WSU Contract #\_\_\_\_\_\_\_

**ATTACHMENT \_\_\_\_**

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (BAA) is made and entered into effective as of \_\_\_\_\_\_\_\_\_ (the Effective Date), by and between Washington State University, a public institution of higher education (Covered Entity or WSU), and \_\_\_\_\_\_\_\_\_**,** a \_\_\_\_\_\_\_ *[for-profit, or non-profit corporation]* formed under the laws of \_\_\_\_\_\_\_\_\_\_\_ *[state / jurisdiction]* (Business Associate). (WSU and Business Associate are each a Party or collectively the Parties.)

This BAA amends any written and/or oral agreement(s) existing as of the Effective Date between WSU and Business Associate, and the terms stated herein shall apply to any future written or oral agreement between the Parties.

**RECITALS**

1. WSU wishes to disclose certain confidential information to Business Associate pursuant to the terms and conditions of an agreement such that Business Associate will provide certain services to or perform functions on behalf of WSU (Service Agreement).
2. Business Associate may have access to information, which may include Protected Health Information (PHI) as defined below, in fulfilling its responsibilities under the Service Agreement.
3. The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996, as amended (HIPAA),the Health Information Technology for Economic and Clinical Health Act (HITECH)and the implementing regulations of said statutes (collectively HIPAA),including the Privacy and Security Rules. The Parties are also committed to complying with Washington’s Uniform Health Care Information Act (UHCIA), RCW 70.02 *et. seq*.
4. This BAA, in conjunction with applicable HIPAA rules and/or the UHCIA, sets forth the terms and conditions pursuant to which PHI will be managed and/or handled by Business Associate during the terms of the Service Agreement and after its termination.

