____ **(“Business Associate”)**

This Business Associate Agreement (this “Agreement”) effective as of _____ (the “Effective Date”), is entered into by and among Emory University and/or Emory Healthcare, Inc., on behalf of themselves and their respective components as defined below (collectively and individually referred to as “Emory”), and _____ (“Business Associate”).

WHEREAS, Business Associate is currently providing services to Emory under existing contracts or agreements, whether written or oral, and may enter into future contracts or agreements, whether written or oral, with Emory (the “Underlying Contracts”);

WHEREAS, Business Associate may have access to, create, receive, maintain or transmit Protected Health Information from Emory as necessary for Business Associate to perform its obligations under the Underlying Contracts;

WHEREAS, the parties wish to enter into this Business Associate Agreement to govern Business Associate’s use and disclosure of the Protected Health Information and implement appropriate safeguards for the security of Electronic Protected Health Information under all of the Underlying Contracts;

NOW THEREFORE, in consideration of the promises and mutual covenants and agreements of the parties as set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. DEFINITIONS. For purposes of this Agreement:

- 1.1 “Access” shall mean the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource.
- 1.2 “Administrative Safeguards” shall mean administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect Electronic Protected Health Information and to manage the conduct of Business Associate’s workforce in relation to the protection of that information.
- 1.3 “Availability” shall mean the property that data or information is accessible and useable upon demand by an authorized person.
- 1.4 “Breach” shall have the meaning given for such term in the Breach Notification Rules.
- 1.5 “Breach Notification Rules” shall mean Section 13402 of HITECH and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time.

- 1.6 "Confidentiality" shall mean the property that data or information is not made available or disclosed to unauthorized persons or processes.
- 1.7 "Emory" shall mean the Emory Party entering into this Agreement as determined by Section 8.12 of this Agreement.
- 1.8 "Emory Healthcare" shall mean Emory Healthcare, Inc. and all of its affiliates, which include but may not be limited to: Emory University Hospital, Emory University Hospital Midtown (formerly known as Emory Crawford Long Hospital), Wesley Woods Center of Emory University, Inc. (includes Wesley Woods Geriatric Hospital, Budd Terrace, and Wesley Woods Towers), The Emory Clinic, Inc., Emory Children's Center, Inc., and Emory Specialty Associates, LLC.
- 1.9 "Emory University" shall mean Emory University and all of its components and operating units, which include but may not be limited to: (a) all components of the Robert W. Woodruff Health Sciences Center, including, but not limited to, the School of Medicine; School of Nursing; School of Public Health and the Yerkes National Primate Research Center (including Hope Clinic); (b) Student Health Service; (c) Student Counseling Center; (d) Psychological Center; (e) Oxford Student Health Service and Counseling Center; (f) Emory Genetics Laboratory; (g) Emory Medical Care Foundation, Inc. and (h) all components of Emory University that perform activities for or on behalf of the units listed above to assist those units in performing their covered functions, including but not limited to the following units: (i) Controller's Office; (ii) Bursar's Office; (iii) Treasurer's Office; (iv) Office of Research Compliance; (v) Office of the General Counsel; (vi) Insurance and Risk Management; and (vii) Institutional Review Board
- 1.10 "Electronic Protected Health Information" or "ePHI" shall mean Protected Health Information that is transmitted by electronic media or maintained in electronic media.
- 1.11 "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996.
- 1.12 "HIPAA Regulations" shall mean the Privacy Rule and the Security Rule at 45 C.F.R. parts 160, 162 and 164.
- 1.13 "HITECH" shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.
- 1.14 "Information System" shall mean an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communication, and people.
- 1.15 "Integrity" shall mean the property that data or information have not been altered or destroyed in an unauthorized manner.
- 1.16 "Protected Health Information" or "PHI" shall mean Individually Identifiable Health Information (transmitted or maintained in any form or medium) that is created or received by Business Associate from or on behalf of Emory, and includes Electronic Protected Health Information.
- 1.17 "Physical Safeguards" shall mean physical measures, policies, and procedures to protect the Business Associate's electronic Information Systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 1.18 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.
- 1.19 "Security Safeguards" shall mean all of the Administrative, Physical, and Technical Safeguards in an Information System.

