

**BUSINESS ASSOCIATE
ADDENDUM TO SERVICE AGREEMENT**

This Business Associate Addendum to Service Agreement (the “Addendum”) and (“BAA”) is made and entered into effective the ___ day of _____, 20__ (“Effective Date”) by and between the Regents of Eastern Michigan University (“Covered Entity”) and _____ (“Business Associate”).

Recitals:

Whereas, Business Associate renders certain services on behalf of Covered Entity pursuant to an Engagement Letter (“Service Agreement”); and

Whereas, the parties now desire through this Addendum to amend the Service Agreement consistent with the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996, as it may be amended from time to time (“HIPAA”), including the regulatory revisions implemented pursuant to the Health Information Technology for Economic and Clinical Health Act (the “HITECH ACT”); and

Whereas, in the event of conflicting terms or conditions, this Addendum shall supersede the Service Agreement with respect to the subject matter hereof.

Now, Therefore the parties agree as follows:

Effective Date: This Addendum is effective as of the date set forth above, with the condition that compliance with any provisions of the HIPAA Rules shall not be required until the compliance date for any such provision(s).

I. Definitions

A. Business Associate. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103

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 Eastern Michigan University.C, HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. The HIPAA Privacy Rule is the Standards for Privacy of Individually Identifiable Health Information at 45 CFR, part 160 and part 164, subparts A and E and the HIPAA Security Rule is the HIPAA Security Standards (45 C.F.R. Parts 160 and 164, Subpart C) including the Notification in the Case of Breach of Unsecured Protected Health Information, at 45 CFR Part 164 Subpart D and as amended by the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and its implementing regulations (“HITECH”) which contains Capitalized terms not otherwise defined in the Service Agreement shall have the meanings given to them in the HIPAA Privacy and Security Rules, as amended by the Health Information Technnology for Economic and Clinical Health Act (“HITECH”) including modification and are incorporated herein by reference.

II. Permitted Uses and Disclosures of PHI

To the extent (if any) that Business Associate creates, receives, maintains, accesses, transmits, uses or discloses in any form or medium any individually identifiable health information including Protected Health Information (“PHI”) as defined in the HIPAA Privacy Rule, on behalf of Covered Entity, Business Associate will maintain the privacy and security of the PHI as required by this Addendum and to the extent required by the HIPAA Privacy and Security Rules as amended by HITECH Act

- A. Permissible Use and Disclosure of PHI: Business Associate will use and/or disclose PHI only to the extent necessary to satisfy Business Associate’s obligations under the Service Agreement, or as otherwise permitted by law. Such use, disclosure or request of PHI shall securely utilize a limited data set if practicable or otherwise the minimum necessary PHI to accomplish the intended result of the use, disclosure or request. Business Associate also agrees to implement and follow appropriate minimum necessary and information security policies in the performance of its obligations under this addendum.
- B. Prohibition on Unauthorized Use or Disclosure of PHI: Business Associate will not use or disclose any PHI received from, or on behalf of, Covered Entity, except as permitted or required by this Addendum or the Service Agreement, as required by law or as otherwise authorized in writing by Covered Entity. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI except where permitted by the Service Agreement and consistent with applicable law. Business Associate shall not directly or indirectly receive payment for any use or disclosure of PHI for marketing purposes except where permitted by the Service Agreement and consistent with applicable law.
- C. Business Associate’s Operations: In addition to the uses and disclosures described above, Business Associate may use PHI it creates or receives for or from Covered Entity to the extent necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities. Business Associate may disclose such PHI as necessary for Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities only if:
 - (1) The disclosure is required by law; or
 - (2) Business Associate obtains reasonable assurances in writing from any person, or organization, to which Business Associate shall disclose such PHI that such person or organization that will bind them to same restrictions, terms, and conditions that apply to Business Associate under this BAA with respect to PHI and will:
 - (i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
 - (ii) Notify Business Associate of any instance of which it is aware in which the confidentiality of such PHI was breached
- D. Data Aggregation Services: Business Associate may use PHI to provide Data Aggregation

Services related to Covered Entity's Health Care Operations. Business Associate also may de-identify PHI it obtains or creates in the course of providing services to Covered Entity.

