

TEXAS TECH UNIVERSITY HEALTH SCIENCES CENTER EI PASO

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (“Agreement”) is entered into on the date the Agreement is fully executed between Texas Tech University Health Sciences Center El Paso (“TTUHSC El Paso” or “Covered Entity”) and Company Name (“Business Associate”). Both TTUHSC El Paso and Business Associate are also referred to herein as “Party” or, collectively, “Parties.”

WHEREAS, Texas Tech University Health Science Center El Paso is a “Covered Entity” and “Business Associate” as those terms are defined in the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) set forth at 45 CFR Parts 160 and 164, and amendments thereto; and

WHEREAS, Business Associate will provide services, and Covered Entity will make available and/or transfer to Business Associate certain Protected Health Information or PHI (hereinafter defined), the Use and Disclosure (hereinafter defined) of which is subject to the federal Standards for Privacy of Individually Identifiable Health Information, located at 45 CFR Parts 160 and 164 (“Privacy Rule”), and the terms and conditions set forth in this Agreement; and

WHEREAS, Covered Entity and Business Associate agree to comply with the rights and obligations of a Covered Entity and a Business Associate, respectively, as set forth in the HIPAA and other federal rules and regulations (including, without limitation, (i) the Privacy Rule; (ii) the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR 164.302 et. Seq. (“Security Rule”); (iii) the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (“HITECH Act”); and (iv) federal regulations promulgated by the Federal Trade Commission (FTC), including but not limited to 16 CFR 681.2 (“Red Flag Rule”) with respect to the privacy and confidentiality of Protected Health Information contained in an Individual’s medical records; and

WHEREAS, this Agreement is executed in conjunction with a service and/or purchase agreement between the Parties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Covered Entity and Business Associate agree as follows:

I. DEFINITIONS

- A. **“Breach”** means an unauthorized acquisition, access, Use or Disclosure of Protected Health Information which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information. 45 CFR 164.402.
- B. **“Business Associate”** means a person or entity, other than a member of the workforce of a Covered Entity, who performs functions or activities on behalf of, or provides certain services to, a Covered Entity that involves access by the Business Associate to Protected Health Information. This includes creating, receiving, maintaining, or transmitting Protected Health Information. 45 CFR 160.103.
- C. **“Covered Entity”** means a health plan, health care clearinghouse, or health care provider who transmits any health information in electronic form in connection with a transaction and in reference to the party to this Agreement, shall mean TTUHSC El Paso. 45 CFR 160.103 and Texas Health and Safety Code 181.
- D. **“Designated Record Set”** means a group of records maintained by or for Covered Entity that is used, in whole or part, to make decision about Individuals, or that is a provider’s medical and billing records about Individuals or a health plan’s enrollment, payment, claims adjudication, and case or medical management record systems. 45 CFR 164.501.
- E. **“Disclosure” or to “Disclose”** means, with respect to Protected Health Information, the release or transfer of, provision of access to, or divulging in any other manner such information outside the entity holding the information. 45 CFR 160.103.
- F. **“Electronic Protected Health Information”** (hereinafter EPHI) shall have the same meaning as

defined in 45 CFR 160.103.

- G. **“HHS”** means the U.S. Department of Health and Human Services.
- H. **“Individual”** means the person who is the subject of Protected Health Information as defined in 45 CFR 160.103, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g) and applicable Texas law.
- I. **“Limited Data Set”** has the meaning provided in 45 CFR 164.514(e).
- J. **“Privacy Rule”** means the Standards for Privacy of Individually Identifiable Health Information in 45 CFR Parts 160 and 164.
- K. **“Protected Health Information”** (hereinafter PHI) means any individually identifiable health information in any form, including information related to payment for health services provided by Covered Entity. 45 CFR 160.103.
- L. **“Required by Law”** means a mandate contained in law that compels an entity to make use or disclosure of PHI and that is enforceable in a court of law. 45 CFR 164.103 and/or applicable Texas laws and regulations.
- M. **“Secretary”** means the Secretary of the HHS or any other officer or employee of HHS to whom the authority involved has been delegated. 45 CFR 160.103.
- N. **“Security Incident”** means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. 45 CFR 164.304.
- O. **“Security Rule”** means the HIPAA security regulations set forth in 45 CFR Parts 160, 162, and 164.
- P. **“Subcontractor”** creates, receives, maintains, or transmits protected health information on behalf of the Business Associate, other than in the capacity of a member of the workforce of such Business Associate. 45 CFR 160.103; 45 CFR 164.502(e)(1)(ii); 164.308(b)(2).
- Q. **“Unsecured Protected Health Information”** means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary of the HHS. 45 CFR 164.402.
- R. **“Use”** means, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information. 45 CFR 160.103.