- 1.20 "Security Incident" shall mean the attempted or successful unauthorized Access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System.
- 1.21 "Technical Safeguards" shall mean the technology and the policy and procedures for its use that protect Electronic Protected Health Information and control Access to it.
- 1.22 "Unsecured PHI" shall have the same meaning given for such term in the Breach Notification Rules.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations or the Breach Notification Rules, as applicable.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1 Business Associate agrees to use and/or disclose the PHI only as permitted or required by this Agreement or as required by law.
- 2.2 Business Associate agrees to use appropriate safeguards to maintain the security of the PHI and to prevent use or disclosure of PHI other than as provided for by this Agreement, which will in no event be any less than the stricter of any applicable HIPAA Regulations or the means which Business Associate uses to protect its own confidential information. Business Associate agrees to implement Security Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of Emory and that are in accord with any applicable HIPAA Regulations.
- 2.3 Business Associate agrees to promptly report to Emory any use or disclosure of PHI that is not permitted by this Agreement or of any Security Incident of which Business Associate becomes aware.
- 2.4 Business Associate agrees to ensure that any agent, including an authorized subcontractor, that receives, uses, or has access to PHI in the performance of the Underlying Contracts agrees, in writing, to the same restrictions and conditions on the use and/or disclosure of such PHI that apply to Business Associate through this Agreement.
- 2.5 Business Associate agrees to ensure that any agent, including an authorized subcontractor, to whom it provides ePHI agrees to implement reasonable and appropriate Security Safeguards to protect it.
- 2.6 Business Associate agrees to document any disclosures of PHI by Business Associate or its agents or authorized subcontractors, and information related to such disclosures, as would be required for Emory to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.7 Business Associate agrees to provide to Emory information collected in accordance with Section 2.6 of this Agreement within fifteen (15) days of a request by Emory, as necessary to permit Emory to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.
- 2.8 Business Associate agrees to make available PHI in a designated record set, within fifteen (15) days of Emory's request, to Emory or, as directed by Emory, to an individual in order to meet the requirements under 45 C.F.R. § 164.524, relating to an individual's right to inspect and obtain a copy of PHI relating to such individual.
- 2.9 Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set as Emory directs or agrees to pursuant to 45 C.F.R. § 164.526 within thirty (30) days of Emory's request.

- 2.10 Except for a disclosure permitted under Section 3.1.d of this Agreement, if Business Associate believes it has a legal obligation to disclose any PHI, it will notify Emory as soon as reasonably practical after it learns of such obligation, and in any event at least five (5) business days prior to the proposed release, as to the legal requirement pursuant to which it believes the PHI must be released. If Emory objects to the release of such PHI, Business Associate will allow Emory to exercise any legal rights or remedies Business Associate might have to object to the release of the PHI, and Business Associate agrees to provide such assistance to Emory, at Emory's expense, as Emory may reasonably request in connection therewith.
- 2.11 Business Associate agrees to make its internal practices, policies and procedures, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining Emory's compliance with the HIPAA Regulations. Business Associate agrees to provide Emory with prompt written notice of any request received from the Secretary for access to such documents.
- 2.12 Business Associate, at its sole expense, 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 Agreement.
- 2.13 Business Associate agrees to report to Emory any use or disclosure of PHI not provided for by this Agreement of which it becomes aware as soon as reasonably possible and in any event within five (5) days of the date on which it becomes aware of the use/disclosure.
- 2.14 Business Associate acknowledges that Sections 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations, apply to Business Associate in the same manner that such sections apply to covered entities and are incorporated into this Agreement by reference. The additional requirements of HITECH that relate to security and to privacy that apply to covered entities also apply to Business Associate and are incorporated into this Agreement by reference. Business Associate agrees to implement the technical safeguards provided in guidance issued annually by the Secretary for carrying out the obligations under the Code of Federal Regulation sections cited above (in this Section 2.14) and the security standards in Subpart C of Part 164 of Title 45 of the Code of Federal Regulations.
- 2.15 Business Associate may use and disclose Protected Health Information that Business Associate obtains or creates only if such use or disclosure, respectively, complies with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations. The additional requirements of Subtitle D of HITECH that relate to privacy and that apply to covered entities also apply to Business Associate and are incorporated into this Agreement by reference.
- 2.16 Business Associate acknowledges that Section 164.504(e)(1)(ii) of Title 45, Code of Federal Regulations apply to Business Associate in the same manner that such section applies to covered entities, with respect to compliance with the standards in Sections 164.502(e) and 164.504(e) of Title 45, except that in applying such Section 164.504(e)(1)(ii) each reference to the business associate, with respect to a contract, shall be treated as a reference to the covered entity involved in such contract.
- 2.17 Business Associate shall comply with Section 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time (collectively, the "Breach Notification Rules").
 - a. Except as provided in 45 C.F.R. § 164.412, Business Associate will give Emory notice of any Breach of Unsecured Protected Health Information without unreasonable delay, but in no case later than thirty (30) days after the first day on which the Breach is known, or by the exercise of reasonable diligence would have been known, to the Business Associate.

