



## BUSINESS ASSOCIATE AGREEMENT

This Addendum is made part of the agreement between Boston Medical Center ("Covered Entity") and \_\_\_\_\_ ("Business Associate"), dated \_\_\_\_\_ [the "Underlying Agreement"].

In connection with the Underlying Agreement Covered Entity discloses to Business Associate Protected Health Information (as defined in 45 C.F. R. §164.501) that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and its implementing regulations, and Business Associate regularly either or both uses and discloses such Protected Health Information in performing the Underlying Agreement.

Both parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") under HIPAA. This Agreement sets forth the terms and conditions under which Protected Health Information that is provided by, or created or received by, the Business Associate from or on behalf of the Covered Entity ("Protected Health Information"), will be handled between the Business Associate and the Covered Entity and with third parties during the term of the Underlying Agreement and after its termination.

The Parties agree as follows:

### 1. DEFINITIONS

- (a) Protected Health Information shall have the same meaning as the term "protected health information" in 45 C.F.R. §164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
- (b) Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. part 160 and part 164, subparts A and E.
- (c) Secretary shall mean the Secretary of the Department of Health and Human Services or his/her designee
- (d) Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- (a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required By Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not

provided for by this Agreement of which it becomes aware.

- (e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- (f) Business Associate agrees to provide access, within ten (10) days of receiving a written request from Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR §164.524.
- (g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 within thirty (30) days of receiving a written request from Covered Entity.
- (h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity within ten (10) days of receiving a written request from Covered Entity, or to the Secretary, in a time and manner designated by the Secretary, for purposes of the Secretary's determining Covered Entity's compliance with the Privacy Rule.
- (i) Business Associate agrees to document such disclosures of Protected Health Information and information related to

such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

- (j) Business Associate agrees to provide to Covered Entity within thirty (30) days of receiving written notice, information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR §164.528.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- (c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or

further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 CFR §164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

(f) Business Associate may de-identify any and all Protected Health Information created or received by Business Associate under this Agreement; provided, however, that the de-identification conforms to the requirements of the Privacy Rule and Business Associate notifies Covered Entity prior to creating de-identified Health Information. Such resulting de-identified information would not be subject to the terms of this Agreement.

(g) Business Associate may create a Limited Data Set and use such Limited Data Set under a Data Use Agreement with Covered Entity that meets the requirements of the Privacy Rule.

#### 4. OBLIGATIONS OF COVERED ENTITY

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Covered Entity shall obtain any consent, authorization or permission that may be required by the Privacy Rule or state laws and regulations before disclosing Business Associate the Protected health Information pertaining to an individual.

#### 5. PERMISSIBLE REQUESTS BY COVERED ENTITY

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity. This provision does not apply to Business Associate's use or disclosure of Protected Health Information for data aggregation or management and administrative activities of Business Associate.

#### 6. TERM AND TERMINATION

(a) **Term.** The Term of this Agreement shall be effective upon execution, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected

Health Information, protections are extended to such information, in accordance with the termination provisions in this Section 6.

**(b) Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

- (1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
- (2) Immediately terminate this Agreement and the Underlying Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or
- (3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary

**(c) Effect of Termination.**

- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- (2) In the event that Business Associate determines that returning or destroying the Protected Health

Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon Covered Entity's review and acknowledgement that return or destruction of Protected Health Information is infeasible Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

## 7. MISCELLANEOUS

**(a) Regulatory References.** A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

**(b) Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for either Party or both Parties to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

**(c) Survival.** The respective rights and obligations of Business Associate under Section 6(c) of this Agreement shall survive the termination of this Agreement. In addition, Section 2(f) shall survive termination of this Agreement, provided Covered Entity determines that the Protected Health Information being retained under Section 6(c) constitutes a Designated Record Set..

**(d) Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

(e) **Construction of Terms.** The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA or the Privacy Rule issued by the Department of Health and Human Service or its Office of Civil Rights from time to time.

(f) **No Third Party Beneficiaries.** Nothing in this Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

(g) **Contradictory Terms.** Any provision of the Underlying Agreement that is directly contradictory to one or more terms of this Agreement (“Contradictory Term”) shall be superseded by the terms of this Business Associate Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity’s compliance with the Privacy Rule and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

**BUSINESS ASSOCIATE**

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

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Title**

\_\_\_\_\_  
**Date**

**COVERED ENTITY**

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

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Title**

\_\_\_\_\_  
**Date**