II. PERMITTED USES AND DISCLOSURES OF PHI BY BUSINESS ASSOCIATE

A. General Use and Disclosure Provisions

Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI on behalf of, or to provide services to, TTUHSC El Paso for the following purpose(s), and to the extent that such use or disclosure of PHI would not violate this Agreement or applicable federal or state laws and regulations if done by TTUHSC El Paso:

*List and describe purposes **OR INSERT THE FOLLOWING***

“ Please fill in...”

B. Specific Use and Disclosure Provisions

- 1) 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.
- 2) Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains a written agreement from the person or entity to whom the PHI is disclosed that it will agree to the same restrictions and conditions that apply to Business

Associate under this Agreement.

- 3) Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation services to TTUHSC EL PASO as permitted by 45 CFR 164.504(e)(2)(i)(B).
- 4) Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1).

III. PRIVACY OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Pursuant to the HITECH Act and implementing regulations, HIPAA privacy provisions and penalties shall be applicable to Business Associate to the same extent as TTUHSC EL PASO.

- A. Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- B. Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the PHI other than as provided for by this Agreement. Business Associate agrees that it will train all persons who act on its behalf, including employees, agents, and others in its workforce who have access to PHI, on policies and procedures with respect to the uses and disclosures of PHI so as to carry out their function within the Business Associate.
- C. Business Associate agrees to mitigate, to the extent practicable, any breach that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
- D. Business Associate agrees to notify TTUHSC EL PASO Privacy and/or Security Officers (see Section X. L.) within **maximum of three (3) business days** of discovery of any breach of Unsecured PHI, including unauthorized uses or disclosures of PHI, consistent with HIPAA and HITECH requirements. Such notice shall include the identification of the persons whose PHI was breached, a description of when and how the breach occurred, the persons who breached the PHI, the specific PHI involved in the breach for each person and the Business Associate response to the breach, including, but not limited to corrective action taken. Business Associate will indemnify and hold TTUHSC EL PASO harmless from all liabilities, costs and damages arising out of or in any manner connected with a breach of PHI by Business Associate, its employees or agents.
- E. Business Associate will provide the notifications to Covered Entity of any Breach as required by law, and cooperate with Covered Entity in any such notification with respect to required information for the notice to individuals. 45 CFR 164.404; 45 CFR 164.410.
- F. Business Associate agrees that it will require any agent, including a subcontractor, to whom it provides PHI received from TTUHSC EL PASO, or created or received by Business Associate on behalf of TTUHSC EL PASO, to agree in writing to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to the PHI.
- G. Business Associate agrees to provide access to PHI in a Designated Record Set, at TTUHSC EL PASO's request and in the time and manner designated by TTUHSC EL PASO. Such access will be provided to TTUHSC EL PASO or, as directed by TTUHSC EL PASO, to an Individual in order to meet the requirements under 45 CFR 164.524.
- H. Business Associate agrees to make any amendment(s) and incorporate any amendments(s) to PHI in a Designated Record Set that TTUHSC EL PASO directs or agrees to pursuant to 45 CFR 164.526 at the request of TTUHSC EL PASO or an Individual, and in the time and manner designated by TTUHSC EL PASO.
- I. Business Associate agrees to make its internal practices, books, and records, including policies and procedures, and PHI, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of TTUHSC EL PASO available to TTUHSC EL PASO, or at the request of TTUHSC EL PASO to the Secretary of the HHS, in a time and manner designated by TTUHSC EL PASO or the Secretary, for purposes of the Secretary determining TTUHSC EL PASO's compliance with the Privacy Rule 45 CFR 164.504.
- J. Business Associate agrees to document and provide to TTUHSC EL PASO or a designated Individual,

a list of disclosures of PHI by Business Associate and information related to such disclosures, and information collected in accordance with Section II of this Agreement (“accounting of disclosures”), to permit TTUHSC EL PASO to timely respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