- b. The notice required by Section 2.17.a. above will be written in plain language and will include, to the extent possible or available, the following:
 - i. The identification of the individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the Breach;
 - ii. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
 - iii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether the full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - iv. Any steps individuals who were subjects of the Breach should take to protect themselves from potential harm that may result from the Breach;
 - v. A brief description of what the Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
 - vi. Contact procedures for individuals to ask questions or learn additional information, including a toll free telephone number, an email address, Web site, or postal address.

2.18 Business Associate shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is consistent with guidance issued by the Secretary, as modified by the Secretary from time to time, specifying the technologies and methodologies that render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of HITECH.

2.19 At Emory's discretion, Emory may require employees and permitted contractors who provide services on behalf of Business Associate to execute appropriate confidentiality or data use agreements.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

3.1 Business Associate may use and disclose PHI only as follows:

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI as necessary to perform functions, activities, or services for Emory as specified in the Underlying Contracts, provided that such use or disclosure would not violate the Privacy Rule if done by Emory.
- b. With respect to permitted disclosures under subsection 3.1.a above, unless otherwise specifically agreed to by the parties, Business Associate will not permit the disclosure of PHI to any person or entity other than such of its employees, agents or subcontractors who must have access to the PHI in order for Business Associate to perform its obligations under an Underlying Contract and who agree to keep such PHI confidential as required by this Agreement.
- c. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Except as otherwise limited in this Agreement, and after giving Emory advance notice as set forth above in Section 2.10, Business Associate may disclose PHI in its possession to a third party for the purpose of its proper management and administration or to fulfill any legal responsibilities of Business Associate, provided that (1) the disclosure is required by law or (2) Business Associate has obtained reasonable written assurances from the third party to whom

the information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party (i.e., for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate) and the third party agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Within fifteen (15) days of a disclosure required by law, Business Associate will notify Emory's Privacy Officer at 101 W. Ponce de Leon Avenue, Suite 610, Decatur, GA 30030.

- e. If the Business Associate provides data aggregation services for Emory under the Underlying Contract, Business Associate may use and aggregate the PHI for purposes of providing the data aggregation services to Emory. Use of PHI for any other data aggregation is not permitted.
- f. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, complies with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations.

3.2 All other uses or disclosures of PHI not authorized by this Agreement are prohibited.

3.3 As between Emory and Business Associate, Emory holds all right, title and interest in and to the PHI, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Emory, any right, title or interest in or to the PHI or any portion thereof. Except as otherwise specified in this Agreement or agreed to in writing by the parties, Business Associate will have no right to de-identify PHI or to create limited data sets from PHI for its own use or compile and/or distribute statistical analyses and reports utilizing aggregated data derived from the PHI or any other health and medical data obtained from Emory.

