

BUSINESS ASSOCIATE AGREEMENT

This Agreement is made effective the ____ day of _____, _____, by and between the Boston Public Health Commission ("Covered Entity"), and Boston Medical Center Corporation, on behalf of itself and its subsidiaries and affiliates, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to the Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "Business Associate" of a Covered Entity as defined in the HIP AA Privacy Regulation.

WHEREAS, Business Associate may have access to Protected Health Information ("PHI") (as defined below) in fulfilling its responsibilities under such arrangement;

WHEREAS, Covered Entity and Business Associate intend to protect and provide for the security, confidentiality and integrity of privacy of PHI disclosed by Covered entity to Business Associate, or collected or created by Business Associate, in compliance with the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the regulations promulgated by the Department of Health and Human Services, including but not limited to, the regulations codified at 45 CFR Parts 160 and 164 (the "HIP AA Privacy Regulation"), the Health Information Technology for Economic and Clinical Health Act (the HITECH Act"), and other applicable state and federal laws, all as amended from time to time, including as amended by the Final Rule issued by the Secretary on January 17, 2013 titled "Modifications to the HIP AA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIP AA Rules"; and

THEREFORE, in consideration of the Parties' continuing obligations under this Agreement, compliance with the HIP AA Privacy Regulation, and for and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIP AA Privacy Regulation and to protect the interests of both Parties.

I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Regulation or the HITECH Act. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Regulation, as amended, the HIPAA Privacy Regulation shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Regulation, but are nonetheless permitted by the HIPAA Privacy Regulation, the provisions of this Agreement shall control.

Protected Health Information. "Protected Health Information" ("PHI") means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that 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 that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

II. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Business Associate acknowledges and agrees that all Protected Health Information that is created, received, maintained or transmitted by the Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Covered Entity or its operating units to Business Associate or is created or received by Business Associate on the Covered Entity's behalf shall be subject to this Agreement.

- A. Except as otherwise permitted herein, Business Associate may only Use or Disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
 1. the Disclosure is required by law; or
 2. Business Associate obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- B. Business Associate may Use and Disclose PHI for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship.
- C. Business Associate may Disclose PHI as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, (if consistent with the HIPAA Privacy Regulation).

- D. Business Associate may Use PHI as would be permitted by the HIPAA Privacy Regulation if such Use or Disclosure were made by the Covered Entity or to carry out the responsibilities of Business Associate, provided that such Disclosures are permitted or Required By Law.

III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

- A. Not use or further disclose PHI other than as permitted or required by this Agreement. Business Associates acknowledges and agrees that in addition to the requirements of this agreement, the Business Associates must comply with all applicable sections and provisions of HIPAA, the HITECH Act, and Final Rule issued by the Secretary on January 17, 2013 titled "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act and the Genetic Information Nondiscrimination Act; Other Modifications to the HIPAA Rules";
- B. Implement appropriate administrative safeguards as required by 45 CFR §164.308, physical safeguards as required by 45 CFR §164.310, and technical safeguards as required by 45 CFR §164.312 to prevent Use or Disclosure of PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity, other than as provided for by or permitted under this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's internal practices, records, and books related to the Use and Disclosure of PHI to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Regulation;
- C. Ensure that Business Associate's agents, including subcontractors, to whom it provides PHI received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement;
- D. Make available PHI in a reasonable amount of time to the extent and in the manner required by §§164.524, 164.526, and 164.528 of the HIPAA Privacy Rule which permit the patient/client to access rights, amendment rights and an accounting of disclosures of his/her PHI;
- E. Make available Business Associate's internal practices, books, and records relating to the use and disclosure of PHI received from Covered Entity to the Secretary of Health and Human Services for purposes of determining the Covered Entity's compliance;
- F. Notify Covered Entity of any request of an individual to make an amendment to PHI and make available to Covered Entity, if so requested, the PHI for Covered Entity to timely and properly comply with requests by Individuals for amendments consistent with Covered Entity's obligations under 45 CFR §164.526.
- G. Incorporate any amendments or corrections to PHI when notified by Covered Entity;

- H. Document its Disclosures of PHI in the same manner as would be required for Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528; and
- I. Report to Covered Entity within five (5) business days any use or disclosure of PHI which is not in compliance with the terms of this Agreement, including breaches of Unsecured PHI as required under 45 CFR §164.410, and any Security Incident of which Business Associate becomes aware. In addition, Business Associate 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.

IV. TERM AND TERMINATION

- A. Term. This agreement shall be effective and enforceable by the Parties to this Agreement as of the Effective Date as defined herein, and shall terminate on the earlier of (1) when Business Associate is no longer providing Services to Covered Entity, (2) the termination of this Agreement by either party, or (3) the mutual written agreement of the Parties.
- B. Termination for Cause. Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement or fails to satisfy any of its statutory obligations under HIPAA or the HITECH Act. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives notice to Business Associate of such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement, then Covered Entity shall have the right to terminate this Agreement immediately.
- C. Effect of Termination.
 - 1. At termination of this Agreement, or any similar documentation of the business relationship of the Parties, or upon request of the Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all PHI received from or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to PHI that is in the possession of any subcontractors or agents of Business Associate. Business Associate shall not retain any copies of such PHI.
 - 2. If Business Associate determines that such return or destruction of PHI is not feasible or in violation of law, Business Associate shall provide Covered Entity with a notification of the conditions for which return or destruction is infeasible, and Business Associate will extend the protections of this Agreement to the information and limit further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible or in violation of law, for so long as Business Associate maintains such PHI.

V. GENERAL PROVISIONS

- A. Obligations of Business Associate. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein. Except as expressly stated herein or the HIPAA Privacy Regulation, the Parties to this Agreement do not intend to create any rights in any third parties.

- B. Amendments and Modifications. This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement is intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of Massachusetts. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

- C. Interpretation and Severability. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of PHI which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.

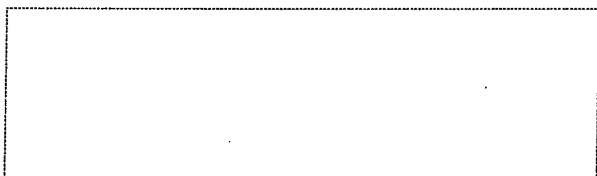
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

Boston Public Health Commission

Business Associate

Signature: _____

Signature: _____



Printed Name: _____

Title: _____

Date: ____ / ____ / ____

Date: ____ / ____ / ____