- K. Business Associate agrees to comply with Individual requests, received directly from the Individual or through TTUHSC EL PASO, for restriction of certain disclosures of PHI to health plans.
- L. Business Associate agrees to apply the minimum necessary standard and implement policies with respect to the use of limited data sets. 45 CFR 160; 45 CFR 164.
- M. Business Associate agrees, upon request of TTUHSC EL PASO or an Individual, to allow the Individual electronic access to Electronic Health Record (EHR) information maintained by Business Associate.
- N. Business Associate agrees to comply with all other restrictions and prohibitions on the use or disclosure of PHI contained in the Privacy Rule.
- O. Business Associate agrees to abide by the provisions of the HITECH Act as made applicable to Business Associates and specifically agrees to abide by the obligations set forth therein.
- P. To the extent Business Associate is a Creditor as defined in the FTC Red Flag Rules, as may be amended (16 CFR Part 681) with respect to its use and disclosure of PHI under this Agreement, Business Associate agrees that it will comply with the FTC Red Flag Rules, including, but not limited to a written program to prevent, detect and mitigate identity theft.
- Q. Business Associate represents and warrants that it maintains a policy or program of insurance at levels sufficient to support the Business Associate’s indemnification obligations and duties assumed under this Agreement. Upon request, Business Associate shall provide evidence of its insurance.

IV. SECURITY OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Pursuant to HITECH and implementing regulations, HIPAA security provisions and penalties shall be applicable to Business Associate to the same extent as TTUHSC EL PASO.

- A. Business Associate agrees to comply with the Security Rules at 45 CFR 164.308 (administrative safeguards); 45 CFR 164.310 (physical safeguards); 45 CFR 164.312 (technical safeguards); 45 CFR 164.316 (policies, procedures, documentation) that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains, or transmits on behalf of TTUHSC EL PASO. Business Associate shall document and keep such security measures current and available for inspection by TTUHSC EL PASO upon request. Business Associate certifies that its security measures comply with the Security Rule.
- B. Business Associate represents and warrants that it will require any agent, including a subcontractor, to whom it provides EPHI to protect such information by implementing reasonable and appropriate safeguards to protect such information which meet at least minimum standards required by the Security Rule.
- C. Business Associate agrees to notify TTUHSC EL PASO’s Privacy Officer and/or Security Officer (see Section X. L.) not later than three (3) business days after discovery of any and all security incident(s) of which it becomes aware. Business Associate will indemnify and hold TTUHSC EL PASO harmless from all liabilities, costs and damages arising out of or in any manner connected with the security incident(s). Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a security incident(s).
- D. Business Associate agrees to make its policies and procedures, and documentation required by the Security Rule available to TTUHSC EL PASO or the Secretary of the HHS for purposes of determining the Covered Entity’s compliance with the Security Rule.
- E. Business Associate represents and warrants that it maintains a policy or program of insurance at levels sufficient to support the Business Associate’s indemnification obligations and duties assumed under this Agreement. Upon request, Business Associate shall provide evidence of its insurance.
- F. Business Associate will not transfer PHI outside of the United States unless it first provides TTUHSC EP

advance notice and an opportunity to object; if TTUHSC EP reasonably objects to the proposed cross border transfer and the Parties do not mutually achieve an alternative, the applicable performance that is the subject matter of the objection shall terminate.

V. ELECTRONIC TRANSACTIONS AND CODE SET STANDARDS FOR BUSINESS ASSOCIATE

- A. If Business Associate conducts any Standard Transaction for, or on behalf of, the Covered Entity, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirements of 45 CFR Part 162.
- B. Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any agreement in connection with the conduct of Standard Transaction for, or on behalf of, TTUHSC EL PASO that:
 - 1) change the definition, data condition or use of a data element or segment in a standard;
 - 2) add any data elements or segments to the maximum defined data set;
 - 3) use any code or data elements that are either marked "not used" in the standard's implementation specification or are not in the standard's implementation specification(s); or
 - 4) change the meaning or intent of the standard's implementation specification(s).