In consideration of mutual promises below and for other good and valuable consideration contained herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Definitions**:
2. Terms used in this BAA that are defined or have a specific meaning under the HIPAA shall have the same meaning here.
3. Protected Health Information or PHI includes electronic PHI (ePHI).
4. **Permitted Use and Disclosure of PHI.**
   1. **Overview.** The requirements of HIPAA that relate to privacy and security that are applicable to WSU shall also be applicable to Business Associate where Required by Law.
   2. **Permitted Uses.** Business Associate provides services for or performs functions and/or activities on behalf of WSU that involve Use and/or Disclosure of PHI. Business Associate may Use and Disclose PHI as necessary to perform services under the Service Agreement and as Required by Law unless otherwise prohibited in the BAA or Service Agreement. All other Uses or Disclosures not authorized by this BAA are prohibited.
   3. **Business Associate Operations.** Unless otherwise limited herein, Business Associate may Use and/or Disclose PHI in its possession for its proper management and administration and to fulfill legal responsibilities of Business Associate provided that such Uses and/or Disclosures comply with and are permitted under applicable Washington State and federal privacy laws.
   4. **Restrictions.** The following restrictions apply to Business Associate.
      1. Unless performing de-identification services for WSU pursuant to a Services Agreement, Business Associate is not authorized and may not use PHI to de-identify the information in accordance with 45 CFR § 164.514.
      2. Business Associate may not Use or Disclose PHI for Business Associate’s Marketing or fundraising purposes.
      3. Business Associate shall not directly receive remuneration in exchange for PHI subject of this BAA unless agreed to by WSU in a separate written contract and as permitted by any applicable laws. This Section does not apply to WSU’s payment to Business Associate for providing services pursuant to the Service Agreement.
5. **Obligations of Business Associate.**
   1. **Compliance**. Except as otherwise permitted or required by this BAA or as Required by Law, Business Associate shall only create, receive, use, disclose, maintain, and/or transmit PHI in compliance with this BAA, HIPAA and the UHCIA.
   2. **Uses**. In accordance with the foregoing, Business Associate shall use PHI (a) to perform services for WSU, and (b) as necessary for the proper management and administration of the Business Associate or to carry out Business Associate's legal responsibilities, provided that such uses are permitted under federal and applicable Washington State law, are Required by Law, and Business Associate obtains reasonable written assurances from the person to whom the information is disclosed that the information will remain confidential and not be used or further disclosed except as Required by Law, for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.
   3. **Disclosures**. Provided that such uses are permitted under federal and applicable Washington State law, Business Associate may only use WSU’s PHI if necessary and in accordance with 45 C.F.R. § 164.504 and only for the following purposes:
      1. As necessary to perform services for WSU;
      2. If the disclosure is Required by Law;
      3. To make uses and disclosures and requests for PHI consistent with the HIPAA minimum necessary standard;
      4. In a manner that would not violate the HIPAA Privacy Rule if done by WSU except as otherwise provided herein;
      5. To a third party if necessary to assist Business Associate in performance of its services for or satisfying other duties owed to WSU if Business Associate obtains reasonable written assurances from the third party to whom the PHI is disclosed that (i) the PHI will be held confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party, and (ii) the third party will notify Business Associate promptly, but no less than seven (7) days following any instance of which such third party becomes aware that PHI has been used or disclosed for a purpose that is not permitted by this BAA, HIPAA, and/or the UHCIA. Business Associate further agrees that any disclosures of PHI made by Business Associate to any third party, including subcontractors, shall comply with HIPAA, the UHCIA and with the terms of this BAA.
   4. **Safeguards.** Use appropriate safeguards to comply with HIPAA including but not limited to the Security Rule (i.e., conducting Risk Analysis) to prevent the use or disclosure of PHI other than as provided for by this BAA, HIPAA and/or the UHCIA. Business Associate acknowledges that WSU is relying on the Administrative, Physical, and Technical safeguards implemented by Business Associate in selecting Business Associate to provide services to WSU. Business Associate warrants that it has adopted, implemented, and shall maintain, for so long as Business Associate has access to, creates, maintains, uses, or discloses WSU’s PHI and/or other confidential information, adequate and appropriate safeguards in order to: (i) protect the confidentiality and security of PHI obtained from, or created on behalf of, WSU by Business Associate, and (ii) prevent the use or disclosure of PHI other than as provided for by this BAA, HIPAA, UHCIA, and other applicable laws. Business Associate's Administrative, Physical, and Technical safeguards and those of its subcontractors, shall comply with HIPAA, Washington law, and all applicable then current privacy and security guidelines and/or standards issued by the [National Institute for Standards and Technology (NIST)](https://www.nist.gov/cyberframework).
   5. **Education/Training.** Business Associate will provide Business Associate’s Workforce member(s), who will have access to WSU’s PHI, with appropriate privacy and security education and training consistent with HIPAA. All education and training must be completed prior to Business Associate’s Workforce member(s) having access to and/or disclosure of WSU’s PHI.
   6. **Access to PHI**. To the extent Business Associated and/or its agents or subcontractors maintain WSU’s PHI in a Designated Record Set, Business Associate and/or its agents or subcontractors shall make available to WSU for inspection and/or copying within seven (7) days upon request so WSU may comply with 45 CFR § 164.524 and RCW 70.02.080.
   7. **Amendments.** To the extent Business Associate and/or its agents or subcontractors maintain WSU’s PHI in a Designated Record Set, Business Associate and/or its agents or subcontractors shall make PHI available to WSU for amendment and incorporate any amendment to enable WSU to comply with 45 CFR § 164.526 and RCW70.02.100. Business Associate will only make an amendment to a Designated Record Set as directed or authorized by WSU. Business Associate will make the PHI available within seven (7) days of WSU’s request.
   8. **Accounting of Disclosures.** Business Associate and its agents or subcontractors shall maintain and make available to WSU the information required to provide an accounting of disclosures so WSU may comply with 45 CFR § 164.528 and RCW 70.02.02.
   9. **Minimum Necessary**. Business Associate warrants that it will only request, use, access, and/or disclose the minimum necessary PHI to satisfy a particular purpose or carry out a function related to the Service Agreement.
   10. **Audits/Inspections of Records**. Business Associate shall make available its internal books, records, and policies and procedures relating to the use and disclosure of PHI available to the Secretary of Health and Human Services to the extent required for determining WSU’s or Business Associate’s compliance with HIPAA.
   11. **Reporting of Unauthorized Uses/Disclosures**. Promptly, but no less than within five (5) days of discovery of an unauthorized Use or Disclosure of WSU’s PHI not provided for by this BAA, including any Breach of Unsecured PHI and/or Security Incident, Business Associate shall notify in writing the undersigned WSU’s representatives of all known information required pursuant to 45 CFR § 164.410 and 45 CFR §164.404. The notification to WSU shall also include, to the extent it is known, the following:
       1. Specific details of what happed including the date of the unauthorized Use or Disclosure and the date of the discovery of the unauthorized Use or Disclosure of WSU’s PHI;
       2. The identity of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used or disclosed;
       3. The identity of the recipient and/or third parties involved with causing the unauthorized Use or Disclosure;
       4. Specification of any corrective action Business Associate took to mitigate further unauthorized Use or Disclosure of WSU’s PHI; and
       5. Such other information as WSU may reasonable request.

