

(Insert name of Sponsoring Institution, co-sponsor, participating institution, or clinical site and institution number in opening paragraph. Sign where indicated.)

## ACGME BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) governs the provision of Protected Health Information (PHI) (as defined in 45 C.F.R. § 160.103) by \_\_\_\_\_ (Insert Name of Clinical Site) (“Covered Entity”) to Accreditation Council or Graduate Medical Education (“Accrediting Entity” or “ACGME”) (each a “Party” and collectively the “Parties”) for its use and disclosure in accrediting all graduate medical education programs conducted in whole or in part in Covered Entity facilities. The accreditation process for all graduate medical education programs is described on the ACGME website at [www.acgme.org](http://www.acgme.org). Upon execution of this Agreement, this Agreement shall supersede any prior Business Associate Agreements executed by and between Covered Entity and Accrediting Entity.

Whereas, Accrediting Entity provides certain accreditation-related services to \_\_\_\_\_ (Insert Name of Sponsoring Institution) for which the Covered Entity serves as a participating clinical site and, in connection with the provision of those services, the Covered Entity discloses to Accrediting Entity PHI that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA);

Whereas, \_\_\_\_\_ (Insert Name of Clinical Site) is a “Covered Entity” as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 1645, Subparts A and E, the Standards for Privacy of Individually Identifiable Health Information (“Privacy Rule”) and 45 C.F.R. Part 160 and Part 164, Subparts A and C, the Security Standards for the Protection of Electronic Protected Health Information (“Security Rule”);

Whereas, through its affiliation with \_\_\_\_\_ (Insert Name of Sponsoring Institution), Accrediting Entity, as a recipient of PHI from Covered Entity, is a “Business Associate” of the Covered Entity as the term “Business Associate” is defined in the Privacy Rule;

Whereas, Covered Entity and Accrediting Entity desire to set forth the terms and conditions pursuant to which PHI received from, or created, received, maintained, or transmitted on behalf of Covered Entity by Accrediting Entity, will be used and disclosed.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. Definitions. Unless otherwise provided in this Agreement, capitalized terms have the same meanings as set forth in the Privacy Rule or the Security Rule.
2. Scope of Use and Disclosure by Accrediting Entity of Protected Health Information.
  - A. Accrediting Entity shall be permitted to make Use and Disclosure of PHI that is received from, or created, received, maintained, or transmitted by Accrediting

Entity on behalf of, Covered Entity as necessary to perform its obligations as an accrediting entity in accordance with Accrediting Entity's established policies, procedures, and requirements. Accrediting Entity shall limit such use, access, or disclosures, to the extent practicable, to the minimum necessary to accomplish this purpose in accordance with HIPAA, the Privacy Rule, and any applicable guidance issued by the Secretary.

B. Unless otherwise limited herein, in addition to any other Uses and/or Disclosures permitted or authorized by this Agreement or Required By Law, Accrediting Entity may:

- (1) use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Accrediting Entity;
- (2) disclose the PHI in its possession to a third party for the purpose of Accrediting Entity's proper management and administration or to fulfill any legal responsibilities of Accrediting Entity; provided, however, that the disclosures are Required By Law or Accrediting Entity has received from the third party written assurances that (a) the information will be held confidentially and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the third party; and (b) the third party will promptly notify the Accrediting Entity of any instances of which it becomes aware in which the confidentiality of the information has been breached;
- (3) engage in Data Aggregation activities, consistent with the Privacy Rule; and
- (4) de-identify any and all PHI created, received, maintained, or transmitted by Accrediting Entity under this Agreement; provided, that the de-identification conforms to the requirements of the Privacy Rule.

3. Obligations of Accrediting Entity. In connection with its Use and Disclosure of PHI, Accrediting Entity agrees that it will:

- A. Not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law, provided that, to the extent Accrediting Entity is to carry out Covered Entity's obligations under the Privacy Rule, Accrediting Entity will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of those obligations;
- B. Use reasonable and appropriate safeguards and comply with the applicable requirements of the Security Rule with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Agreement;