VI. NOTICE OF PRIVACY PRACTICES

- A. TTUHSC EL PASO agrees to make available its current HIPAA Notice of Privacy Practices at <https://elpaso.ttuhscc.edu/hipaa/forms.aspx>. Business Associate is responsible to review and comply with the uses and disclosures as set forth by 45 CFR 164.520.
- B. TTUHSC EL PASO shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI given to TTUHSC EL PASO, if such changes or revocation affect Business Associate's permitted or required uses and disclosures PHI.

VII. PERMISSIBLE REQUESTS BY TTUHSC EL PASO

- A. TTUHSC EL PASO shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the HITECH Act or applicable state law if done by TTUHSC EL PASO.
- B. TTUHSC EL PASO may request Business Associate to use or disclose PHI, if applicable and in accordance with the purpose of this Agreement or an agreement for services between TTUHSC EL PASO and Business Associate, for data aggregation or management and administrative activities of Business Associate.
- C. TTUHSC EL PASO may request Business Associate to create a de-identified or limited data set in accordance with the purpose of this Agreement or an agreement for services between TTUHSC EL PASO and Business Associate, consistent with HIPAA and HITECH requirements.

VIII. TERM AND TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the date set forth on page one of this Agreement and continue until August 31 of that fiscal year.
 - 1) Unless terminated, this Agreement shall be automatically renewed for one year periods starting September 1 of each year, so as not to terminate until all of the PHI provided by TTUHSC EL PASO to Business Associate, or created or received by Business Associate on behalf of TTUHSC EL PASO, is destroyed or returned to TTUHSC EL PASO, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause.

- 1) Upon TTUHSC EL PASO's knowledge of a breach by Business Associate ("Breaching Party"), in coordination with the Business Associate, TTUHSC EL PASO may investigate the breach and provide an opportunity for the Business Associate to cure the breach or end the violation. If Business Associate does not cure the breach or end the violation within the time specified by TTUHSC- EP, TTUHSC EL PASO may terminate this Agreement and any agreement identified in Section II, A, upon written notice.
- 2) Either Party may immediately terminate this Agreement and any agreement identified in Section II, A, upon written notice, if the other Party has breached a material term of the underlying Agreement and cure of the breach is not possible.
- 3) If neither termination nor cure is feasible, the non-breaching Party shall report the violation to the Secretary of the HHS.

C. Effect of Termination.

- 1) Except as provided in paragraph (2) below, upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI received from TTUHSC EL PASO, or created or received by Business Associate on behalf of TTUHSC EL PASO. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- 2) In the event that Business Associate determines that returning or destroying the PHI is not feasible, Business Associate shall provide to TTUHSC El Paso notification of the conditions that make return or destruction infeasible. Upon mutual agreement in writing between TTUHSC El Paso and the Business Associate that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

IX. DISCLAIMER

TTUHSC EL PASO MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA OR HITECH REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES OR THAT ANY INFORMATION IN THE POSSESSION OF BUSINESS ASSOCIATE OR SUBJECT TO ITS CONTROL, OR TRANSMITTED OR RECEIVED BY THE BUSINESS ASSOCIATE, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARDING OF PHI OR EPHI.

X. MISCELLANEOUS

- A. Regulatory References. A reference in this Agreement to HIPAA, HITECH, or a cite or section in the Privacy Rule or Security Rule means the section as is in effect or as may be 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 TTUHSC El Paso to comply with the requirements of applicable federal and state laws and regulations (including, but not limited to, the Privacy Rule, Security Rule, HIPAA and HITECH, and as these may be amended). Any amendment to this Agreement shall be in writing and attached hereto.
- C. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits TTUHSC EL PASO to comply with the federal and state laws referenced in paragraph B. above.
- D. Survival. The obligations of Business Associate under this Agreement shall survive the expiration, termination or cancellation of this Agreement.
- E. Assignment. Business Associate shall not have the right to assign or transfer its rights and obligations under this Agreement to any third party without prior written consent of TTUHSC El Paso.
- F. Severability. If any term or provision of this Agreement is held to be invalid for any reason, the

invalidity of that section shall not affect the validity of any other section of this Agreement, provided that any invalid provision is not material to the overall purpose and operation of this Agreement, and the remaining provisions of this Agreement shall continue in full force and effect and shall in no way be affected, impaired or invalidated.

