

**THE UNIVERSITY OF MONTANA
A HYBRID ENTITY AS DEFINED BY HIPAA**

HIPAA BUSINESS ASSOCIATE ADDENDUM

This Addendum (“Addendum”) amends and is hereby incorporated into the existing agreement known as _____ (“Agreement”), entered into by and between _____ (hereinafter “Business Associate”) and The University of Montana (hereinafter “UM”) on _____.

UM and Business Associate mutually agree to modify the Agreement to incorporate the terms of this Addendum to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and HIPAA’s implementing regulations, Title 45, Parts 160 and 164 of the Code of Federal Regulations (“Privacy Rule”), dealing with the confidentiality of health or health-related information. If any conflict exists between the terms of the original Agreement and this Addendum, the terms of this Addendum shall govern.

Definitions:

- a. Protected Health Information (PHI) means any information, whether oral or recorded in any form or medium, that:
 - (i) relates to the past, present or future physical or mental condition of any Individual; the provision of health care to an Individual; or the past, present or future payment of the provision of health care to an Individual; and
 - (ii) identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual. PHI includes demographic information unless such information is de-identified according to the Privacy Rule.
- b. Individual means the person who is the subject of PHI, and shall include a person who qualifies under the Privacy Rule as a personal representative of the Individual.
- c. Capitalized terms used in this Agreement, but not otherwise defined, shall have the same meaning as those terms in the Privacy Rule.

Prohibition on Unauthorized Use or Disclosure of PHI: Business Associate shall not use or disclose any PHI received from or on behalf of UM except as permitted or required by the Agreement or this Addendum, as required by law, or as otherwise authorized in writing by UM.

Use and Disclosure of Protected Health Information: Except as described in Section 4, Business Associate may use or disclose PHI only for the following purpose(s):

- a. As necessary to perform its obligations under the Agreement.

- b. As may be permitted in an attached Exhibit.

Use of PHI for Certain of Business Associate's Operations: Business Associate may use and/or disclose PHI it creates for, or receives from, UM to the extent necessary for Business Associate's proper management and administration, or to carry out Business Associate's legal responsibilities, only if:

- a. The disclosure is required by law; or
- b. Business Associate obtains reasonable assurances, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
 - (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, who shall in turn promptly notify UM, of any instance which the person or organization becomes aware of in which the confidentiality of such PHI was breached.

Safeguarding of PHI: Business Associate shall develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to prevent the improper use or disclosure of all PHI, in any form or media, received from or created or received by Business Associate on behalf of, UM Business Associate shall document and keep these security measures current.

Subcontractors and Agents: If Business Associate provides any PHI which was received from, or created for, UM to a subcontractor or agent, then Business Associate shall require such subcontractor or agent to agree to the same restrictions and conditions as are imposed on Business Associate by this Addendum.

Maintenance of the Security of Electronic Information: Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical security measures to preserve the confidentiality, integrity and availability of all electronically maintained or transmitted Health Information received from, or on behalf of, UM which pertains to an Individual. Business Associate shall document and keep these security measures current and available for inspection, upon request. Business Associate's security measures must be consistent with HIPAA's Security regulations, Title 45, Part 142 of the Code of Federal Regulations ("Security Rule"), once these regulations are effective.

Compliance with Electronic Transactions and Code Set Standards: If Business Associate conducts any Standard Transaction for, or on behalf of, UM, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of Title 45, Part 162 of the Code of Federal Regulation. Business Associate shall not enter into, or permit its subcontractors or agents to enter into, any Agreement in connection with the conduct of Standard Transactions for or on behalf of UM that:

- a. changes the definition, Health Information condition, or use of a Health Information element;
- b. adds any Health Information elements or segments to the maximum defined Health Information Set;
- c. uses any code or Health Information elements that are either marked “not used” in the Standard’s Implementation Specification(s) or are not in the Standard’s Implementation Specifications(s); or
- d. changes the meaning or intent of the Standard’s Implementations Specification(s).

Access to PHI: At the direction of UM, Business Associate agrees to provide access to any PHI held by Business Associate which UM has determined to be part of UM’s Designated Record Set, in the time and manner designated by UM. This access will be provided to UM or, as directed by UM, to an Individual, in order to meet the requirements under the Privacy Rule.

Amendment or Correction to PHI: At the direction of UM, Business Associate agrees to amend or correct PHI held by Business Associate and which UM has determined to be part of UM’s Designated Record Set, in the time and manner designated by UM.

Reporting of Unauthorized Disclosures or Misuse of PHI: Business Associate shall report to UM any use or disclosure of PHI not authorized by this Addendum or in writing by UM. Business Associate shall make the report to UM’s Privacy Official not less than one (1) business day after Business Associate learns of such use or disclosure. Business Associate’s report shall identify:

- (i) the nature of the unauthorized use or disclosure,
- (ii) the PHI used or disclosed,
- (iii) who made the unauthorized use or received the unauthorized disclosure,
- (iv) what Business Associate has done or shall do to mitigate any deleterious effect of the unauthorized use or disclosure, and
- (v) what corrective action Business Associate has taken or shall take to prevent future similar unauthorized use or disclosure. Business Associate shall provide such other information, including a written report, as reasonably requested by UM’s Privacy Official.

