

AMERICAN COLLEGE OF SURGEONS
COMMISSION ON CANCER

BUSINESS ASSOCIATE AGREEMENT

NAME OF HOSPITAL:
HOSPITAL IDENTIFICATION
NUMBER:
HOSPITAL ADDRESS:

CITY, STATE, AND ZIP:

EFFECTIVE DATE:

The Hospital participates in the American College of Surgeon's Commission on Cancer (the "Commission"). The Commission is a consortium of professional associations dedicated to reducing the morbidity and mortality of cancer through education, standard setting and the monitoring of quality care.

The National Cancer Data Base (NCDB), a joint program of the Commission and American Cancer Society, is a nationwide oncology outcomes database for more than 1,400 Commission-approved cancer programs in 50 states. Eighty percent (80%) of all newly diagnosed cases of cancer in the US are captured at the institutional level and reported to the NCDB. The NCDB now contains more than 12 million records from hospital cancer registries. These data are used to explore trends in cancer care, create regional and state benchmarks for participating hospitals, and to serve as the basis for quality improvement.

The Commission requires the Hospital to disclose to the College and for the College to use patient Protected Health Information ("PHI"), as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

HIPAA requires the Hospital and the College to enter into a Business Associate Agreement to protect PHI.

1. The Hospital agrees that the College may use the PHI received for the following purposes:
 - a. To set standards for quality, multidisciplinary cancer care delivered in numerous hospital settings nationwide;
 - b. To survey hospitals to assess compliance with those standards;
 - c. To analyze, aggregate, produce and publish aggregated de-identified data on clinical patterns of diagnosis, treatment and outcomes of cancer patients;
 - d. To produce reports of aggregated, de-identified data that describe the diagnosis, treatment and outcomes of cancer patients;

- e. To evaluate hospital performance, develop effective interventions to improve cancer care outcomes at the national and local level, and provide feedback in the form of an individual facility's data benchmarked against regional and national data.

2. The Hospital and the College agree to the additional terms and provisions on the Term Sheet below in order to comply with the applicable requirements of HIPAA.

TERM SHEET

TERMS REQUIRED UNDER THE STANDARDS FOR PRIVACY OF INDIVIDUALLY IDENTIFIABLE HEALTH INFORMATION, 45 CFR PART 160 AND PART 164, SUBPARTS A AND E (THE "PRIVACY RULE").

Definitions

Terms used, but not otherwise defined, in this Agreement will have the same meaning as those terms in the Privacy Rule. PHI will have the meaning ascribed to it in the Privacy Rule, but for the purposes of this Agreement will refer solely to PHI received from, or created or received by the College, its agents or subcontractors, on behalf of the Hospital. The College is a Business Associate and the Hospital is a Covered Entity under the terms of the Privacy Rule.

General Obligations of the College

- (a) The College agrees not to use or disclose PHI other than as permitted or required by this Agreement or as required by law.
- (b) The College agrees to use appropriate safeguards to prevent use or disclosure of PHI by the College or its agents, other than as provided for by this Agreement and will, at its own expense and at its own site, provide the equipment and software services necessary to reasonably protect and safeguard the PHI consistent with industry standards of similarly situated business associates.
- (c) The College agrees to report to the Hospital any use or disclosure of PHI not authorized by this Agreement of which it becomes aware.
- (d) The College agrees to ensure that any agent, including a subcontractor, to whom it provides PHI will agree to comply with the same restrictions and conditions that apply to the College through this Agreement.
- (e) The College agrees to make its internal practices, books and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by the College on behalf of the Hospital, available to the Secretary of the U.S. Department of Health and Human Services ("Secretary"), during reasonable business hours, for purposes of the Secretary determining the Hospital's compliance with the Privacy Rule.

- (f) The College agrees to document and account for disclosures of PHI and information related to such disclosures as would be required by the Privacy Rule if the Hospital made the same or similar disclosures.
- (g) The College agrees to provide to the Hospital or an Individual, within thirty (30) days, information collected in accordance with subsection (f) of this section to permit the Hospital to respond to a request by an Individual for an accounting of disclosures of PHI.
- (h) The College agrees to mitigate, to the extent practicable, any harmful effect that is known to the College of a use or disclosure of PHI by the College in violation of the requirements of this Agreement.

