

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”) is entered into by and between Idaho State University, \_\_\_\_\_ (“COVERED ENTITY”) and \_\_\_\_\_ (“BUSINESS ASSOCIATE”) and takes effect on \_\_\_\_\_, 200\_\_ (“Effective Date”).

### **I. Purpose and Intent**

**1.1** BUSINESS ASSOCIATE has agreed to perform certain services for or on behalf of COVERED ENTITY, which services may involve the use or disclosure of Protected Health Information within the meaning of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) as it may be amended from time to time and its implementing regulations, 45 CFR Parts 160 and 164 (“the Privacy Rule”). This Agreement supplements the parties’ Agreement for services and is intended to satisfy the requirements for Business Associate Agreements as set forth in the Privacy Rule, including 45 CFR § 164.50(e). BUSINESS ASSOCIATE hereby agrees to comply with applicable provisions of the Privacy Rule and to assist COVERED ENTITY with its compliance as explained below.

### **II. Definitions**

**2.1** *Designated Record Set* means (1) medical records and billing records about individuals maintained by or for COVERED ENTITY; and (2) other records used by or for COVERED ENTITY to make decisions about Individuals. See 45 CFR § 164.501.

**2.2** *Individual* means the person who is the subject of Protected Health Information, and any person who qualifies as a personal representative of such person in accordance with 45 CFR § 164.502(g). See 45 CFR § 164.501.

**2.3** *Protected Health Information (PHI)* means any information which is created or received by BUSINESS ASSOCIATE from or on behalf of COVERED ENTITY, whether oral or recorded in any form or medium, 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. See 45 CFR § 160.103.

**2.4** *Secretary* shall mean the Secretary of the Department of Health and Human Services or his or her designee.

**2.5** Terms used but not otherwise defined in the Agreement shall be defined as set forth in 45 CFR Part 160 and Part 164, Subparts A and E.

### **III. Obligations of BUSINESS ASSOCIATE**

**3.1** BUSINESS ASSOCIATE agrees to not use or disclose PHI other than as permitted or required by the Agreement or as required by law.

**3.2** BUSINESS ASSOCIATE agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

**3.3** BUSINESS ASSOCIATE 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.

**3.4** BUSINESS ASSOCIATE agrees to immediately report to COVERED ENTITY any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

**3.5** BUSINESS ASSOCIATE agrees to ensure that any agent to whom it provides PHI, including a subcontractor, agrees to the same restrictions and conditions concerning the information that apply through this Agreement with BUSINESS ASSOCIATE. BUSINESS ASSOCIATE may comply with this section by entering into a contract with such agent or subcontractor, which contract requires the agent or subcontractor to comply with the terms of the Agreement.

**3.6** Upon a request by COVERED ENTITY, BUSINESS ASSOCIATE agrees to provide access to PHI maintained in a designated Record Set to COVERED ENTITY or, as directed by COVERED ENTITY, to an Individual in order to meet the requirements under 45 CFR § 164.524. BUSINESS ASSOCIATE shall provide access to the PHI in the time and manner designated by COVERED ENTITY.

**3.7** Upon a request by COVERED ENTITY or an Individual and at COVERED ENTITY'S direction or agreement, BUSINESS ASSOCIATE agrees to make any amendment(s) to PHI maintained in a Designated Record Set in order to meet the requirements under 45 CFR § 164.526. BUSINESS ASSOCIATE shall act on the amendments in the time and manner designated by COVERED ENTITY.

**3.8** BUSINESS ASSOCIATE agrees to make internal practices, books, and records (including policies and procedures and PHI) relating to the use and disclosure of PHI received from COVERED ENTITY or created or received by BUSINESS ASSOCIATE on behalf of COVERED ENTITY, available to COVERED ENTITY or to the Secretary for purposes of the Secretary determining COVERED ENTITY'S compliance with the Privacy Rule. BUSINESS ASSOCIATE shall make the documents available in the time and manner designated by COVERED ENTITY or the Secretary.