Business Associate shall timely supplement any written reports to WSU when

additional information becomes available.

The Parties acknowledge that probes and reconnaissance scans are common in the industry. The Parties agree this section satisfies any notices necessary by Business Associate to WSU of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents (as defined below) for which no additional notice to WSU shall be required. For purpose of this BAA, “Unsuccessful Security Incidents” includes pings and other broadcast attacks on the Business Associate’s firewall, port scans, unsuccessful log-on attempts, denial of services, and any combination of the above so long as no such incident results in unauthorized Use or Disclosure of PHI.

* 1. **Costs Related to Unauthorized Uses/Disclosure**. Business Associate agrees to cooperate with WSU in the investigation of a potential or actual Breach of WSU’s Unsecured PHI. Business Associate shall be solely responsible for any costs associated with Business Associate’s errors and/or omissions, breach of this BAA and/or Unauthorized Use or Disclosure of WSU’s PHI in violation of HIPAA and/or the UHCIA.
  2. **Remedial/Corrective Action**. Business Associate agrees to mitigate to the extent practicable any harmful effect that is known to Business Associate of Use or Disclosure of PHI by Business Associate or subcontractors that is inconsistent with this BAA, HIPAA and/or the UHCIA.
  3. **Foreign Activities**. Business Associate shall not disclose, transmit, and/or provide access to WSU’s PHI to any person and/or entity located outside the geographic boundaries of the United States including employees, subcontractors, agents, or any other representative of that person or entity.
  4. **Cyber Liability Insurance**. Business Associate shall maintain Cyber Liability Insurance with minimum limits of no less than $1,000,000 per occurrence with $3,000,000 aggregate. The state of Washington, its agents and employees need not be named as additional insureds under this policy.