Additional Uses and Disclosure Provisions

- (a) Except as otherwise limited in this Agreement, the College may use PHI for the proper management and administration of the College or to carry out the legal responsibilities of the College.
- (b) Except as otherwise limited in this Agreement, the College may disclose PHI for the proper management and administration of the College, provided that disclosures are required by law, or the College otherwise obtains reasonable assurances from the person to whom the information is disclosed that the person will (i) protect the confidentiality of the PHI, (ii) use or further disclose it only as required by law or for the purpose for which it was disclosed to the person, and (iii) notify the College of any instances of which the person is aware that the confidentiality of the information has been breached.
- (c) Nothing in this Agreement will be interpreted to prevent the College from disclosing PHI in accordance with the Privacy Rule [45 CFR 164.502(j)(1)] concerning disclosures in the public interest, or other permissible uses or disclosures by a business associate as set forth in the Privacy Rule.

General Obligations of the Hospital

- (a) Provisions for The Hospital to Inform the College of Privacy Practices and Restrictions
 - (i) The Hospital shall notify the College of any limitation(s) in the Hospital's Notice of Privacy Practices, to the extent that such limitation may affect the College's use or disclosure of PHI. The Hospital will make its Notice of Privacy Practices available to the College upon request.
 - (ii) The Hospital will provide the College with any changes in, revocation of, or permission by an Individual to use or disclose PHI, if such changes affect the College's permitted or required uses and disclosures.

- (iii) The Hospital warrants that all disclosures of PHI made to the College are permissible disclosures under the Privacy Rule and that no Individual has restricted disclosure so as to make the disclosure to the College impermissible. The Hospital will notify the College of any restriction on the use or disclosure of PHI that the Hospital has agreed to in accordance with the Privacy Rule [45 CFR 164.522] if such restriction affects the College's use or disclosure of PHI.
- (b) Permissible Requests by The Hospital. The Hospital will not ask the College to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if undertaken by the Hospital; except as otherwise provided for in this Agreement.

ADDITIONAL PROVISIONS

Term and Termination

- (a) Term. The Term of this Agreement will begin on the Effective Date and will remain in effect until terminated by mutual agreement of the parties or in accordance with the termination provisions in subparagraph (b) below.
- (b) Termination for Cause. Either party may terminate this Agreement based on a material breach of this Agreement, provided that the non-breaching Party gives the breaching party thirty (30) days written notice of termination and the opportunity to remedy the breach, and the breach is not remedied during the notice period.
- (c) Effect of Termination. Except as provided in paragraph (b) of this sub-section, upon termination of this Agreement, for any reason, the College will, at the Hospital's direction, destroy all PHI received from the Hospital, or created or received by the College on behalf of the Hospital if the PHI has not yet been entered into the College's database. The College will retain no copies of the PHI, except to the extent that it has been entered into the College's database.

In the event that the College reasonably determines that destroying the PHI is infeasible due to inclusion of the PHI in the College's database or for other legitimate reason, the College will give the Hospital a statement of reasons why the return or destruction of the PHI is infeasible. As the sole consequence of such determination, the College will extend the protections of this Agreement to such PHI and limit further its use and disclosure to those purposes that make the return or destruction infeasible, for so long as the College maintains such PHI.

The obligations of this sub-section (c) will survive any termination or expiration of this Agreement.

MISCELLANEOUS

- (a) **Regulatory References.** A reference in this Agreement to a section in the Privacy

Rule means the section as in effect or as amended and for which compliance is required.