**3.9** BUSINESS ASSOCIATE agrees to document such disclosures of PHI and information related to such disclosures as would be required for COVERED ENTITY to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

**3.10** BUSINESS ASSOCIATE agrees to provide to COVERED ENTITY or an Individual information collected in accordance with the section 3.9 of this Agreement, to permit COVERED ENTITY to respond to a request by an Individual for an accounting of

disclosures of PHI in accordance with 45 CFR § 164.528. BUSINESS ASSOCIATE shall act in the time and manner designated by COVERED ENTITY or the Individual.

**3.11** BUSINESS ASSOCIATE shall notify COVERED ENTITY of any change(s) in BUSINESS ASSOCIATE’S internal practices and procedures, to the extent that such changes may affect BUSINESS ASSOCIATE’S use and disclosure of PHI and such changes shall be subject to the approval by COVERED ENTITY.

**3.12** BUSINESS ASSOCIATE shall comply with the security policies and procedures adopted by the COVERED ENTITY.

**IV. Permitted Uses and Disclosures by BUSINESS ASSOCIATE**

**4.1** General Use and Disclosure Provisions. Except as otherwise limited in the Agreement, BUSINESS ASSOCIATE may use or disclose PHI on behalf of, or to provide services to, COVERED ENTITY for the following purposes, if such use or disclosure of PHI would not violate (1) the Privacy Rule if done by COVERED ENTITY or (2) COVERED ENTITY’S policies and procedures which limit disclosures to the minimum necessary:

The \_\_\_\_\_ (company) located in \_\_\_\_\_, will be \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_.

**4.2** Specific Use and Disclosure Provisions

**4.2.1** 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.

**4.2.2** 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 reasonable assurances from the person to whom the information is disclosed that it will remain confidential 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 notifies the BUSINESS ASSOCIATE of any instances of which it is aware in which the confidentiality of the information has been breached.

**4.2.3** Except as otherwise limited in this Agreement, BUSINESS ASSOCIATE may use PHI to provide data aggregation services to COVERED ENTITY as permitted by 45 CFR § 164.504(e)(2)(i)(B).

**4.2.4** BUSINESS ASSOCIATE may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(i).

**4.2.5** In the event BUSINESS ASSOCIATE receives a subpoena, court order or other legal process which mandates the disclosure of PHI, BUSINESS ASSOCIATE agrees to promptly notify and allow the COVERED ENTITY to respond to such legal process.

**4.3** Ownership of Protected Health Information. BUSINESS ASSOCIATE acknowledges and agrees that any and all PHI which COVERED ENTITY provides to BUSINESS ASSOCIATE is owned by COVERED ENTITY.

## **V. Obligations of COVERED ENTITY**

**5.1** COVERED ENTITY shall notify BUSINESS ASSOCIATE of any limitation(s) in COVERED ENTITY'S Notice of Privacy Practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.

**5.2** COVERED ENTITY shall notify BUSINESS ASSOCIATE of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.

**5.3** COVERED ENTITY shall notify BUSINESS ASSOCIATE of any restriction to the use or disclosure of PHI to which COVERED ENTITY has agreed in accordance with 45 CFR § 164.522, to the extent that such restriction may affect BUSINESS ASSOCIATE'S use or disclosure of PHI.

**5.4** COVERED ENTITY shall not request BUSINESS ASSOCIATE to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by COVERED ENTITY.

## **VI. Term and Termination**

**6.1** Term. The Term of this Agreement shall be effective as of the Effective Date identified 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 not feasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provision in this section.

**6.2** Termination for Cause. Upon COVERED ENTITY'S knowledge of a material breach of the Agreement by BUSINESS ASSOCIATE, COVERED ENTITY shall either:

**6.2.1** Provide an opportunity for BUSINESS ASSOCIATE to cure the breach or end the violation and, if BUSINESS ASSOCIATE fails to cure the breach or end the violation within the time specified by the COVERED ENTITY, COVERED ENTITY shall terminate this Agreement and all related agreements for BUSINESS ASSOCIATE'S services involving the use or disclosure of PHI.

**6.2.2** Immediately terminate this Agreement together with any related agreement for BUSINESS ASSOCIATE'S services involving the use and disclosure of PHI if BUSINESS ASSOCIATE has breached a material term of this Agreement and attempt to cure the breach or end the violation, if possible.

