**BUSINESS ASSOCIATE AGREEMENT BETWEEN**

# EAST CAROLINA UNIVERSITY

**AND**

Click here to enter name of person/entity

 This Business Associate Agreement (“Agreement”) is made effective the Click here to enter day of Click here to enter month 20Click here to enter year, by and between **East Carolina University**, hereinafter referred to as “Covered Entity”, and Click here to enter name of person/entity**,** hereinafter referred to as “Business Associate,” (individually, a “Party” and collectively, the “Parties”).

 The parties acknowledge that the services provided to or on behalf of Covered Entity by Business Associate pursuant to Click here to enter description of underlying agreement or arrangement may involve the use or disclosure of protected health information (PHI) (as defined below). The purpose of this Business Associate Agreement is to set forth the duties and obligations of Business Associate with respect to any PHI of Covered Entity.

 **The Parties hereby agree as follows:**

**I.** **DEFINITIONS**

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy Rule and ARRA (as defined below), as each is amended from time to time.

(a) “ARRA” means the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009, Pub. Law No. 111-5 and its implementing regulations. References in this Agreement to a section or subsection of Title 42 of the United States Code are references to provisions of ARRA, and its existing and future implementing regulations, when and as each are effective.

(b) “Protected Health Information” 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, and is transmitted or maintained in any form or medium, including electronic media (Electronic PHI or ePHI).

(c) “HIPAA Privacy Rule” means the regulations set forth under 45 CFR Parts 160 and 164, as may be amended, which were issued under the Health Information Portability and Accountability Act of 1996.

**II.** **COORDINATION WITH HIPAA PRIVACY RULE and ARRA**

In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rules and ARRA, the HIPAA Privacy Rule and ARRA shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule or ARRA, but are nonetheless permitted by the HIPAA Privacy Rule or ARRA, the provisions of this Agreement shall control.

The parties agree that, in the event that any agreement or other documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions related 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.

**III. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATES**

1. Business Associate:
2. Acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.
3. In accordance with 45 CFR 164.308(b) and 164.502(e), will ensure that its agents, including a Subcontractor, to whom it provides PHI received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees’ or agents’ actions or omissions do not cause Business Associate to breach the terms of this Agreement.
4. Will implement appropriate technical, physical, and administrative safeguards to (1) prevent the use or disclosure of PHI other than as permitted in this Agreement; (2) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, maintains or transmits on behalf of Covered Entity; and (3comply with the requirements set forth in 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316, as may be amended from time to time.
5. Agrees to report to covered entity as soon as practicable but no later than five (5) business days after any discovery of (1) any use or disclosure of PHI not permitted under this Agreement of which it becomes aware or reasonably should have been aware; and (2) any Security Incident of which Business Associate becomes aware or reasonably should have been aware.
6. The parties acknowledge and agree that notice to the Covered Entity is not required for Unsuccessful Security Incidents. Unsuccessful Security Incident means, without limitation, pings and other broadcast attacks on Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.
7. 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.
8. Agrees, within ten (10) business days of written request from Covered Entity, to make available PHI in a Designated Record Set for access by patients or their personal representatives to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule; and in the event that Business Associate uses or maintains an Electronic Health Record of PHI of or about an Individual, Business Associate shall provide an electronic copy (at the request of Covered Entity, and in the time and manner designated by Covered Entity) of such PHI, to Covered Entity or, when and as directed by Covered Entity, to an Individual or a third party designated by the Individual, in accordance with 42 U.S.C. 17935(e) and any implementing regulations.
9. Agrees to make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary of the United States Department of Health and Human Services for purposes of determining Covered Entity’s compliance with the Privacy Rule and ARRA.
10. Agrees to make, at the request of, and in the time and manner designated by the Covered Entity, any amendments to the PHI that the Covered Entity directs or agrees to at the request of an individual pursuant to Section 164.526 of the HIPAA Privacy Rule and to incorporate such amendments into its copies of such PHI.
11. Agrees to maintain and make available to the individual from whom the PHI originated and/or to the Covered Entity, information required for an accounting of disclosures of Protected Health Information with respect to that individual in accordance with Section 164.528 of the HIPAA Privacy Rule and, in accordance with 42 U.S.C. 17935(c) and any implementing regulations, and when directed by Covered Entity or an Individual, make such accounting directly to the requesting Individual.
12. Agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
13. Agrees that it will abide by the limitations of any Notice of Privacy Practices (“Notice”) published by the Covered Entity of which it has knowledge. Any amended Notice shall not affect permitted uses and disclosures on which Business Associate has relied prior to the receipt of the Notice.
14. Agrees to limit use or disclosure of PHI for any particular individual based upon specific instructions from the Covered Entity. Business Associate is obligated to follow such instruction only after and to the extent that the Covered Entity has provided such instructions in writing to Business Associate and to the extent that Business Associate has not already made uses or disclosures in reliance on the lack of such instructions.
15. Without unreasonable delay and in no case later than five (5) calendar days after discovery, shall notify Covered Entity of a Breach of any unsecured PHI in accordance with 45 CFR 164.410; provided, further, that in the event of such a Breach, Business Associate shall provide to Covered Entity as soon as possible but in no event no later than ten (10) calendar days after discovery of such Breach, all information necessary for Covered Entity to fulfill its reporting requirements under 45 CFR Sections 164.404, 164.406, and 164.408.
16. Shall request, use, and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure (the “minimum necessary standard”); provided, further that a Limited Data Set shall be deemed to satisfy the minimum necessary standard pending further guidance from the Department of Health and Human Services.
17. Shall not directly or indirectly receive remuneration in exchange for any PHI in compliance with 42 U.S.C. 17935(d) and any implementing regulations
18. Shall not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. 17936(a) and any implementing regulations.
19. Shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. 17936(b) and any implementing regulations.

