

BUSINESS ASSOCIATE AGREEMENT
(This document is used for Vendors with whom we have no written agreement.)

The University of Chicago Medical Center (“UCMC”) has entered into an arrangement with _____ (*insert full corporate name*) (“**Vendor**”) for the purpose of

_____ (*insert the purpose of the arrangement specifically stating the services (“Services”)*).

The parties acknowledge (a) that pursuant to the arrangement Vendor receives or will receive patient information, and (b) that Vendor is a Business Associate, as that term is defined in the Privacy Standards and Security Standards (both defined below). Pursuant to the Privacy Standards and Security Standards, the parties agree to the terms of this Agreement (“**Agreement**”).

I. DEFINITIONS FOR USE IN THIS ADDENDUM

[only use this term if the Services are Data Aggregation services "Data Aggregation" will mean, with respect to PHI created or received by Vendor in its capacity as the Business Associate of UCMC, the combining of such PHI by Vendor with the PHI received by Vendor in its capacity as a Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.]

“**Disclosure**” will mean the release, transfer, provision of access to, or divulging in any other manner of information outside the entity holding the information, including the transfer of EPHI.

“**Electronic PHI**” or “**EPHI**” will mean that subset of PHI that is transmitted by or maintained in electronic media and that is created by, transmitted to or by, or maintained by Vendor.

“**Electronic Media**” will mean (1) Electronic storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media, because the information being exchanged did not exist in electronic form before the transmission.

“**Individually Identifiable Health Information**” will mean information that is a subset of health information, including demographic information collected from an individual, and (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (ii) 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 (a) identifies the individual,

or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

“**OHCA Entity**” will mean UCMC, the University of Chicago, the UC Regional Doctors Offices, and any other entity added by UCMC by written notification to Vendor.

"**Privacy Standards**" will mean the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

“**Protected Health Information**” or “**PHI**” will mean Individually Identifiable Health Information received from UCMC or an OHCA Entity or received or created on behalf of UCMC or an OHCA Entity, except that "Protected Health Information" will not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. §1232g and (ii) records described in 20 U. S.C. §1232g(a)(4)(B)(iv). EPHI is a subset of PHI.

"**Secretary**" will mean the Secretary of the Department of Health and Human Services.

“**Security Standards**” will mean the Standards for Security of Electronic PHI, 45 C.F.R. 160 and 164.

“**Use**” means the employment, application, utilization, examination, or analysis of information within the entity that holds the information.

Forms of the words defined above are included as defined terms (e.g. Disclose).

II. OBLIGATIONS OF VENDOR

Section 1. Use of Protected Health Information. Vendor will not, and will ensure that its directors, officers, employees, contractors and other agents do not, Use PHI other than as permitted or required by Vendor to perform the Services or as required by law, but in no event in any manner that would constitute a violation of the Privacy Standards or Security Standards if Used by UCMC. However, Vendor may Use PHI to carry out its legal responsibilities. *[If Vendor needs to use PHI for its own purposes, then you can add: “and for Vendor's proper management and administrative services.” An example is the JCAHO.]* Without limiting the foregoing, Vendor agrees it will (a) secure and protect PHI consistent with applicable laws and standards that apply to the security and protection of patient information, and in any event using at least the degree of care and security as Vendor uses to maintain the confidentiality of its own confidential information; (b) make all reasonable efforts to only Use the minimum amount of PHI necessary to accomplish the intended purpose of the Use; and (c) permit access within its organization to the PHI only to those of its employees who need to know such information and only the minimum amount necessary in order to fulfill Vendor’s rights and obligations under the arrangement.

Section 2. Disclosure of Protected Health Information. Vendor will not, and will ensure that its directors, officers, employees, contractors, and other agents do not, Disclose PHI other than as permitted pursuant to this arrangement or as required by law, but in no event in any manner that would constitute a violation of the Privacy Standards or Security Standards if disclosed by

UCMC. To the extent Vendor Discloses PHI to a third party, Vendor must obtain, prior to making any such Disclosure, reasonable assurances from such third party that the party will abide by the same restrictions and conditions contained in this Agreement, including that (a) the third party will hold the PHI in confidence and will only Disclose PHI as required by law or only for the purposes for which it was Disclosed to such third party, (b) the third party will immediately notify Vendor of any breaches of these confidentiality restrictions, to the extent it has obtained knowledge of such breach, and (c) the third party will protect the integrity, and availability of PHI. Without limiting the foregoing, Vendor agrees it will (y) secure and protect PHI consistent with applicable laws and standards that apply to the security and protection of patient information, and (z) make all reasonable efforts to only Disclose the minimum amount of PHI necessary to accomplish the intended purpose of the Use.

