

WEST VIRGINIA UNIVERSITY PHYSICIANS OF CHARLESTON
BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is entered into this ____ day of _____, 20____, by and between West Virginia University Medical Corporation Charleston Division dba West Virginia University Physicians of Charleston, referred to herein as “Covered Entity” and _____, referred to herein as “Business Associate.”

WHEREAS, Business Associate and Covered Entity are parties to an agreement for services (the “Underlying Agreement”) pursuant to which Business Associate provides certain services to Covered Entity. In connection with the performance of the services, Business Associate may receive from the Covered Entity, or otherwise have access to, maintain, or transmit certain information that is required to be kept confidential in accordance with the Health Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder, as may be amended from time to time (collectively, “HIPAA”). In addition, Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the “HITECH Act) amends HIPAA to impose significant obligations on HIPAA Covered Entities and their Business Associates. The purpose of this Agreement is to allow for compliance with the Privacy Rule, Security Rule and HIPAA, as amended, with respect to Business Associate’s provision of the Services to Covered Entity.

THEREFORE, the parties, intending to be legally bound, agree as follows:

I. Definitions

1. Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

2. Specific definitions:

(a) Agreement. “Agreement” shall mean this Business Associate Agreement and the Underlying Agreement taken together.

(b) Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Business Associate named above.

(c) Covered Entity. “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the Covered Entity named above.

(e) HIPAA Rules. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

II. Obligations and Activities of Business Associate

1. Business Associate agrees to:

(a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;

(c) Report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware, within five (5) days of becoming aware of such use, disclosure, breach or security incident. If such use, disclosure, breach or security incident was caused by the business associate then the business associate shall, at the request of the covered entity, provide any required notifications to individuals, the HHS Office for Civil Rights, or the media. Business associate shall furnish to covered entity as part of the notice required by law the following information: (i) identification of each individual whose unsecured protected health information has been, or is reasonably believed by business associate to have been, accessed, acquired or disclosed during such breach; (ii) a description of events, including the date of the breach and the date of discovery of the breach; (iii) a description of the type(s) of unsecured protected health information involved in the breach (such as name, Social Security number, date of birth, address, account number); and (iv) such other information as may be required by applicable regulations or reasonably requested by covered entity;

(d) Mitigate, as much as possible, any harmful effect of which it is aware of any use or disclosure of protected health information in violation of the Underlying Agreement or this Agreement;

(e) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;

(f) Make available protected health information in a designated record set to the covered entity as necessary to satisfy covered entity’s obligations under 45 CFR 164.524;

(g) Make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;

(h) Maintain and make available the information required to provide an accounting of disclosures to the covered entity as necessary to satisfy covered entity's obligations under 45 CFR 164.528;

(i) To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s);

(j) Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules;

(k) If business associate (a) becomes legally compelled by law, process, or order of any court or governmental agency to disclose protected health information, or (b) receives a request from the Secretary to inspect business associate's books and records relating to the use and disclosure of protected health information, business associate, to the extent it is not legally prohibited from so doing, shall promptly notify covered entity and cooperate with covered entity in connection with any reasonable and appropriate action covered entity deems necessary with respect to such protected health information.

III. Permitted Uses and Disclosures by Business Associate

1. Business Associate agrees:

(a) to only use or disclose protected health information as is necessary to perform the services contained in the Underlying Agreement;

(b) to use or disclose protected health information as required by law;

(c) to make uses and disclosures and requests for protected health information consistent with covered entity's minimum necessary policies and procedures;

(d) to not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity, except for the specific uses and disclosures set forth below;

(e) it 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;

(f) it may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will

remain confidential and used or further disclosed only as required by law or for the purposes 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;

(g) it may provide data aggregation services relating to the health care operations of the covered entity.

IV. Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

1. Covered Entity shall:

(a) notify business associate of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.

(b) notify business associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information;

(c) notify business associate of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

V. Permissible Requests by Covered Entity

1. Covered entity shall not request business associate to use or disclose protected health information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by covered entity.

VI. Term and Termination

1. The parties agree that:

(a) Term. The Term of this Agreement shall be effective as of the date of this agreement and shall terminate on the date of the termination of the Underlying Agreement or on the date covered entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business associate authorizes termination of this Agreement by covered entity, if covered entity determines business associate has violated a material term of the Agreement and business associate has not cured the breach or ended the violation within the time specified by covered entity.

(c) Obligations of Business Associate upon Termination. Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

- i. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
- ii. Return to covered entity or, if agreed to by covered entity, destroy the remaining protected health information that the business associate still maintains in any form;
- iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
- iv. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions which applied prior to termination; and
- v. Return to covered entity or, if agreed to by covered entity, destroy the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

VII. Miscellaneous

1. The parties agree that:

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules 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 compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

VIII. Indemnification

1. Business associate agrees to indemnify, defend, and hold covered entity harmless from any and all liability (including, without limitation, reasonable attorney's fees, costs and expenses) resulting from or related to any claim, complaint and/or judgment for any breach or claimed

breach of this agreement by business associate or its subcontractors or agents, including the unauthorized use or disclosure of protected health information.

IN WITNESS WHEREOF, Business Associate and Covered Entity have caused this Business Associate Agreement to be signed and delivered by their duly authorized representatives, as of the date set forth herein.

WVU PHYSICIANS OF CHARLESTON

By: _____

Its: _____

BUSINESS ASSOCIATE

By: _____

Its- _____