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AMENDMENT TO ACGME BUSINESS ASSOCIATE AGREEMENT

This Amendment (this "Amendment") amends the Business Associate Agreement in the form posted on the ACGME website and marked on the first page with "Amended BAA 2005 – Security Regulations" (the "Existing BAA") between the Accreditation Council for Graduate Medical Education ("ACGME") and Covered Entity.

WHEREAS, ACGME and the Covered Entity entered into the Existing BAA as a business associate agreement for purposes of the Privacy Rule and the Security Rule;

WHEREAS, the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (collectively "HITECH"), adopted as part of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§17921-17954, imposes certain requirements on business associates;

WHEREAS, ACGME is providing this Amendment in order to facilitate compliance with HITECH in an efficient manner for itself and for the covered entities with which ACGME has business associate agreements prior to the general effective date of HITECH; and

WHEREAS, the Existing BAA contemplates that it will be amended from time to time to continue to comply with the Privacy Rule and other applicable law, and this Amendment is consistent with that commitment.

NOW, THEREFORE, in consideration of the foregoing and other good and valuable consideration, the sufficiency of which is hereby acknowledged, this Amendment is entered into to amend and supplement the Existing BAA as follows:

1. Defined terms used herein without definition shall have the respective meanings assigned to such terms in the Existing BAA. Capitalized terms not otherwise defined in the Existing BAA or this Amendment have the meanings established for purposes of HIPAA and HITECH, as each is amended from time to time.

(a) "Breach" shall mean the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule that compromises the security or privacy of the PHI as defined, and subject to the exceptions set forth, in 45 C.F.R. Section 164.402.

2. HITECH imposes certain requirements on business associates with respect to privacy, security and breach notification and contemplates that such requirements shall be implemented by regulations to be adopted by the Department of Health and Human Services ("HHS"). Such provisions of HITECH and the regulations adopted thereunder applicable to business associates may be referred to collectively herein as the "HITECH BA Provisions". Each of the HITECH BA Provisions applies commencing on February 17, 2010 or on such other respective dates as may be specified in the applicable HITECH BA Provision (the "Applicable Effective Dates").

3. ACGME shall be subject to each of the HITECH BA Provisions with respect to ACGME's role as a business associate of the Covered Entity commencing on the respective Applicable Effective Date of each HITECH BA Provision.

4. The provisions of HITECH that apply to business associates and are required to be incorporated by reference in a business associate agreement are hereby incorporated into the Existing BAA as of the respective Applicable Effective Dates including, without limitation, 42 U.S.C. Sections 17935(b), (c), (d) & (e), and 17936(a) & (b).

5. Without limitation of the foregoing, as of the respective Applicable Effective Dates:

(a) Pursuant to 42 U.S.C. Section 17931(a), the following sections of the Security Rule shall apply to ACGME in the same manner as they apply to the Covered Entity:

- Section 164.308 – Administrative safeguards;
- Section 164.310 – Physical safeguards;
- Section 164.312 – Technical safeguards; and
- Section 164.316 – Policies and procedures and documentation requirements.

(b) Pursuant to 42 U.S.C. Section 17934(a), ACGME may use or disclose PHI that it obtains or creates only if such use or disclosure, respectively, is in compliance with each applicable requirement of Section 164.504(e) of the Privacy Rule.

(c) Pursuant to 42 U.S.C. Sections 17931(b), 17934(b) & 17934(c), Section 164.504(e)(1)(ii) of the Privacy Rule shall apply to ACGME with respect to compliance with such subsection, in the same manner that such section applies to the Covered Entity, with respect to compliance with the standards in sections 164.502(e) and 164.504(e) of the Privacy Rule, except that in applying such Section 164.504(e)(1)(ii) each reference to ACGME, with respect to a contract, shall be treated as a reference to the Covered Entity involved in such contract. To the extent necessary to achieve the purposes of the foregoing, ACGME shall have the right to terminate the Existing BAA and all contracts to which it relates if the Covered Entity is in material breach or violation of the Existing BAA and fails to cure such breach or violation.

(d) 42 U.S.C. Sections 17931(b) & 17934(c) each apply to ACGME with respect to its status as a business associate to the extent set forth in each such Section.

(e) Pursuant to 42 U.S.C. Section 17932, without unreasonable delay, and in any event no later than sixty (60) calendar days after Discovery, ACGME shall notify Covered Entity of any Breach of Unsecured PHI. The notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all individuals whose Unsecured PHI is reasonably believed by ACGME to have been Breached along with any other available information that is required to be included in the notification to the Individual, HHS and/or the media, all in accordance with the data breach notification requirements set forth in 42 U.S.C. § 17932 and 45 C.F.R. Parts 160 & 164 subparts A, D, & E.

6. (a) Section 1 of the Existing BAA is hereby amended to add the following sentence to the end of that section: "Terms used but not otherwise defined in the Agreement, shall have the same meanings as set forth in the Privacy Rule or Security Rule."

(b) Section 3G of the Existing BAA is hereby deleted in its entirety and replaced by the following: "Within fifteen (15) days of receiving a request from Covered Entity, make available the information necessary for Covered Entity to make an accounting of Disclosures of PHI about an individual;"

(c) Section 7 of the Existing BAA is hereby deleted in its entirety and replaced by the following: "Survival. The obligations of Accrediting Entity under sections 5.C.(2) and 8 of this Agreement shall survive any termination of this Agreement."

7. The Existing BAA is hereby amended to add Sections 1-5 and 10 of this Amendment and otherwise as set forth in Section 6 of this Amendment. Except as specifically amended and modified by this Amendment and to the extent not inconsistent therewith, all terms and conditions of the Existing BAA shall remain in full force and effect. To the extent that this Amendment conflicts with, is inconsistent with or addresses matters not addressed by the Existing BAA or any other agreement between ACGME and the Covered Entity, it shall supersede and take precedence over such provisions. The terms of this Amendment to the extent that they are unclear shall be construed to allow for compliance by Covered Entity and ACGME with HIPAA and HITECH. Except as otherwise agreed in writing by both parties, the Existing BAA, as amended hereby, constitutes the entire understanding and obligation of the parties with respect to the subject matter thereof and supersedes any prior agreements, writings or understandings, whether oral or written with respect to the subject matter thereof.

8. This Amendment is provided to document ACGME's obligations and to comply with HITECH.

9. This Amendment may be executed in counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same document. Signatures delivered by facsimile, e-mail or other electronic means shall be deemed originals for all purposes.

10. The obligations of ACGME under section 7 of this Amendment shall survive any termination or expiration of this Amendment.

11. This Amendment is made effective as of the 17th day of February, 2010.

IN WITNESS WHEREOF, this Amendment has been executed by Covered Entity this ___ day of _____, 201_.

**Accreditation Council for Graduate
Medical Education**

Name of Covered Entity

By: _____

Name: _____

Title: _____

Date: _____

By:  _____

Name: Thomas J. Nasca, M.D.

Title: Chief Executive Officer

Date: February 17, 2010

**ACGME 6 Digit Sponsoring
Institution Number**