**IV. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATES**

(a) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose PHI as follows:

(i) If necessary, 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:

(A) The disclosure is required by law; or

(B) Business Associate obtains reasonable written 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 immediately notifies Business Associate of any instances of which the person is aware that the confidentiality of the information has been breached;

(C) To carry out its legal responsibilities in connection with the Arrangement Agreement or this Agreement provided that such uses or disclosures as provided in Sections (A) and (B) and (C), would not violate the HIPPA Privacy Rule if done by the Covered Entity.

(ii) For Data Aggregation services as defined by 45 CFR 164.501, if to be provided by Business Associate for the health care operations of Covered Entity, only pursuant to a written agreements between the Parties.

**V. TERM AND TERMINATION**

1. Term. The Term of this Agreement shall be effective as of the date first written above, and shall terminate when all of the PHI 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 PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
2. Termination for Cause. Upon Covered Entity’s knowledge of a material breach by Business Associate, Covered Entity shall have the right to immediately terminate this Agreement and the Arrangement Agreements(s).
3. Effects of Termination.
	* 1. Except as provided in paragraph (ii) of this subsection, within fifteen (15) days upon termination of this Agreement or of the Arrangement Agreements(s) or upon request of the Covered Entity, whichever occurs first, Business Associate shall return or destroy all PHI received from Covered Entity, created, or received by Business Associate on behalf of Covered Entity. 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 infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties 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.

**VI. MISCELLANEOUS**

1. No Rights in Third Parties. Except as expressly stated herein or the HIPAA Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties.
2. Survival. 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.
3. Amendment This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that this Agreement will be automatically amended to conform to any changes in the Privacy Rule, ARRA and its implementing regulations as is necessary for a Covered Entity to comply with the current requirements of HIPAA and ARRA. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or ARRA, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Privacy Rule or ARRA, then either party has the right to terminate upon written notice to the other party.
4. Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
5. Independent Contractor. None of the provisions of this Agreement are 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.
6. Governing Law. The laws of the State of North Carolina will govern this Agreement.
7. No Waiver. 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.
8. Interpretation. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply fully with the Privacy Rule and ARRA.
9. Severability. 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.
10. Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement or the HIPAA Privacy Rule will be adequate or satisfactory for Business Associate’s own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

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

**EAST CAROLINA UNIVERSITY BUSINESS ASSOCIATE:**

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: Click to enter name of person

 Title: Click to enter person’s title

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

 Contact Person’s Name: Click to enter contact person

Address: Click to enter address line 1

For: East Carolina University Click to enter address line 2

Phone: Click to enter phone number