

## *C. Business Associate Agreement*

### **Pepperdine University Business Associate Agreement**

#### **Definitions:**

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

#### **Specific Definitions:**

(a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean \_\_\_\_\_ **[Insert name of Business Associate]**.

(b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Pepperdine University.

(c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

#### **Obligations and Activities of Business Associate:**

Business Associate agrees to:

(a) Not use or disclose protected health information ("PHI") other than as permitted or required by the Agreement or as required by law;

(b) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 64 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the Agreement;

(c) Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of unsecured PHI as required at 45 CFR 164.410, and any security incident of which it becomes aware within seven (7) business days;

(d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, 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) Make available PHI in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524;

(f) Make any amendment(s) to PHI in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526;

(g) Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528;

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

(i) Make its internal practices, books, and records available to the Secretary of Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.

**Permitted Uses and Disclosures by Business Associate:**

(a) Business Associate may only use or disclose PHI as necessary to perform the services set forth in Service Agreement.

(b) Business Associate may use or disclose PHI as required by law.

(c) Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.

(d) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E or 45 CFR Part 164 if done by Covered Entity.

**Provisions for Covered Entity to Inform Business Associate of Notice of Privacy Practices and Restrictions ("NPP"):**

(a) Covered Entity shall notify Business Associate of any limitation(s) in the NPP of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(c) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

**Term and Termination:**

(a) Term. The Term of this Agreement shall be effective as of \_\_\_\_\_ **[Insert effective date]**, and shall terminate on \_\_\_\_\_ **[Insert termination date]** or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Termination for Cause. Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement.

**Miscellaneous:**

(a) Injunctions. Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.

(b) Indemnification. Business Associate shall indemnify, hold harmless, and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement.

(c) Obligations of Business Associate upon termination. Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity, or if agreed to by Covered Entity destroy, all PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI.

(d) Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

(e) The parties agree that the Business Associate Agreement may need to be amended as necessary to accommodate changes to HIPAA or other privacy laws and regulations in the future.

(f) The parties further agree that the Business Associate (and its subcontractors if applicable) is acting as an independent contractor and not as an agent of the Covered Entity.

(g) For questions regarding Pepperdine University's HIPAA compliance, please contact Kim Miller, HIPAA Compliance Officer, 24255 Pacific Coast Highway, Malibu, CA 90263, 310.506.4208.

IN WITNESS WHEREOF, PEPPERDINE UNIVERSITY AND \_\_\_\_\_  
**[Insert name of Business Associate]** have executed this Agreement as of the date first written above.

ATTEST:

by \_\_\_\_\_ Date \_\_\_\_\_  
PEPPERDINE UNIVERSITY

ATTEST:

by \_\_\_\_\_ Date \_\_\_\_\_  
BUSINESS ASSOCIATE