

BUSINESS ASSOCIATE AGREEMENT BETWEEN THE DEPARTMENT OF
VETERANS AFFAIRS VETERANS HEALTH ADMINISTRATION AND
ACCREDITATION COUNCIL FOR GRADUATE MEDICAL EDUCATION

This Business Associate Agreement (“Agreement”) governs the provision of Protected Health Information (PHI) (as defined in 45 C.F.R. § 160.103) by the Department of Veterans Affairs (VA) Veterans Health Administration (VHA) (“Covered Entity”) to Accreditation Council for Graduate Medical Education (“Business Associate” or “ACGME”) (each a “Party” and collectively the “Parties”) for its use and disclosure in accrediting all graduate medical education programs conducted in whole or in part in Covered Entity facilities. The accreditation process for all graduate medical education programs is described in the “Manual of Policy and Procedures for ACGME Residency Review Committees” on the ACGME web site at www.acgme.org, and in documents referenced therein.

With respect solely to the subject matter herein, the terms and conditions in this National Business Associate Agreement supersede any previous Agreement, as well as any local Business Associate Agreement between Business Associate and a component of VHA. Accordingly, this Agreement, unless otherwise provided, will control and cannot be superseded, modified, or nullified by any local Business Associate Agreement.

Whereas, Business Associate provides certain accreditation-related services to the Covered Entity and, in connection with the provision of those services, the Covered Entity discloses to Business Associate PHI that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

Whereas, the VHA is a “Covered Entity” as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) and 45 C.F.R. Part 160 and Part 164, Subparts A and C, the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”);

Whereas, Business Associate, as a recipient of PHI from Covered Entity, is a “Business Associate” of the Covered Entity as the term “Business Associate” is defined in the Privacy Rule;

Whereas, Business Associate and Covered Entity desire to set forth the terms and conditions pursuant to which PHI received from, or created, received, maintained, or transmitted on behalf of Covered Entity by Business Associate, will be used and disclosed.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms have the same meanings as set forth in the Privacy Rule or the Security Rule.
2. Scope of Use and Disclosure by Business Associate of Protected Health Information.

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- A. Business Associate shall be permitted to make Use and Disclosure of PHI that is received from, or created, received, maintained, or transmitted by Business Associate on behalf of, Covered Entity as necessary to perform its obligations under Business Associate's established policies, procedures and requirements.
- B. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Agreement or Required By Law, Business Associate may:
 - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - (2) Disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate; provided, however, that the disclosures are Required By Law or Business Associate has received from the third party written assurances that (a) the information will be held confidentially and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the third party; and (b) the third party will notify the Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;
 - (3) Engage in Data Aggregation activities, consistent with the Privacy Rule; and
 - (4) De-identify any and all PHI created, received, maintained or transmitted by Business Associate under this Agreement; provided, that the de-identification conforms to the requirements of the Privacy Rule.
- 3. Obligations of Business Associate. In connection with its Use and Disclosure of PHI, Business Associate agrees that it will:
 - A. Not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law, provided that, to the extent Business Associate is to carry out Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations;

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- B. Consult with Covered Entity before using or disclosing PHI whenever Business Associate is uncertain whether the Use or Disclosure is authorized under this Agreement.
- C. Use reasonable and appropriate safeguards and, as of September 23, 2013, comply with the applicable requirements of the Security Rule with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;
- D. Provide satisfactory assurances that PHI created or received by Business Associate under this Agreement is protected to the greatest extent feasible.
- E. Notify Covered Entity within seventy-two (72) hours of Business Associate's discovery of any potential access, acquisition, use, disclosure, modification, or destruction of either secured or unsecured PHI in violation of this Agreement, including any Breach of PHI.
 - (1) Any incident as described above will be treated as discovered as of the first day on which such event is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate.
 - (2) Notification shall be sent to the Director, Health Information Governance, by email to VHABAAIssues@va.gov.
 - (3) Business Associate shall not notify individuals or HHS directly unless Business Associate is not acting as an agent of Covered Entity but in its capacity as a Covered Entity itself.
- F. Provide a written report to Covered Entity of any potential access, acquisition, use, disclosure, modification, or destruction of either secured or unsecured PHI in violation of this Agreement, including any Breach of PHI, within ten (10) business days of the initial notification.
 - (1) The written report of an incident as described above will document the following:
 - (a) The identity of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, disclosed, modified, or destroyed;
 - (b) A description of what occurred, including the date of the incident and the date of the discovery of the incident (if known);

