

## The University of Chicago Business Associate Agreement

This Business Associate Agreement (“**Agreement**”), effective as of March 26, 2013 (“**Effective Date**”), is entered into by and between The University of Chicago (“**UC**”) and \_\_\_\_\_ (the “**Business Associate**”) (each a “**Party**” and collectively the “**Parties**”).

The Parties have an arrangement under which the Business Associate uses and/or discloses PHI of the covered portions of The University of Chicago (a hybrid entity) in its performance of services (the “**Underlying Arrangement**”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information and the Standards for Security of Electronic Protected Health Information under the Health Insurance Portability and Accountability Act of 1996 as amended (“**HIPAA**”). This Agreement, in conjunction with the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by the Business Associate from or on behalf of UC, will be handled between the Business Associate and UC and with third parties. The Parties agree as follows:

### **DEFINITIONS**

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

Specific definitions include:

- a. **HIPAA Rules**. “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- b. **Privacy Rule**. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164.
- c. **Security Rule**. Security Rule shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164.

d. **UC OHCA**. UC, The University of Chicago Medical Center, UCMC Community Physicians LLC, and any other entity added by UC that qualify as an entity that can be part of the UC OHCA under the HIPAA Rules.

A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

### **1. PERMITTED USES AND DISCLOSURES OF PHI**

1.1 **Services**. Except as otherwise specified herein, the Business Associate may use PHI necessary to perform its obligations under the Underlying Arrangement. All other uses not authorized by this Agreement are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents, in accordance with Section 2.1(d), or (ii) as otherwise required by the Privacy or Security Rule. All actions of its directors, officer, employees, contractors and other agents are deemed actions of the Business Associate.

1.2 **Business Activities of the Business Associate**. Unless otherwise limited herein *and only* if such use or disclosure of PHI would not violate the Privacy or Security Rules if done by UC, the Business Associate may:

- a. use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and federal confidentiality laws.
- b. disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate hereby represents to UC that (i) the disclosures are required by law, as

provided for in 45 CFR § 103, but subject to Section 4(c) below, or (ii) the Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 CFR §§ 164.504(e)(4) and 164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

Business Associate may provide data aggregation services relating to the health care operations of UC only to the extent set forth an agreement memorializing the Underlying Arrangement.

## **2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

### **2.1 Responsibilities of the Business Associate.**

With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

- a. Not use or disclose PHI other than as permitted or required by the Underlying Arrangement or as required by law, subject to Section 3(c) below.
- b. Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to secure and protect electronic PHI to prevent use or disclosure of PHI other than as provided for by the Agreement, and to protect the integrity and availability of PHI.
- c. Report, in writing, to the UC privacy officer within five (5) business days any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI, and any security incident of which it becomes aware, and cooperate with UC in any mitigation or breach reporting efforts. The notice will provide as much information as Business Associate has gathered as of that time. A subsequent notice, which Business Associate will provide no later than thirty (30) days after the first discovery of the use or disclosure, will include the identification of each individual whose PHI has been or is reasonably believed by Business Associate to have been affected by or during such use or disclosure. Business Associate will make no public disclosure of such use or disclosure without the approval of UC.

d. In accordance with 45 CFR §§ 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit PHI 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.

e. Ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America.

f. Within five (5) business days request of UC, make available PHI in a designated record set, if applicable, to UC, as necessary to satisfy UC's obligations under 45 CFR § 164.524.

g. Within five (5) business days, make any amendment(s) to PHI, if applicable, in a designated record set as directed or agreed to by UC pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy UC's obligations under 45 CFR § 164.526.

h. As applicable, maintain and make available the information required to provide an accounting of disclosures as necessary to satisfy UC's obligations under 45 CFR § 164.528.

i. To the extent the Business Associate is to carry out one or more of UC's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to UC in the performance of such obligation(s).

j. Upon request, make its internal practices, books, and records available to the Secretary and to UC for purposes of determining compliance with the HIPAA Rules.

k. Comply with minimum necessary requirements under the HIPAA Rules.

l. Take actions to mitigate, to the extent practical, any harmful effects that are known to it of its use or disclosure of PHI or a failure of its obligations to safeguard PHI.

m. Otherwise comply with all HIPAA requirements applicable to it.