- C. Promptly report to Covered Entity any Use or Disclosure of PHI not provided for by this Agreement of which Accrediting Entity becomes aware, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410;
  - D. In accordance with 45 C.F.R. § 164.502(e)(1)(ii) and 45 C.F.R. § 164.308(b)(2), ensure that any subcontractors of Accrediting Entity that create, received, maintain, or transmit PHI on behalf of Accrediting Entity agree to the same restrictions and conditions that apply to Accrediting Entity pursuant to this Agreement, including complying with the applicable requirements of the Security Rule with respect to Electronic PHI;
  - E. Make available to the Secretary of Health and Human Services Accrediting Entity's internal practices, books, and records relating to the Use or Disclosure of PHI for purposes of determining Covered Entity's compliance with the Privacy Rule, subject to any applicable legal privileges;
  - F. Within fifteen (15) days of receiving a written request from Covered Entity, make available the information necessary for Covered Entity to make an accounting of Disclosures of PHI about an individual in accordance with 45 C.F.R. § 164.528 and, as of the date compliance is required by final regulations, 42 U.S.C. § 17935(c);
  - G. Within fifteen (15) days of receiving a written request from Covered Entity, make available PHI in a Designated Record Set, in accordance with 45 C.F.R. § 164.524, as necessary for Covered Entity to respond to individuals' requests for access to PHI about them, including;
  - H. Within fifteen (15) days of receiving a written request from Covered Entity, incorporate any amendments or corrections to the PHI in a Designated Record Set in accordance with 45 C.F.R. § 164.528;
  - I. Promptly report to Covered Entity any Security Incident of which it becomes aware, including any Breach of Unsecured PHI as required by 45 C.F.R. § 164.410.
4. Obligations of Covered Entity. Covered Entity agrees that it:
- A. Has included, and will include, in Covered Entity's Notice of Privacy Practices required by the Privacy Rule that Covered Entity may disclose PHI for health care operations purposes;
  - B. Has obtained, and will obtain, from Individuals any consents, authorizations, and other permissions necessary or required by laws applicable to Covered Entity for Accrediting Entity and Covered Entity to fulfill their obligations under this Agreement;

- C. Will promptly notify Accrediting Entity in writing of any restrictions on the Use and Disclosure of PHI about Individuals that Covered Entity has agreed to that may affect Accrediting Entity's ability to perform its obligations under this Agreement; and
- D. Will promptly notify Accrediting Entity in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes or revocation may affect Accrediting Entity's ability to perform its obligations under this agreement.

5. Termination.

- A. Termination for Cause. Upon either Party's knowledge of a material breach or violation of this Agreement by the other Party, the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified timeframe, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may terminate this Agreement.
- B. Automatic Termination. This Agreement will automatically terminate upon the cessation of Covered Entity's conducting accredited activities in all Covered Entity facilities.
- C. Effect of Termination.
  - (1) Termination of this Agreement will result in cessation of Accrediting Entity's conducting ACGME accrediting activities in all Covered Entity facilities.
  - (2) Within sixty (60) days after termination of this Agreement, Accrediting Entity will return or destroy all PHI received from Covered Entity or created or received by Accrediting Entity on behalf of Covered Entity that Accrediting Entity still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, Accrediting Entity will extend the protections of this Agreement to the PHI and limit further Use and Disclosure to those purposes that make the return or destruction of the information infeasible. In the event Accrediting Entity determines that destruction of Covered Entity's PHI is not feasible, Accrediting Entity will provide Covered Entity with a written statement of the reason that return or destruction is not feasible.

6. Amendment. Upon the effective date of any amendment to HIPAA, the Privacy Rule, or the Security Rule promulgated by HHS with regard to PHI, this Agreement shall automatically amend so that the obligations imposed shall remain in compliance with such

regulations. Notwithstanding anything to the contrary herein, this Agreement may be amended or altered only upon mutual written agreement of the parties. Accrediting Entity and Covered Entity agree to take such action as is necessary to amend this Agreement for the Parties to comply with the requirements of the Privacy Rule or other applicable law.

7. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the parties to comply with HIPAA.
8. Survival. The obligations of Accrediting Entity under section 5.C.(2) of this Agreement shall survive any termination of this Agreement.
9. No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
10. Independent Contractor. The Parties are and shall remain independent contractors throughout the term. Nothing in this Agreement shall be construed to constitute Accrediting Entity and Covered Entity as partners, joint venturers, agents, or anything other than independent contractors.
11. Other Applicable Law. This Agreement does not, and is not intended to, abrogate any responsibilities of the parties under any other applicable law.
12. Counterparts. This Agreement may be executed and delivered in one or more counterparts, each of which shall be deemed an original, and all of which together shall constitute one and the same instrument. A facsimile or other reproduction of this Agreement shall be deemed an original.
13. Effective Date. This Agreement shall be effective on the date of execution by Covered Entity (the "Effective Date").

IN WITNESS WHEREOF, each of the undersigned has caused this Business Associate Agreement to be duly executed effective as of the Effective Date.

**COVERED ENTITY**

**ACGME**

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

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

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

Name: Debra F. Weinstein, MD

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

Title: President and Chief Executive Officer

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

Institution Number: \_\_\_\_\_