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- (c) A description of the types of secured or unsecured PHI that was involved;
 - (d) A description of what is being done to investigate the incident, to mitigate further harm to Individuals, and to protect against future incidents; and
 - (e) Any other information as required by 45 C.F.R. §§ 164.404(c) and 164.410.
 - (2) The written report shall be addressed to:
 - Director, Health Information Governance
 - Department of Veterans Affairs – Veterans Health Administration
 - Office of Informatics and Analytics (10P2)
 - 810 Vermont Avenue NW
 - Washington, DC 20420
- and submitted by email at VHABAAIssues@va.gov.
- G. Enter into Business Associate Agreements with contractors and Subcontractors as appropriate under the HIPAA Rules and this Agreement. Business Associate:
- (1) Must ensure that the terms of any agreement between Business Associate and a contractor or subcontractor are at least as restrictive as Business Associate Agreement between Business Associate and Covered Entity.
 - (2) Must ensure that contractors and Subcontractors agree to the same restrictions and conditions that apply to Business Associate and obtain satisfactory written assurances from them that they agree to those restrictions and conditions.
 - (3) May not amend any terms of such agreement without Covered Entity's prior written approval.
- H. Provide to the Secretary of Health and Human Services and to Covered Entity records related to Use or Disclosure of PHI, including its policies, procedures, and practices, for the purpose of determining Covered Entity's, Business Associate's, or a subcontractor's compliance with the HIPAA Rules.

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- I. Within five (5) business days of a written request from Covered Entity:
 - (1) Make available information for Covered Entity to respond to an Individual's request for access to PHI about him/her.
 - (2) Make available information for Covered Entity to respond to an Individual's request for amendment of PHI about him/her and, as determined by and under the direction of Covered Entity, incorporate any amendment to the PHI.
 - (3) Make available PHI for Covered entity to respond to an Individual's request for an accounting of Disclosures of PHI about him/her.
 - J. Promptly report, as defined at Section 3.E., to Covered Entity any Security Incident of which it becomes aware, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410.
 - K. Business Associate may not take any action concerning an individual's request for access, amendment, or accounting other than as instructed by Covered Entity.
 - L. To the extent Business Associate is required to carry out Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the provisions that apply to Covered Entity in the performance of such obligations.
 - M. Be liable to Covered Entity for civil or criminal penalties imposed on Covered Entity, in accordance with 45 C.F.R. §§ 164.402 and 164.410, and with the HITECH Act, 42 U.S.C. §§ 17931(b), 17934(c), for any violation of the HIPAA Rules or this Agreement by Business Associate.
4. Obligations of Covered Entity. Covered Entity agrees that it:
- A. Will not request Business Associate to make any Use or Disclosure of PHI in a manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if made by Covered Entity, except as permitted under Section 2 of this Agreement.
 - B. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for health care operations purposes;
 - C. Has obtained, and will obtain, from Individuals any consents, authorizations and other permissions necessary or required by laws

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applicable to Covered Entity for Business Associate and Covered Entity to fulfill their obligations under this Agreement;

- D. Will promptly notify Business Associate in writing of any restrictions on the Use and Disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Business Associate's ability to perform its obligations under this Agreement; and
- E. Will promptly notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes or revocation may affect Business Associate's ability to perform its obligations under this Agreement.

5. Termination.

- A. Termination for Cause. Upon either Party's knowledge of a material breach or violation of this Agreement by the other Party, the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified time frame, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may terminate this Agreement.
- B. Automatic Termination. This Agreement will automatically terminate upon the cessation of Business Associate conducting accredited activities in all Covered Entity facilities.
- C. Termination Upon Review. This Agreement may be terminated by Covered Entity, at its discretion, upon review as provided by Section 11 of this Agreement.
- D. Effect of Termination.
 - (1) Termination of this Agreement will result in cessation of Business Associate conducting ACGME accredited activities in all Covered Entity facilities.
 - (2) Within sixty (60) days after termination of this Agreement, Business Associate will return or destroy all PHI received from Covered Entity or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the PHI and limit further Use

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and Disclosure to those purposes that make the return or
destruction of the information infeasible.

6. Amendment. Business Associate and Covered Entity agree to take such action as is necessary to amend this Agreement for the Parties to comply with the requirements of the Privacy Rule or other applicable law.
7. Survival. The obligations of Business Associate under section 5.C.(2) of this Agreement shall survive any termination of this Agreement.
8. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
9. Independent Contractor. The Parties are and shall remain independent contractors throughout the term. Nothing in this Agreement shall be construed to constitute Business Associate and Covered Entity as partners, joint venturers, agents or anything other than independent contractors.
10. Other Applicable Law. This Agreement does not, and is not intended to, abrogate any responsibilities of the parties under any other applicable law.
11. Review Date. The provisions of this Agreement will be reviewed by Covered Entity every two years from Effective Date to determine the applicability and accuracy of the agreement based on the circumstances that exist at the time of review.
12. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A facsimile or other reproduction of this Agreement shall be deemed an original.
13. Effective Date. This Agreement shall be effective on the last signature date below.

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**Department of Veterans Affairs
Veterans Health Administration**

**Accreditation Council For
Graduate Medical Education**

By: _____

Name: Charles E. Stroup, Jr.

Title: Deputy Director, National
Data Systems

Date: _____



By: _____

Name: Thomas J. Nasca, M.D.

Title: Chief Executive Officer

Date: 7/21/2014