2.2 Responsibilities of UC. With regard to the use and/or disclosure of PHI by the Business Associate, UC hereby agrees:

- a. to provide access to Business Associate of its notice of privacy practices, which is currently available on its website.
- b. to inform the Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- c. to notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that UC has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement.

### **3. REPRESENTATIONS AND WARRANTIES**

Business Associate represents and warrants:

- a. that it is duly organized, validly existing, and in good standing under the laws of the jurisdiction in which it is organized or licensed, it has the full power to enter into this Agreement and to perform its obligations hereunder, and that the performance by it of its obligations under this Agreement have been duly authorized by all necessary corporate or other actions and will not violate any provision of any license, corporate charter or bylaws.
- b. that the PHI requested or accessed by Business Associate is the minimum amount necessary for the purpose of the Underlying Arrangement, and that the use and/or disclosure of the PHI does not constitute a sale of PHI as prohibited by the HIPAA, including the HIPAA Rules.
- c. that if confronted with legal action to disclose any PHI, it will promptly notify UC and assist UC in obtaining a protective order or other similar order, and will thereafter disclose only the minimum amount of PHI that is required to be disclosed in order to the

comply with the legal action, whether or not a protective order or other order has been obtained.

d. that all of its employees and members of its workforce whose services may be used to fulfill obligations under this Agreement are or shall be appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise sufficient to enable Business Associate to fully comply with all provisions of this Agreement and HIPAA and the HIPAA Rules.

e. that it will reasonably cooperate with UC in the performance of the mutual obligations under this Agreement.

f. that in addition to complying with the Privacy Standards and Security Standards, Business Associate will comply with all applicable laws, including statutes, regulations, and judgments.

g. that it will notify UC immediately after it becomes aware that any of the foregoing representation and warranties may be inaccurate or may become incorrect.

### **4. TERMS AND TERMINATION**

4.1 Term. The Term of this Agreement shall commence on the Effective Date, and shall terminate on the termination date of the relevant Underlying Arrangement or on the date UC terminates this Agreement for cause as authorized in paragraph (b) of this Section, whichever is sooner.

4.2 Termination for Cause. Business Associate authorizes termination of this Agreement by UC if UC 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 UC.

4.3 Obligations of Business Associate upon Termination. Business Associate agrees to return or destroy all PHI pursuant to 45 CFR § 164.504(e)(2)(I). Prior to doing so, the Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for the Business Associate to return or destroy said PHI, the Business Associate will notify UC in writing. The notification shall include: (i) a

statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to the Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If in spite of Business Associate's best effort attempt it is infeasible for the Business Associate to obtain from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to UC and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

4.4 Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Underlying Arrangement.

## **5. OWNERSHIP/USE OF NAME**

5.1 Ownership of PHI. Business Associate acknowledges and agrees that UC owns all right, title and interest in and to all PHI, and that such right, title and interest will be vested in UC. Neither Business Associate nor any of its employees, agents, consultant or assigns will have any rights in any of the PHI or to use the PHI in any form, including stripped or aggregated information or statistical information derived from or in connection with the PHI, except as expressly permitted in this Agreement. Business Associate will not compile or distribute analysis to third parties using any PHI without UC's express written consent.

5.2 Use of Names; No Implied Endorsement. Business Associate agrees that it will not use in any way in its promotional, informational, or marketing activities or materials the names, trademarks, logos, symbols, or a description of the business activities of UC, The University of Chicago Medical Center, or

UCMC Community Physicians LLC without in each instance obtaining the prior written consent of the person owning the rights thereto.