- G. **Binding Effect.** This Agreement shall be binding upon, and shall extend to the benefit of, the Parties hereto and their respective permitted successors and assigns.
- H. **Execution.** This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.
- I. **Independent Contractor.** Nothing in this Agreement is intended nor shall be construed to create an employer/employee relationship between TTUHSC El Paso and Business Associate. The sole interest and responsibility of the Parties is to perform services and obligations under this Agreement as independent contractors in a competent, efficient, and satisfactory manner.
- J. **Venue and Governing Law.** This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of Texas. Venue will be in accordance with the Texas Civil Practice and Remedies Code and any amendments thereto.
- K. **Audit.** Business Associate shall immediately notify TTUHSC El Paso's Privacy Officer and/or Security Officer if Business Associate becomes the subject of an HHS audit pursuant to 42 USC §17940.
- L. **Notice.** Any notice or notification required to be provided under this Agreement by either Party shall be made to the following individuals.
- M. **No Boycott.** If this [Contract] has a value of \$100,000 or more that is to be paid wholly or partly from public funds of [TTUS], and if [Contractor] is a company, other than a sole proprietorship, with ten (10) or more full-time employees, then pursuant to Texas Government Code § 2270.002, [Contractor] affirmatively states that it does not boycott Israel and will not boycott Israel during the term of this [Contract]. In this paragraph, the terms "company" and "boycott Israel" shall have the meanings described in Texas Government Code § 808.001. **[Delete the paragraph if the contract is NOT EXPENSE.]**
- N. The person(s) executing this Agreement on behalf of the Parties, or representing themselves as executing this Agreement on behalf of a Party, warrant and guarantee that each has been duly authorized by the appropriate Party to execute this Agreement on behalf of the Party and to validly and legally bind the Party to all of its terms, performances, and provisions.
- O. Under Section 2155.0061, Government Code, the vendor certifies that the individual or business entity named in this bid or contract is not ineligible to receive the specified contract and acknowledges that this contract may be terminated and payment withheld if this certification is inaccurate. **[Delete the paragraph if the contract is NOT EXPENSE.]**
- P. **Force Majeure.** "Event of Force Majeure" means an event beyond the control of Contractor or University which prevents or makes a party's compliance with any of its obligations under this Contract illegal or impracticable, including but not limited to: act of God (including, without limitation, fire, explosion, earthquake, tornado, drought, and flood); war, act or threats of terrorism, hostilities (whether or not war be declared), invasion, act of enemies, mobilization, requisition, or embargo; rebellion, insurrection, military or usurped power, or civil war; contamination or destruction from any nuclear, chemical, or biological event; riot, commotion, strikes, go slows, lock outs, or disorder; epidemic, pandemic, viral outbreak, or health crisis; or directive of governmental authority. No party will be considered in breach of this Contract to the extent that performance of their respective obligations is prevented or made illegal or impracticable by an Event of Force Majeure that arises during the term (or after execution of the Contract but prior to the beginning of the term). A party asserting an Event of Force Majeure hereunder ("Affected Party") will give reasonable notice to the other party of an Event of Force Majeure upon it being foreseen by, or becoming known to, Affected Party. In the event of an Event of Force Majeure, Affected Party will endeavor to continue to perform its obligations under the Contract only so far as reasonably practicable.

[Signature page follows.]

TTUHSC El Paso (Covered Entity):

TTUHSC El Paso Privacy Officer
5001 El Paso Drive
El Paso, Texas 79905
(915) 215-4454

TTUHSC El Paso Information Security Officer
5001 El Paso Drive
El Paso, Texas 79905
(915) 215-4903

Business Associate:

Name of Business: _____

Attention: _____

Title: _____

Address: _____

Phone: _____

Email: _____

**TEXAS TECH UNIVERSITY
HEALTH SCIENCES CENTER EL PASO**

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date