**6.2.3** Immediately terminate this Agreement together with any related agreement for BUSINESS ASSOCIATE'S services involving the use and disclosure of PHI if BUSINESS ASSOCIATE has breached a material term of this Agreement and if cure is not possible, COVERED ENTITY shall be entitled to seek any and all available remedies to compensate it for any damages, losses, costs, and/or expenses it incurs.

**6.2.4** If neither termination nor cure is feasible, COVERED ENTITY shall report the violation to the Secretary.

**6.2.5** BUSINESS ASSOCIATE acknowledges that remedies at law for the breach or violation of this Agreement by BUSINESS ASSOCIATE may be inadequate and therefore, COVERED ENTITY shall also be entitled to injunctive relief, and to all costs and expenses, including reasonable attorney's fees, relating to the pursuit of such injunctive relief. Such injunctive relief shall not be exclusive, but shall be in addition to any other rights and remedies that COVERED ENTITY may have for such breach or violation.

**6.3** Effect of Termination. Except as provided in subsection 6.3.1, upon termination of this Agreement for any reason, BUSINESS ASSOCIATE shall return or destroy all PHI received from COVERED ENTITY, or 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.

**6.3.1** In the event that BUSINESS ASSOCIATE determines that returning or destroying the PHI is not feasible BUSINESS ASSOCIATE shall provide to COVERED ENTITY notification of the conditions that make return or destruction infeasible. Upon COVERED ENTITY'S determination that return or destruction of PHI is not feasible, 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.

## **VII. Insurance and Indemnification**

**7.1** Insurance. In addition to any general and/or professional liability insurance coverage required of BUSINESS ASSOCIATE under the parties agreement for services, BUSINESS ASSOCIATE shall provide appropriate liability insurance coverage to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BUSINESS ASSOCIATE, its agents or employees, under this Agreement.

**7.2** Indemnification. In addition to any indemnification obligations undertaken by BUSINESS ASSOCIATE under the parties agreement for services, BUSINESS ASSOCIATE shall indemnify and hold harmless COVERED ENTITY from any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy or confidentiality obligations of BUSINESS ASSOCIATE, its agents or employees, under this Agreement.

**VIII. Miscellaneous**

**8.1** Notice. All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; (iii) overnight delivery service with proof of delivery; or (iv) facsimile with return facsimile acknowledging receipt. Notices shall be sent to the addresses below. Neither party shall refuse delivery of any notice hereunder.

COVERED ENTITY:

Idaho State University  
Attn: General Counsel  
921 S. 8<sup>th</sup> Ave., Stop 8410  
Pocatello, ID 83209-8410

BUSINESS ASSOCIATE:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**8.2** Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

**8.3** Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for COVERED ENTITY to comply with the requirements of Privacy Rule and HIPAA.

**8.4** Survival. The respective rights and obligations of BUSINESS ASSOCIATE under Section 6.3, "Effect of Termination," of this Agreement shall survive the termination of the Agreement.

**8.5** Interpretation. Any ambiguity in this Agreement shall be resolved to permit COVERED ENTITY to comply with the Privacy Rule.

**8.6** Governing Law. The law of the State of Idaho and applicable federal law shall govern the validity, construction, interpretation, and effect of this Agreement, and any disputes pertaining hereto shall be adjudicated in the federal or state courts of Idaho with venue being located in Bannock County, Idaho.

**8.7** No Third-Party Beneficiary Rights. This is not a third-party beneficiary contract. This is an Agreement between COVERED ENTITY and BUSINESS ASSOCIATE, and it can only be enforced by COVERED ENTITY and BUSINESS ASSOCIATE. COVERED ENTITY and BUSINESS ASSOCIATE do not intend to

create in any third-party a right to enforce this Agreement or to claim losses or damages under this Agreement.

**8.8** No Warranty. PHI is provided to BUSINESS ASSOCIATE solely on an “as is” basis. COVERED ENTITY disclaims all other warranties, express or implied, including, but not limited to, implied warranties of merchantability, and fitness for a particular purpose.

**IX. Effective Date**

**9.1** The parties have executed this Agreement as of the Effective Date.

**IDAHO STATE UNIVERSITY  
Covered Entity**

By: \_\_\_\_\_  
Robert A. Wharton  
Provost and Vice President for  
Academic Affairs

Date: \_\_\_\_\_

**COMPANY NAME  
Business Associate**

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

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

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

Date: \_\_\_\_\_