III. Safeguards

- A. Safeguards: Business Associate will use appropriate safeguards to prevent the use or disclosure of PHI other than as provided for by this Addendum.
- B. Business Associate will comply with the security provisions found at 45 C.F.R. 164.308, .310, .312, and .316 in the same manner as such provisions apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity, consistent with the safeguards as implemented and required by the HIPAA Security Rule. The term "electronic Protected Health Information" or "ePHI" has the meaning set forth in 45 Code of Federal Regulations Section 160.103, as amended from time to time and generally means PHI that is transmitted or maintained in any electronic media.
- C. Report of Prohibited Use or Disclosure: Business Associate will report to the Covered Entity's Office of Legal Affairs any use or disclosure not provided for by this Addendum or a breach of unsecured PHI in accordance with the requirements set forth in 45 C.F.R. 164.400-414 within 10 business days from when it becomes aware of such use or disclosure by Business Associate, its officers, directors, employees, agents, or subcontractors or by a third party to whom the Business Associate disclosed PHI. In addition, Business Associate will report, following discovery and without unreasonable delay, any "Breach" of "Unsecured Protected Health Information" as required by 45 CFR 164.410. Any such report shall include the identification (if known) of each individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach. Business Associate also will report to the Covered Entity any Security Incidents (as that term is defined in the HIPAA Security Rule) that results in the unauthorized access, use, disclosure, modification, or destruction of Covered Entity's electronic Protected Health Information of which Business Associate becomes aware
- D. Privacy. To the extent that Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164, Business associate shall comply with the requirements of Subpart E that apply to Covered Entity in performance of its obligation(s) under the BAA. Business Associate shall also otherwise implement appropriate safeguards in accordance with the Privacy Standards to prevent the use and disclosure of PHI other than pursuant to the terms and conditions of this BAA.
- E. Mitigation of Harmful Effects. Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of the BAA, including, but not limited to, compliance with any state law or contractual data breach requirements.

IV. Individual Rights

- A. Accounting of Certain Uses or Disclosures: When required by applicable law and requested by Covered Entity, Business Associate will document and make available within 10 days the information required to enable Covered Entity to make an accounting of disclosures in accordance with the Privacy Rule
- B. Access to Records by the Subject of the Records: To the extent (if any) that Business Associate maintains PHI in a Designated Record Set, Business Associate will make available this PHI about an individual as directed by Covered Entity, in the time and manner set forth in the Privacy Rule.
- C. Amendment of PHI: To the extent (if any) that Business Associate maintains PHI in a Designated Record Set, Business Associate will make this PHI available for amendment and incorporate any amendment as directed by Covered Entity, in the time and manner set forth in the Privacy Rule
- D. Restrictions: Business Associate shall comply with any restrictions on disclosure of PHI requested by an individual and agreed to by Covered Entity in accordance with 45 C.F.R. 164.522.

V. Term and Termination

- A. Term. The Term of this Agreement shall be effective as of _____, and shall terminate on _____ 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 and business associate has not cured the breach or ended the violation within the time specified by covered entity.
- 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 protected health information 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 protected health information.

VI. Miscellaneous Provisions

- A. Subcontractors: Business Associate will ensure that any agents, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate, on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to the Business Associate with respect to the PHI and agrees to implement reasonable and appropriate safeguards to protect it, consistent with applicable law.
- B. Government Access to Records: Business Associate agrees to make available its internal

practices, books and records related to the use and disclosure of PHI under this arrangement, and Business Associate's policies and procedures and documentation required by the HIPAA Security Rule, to the Secretary of the U.S. Department of Health and Human Services or his or her designee for the purpose of evaluating compliance with relevant HIPAA requirements.

- C. No Third Party Beneficiaries. Nothing express or implied in this Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- D. Owner of PHI. Under no circumstances shall Business Associate be deemed in any respect as the owner of any PHI of Covered Entity.

IN WITNESS WHEREOF, the parties have executed this Addendum this_ day of _____, 201__.

Covered Entity:
Eastern Michigan University

Business Associate:
_____:

James J. Carroll, III
Assoc. Provost & Assoc. VP for Administration

Name:
Title: