BUSINESS ASSOCIATE AGREEMENT

The University of Delaware (the "University"), on behalf of [Provide Name of the Particular Covered Component] (herein the "Covered Component"), and _____ ("Business Associate") have entered into an agreement for services (the "Services Agreement"), involving the use or disclosure of protected health information ("PHI"). The parties desire to ensure that their respective rights and responsibilities reflect applicable federal statutory and regulatory requirements relating to the access, use and disclosure of PHI. To that end, the parties have agreed to enter into this Business Associate Agreement (the "Agreement"), effective as of the effective date of the Services Agreement.

This Agreement is intended to comply with the requirements for business associate agreements under the HIPAA Rules, as defined below, and is to be construed to achieve compliance with those requirements. If applicable, to the extent that the terms of this Agreement conflict with any provisions of the Services Agreement having to do with the use and disclosure of PHI, the terms of this Agreement will control.

1. Definitions.

(a) Capitalized terms used, but not otherwise defined in this Agreement, have the same meaning as those terms in the "HIPAA Privacy Rule" (the "Standards for Privacy of Individually Identifiable Health Information"), which is codified at 45 C.F.R. Parts 160, subpart A, and 164, subparts A and E, as amended from time to time; the "HIPAA Security Rule" (the "Security Standards for the Protection of Electronic Protected Health Information"), which is codified at 45 C.F.R. Parts 160, subpart A, and 164, subparts A and C, as amended from time to time; and the "HIPAA Breach Notification Rule" (the "Breach Notification for Unsecured Protected Health Information"), which is codified at 45 C.F.R. Parts 160, subpart A, and 164, subpart D (collectively, the "HIPAA Rules").

(b) "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, as amended.

(c) "Protected Health Information" or "PHI," as used in this Agreement, has the meaning set forth in 45 C.F.R. § 160.103, limited to information that Business Associate creates, receives, maintains, or transmits on behalf of the Covered Component in connection with the performance of the services under the Services Agreement.

(d) "Electronic PHI" as used in this Agreement means (subject to the definition provided at 45 C.F.R. § 160.103) PHI, as limited above, that is transmitted or maintained in any Electronic media.

2. Uses and Disclosures Permitted by HIPAA. Business Associate may use or disclose PHI as necessary to provide the services to the Covered Component described in the Services Agreement. When requesting, using, or disclosing PHI, Business Associate will make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the use, disclosure, or request consistent with and to the extent required by the HIPAA Rules. Business Associate may not use or further disclose the information in a manner that would violate the requirements of the HIPAA Privacy Rule if done by the Covered Component, except that Business Associate may use and disclose PHI for the proper management

and administration of Business Associate, to carry out the legal responsibilities of Business Associate consistent with the provisions of 45 C.F.R. §§ 164.504(e)(4)(i) and (ii), or to provide Data Aggregation services. Business Associate may disclose PHI for its proper management and administration, or to carry out its legal responsibilities, only if:

(a) the disclosure is required by law; or

(b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

3. Uses and Disclosures Permitted By Agreement or By Law. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.

4. Safeguards. Business Associate warrants that it will use appropriate administrative, technical, and physical safeguards to prevent the use or disclosure of PHI other than as provided for by this Agreement, to protect the confidentiality, integrity, and availability of Electronic PHI, and to address any Breaches of Unsecured PHI, in accordance with the HIPAA Rules.

5. Compliance with HIPAA Security Rule. Business Associate agrees to comply with applicable requirements of the HIPAA Security Rule.

6. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

7. Reporting of Certain Uses and Disclosures. Business Associate will report promptly to the Covered Component any use or disclosure of PHI not provided for by this Agreement of which it becomes aware.

8. Reporting of Security Incidents. Business Associate agrees to report to the Covered Component's Privacy Officer any suspected or known Security Incident under the HIPAA Security Rule of which it becomes aware, without unreasonable delay and in no case later than five (5) days after the Security Incident is (or exercising reasonable diligence should have been) discovered. The current contact information for the Covered Component's Privacy Official is: _____, HIPAA Privacy Official, PrivacyOfficer@udel.edu, 112 Hullihen Hall, Newark, DE 19716, 302-831-7263. The parties acknowledge and agree that this section constitutes notice by Business Associate to the Covered Component of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which no additional notice to the Covered Component will be required. "Unsuccessful Security Incidents" include, but are not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in unauthorized access, use or disclosure of PHI.