If Vendor is confronted with legal action to Disclose any portion of PHI, Vendor will promptly notify and assist UCMC (at UCMC's expense) in obtaining a protective order or other similar order, and shall thereafter Disclose only the minimum amount of the PHI that is required to be Disclosed in order to comply with the legal action, whether or not a protective order or other order has been obtained.

Section 3. Safeguards Against Misuse of Information. Vendor agrees that it will implement appropriate safeguards to (a) prevent the Use or Disclosure of PHI other than pursuant to the terms and conditions of this Agreement, and (b) to appropriately protect the integrity and availability of PHI. Vendor also agrees to mitigate, to the extent practicable, any harmful effect that is known to it of its Use or Disclosure of PHI or failure to safeguard PHI in violation of this Agreement.

Section 4. Reporting of Disclosures of Protected Health Information. Vendor will, within five (5) days of becoming aware of a Disclosure of PHI or failure to safeguard PHI in violation of this Agreement by Vendor, its officers, directors, employees, contractors, or other agents or by a third party to which Vendor Disclosed PHI, report any such failure to the Privacy Officer of UCMC, who at the present time is Kerry DeMott.

Section 5. Agreements by Third Parties. Vendor will enter into an agreement with any agent or subcontractor that will have access to PHI, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions, terms, and conditions that apply to Vendor pursuant to this Agreement.

Section 6. Access to Information. Within five (5) days of a request by UCMC for access to PHI, Vendor will make available to UCMC the PHI requested. Vendor will have no responsibility to respond to requests of individuals who are seeking PHI directly from Vendor. If any individual requests access to PHI directly from Vendor, Vendor will within two (2) business days forward such request to the UCMC Privacy Officer. Any denials of access to the PHI requested will be the responsibility of UCMC.

Section 7. Availability of Protected Health Information for Amendment. Within ten (10) days of receipt of UCMC's request to amend an individual's PHI, Vendor will provide such information to UCMC for amendment, or amend the information upon UCMC's request, and incorporate any such amendments in the PHI as required by 45 C.F.R. §164.526. Vendor will

have no responsibility to respond to requests of individuals who are seeking to amend their PHI directly with Vendor.

Section 8. Accounting of Disclosures. Within ten (10) days of notice by UCMC to Vendor that it has received a request for an accounting of Disclosures of PHI regarding an individual, which Disclosures include the time during the six (6) years prior to the date on which the accounting was requested, Vendor will make available to UCMC such information as is in Vendor's possession and is required for UCMC to make the accounting required by 45 C.F.R. §164.528. At a minimum, Vendor will provide UCMC with the following information: (i) the date of the Disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person, (iii) a brief description of the PHI Disclosed, and (iv) a brief statement of the purpose of such Disclose, which includes an explanation of the basis for such Disclosure. Vendor will have no responsibility to respond to requests of individuals who are seeking an accounting of PHI Disclosures directly from Vendor. If the request for an accounting is delivered directly to Vendor, Vendor will within two (2) business days forward such request to UCMC. It will be UCMC's responsibility to prepare and deliver any such accounting requested. Vendor hereby agrees to implement an appropriate record keeping process to enable it to comply with the requirements of this Section.

Section 9. Availability of Books and Records. Vendor hereby agrees to make its internal practices, books, and records relating to the Use, Disclosure, and safeguarding of PHI available to the Secretary for purposes of determining UCMC's and/or Vendor's compliance with the Privacy Standards and the Security Standards.

Section 10. UCMC's Access to Books and Records. Immediately upon UCMC's reasonable request, Vendor will permit UCMC or its designee to access any and all records and material created, maintained, or held by or for Vendor that contains any form of PHI, whether such records are in paper, electronic, or other form. Vendor will supply UCMC with any copies of any such records as UCMC reasonably requests in order for UCMC to audit the scope, nature, and level of the Use, Disclosure, or safeguarding of PHI. If the audit uncovers irregularities in the scope, nature, and level of such Use, Disclosure, or safeguarding due to the negligence, gross negligence, willful acts, or omissions of Vendor's officers, directors, personnel, affiliates, and/or subcontractors, then Vendor will bear all costs of such audit, including those of UCMC. If no such irregularities are uncovered, then the parties will bear their own costs of such audit.

Section 11. Regulatory Changes. The parties acknowledge and agree that this Agreement is at all times subject to applicable laws, including, but not limited to, the Social Security Act and the rules, regulations, and policies of the U.S. Department of Health and Human Services. In the event legislation is enacted or rules, regulations, or interpretations thereof are set forth by a governmental agency or a decision or ruling by any such agency or a court or tribunal of competent jurisdiction, which in the opinion of UCMC's legal counsel affects or may affect the legality of this Agreement or materially and adversely affects the ability of either party to perform its obligations or receive the benefits intended hereunder, then within ten (10) days of notice from UCMC's legal counsel the parties will meet to amend this Agreement to carry out the original intentions of the parties. If the parties cannot reach a mutually agreeable resolution within forty-five (45) days after notice from UCMC's legal counsel, then either party may terminate this Agreement upon an additional thirty (30) days written notice to the other.

