

BUSINESS ASSOCIATE ADDENDUM

This Business Associate Agreement (“Addendum”) is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, and is made part of the Application submitted by

\_\_\_\_\_

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\_\_\_\_\_

(“**Applicant**”) to the Adult Congenital Heart Association’s (“**ACHA**”) Adult Congenital Heart Disease Program Accreditation process. Applicant and ACHA are collectively referred to as “Parties.”

WHEREAS, the Application and the Addendum establish the relationship between the Parties for the purpose of accreditation;

WHEREAS, Applicant is a Covered Entity pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the regulations promulgated thereunder by the U.S. Department of Health and Human Services codified at 45 C.F.R. parts 160 and 164 (Standards for Privacy of Individually Identifiable Health Information or “Privacy Rule” and the Security Standards for the Protection of Electronic Health Information or “Security Rule”); and the security provisions of the American Recovery and Reinvestment Act of 2009 (the “HITECH Act”), and the regulations promulgated thereunder;

WHEREAS, in the course of accreditation, ACHA may access or receive individually identifiable health information from Applicant that qualifies as Protected Health Information (“PHI”);

WHEREAS, in receiving or accessing such PHI, ACHA would become a “Business Associate” of the Applicant as defined by HIPAA;

WHEREAS, Applicant as a Covered Entity is required to enter into this Agreement to obtain satisfactory assurances that ACHA, as a Business Associate, will appropriately safeguard all PHI received by ACHA on behalf of Applicant.

In consideration of the mutual promises in this Addendum, the Parties agree as follows:

I. DEFINITIONS

1.01 Addendum. “Addendum” means this Business Associate Agreement.

1.02 Protected Health Information (“PHI”). “Protected Health Information” or “PHI” shall have the same meaning as the term “Protected Health Information” in 45 C.F.R. §160.103, limited to that subset of PHI held by ACHA that is received by Applicant on behalf Applicant. PHI as stated herein will include PHI in electronic form unless specifically stated otherwise.

1.03 Capitalized terms used but not otherwise defined in this Addendum shall have the same meaning as set forth in 45 C.F.R. parts 160 and 164.

## II. ACHA’S OBLIGATIONS

2.01 Ownership. ACHA agrees and acknowledges that any PHI that ACHA receives in connection with the services rendered pursuant to the Application, is confidential and shall remain the exclusive property of Applicant.

2.02 Use and Disclosure of Protected Health Information. ACHA will not use or disclose PHI in any manner that would violate the Privacy Rule at Subpart E 45 C.F.R §164 if done by Applicant except as required by law and as specified below:

- A. Use and disclosure in a manner compliant with the Privacy Rule Subpart E of 45 C.F.R. Part 164 that is necessary to perform the services set forth in the Application;
- B. Use of PHI for ACHA’s proper management and administration and to fulfill of legal responsibilities ACHA;
- C. Disclosure of PHI for ACHA’s proper management and administration or to carry out its legal responsibilities, provided that the disclosures are required by law, or ACHA has i) obtained from the third party written assurance that the PHI will remain confidential and will be used or disclosed only as required by law or for the purposes for which it was disclosed, and ii) the third party agrees to notify ACHA of any instances of which it is aware in which the confidentiality of the PHI has been breached;
- D. Use or disclosure of PHI to provide Data Aggregation services in relation to Health Care Operations of Applicant that have authorized ACHA to perform Data Aggregation services;

- E. De-identify PHI on behalf of the Applicant pursuant to 45 C.F.R. §164.502(d) for use in research, quality improvement or other purposes consistent with ACHA's charitable mission;
- F. ACHA agrees to make uses, disclosures and requests for PHI consistent with Applicant's minimum necessary policies.

2.03 Applicant's Obligations: To the extent that ACHA carries out any obligations of Applicant under the Privacy Rule, ACHA will comply with the requirements of the Privacy Rule that apply to Applicant in carrying out those obligations.

2.04 Prohibited Use & Disclosure of Protected Health Information: ACHA will not use or further disclose PHI other than as permitted by this Business Associate Agreement or as required by law.

2.05 Safeguards. ACHA agrees to use reasonable and appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement or as required by law. ACHA agrees to implement appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of any PHI in accordance with Subpart C of 45 C.F.R. 164 and comply with all provisions of the Security Rule at 45 C.F.R. §§164.308, 164.310, 164.312 and 164.316.

2.06 Reporting and Breach Notification. ACHA shall report to Applicant any use or disclosure of PHI not provided for in the Agreement, any Security Incident involving electronic PHI, and any Breach of Unsecured PHI as required at 45 C.F.R. §164.410. Such report shall be provided promptly and without unreasonable delay, but no later than fifteen (15) days after ACHA first learns of the unauthorized use or disclosure, Security Incident or Breach.

- A. The parties agree that this section satisfies any notices necessary by ACHA to Applicant of the occurrence of unsuccessful Security Incidents for which no additional notice to Applicant shall be required. For purposes of this Agreement, such unsuccessful Security Incidents include, without limitation, activity such as pings and other broadcast attacks on ACHA's firewall, port scans, unsuccessful log-on attempts, denial of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of Electronic PHI.