9. Reporting of Breaches of Unsecured Protected Health Information. In the event of a Breach of Unsecured PHI, Business Associate agrees to report the information required by 45 C.F.R. § 164.410 without unreasonable delay and in no case later than two (2) days after the Breach is discovered or deemed discovered under such section. Business Associate will cooperate with the Covered Component in investigating the Breach and in meeting the Covered Component's legal obligations in connection with the Breach. If requested by the Covered Component, in the event of a Breach of Unsecured PHI, Business Associate will notify or direct its subcontractor(s) to notify, as applicable, an Individual as required by 45 C.F.R. §164.404, the media as required by 45 C.F.R. §164.406, and the Secretary of the U.S. Department of Health and Human Services (the "Secretary") as required by 45 C.F.R. §164.408. Business Associate will provide the Covered Component with any and all information necessary about a Breach of Unsecured PHI in order for the Covered Component to comply with its obligations under 45 C.F.R. Part 164, Subpart D.

10. Subcontractors. Business Associate will ensure that any Subcontractor that creates, receives, maintains, or transmits PHI on Business Associate's behalf agrees in writing to the same (or no less protective of the Covered Component) restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

11. Access. Business Associate agrees to provide access to PHI in a Designated Record Set at the written request of the Covered Component within fifteen (15) days to the Covered Component or, as directed by the Covered Component, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524 as reasonably interpreted by the Covered Component. Business Associate may impose a reasonable cost-based fee for the provision of copies of PHI in a Designated Record Set in accordance with 45 C.F.R. 164.524(c)(4). If an Individual makes a request directly to Business Associate for access to PHI in a Designated Record Set, within fifteen (15) days Business Associate will forward to the Covered Component both the Individual's request and the PHI at issue, to allow the Covered Component to provide access to the Individual in accordance with 45 C.F.R. § 164.524. If the information is maintained electronically, Business Associate will make the information available to the Covered Component in an electronic format, if and as requested by the Covered Component. For purposes of this Agreement, the terms "written" or "in writing" include facsimile, email, or similar method of electronic communication.

12. Covered Component Access. Business Associate will provide the Covered Component, at the Covered Component's written request but no more often than once per year and during Business Associate's business hours, access (for purposes of inspection and copying) to Business Associate's policies and procedures related to the use and disclosure of PHI related to the Services Agreement, for the purpose of determining compliance with this Agreement. Business Associate and the Covered Component will agree on reasonable timing for compliance with any such request.

13. Annual Review. Business Associate will undertake, or will have undertaken on its behalf, an annual review in order to ensure that Business Associate's policies, procedures, and systems related to the privacy and security of PHI are adequate to satisfy the Covered Component's obligations under applicable laws and regulations, including the HIPAA Rules. Business Associate will provide the Covered Component a copy of its SOC2 report within sixty (60) days following the conclusion of each calendar year. Business Associate will promptly undertake any corrective action, in response to annual review

findings, as are necessary to satisfy its obligations under applicable law and regulations, and will notify the Covered Component of the timing and nature of any such corrective action measures.

14. Amendment. Business Associate will make PHI in a Designated Record Set available to the Covered Component within thirty (30) days of the Covered Component's written request, to the extent required (as reasonably interpreted by the Covered Component) for amendment, and incorporate any amendments, to PHI in accordance with 45 C.F.R. § 164.526, which describes the requirements applicable to an Individual's request for an amendment to PHI. If an Individual makes a request directly to Business Associate for an amendment to PHI in a Designated Record Set, within fifteen (15) calendar days Business Associate will forward the Individual's request to the Covered Component, and will make the PHI at issue available to incorporate any amendment(s) in accordance with 45 C.F.R. § 164.526.

15. Accounting. Business Associate will make PHI and information related to disclosures of PHI by Business Associate available to the Covered Component upon written request to the extent required (as reasonably interpreted by the Covered Component) to provide an accounting of disclosures in accordance with 45 C.F.R. § 164.528, which describes the requirements applicable to an Individual's request for an accounting of disclosures of PHI relating to the Individual. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for the Covered Component to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Business Associate must maintain, and within fifteen (15) calendar days of any written request from the Covered Component for an accounting of disclosures of PHI with respect to an identified Individual, provide to the Covered Component information including the following with respect to any disclosure for which an accounting is required:

(a) The date of the disclosure,

(b) The name, and if known address, of the individual or entity to which it was disclosed,

(c) A brief description of the PHI disclosed, and

(d) A brief statement of the purpose of the disclosure or copy of the written authorization or request authorizing it.

If an Individual makes a request directly to Business Associate for an accounting of disclosures of PHI, within fifteen (15) calendar days Business Associate will forward to the Covered Component both the Individual's request and the applicable information described above.

16. HHS Access. If Business Associate receives a request, made on behalf of the Secretary, that Business Associate make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining the Covered Component's or Business Associate's compliance with the HIPAA Rules, then Business Associate will promptly notify the Covered Component, unless prohibited by law, and comply with the request. Nothing in this section may be construed as a waiver of any legal privilege or of any protections for trade secrets or confidential commercial information.