Section 12. Other Privacy Requirements. In addition to complying with the Privacy Standards and Security Standards, Vendor will comply with all applicable laws, including statutes, regulations, and judgments.

Section 13. Data Ownership. Vendor acknowledges and agrees that UCMC owns all right, title, and interest in and to all PHI, and that such right, title, and interest will be vested in UCMC. Neither Vendor nor any of its employees, agents, consultants or assigns will have any rights in any of the PHI or to Use the PHI in any form including, but not limited to, stripped or aggregated information, or statistical information derived from or in connection with the PHI, except as expressly set forth above. Vendor represents, warrants, and covenants that it will not compile and/or distribute analyses to third parties using any PHI without UCMC's express written consent.

Section 14. Term and Termination of this Agreement. The term of this Agreement is effective as of [*the sooner of the date vendor has access to PHI and the date of the arrangement, but no earlier than April 14, 2003*], and, notwithstanding anything to the contrary in any other document, will continue after the Services are complete, even if the arrangement has terminated or expired. Provisions 6 through 8 will expire six (6) years after the later of the completion of the Services or the termination or expiration of the arrangement. Upon UCMC's knowledge of a breach of this Agreement by Vendor, UCMC may either (i) provide an opportunity for Vendor to cure the breach by providing written notice of the breach with a time by which the breach must be cured, and if the breach is not cured within that time, UCMC may terminate the arrangement immediately upon delivery of a written notice of termination, (ii) immediately terminate the arrangement by providing written notice of the breach and termination, or (iii) if termination and cure are not feasible, UCMC may report the violation to the Secretary. This provision will in no way limit UCMC's termination rights or remedies under the arrangement, this Agreement, or the law.

After the completion of the Services or the termination or expiration of the arrangement, whichever is later, Vendor will within thirty (30) days of UCMC's request return to UCMC all PHI (including copies, notes, or other documents, electronic or printed, containing PHI) in its possession, or if directed by UCMC in writing, destroy such PHI and cause an officer of Vendor to certify to UCMC in writing that all PHI has been destroyed.

Section 15. Injunctive Relief. Vendor acknowledges and agrees that any breach or threatened breach of this Agreement would cause continuing, substantial, and irreparable injury to UCMC and/or the OHCA Entities, and that their remedy at law for such breach will not be adequate. Vendor agrees that UCMC will be entitled to immediate equitable relief, including a permanent injunction or a temporary restraining order, for a breach or threatened breach hereof without the need for UCMC 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 UCMC may be entitled at law or equity.

Section 16. Third Party Beneficiaries. The OHCA Entities are third party beneficiaries of this Agreement.

Section 17. Use of Names; No Implied Endorsement. Vendor 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 or activities of UCMC or University

of Chicago without in each instance obtaining the prior written consent of the person owning the rights thereto.

Section 18. Indemnification. Vendor shall indemnify, defend and hold harmless UCMC and the OHCA Entities and each of their respective officers, directors, trustees, employees, agents, and representatives (collectively, the “Indemnified Parties”) from and against any and all damages, losses, liabilities, judgments, awards, costs, and expenses of any nature whatsoever, including attorney's fees and court costs, due to, related to or arising out of any breach by Vendor of this Agreement. UCMC will promptly notify Vendor in writing of any related claim or action brought against it or the Indemnified Parties. The selection of counsel, the conduct of the defense of any lawsuit and any settlement shall be within Vendor’s control; provided, however, that Vendor may not settle any claim, or otherwise take any action or make any admission, that would adversely impact the Indemnified Parties without UCMC’s prior written approval. Notwithstanding anything to the contrary herein, UCMC shall have the unrestricted right to participate in the defense of any claim covered by this Section using counsel of its choice.

Section 19. Miscellaneous. This Agreement contains the entire intent of the parties, superceding any other arrangements between the parties with regard to its subject matter, may only be amended in writing, and will be governed by the laws of the state of Illinois. In addition, the parties hereby irrevocably and unconditionally consent and submit to the personal jurisdiction of Illinois courts over all matters relating to this Agreement. Whenever possible, each provision of this Agreement will be interpreted in such a manner as to be effective and valid under applicable law, but if any provision thereof will be prohibited by or held invalid under applicable law, such provision will be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions thereof.

IN WITNESS WHEREOF, the signators represent that they are duly authorized representatives and execute this Business Associate Agreement on behalf of the undersigned.

The University of Chicago Medical Center

Insert name

By: _____ By: _____
Name: _____ Name: _____

Its: _____ Its: _____
Title _____ Title _____

_____ Date _____ Date _____