4. **OBLIGATIONS OF EMORY**

Emory agrees to timely notify Business Associate of any changes to Emory's privacy or security practices and any individual restrictions on the use or disclosure of PHI applicable to or accepted by Emory to the extent that such changes or restrictions may impact Business Associate's use and/or disclosure of any PHI.

5. **TERM AND TERMINATION**

5.1 **Term.** This Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as provided in Section 5.2 or until all of the PHI provided by Emory to Business Associate, or created or received by Business Associate on behalf of Emory, is destroyed or returned to Emory.

5.2 **Termination For Cause.** In the event Emory determines that Business Associate has committed a material breach of this Agreement, Emory may either: (i) provide an opportunity for Business Associate to cure the breach or end the violation, provided that Emory may immediately terminate any Underlying Contracts that require the use of PHI or ePHI if Business Associate does not cure the breach or end the violation within the time frame specified by Emory; (ii) immediately terminate any Underlying Contracts that require the use of PHI or ePHI if Business Associate has breached a material term of this Agreement and Emory determines in its sole discretion that a cure is not possible; or (iii) if neither termination nor cure is feasible, Emory shall report the violation to the Secretary.

5.3. **Effect of Termination.** Upon the termination, for any reason, of this Agreement or an Underlying Contract that requires the use of PHI by Business Associate, Business Associate will promptly return to Emory or, at Emory's sole option, destroy any PHI in its possession or control, or in the possession or control of its agents or subcontractors, and will retain no copies of such PHI. Upon Emory's request, Business Associate shall certify to Emory that all PHI in its possession or control, or in the possession or control of its agents or subcontractors, has been returned or

destroyed as required by this Agreement. If Business Associate and Emory agree that the destruction or return of the PHI is not reasonably feasible, Business Associate will extend the protections contained in this Agreement to such PHI and limit any further uses and/or disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Except in the case of non-feasibility or as otherwise agreed to in writing, any right or license that Business Associate has to use the PHI will terminate immediately upon the termination of this Agreement or the Underlying Contract allowing its use.

6. INDEMNIFICATION

Business Associate agrees to indemnify, defend and hold harmless Emory, and its employees and agents, against any loss, claim, damage or liability ("Claim") if and to the extent proximately caused by a material breach of this Agreement by Business Associate. Emory shall furnish to Business Associate prompt written notice of any such Claim of which Emory has actual knowledge, provided, however, that the failure to deliver such prompt notice shall not release Business Associate from any of its indemnity obligations hereunder except to the extent such obligations have increased as a result of such failure, and then only to the extent of such increase. Emory shall use good faith efforts to furnish Business Associate with reasonable and sufficient authority, information and assistance necessary to defend the Claim.

7. RIGHT TO INJUNCTIVE RELIEF

Business Associate expressly acknowledges and agrees that the breach, or threatened breach, by it of any provision of this Agreement may cause Emory to be irreparably harmed and that Emory may not have an adequate remedy at law. Therefore, Business Associate agrees that upon such breach, or threatened breach, Emory will be entitled to seek injunctive relief to prevent Business Associate from commencing or continuing any action constituting such breach without having to post a bond or other security and without having to prove the inadequacy of any other available remedies. Nothing in this paragraph will be deemed to limit or abridge any other remedy available to Emory at law or in equity.