Mitigating Effect of Unauthorized Disclosures or Misuse of PHI: Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a misuse or unauthorized disclosure of PHI by Business Associate in violation of the requirements of this Addendum.

Tracking and Accounting of Disclosures: So that UM may meet its accounting obligations under the Privacy Rule,

- a. **Disclosure Tracking:** Starting April 14, 2003, for each disclosure not excepted under subsection (b) below, Business Associate will record for each disclosure

of PHI it makes to UM or a third party of PHI that Business Associate creates or receives for or from UM:

- (i) the disclosure date,
- (ii) the name and (if known) address of the person or entity to whom Business Associate made the disclosure,
- (iii) a brief description of the PHI disclosed, and
- (iv) a brief statement of the purpose of the disclosure.

For repetitive disclosures which Business Associate makes to the same person or entity, including UM, for a single purpose, Business Associate may provide:

- (i) the disclosure information for the first of these repetitive disclosures,
- (ii) the frequency, periodicity or number of these repetitive disclosures, and
- (iii) the date of the last of these repetitive disclosures. Business Associate will make this log of disclosure information available to UM within five (5) business days of the UM's request.

b. Exceptions from Disclosure Tracking: Business Associate need not record disclosure information or otherwise account for disclosures of PHI that meet each of the following conditions:

- (i) the disclosures are permitted under this Addendum, or are expressly authorized by UM in another writing; and,
- (ii) the disclosure is for one of the following purposes:
 - a. UM's Treatment, Payment, or Health Care Operations;
 - b. in response to a request from the Individual who is the subject of the disclosed PHI, or to that Individual's Personal Representative;
 - c. made to persons involved in that individual's health care or payment for health care;
 - d. for notification for disaster relief purposes;
 - e. for national security or intelligence purposes; or,
 - f. to law enforcement officials or correctional institutions regarding inmates.

c. Disclosure Tracking Time Periods: Business Associate must have available for UM the disclosure information required by this section for the six-year period preceding UM's request for the disclosure information (except Business Associate need have no disclosure information for disclosures occurring before April 14, 2003).

Accounting to Covered Entity and to Government Agencies: Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from or on behalf of, or created for, UM available to UM, or at the request of UM, to the Secretary of the Department of Health and Human Services (HHS) or his/her designee, in a time and manner designated by UM or the Secretary or his/her designee, for the purpose of determining UM's compliance with the Privacy Rule. Business Associate shall promptly notify UM of communications with HHS

regarding PHI provided by or created by UM and shall provide UM with copies of any information Business Associate has made available to HHS under this provision.

Term and Termination:

a. This Addendum shall take effect April 14, 2003.

b. In addition to the rights of the parties established by the underlying Agreement, if UM reasonably determines in good faith that Business Associate has materially breached any of its obligations under this Addendum, Covered Entity, in its sole discretion, shall have the right to:

- (i) exercise any of its rights to reports, access and inspection under this Addendum; and/or
- (ii) require Business Associate to submit to a plan of monitoring and reporting, as UM may determine necessary to maintain compliance with this Addendum; and/or
- (iii) provide Business Associate with a _____ day period to cure the breach; or
- (iv) terminate the Agreement immediately.

c. Before exercising any of these options, UM shall provide written notice to Business Associate describing the violation and the action it intends to take.

Return or Destruction of PHI: Upon termination, cancellation, expiration or other conclusion of the Agreement, Business Associate shall:

a. Return to UM or, if return is not feasible, destroy all PHI and all Health Information in whatever form or medium that Business Associate received from or created on behalf of UM. This provision shall also apply to all PHI that is in the possession of subcontractors or agents of Business Associate. In such case, Business Associate shall retain no copies of such information, including any compilations derived from and allowing identification of PHI. Business Associate shall complete such return or destruction as promptly as possible, but not less than thirty (30) days after the effective date of the conclusion of this Agreement. Within such thirty (30) day period, Business Associate shall certify on oath in writing to UM that such return or destruction has been completed.

b. If Business Associate believes that the return or destruction of PHI or Health Information is not feasible, Business Associate shall provide written notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction is not feasible, Business Associate shall extend the protections of this Addendum to PHI and Health Information received from or created on behalf of UM, and limit further uses and disclosures of such PHI, for so long as Business Associate maintains the PHI.

Miscellaneous:

a. Automatic Amendment: Upon the effective date of any amendment to the regulations promulgated by HHS with regard to PHI, this Addendum shall

automatically amend so that the obligations imposed on Business Associate remain in compliance with such regulations.

b. Interpretation: Any ambiguity in this Addendum shall be resolved in favor of a meaning that permits UM to comply with the Privacy Rule.

IN WITNESS WHEREOF, each of the undersigned has caused this Addendum to be duly executed in its name and on its behalf.

UNIVERSITY OF MONTANA

BUSINESS ASSOCIATE

By: _____

By: _____

Title: _____

Title: _____

Date: _____

Date: _____