2.07 Access, Amendment and Accounting of Disclosures. With respect to all PHI in ACHA's possession, ACHA agrees to the following:

- A. Access to PHI. To the extent that ACHA possesses an applicable Designated Record Set, that is not otherwise in possession of Applicant, and within fifteen (15) business days of receipt of a written request by Applicant for Individual to access such PHI, ACHA shall make available such PHI, to the extent required for Applicant's compliance with its obligations under 45 C.F.R. §164.524.
- B. Amendment of PHI. To the extent that ACHA possesses an applicable Designated Record Set, and within fifteen (15) business days of receipt of a written request from Applicant or Individual, ACHA shall make any amendment(s) to such PHI as directed or agreed to pursuant to 45 C.F.R. §164.526 or take other measures as necessary to satisfy ACHA's obligations under 45 C.F.R. §164.526.
- C. Availability of Compliance Records. ACHA shall make its internal practices, books and records available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining compliance with the HIPAA Rules.
- D. Accounting. Within fifteen (15) business days of receipt of a written request from Applicant, ACHA shall make available to Applicant disclosures of PHI as would be required for Applicant to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528.

2.08 Subcontractors. ACHA agrees to ensure that any subcontractor, to whom it provides or transmits PHI received from Applicant, or created or received by ACHA on behalf of Applicant agrees to the same restrictions and conditions that apply through this Agreement to ACHA with respect to such information.

2.09 Marketing and Sale. ACHA will not engage in communication that might be deemed to be "Marketing" under the HITECH Act. ACHA will not engage in the sale of PHI.

### III. APPLICANT'S OBLIGATIONS

3.01 Notice of Privacy Practices. Applicant shall provide to ACHA any notice of privacy practices produced in accordance with 45 C.F.R. § 164.520 and any changes to that notice.

3.02 Restrictions on Use and Disclosure. Applicant agrees to notify ACHA in writing, of any restriction on the use or disclosure of PHI agreed to by Applicant in accordance with 45 C.F.R. §164.522 to the extent that the restriction affects ACHA's use or disclosure of PHI. Should the restrictions materially affect ACHA's ability to perform accreditation services or increase ACHA's costs of performance, Applicant

authorizes ACHA to terminate the application and accreditation maintenance relationship.

3.03 Individual Authorization Revocation. Applicant agrees to inform ACHA of any change to, or revocation of, an Individual's Authorization to use or disclose PHI to the extent that such change may affect ACHA's use or disclosure of PHI, within a reasonable period of time after Applicant becomes aware of such change.

3.04 Permissible Requests. Applicant shall not request ACHA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule at Subpart E of 45 C.F.R. Part 164 if done by Applicant.

3.05 Notice of Security Incidents. Applicant shall report to ACHA in writing any Security Incident relating to any PHI reviewed or held by ACHA of which it becomes aware.

#### IV. TERMINATION

4.01 This Addendum shall commence on the Effective Date.

4.02 Either Party may terminate this Addendum by providing written notice to the other Party.

4.03 This Addendum shall automatically terminate upon the termination date of the Accreditation process as set forth in the Application, including application, provisional accreditation, accreditation monitoring and accreditation maintenance.

4.04 Upon termination of this Addendum for any reason, except as provided in paragraph (B) of this section, ACHA agrees:

A. to return to Applicant or to destroy all PHI received from Applicant or otherwise through the performance of services for Applicant, that is in the possession or control of ACHA or its agents.

B. in the case of PHI which is not feasible to "return or destroy," to extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as ACHA maintains such PHI. ACHA further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI.

#### V. MISCELLANEOUS

5.01 Survival. The rights and obligations under Section II of this Addendum, shall survive the termination of this Addendum.

5.02 Choice of Law and Jurisdiction. The Parties agree that the law of Pennsylvania shall govern this Addendum and that any dispute arising under this Addendum shall be resolved in a court of competent jurisdiction located in Pennsylvania.

5.03 Mutual Indemnification.

- A. Each party shall indemnify, defend and hold harmless the other from and against any and all claims, liabilities, losses, damages expenses and costs (including reasonable attorney's fees), that arise in connection with this Addendum or any negligent or wrongful acts or omissions related to this Addendum, caused in whole or in part by either party's failure to comply with this Addendum, to the extent that party's failure caused or contributed to the other's liability for such claims, penalties, damages or other amounts payable.
- B. Each party shall indemnify the other, and pay, or reimburse, the other for all reasonable costs of notification of individuals, including legal fees and other costs associated with determination of notification duty, drafting the notification letter, mailing the notification letter and staffing the call center, that arise from its own acts, omissions or negligence.

**ADULT CONGENITAL HEART ASSOCIATION**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

280 North Providence Road, Suite 6  
Address

Media, PA 19063  
Address

**APPLICANT NAME**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Name

\_\_\_\_\_  
Title

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Date

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Address

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