8. MISCELLANEOUS

- 8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Regulations, HITECH, or the Breach Notification Rules means the section as in effect or as amended.
- 8.2 Survival. The respective rights and obligations of Business Associate and Emory under Section 5.3 and 6 of this Agreement will survive the termination of this Agreement.
- 8.3 Other Confidentiality Obligations. The parties acknowledge that this Agreement is intended to supplement any and all other confidentiality obligations that either party may have under this or any other agreement or applicable law.
- 8.4 Underlying Contracts. The terms of this Agreement will govern the use of PHI under any Underlying Contract. Except as specified herein, all other terms of an Underlying Contract will continue in full force and effect. In the event of any conflict among the provisions of this Agreement and the Underlying Contract, the provisions of this Agreement will control.
- 8.5 Amendment. This Agreement may only be modified, or any rights under it waived, by a written agreement executed by both parties. The parties agree to amend this Agreement from time to time as is necessary for Emory to comply with the requirements of the HIPAA Regulations, the Breach Notification Rules, HITECH and any current or future regulations promulgated thereunder.
- 8.6 Interpretation. Any ambiguity in this Agreement will be resolved to permit Emory to comply with the HIPAA Regulations, the Breach Notification Rules, HITECH and any current or future regulations promulgated thereunder.

- 8.7 Waiver. Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.
- 8.8 Notice. Except as otherwise specified in this Agreement, any notice or requests for information to Emory or Business Associate under this Agreement shall be sent to:

EMORY:

If Emory University is a party:

Emory University Privacy Officer
1599 Clifton Rd., 4th Floor
Atlanta, GA 30322
Fax: (404) 727-2328

If Emory Healthcare is a party:

Emory Healthcare Privacy Officer
101 W. Ponce de Leon Avenue, Suite 610,
Decatur, GA 30030
Telephone:
Fax: (404) 778-2755

In either case, with a copy to:

[Name]
Address:
Attention:
Telephone:
Fax:
Email:

BUSINESS ASSOCIATE:

[Name]
Address:
Attention:
Telephone:
Fax:
Email:

The notice provisions set forth in the Underlying Agreement, if any, shall continue in full force and effect with respect to all other notices arising under the Underlying Agreement.

- 8.9 Binding Effect. The agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.
- 8.10 Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.
- 8.11 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.
- 8.12 Emory Parties. If executed on behalf of Emory University, this Agreement is entered into by Emory University. If executed on behalf of Emory Healthcare, this Agreement is entered into by Emory Healthcare. If executed on behalf of both Emory University and Emory Healthcare, this Agreement is entered into by both Emory University and Emory Healthcare.

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

EMORY UNIVERSITY

By: _____

Print Name: _____

Print Title: _____

Date: _____

(Business Associate)

By: _____

Print Name: _____

Print Title: _____

Date: _____

EMORY HEALTHCARE, INC.

By: _____

Print Name: _____

Print Title: _____

Date: _____



EMORY
UNIVERSITY

**APPENDIX 2
BUSINESS ASSOCIATE CONFIDENTIALITY AGREEMENT**

Directions for the Use of this Form: Units of the Emory Covered Component should use this form when they are utilizing a Business Associate to whom the unit will be required to disclose PHI in order for the Business Associate to perform administrative, managerial or consultative-type service in conjunction with the unit’s performance of Covered Functions. The Business Associate, its agent or subcontractor who will assist in the performance of these functions should sign this Agreement, as well as all employees and other personnel of the Business Associates who will participate in the project.

The unit should keep copies of the signed Confidentiality Agreements with its contract with the Business Associate.

Acknowledgement and Agreement:

The undersigned acknowledges and agrees for himself/herself, or on behalf of the organization for whom he/she is signing, that he/she/it will keep confidential any Protected Health Information (PHI) to which he/she/it may have access as a part of his/her/its duties regarding the protocol, and that he/she/it will only use and disclose the PHI as authorized by the Standard Business Associate Agreement dated ____ between Emory University and the Business Associate (or subcontractor or agent) identified below.

The undersigned understands that any failure to adhere to this Agreement constitutes a breach of this Agreement and of the Standard Business Associate Agreement referenced above, for which sanctions, including termination of the Standard Business Associate Agreement, may be imposed.

Name of Business Associate (or Business Associate’s Subcontractor or Agent)

Name of Person Signing on Behalf of Business Associate, Subcontractor or Agent

OR

Name of Employee of Business Associate, Subcontractor or Agent Signing this Agreement

Signature: _____ Date: _____

Title: _____