1. **Obligations of WSU.**
   1. **Compliance with the Law.** WSU agrees not to request Business Associate to Use or Disclose PHI in any manner that would not be permissible under HIPAA and/or the UHCIA if done by WSU.
   2. **Requested Restrictions.** WSU agrees to notify Business Associate of any restrictions on Use or Disclosure of PHI that WSU has agreed to in accordance with 45 CFR § 164.522 to the extent such restrictions affect Business Associate’s Use or Disclosure of PHI.
   3. **Changes/Revocation**. WSU agrees to inform Business Associate of any changes in, or revocation of, the consent or authorization provided by individuals to Use or Disclose PHI, to the extent that such changes or revocation may affect Business Associate’s Use or Disclosure of PHI pursuant to 45 CFR §§ 164.506 and 164.508.
2. **Term and Termination.** 
   1. **Term.** The provisions of this BAA shall take effect on the Effective Date and shall terminate on the sooner of (1) the date of termination of the Service Agreement, or (2) the date this BAA is terminated pursuant to this Section.
   2. **Automatic Termination.** Unless extended by the Parties in writing, this BAA will automatically terminate without any further action upon the termination or expiration of the Service Agreement.
   3. **Termination.** As provided pursuant to 45 CFR § 164.504(e)(2)(iii), WSU may immediately terminate this BAA and any Service Agreements if WSU makes the good-faith determination that Business Associate has breached a material term of this BAA.
   4. **Cure.** At WSU’s sole discretion, WSU may elect to provide Business Associate with written notice of the existence of an alleged material breach and provide Business Associate with a reasonable opportunity to cure the breach or end the violation. Where Business Associate is unable or unwilling to cure any material breach within the timeframe for cure set by WSU, WSU may terminate the BAA.
   5. **Effect of Termination.** Upon termination of this BAA for any reason, Business Associate shall return or appropriately destroy all PHI that Business Associate or its agents or subcontractors still maintain in any form and shall retain no copies of such PHI. If return or destruction is not feasible, Business Associate shall continue to extend the protections of this BAA to all PHI and limit further Uses and Disclosures of such information to those purposes that make the return or destruction of such PHI infeasible for so long as Business Associate or its agents or subcontractors maintain the information. Business Associate’s duty to protect the privacy and security of WSU’s PHI will be continuous and survive expiration or termination of this BAA.
3. **Indemnification.** Business Associate will indemnify and hold harmless WSU from and against any claim, cause of action, liability, damage, penalty, fine, cost or expense including reasonable attorneys’ fees arising out of or relating to any non-permitted Use or Disclosure of PHI, breach of this BAA, and/or violation of HIPAA or the UHCIA or other applicable privacy/security laws by Business Associate or its agents or subcontractors.
4. **Miscellaneous.**
   1. **Changes in Law.** If any new Washington State or federal law, rule, regulation, or judicial or administrative decision affecting the Use or Disclosure of PHI is enacted or issued, the Parties agree to take action in a timely manner and as is necessary for WSU and Business Associate to comply with such law, rule, regulation, and/or decision. If the Parties are not able to agree on the terms of an amendment to this BAA, either Party may terminate this BAA upon 30 days written notice**.**
   2. **Entire Agreement.** This BAA constitutes the entire agreement between the Parties as to this subject matter and supersedes all prior communications, representations, and agreements (oral or written), of the Parties as it relates to this subject matter**.**
   3. **Amendment.** This BAA may not be modified or amended except by a writing duly signed by an authorized representative of each Party.
   4. **Waiver.** No wavier of a breach of any provision of this BAA shall be construed to be a waiver of any breach of any other term/condition of this BAA or of any other breaches of the same term/condition. No delay in action with regard to any breach of any term/condition of this BAA shall be construed to be a waiver of such breach.
   5. **Severability.** The invalidity of any term or condition of this BAA will not affect the validity of any other term or condition.
   6. **Independent Contractor.** This BAA is not intended to create, and shall not be construed to create a relationship between the Parties other than that of independent contractors. It is agreed that Business Associate is an independent contractor of WSU.
   7. **Assignment.** WSU has entered into this BAA in reliance on Business Associate’s expertise and qualifications. Business Associate may not transfer or assign its interest to any other person or entity without written approval from WSU.
   8. **No Third Party Beneficiaries**. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than WSU, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
   9. **Governing Law**. This BAA will be governed and construed in accordance with the laws of Washington State.
   10. **Ownership of PHI**. It is agreed by the Parties that WSU has sole and complete rights and ownership of WSU’s PHI including but not limited to PHI created, received, transmitted, and/or maintained by Business Associate in the performance of services to, for, and/or on behalf of WSU.
   11. **Interpretation**. The terms and conditions of this BAA shall supersede any conflicting terms and conditions in the Service Agreement, which may be amended from time-to-time. This BAA shall be interpreted broadly to implement and comply with HIPAA, UHCIA, and/or other applicable laws. The Parties agree that any ambiguity in this BAA shall be resolved to permit WSU to comply with HIPAA, UHCIA and applicable laws.
   12. **Counterparts**. This BAA may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

**IN WITNESS WHEREOF**, each of the undersigned has duly executed this Agreement on behalf of the Party and as of the Effective Date.

**Washington State University Business Associate**

Recommended By:

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

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

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

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

Approved By:

By:

Name:

Title: Contracts Manager, Finance and Admin

Date:

Approved as to Form

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Assistant Attorney General Date