## **6. INSURANCE AND INDEMNIFICATION**

6.1 Insurance. Business Associate will procure and maintain in effect during the term of this Agreement: (1) general liability insurance coverage with minimum limits of \$3 million per occurrence and \$3 million aggregate; and (2) professional liability or errors and omissions insurance coverage within minimum limits of \$3 million per occurrence and \$3 million in aggregate, insuring against breaches of this Agreement, if determined applicable by UC; (3) workers' compensation insurance coverage as required by law and employers liability in an amount not less than \$1 million, and (4) Automobile Liability insurance in the amount of \$1,000,000, if applicable. Upon request, Business Associate shall provide evidence of continuous coverage to UC and no coverage required within this section 7.1 shall be voided or cancelled without prior notice to UC. UC, its subsidiaries and affiliates, and its employees, trustees, directors, officers, subcontractors, agents or other members of its workforce shall be added as additional insureds on the liability policies required herein on a primary, non-contributory basis. If this Agreement is supplemental documentation to a professional services or vendor agreement, then the greater of the insurance types and coverage requirements shall take precedence to this clause.

6.2 Indemnification. The Business Associate agrees to indemnify, defend and hold harmless UC, the other UC OHCA entities, and each or their respective employees, trustees, directors, officers, subcontractors, agents or other members of its workforce from any costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including failure to perform its obligations under this Agreement or the HIPAA Rules. The Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason. Business Associate may not settle any claim, or otherwise take any action or make any admission that would adversely impact the Indemnified Parties without UC's prior written

approval. UC will have the unrestricted right to participate in the defense of any claim covered by this Section using counsel of its choice.

## 7. MISCELLANEOUS

7.1 Injunctive Relief. Business Associate acknowledges and agrees that any breach or threatened breach of this BAA would cause continuing, substantial, and irreparable injury to UC and/or the OHCA Entities, and that their remedy at law for such breach will not be adequate. Business Associate agrees that UC will be entitled to immediate equitable relief, including permanent injunction or a temporary restraining order, for a breach or threatened breach hereof without the need for UC to post a bond or other surety. Such rights will be in addition to, and not in limitation of, any other rights or remedies to which UC may be entitled at law or equity.

7.2 Survival. The provisions that by their nature are ongoing shall survive termination of this Agreement indefinitely.

7.3 Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. 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.

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

7.5 Third Party Beneficiaries. The UC OHCA entities are intended third party beneficiaries of this Agreement.

7.6 Notices. Any notices to be given hereunder to the Business Associate shall be made via U.S. Certified Mail signature required or overnight express courier signature required to the Vice President and General Counsel, The University of Chicago Medical Center, 5841 South Maryland, MC 1132, Chicago, IL 60637.

7.7 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

7.8 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

7.9 Changes in Law. The parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation. Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement and, in such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this set forth in an executed written agreement within thirty (30) days of receipt of notice from one party to the other party setting forth the proposed changes, then either party may, by giving the other an additional sixty (60) days written notice, terminate this Agreement, unless this Agreement would terminate earlier by its terms. In the event amendments or changes in existing law, general instructions, or new legislation, rules, regulations, or decisional law preclude or substantially preclude a contractual relationship between the parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either party may provide the other at least sixty (60) days advance written notice of termination of this Agreement, unless this Agreement would terminate earlier by its terms.

7.10 Construction of Terms. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the Department of Health and Human Services of the Office of Civil Rights from time to time.

7.11 Terms Superseding. Any provision of a writing memorializing the Underlying Arrangement that is directly contradictory to one or more terms of this Agreement (“Contradictory Term”) shall be superseded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of UC’s compliance with the Privacy Rule and only to the extent that it is reasonable impossible to comply with both the Contradictory Term and the terms of this Agreement. In addition, no limitation of liability agreed to by UC shall be applicable to this Agreement, notwithstanding any language in another agreement to the contrary.

7.12 Governing Law. This Agreement and any Underlying Arrangement shall be governed by Illinois law notwithstanding any conflicts of law provisions to the contrary.

**IN WITNESS WHEREOF**, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf.

**The University of Chicago**

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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

**Business Associate:**

\_\_\_\_\_  
*Insert name of Business Associate*

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

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