17. Breach of Agreement. Either party may terminate this Agreement and the Services Agreement by written notice to the other if the other party materially breaches this Agreement and does not promptly cure such breach of the Agreement after receiving notice thereof from, and within the timeframe specified by, the first party (or cure is not feasible).

18. Return or Destruction of PHI. Upon termination of this Agreement for any reason, if feasible, Business Associate will return or destroy (at the Covered Component's discretion) all PHI received from the Covered Component, or created, maintained, or received by Business Associate on behalf of the Covered Component, that Business Associate or any of Business Associate's Subcontractors still maintain in any form and retain no copies of such information. If the parties agree that such return or destruction is not feasible, and thus Business Associate must retain some amount of PHI, Business Associate will extend the protections of this Agreement to the PHI retained and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible. Business Associate will return or destroy such retained PHI (at the Covered Component's direction), as soon as practicable, as soon as reasonably practicable upon it becoming feasible to do so. For purposes of this section, at the Covered Component's direction, Business Associate's return of PHI may be made to another business associate acting on Covered Entity's behalf.

Business Associate will retain copies of all of its policies, procedures, notices, disclosures of PHI, and communications which pertain to the performance of its obligations under this Agreement, whether in written or electronic form, for a period of no less than six (6) years, or longer if required by other applicable law.

This section will survive termination or expiration of this Agreement.

19. Electronic Transactions. Business Associate agrees to comply, and require its Subcontractors to comply, as applicable, with the HIPAA Standards for Electronic Transactions, 45 CFR Parts 160 and 162 ("Electronic Standards Regulations"), with respect to any transactions it conducts on behalf of the Covered Component that are subject to the Electronic Standards Regulations.

20. Termination. This Agreement will terminate (a) when either party terminates the Agreement due to the other party's material breach, or (b) when the Services Agreement terminates or expires, whichever occurs first.

21. No Third Party Beneficiary. This Agreement is intended for the sole benefit of Business Associate, the Covered Component, and the University, and does not create any third party beneficiary rights, except to the extent that the Privacy Rule validly requires the Secretary to be a third party beneficiary to this Agreement.

22. Amendment of Agreement. This Agreement cannot be amended except by the mutual written agreement of Business Associate and the University, on behalf of itself and the Covered Component.

23. Amendment for Compliance. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event the Covered Component believes in good faith that any provision of the Agreement fails to comply with the then-current requirements of the HIPAA Rules, and notifies Business Associate of such belief in writing, the parties will address in good faith such concerns and will amend the terms of this Agreement within thirty (30) days, if necessary to bring it into compliance. If after such period the Agreement fails to comply with the HIPAA Rules, with respect to the concern(s) raised pursuant to this paragraph, then either party will have the right to terminate this Agreement upon written notice to the other.

24. Indemnification. The provisions of the Services Agreement regarding indemnification and indemnification procedures apply to any damages, taxes, penalties, fines, costs, losses, and liabilities that arise out of or relate to this Agreement. This section will survive termination or expiration of this Agreement.

25. Obligations of Covered Entity. The Covered Component represents and warrants that it has the right and authority to disclose PHI to Business Associate for Business Associate to perform its obligations and provide services to the Covered Component, and the Covered Component will not request Business Associate to use or disclose PHI in any manner that would violate HIPAA, other applicable laws or the Covered Component's privacy notice, if done by the Covered Component.

(a) The Covered Component will provide Business Associate with the notice of privacy practices applicable to the Covered Component as required by 45 C.F.R. § 164.520, and thereafter notify Business Associate of any changes to that notice if such changes affect Business Associate's permitted or required uses and disclosures. Business Associate acknowledges that, as of the date of execution of this Agreement, the Covered Component has provided its notice of privacy practices to Business Associate in accordance with this subsection.

(b) The Covered Component will provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose his or her PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) The Covered Component will notify Business Associate, in writing, of any restriction to the use or disclosure of PHI that the Covered Component has agreed to in accordance with 45 C.F.R. § 164.522 if such changes affect Business Associate's permitted or required uses and disclosures.

(d) To the extent required under the HIPAA Rules, the Covered Component will request from Business Associate only the minimum PHI necessary for Business Associate to perform or fulfill a specific function required or permitted hereunder.

26. Interpretation. Any ambiguity in this Agreement will be resolved in a manner that is compliant with applicable law, including 45 C.F.R. Parts 160, 162, and 164.

27. Supersession. This Agreement supersedes and replaces any and all previous Business Associate Agreements or amendments between the Covered Component and Business Associate.

28. Survival. Business Associate's obligations under this Agreement will survive the termination of the Agreement.

THE UNIVERSITY OF DELAWARE
("University"),
on behalf of itself and the

(the "Covered Component")	**("BUSINESS ASSOCIATE")**