- (b) Amendment. Any amendment to this Agreement must be in writing and signed by each of the Parties. The Parties agree to amend this Agreement from time to time as necessary for the Hospital to comply with the requirements of federal and applicable state law and regulations including the Privacy Rule and HIPAA. Either party may request that the other party amend this Agreement in order to comply with applicable state and federal law and regulations. If amendment of this Agreement is not achieved to the satisfaction of both parties, then either party may terminate this Agreement without penalty.
- (c) Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits the Hospital and the College to comply with HIPAA and applicable state and federal laws and regulations.
- (d) Assignment. Except as otherwise provided herein, neither Party may without the written consent of the other assign, subcontract, delegate or otherwise transfer this Agreement or any of its rights or obligations under this Agreement. Nor may either Party contract with third parties to perform any obligations required by this Agreement except as may be contemplated in this Agreement, without the other Party's prior written consent.
- (e) Severability. If any part of this Agreement is determined to be invalid, illegal or unenforceable by any Act of Congress, state legislature, or by any regulation issued by the United States or a state, or declared null and void by any court with valid jurisdiction, then the Parties will modify such part, if possible, to conform to the law, and the remaining parts will be fully effective and operative insofar as reasonably possible.
- (f) Entire Agreement. This Agreement constitutes the entire understanding and agreement between the Parties concerning the subject matter of this Agreement, and supersedes all prior negotiations, agreements and understandings between the Parties, whether oral or in writing, concerning its subject matter.

SECURITY RULE AMENDMENT TO THE BUSINESS ASSOCIATE AGREEMENT

This Amendment to Business Associate Agreement (the "Amendment"), is entered into by and between The American College of Surgeons (the "Business Associate") and Hospital (each "Party" and collectively the "Parties").

WHEREAS, the U. S. Department of Health and Human Services ("HHS") has issued final regulations, pursuant to the Administrative Simplification provision of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the security of electronic protected health information ("EPHI") obtained, created or maintained by covered entities, including health care providers such as Facility (the "HIPAA Security Rule"); and

WHEREAS, Hospital and the College are parties to a Business Associate Agreement (the “Agreement”) and the HIPAA Security Rule requires that Hospital enter into this Amendment with College in order to protect the security of EPHI; and

WHEREAS, the College and its employees, affiliates, agents or representatives access, create, obtain or maintain EPHI in carrying out their obligations to the Hospital; and

WHEREAS, the Parties desire to enter into this Amendment to protect security of EPHI and to amend any agreements between them with the execution of this Amendment;

NOW, THEREFORE, in consideration of the premises and mutual covenants hereinafter set forth, and for other valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Business Associate Covenants.
 - 1.1 The College shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that creates, receives, maintains or transmits on behalf of the Hospital; and
 - 1.2 The College shall promptly report to Hospital any “security incident” of which it becomes aware, as such term is defined in the HIPAA Security Rule. At the request of Hospital, the College shall identify: the date of the security incident, the scope of the security incident, the College’s response to the security incident and the identification of the party responsible for causing the security incident, if known.
 - 1.3 The College shall ensure that any agent, including a subcontractor, to whom it provides EPHI agrees in writing to implement reasonable and appropriate safeguards to protect EPHI.
2. Ratification of Agreement. Except as expressly modified herein, all other terms and conditions of the Agreement shall remain in full force and effect as written, and are hereby ratified and confirmed by Hospital and the College.
3. Effective Date. The provision of this Amendment shall become effective on the day the Business Associate Agreement (the “Effective Date”) is signed.
4. Miscellaneous. The Agreement and the Amendment represent the entire agreement of the parties with respect to the subject matter hereof. This Amendment is binding on and shall inure to the benefit of Hospital and the College and their respective legal representatives, successors and permitted assigns. Neither this Amendment nor the Agreement may be amended, except by a written agreement signed by both parties.

Intending to be legally bound, the Parties hereto have duly executed this Amendment as of date first

written above.

Gay F. Vincent

Gay Vincent, CPA
Comptroller
American College of Surgeons

I AM THE PERSON AUTHORIZED TO SIGN THIS AGREEMENT ON BEHALF OF THE HOSPITAL SET FORTH ON THE FIRST PAGE OF THIS AGREEMENT AND THE HOSPITAL HEREBY AGREES WITH THE TERMS AS STATED. BY CLICKING THE ACCEPTANCE BUTTON, THE HOSPITAL IS CONSENTING TO BE BOUND BY AND IS BECOMING A PARTY TO THIS AGREEMENT.

Name of person accepting on behalf of the facility. (Electronic Signature)

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