

## MHS BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is effective as of the date of full execution (“Effective Date”) and is by and between Multi-Health Systems Inc., having a principal place of business at 3770 Victoria Park Avenue, Toronto, Ontario, M2H 3M6, Canada (“Business Associate”) and \_\_\_\_\_, having a principal place of business at \_\_\_\_\_ (“Covered Entity”).

### RECITALS

Covered Entity is required to comply with the requirements of: 1) the Health Insurance Portability and Accountability Act of 1996, as codified at 42 U.S.C. §1320d *et seq.* (“HIPAA”), 2) the security provisions of the Health Information Technology for Economic and Clinical Health Act, as codified at 42 U.S.C. §17901 *et seq.* (“HITECH”) which was enacted as part of the American Recovery and Reinvestment Act of 2009 (“ARRA”), 3) the regulations implementing HIPAA and HITECH found at 45 CFR Parts 160 and 164 (collectively, the “HIPAA Rules”), and where applicable 4) Chapter 181 of the Texas Health & Safety Code, all of which relate to the confidentiality and privacy of Protected Health Information;

Business Associate and Covered Entity are engaged in a business relationship whereby Covered Entity purchases and Business Associate sells or provides certain services to Covered Entity (“Business Relationship”);

As part of the Business Relationship, Business Associate performs or assists in performing a function or activity on behalf of covered entity that involves the access and/or use of Protected Health Information as defined in 45 CFR §160.103;

Business Associates also are required to comply with certain requirements of HIPAA, HITECH, and the HIPAA Rules; and

The purpose of this Agreement is for the parties to memorialize their mutual understanding of their respective obligations under HIPAA, HITECH, the HIPAA Rules, and if applicable Chapter 181 of the Texas Health & Safety Code and to satisfy the requirements of 45 CFR §164.502(e).

The parties agree as follows:

#### I. Definitions.

Unless otherwise specified in this Agreement, all capitalized terms shall have the same definitions as in the HIPAA Rules, as may be amended from time to time, and specifically 45 CFR §§160.103, 164.103, 164.304, 164.402, and 164.501.

- A. “Business Associate” shall have the meaning given in 45 CFR §160.103.
- B. “Covered Entity” shall have the meaning given in 45 CFR §160.103.

- C. “Individual” shall, in addition to the meaning given in 45 CFR §160.103, include a person who qualifies as a Personal Representative in accordance with 45 CFR §164.502(g).
- D. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- E. “Security Rule” shall mean the portion of the HIPAA Rules regarding security of information technology in order to prevent unlawful use or disclosure of Protected Health Information as set forth at 45 CFR Part 160 and Part 164, Subparts A and C.

## II. General Obligations of the Parties.

- A. Mutual Obligations. The parties shall comply with all applicable federal and state laws governing the confidentiality and privacy of health information including, without limitation, the Privacy Rule. The provisions of this Section II.A shall survive the termination of this Agreement.
- B. General Obligations of Covered Entity. Covered Entity agrees to:
  - 1. Notify Business Associate of any limitation(s) in the Notice of Privacy Practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate’s use or disclosure of Protected Health Information.
  - 2. Notify Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose his or her Protected Health Information, to the extent that such changes may affect Business Associate’s use or disclosure of Protected Health Information.
  - 3. Notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR §164.522, to the extent that such restriction may affect Business Associate’s use or disclosure of Protected Health Information.
  - 4. Not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except as permitted by 45 CFR §164.504(e)(4) or this Agreement.
- C. General Obligations of Business Associate. Business Associate agrees to:
  - 1. Not use or further disclose Protected Health Information other than as permitted or required by this Agreement, as required to accomplish the intended purposes of the Business Relationship or as Required by Law.
  - 2. Use appropriate administrative, physical, and technical safeguards, and comply, where applicable, with the Security Rule with respect to Electronic

Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement, or as required to accomplish the intended purposes of the Business Relationship, or as Required by Law. Business Associate shall provide Covered Entity with a copy of its written information security program upon request. Upon reasonable notice and during normal business hours, Covered Entity shall have the right to audit Business Associate's compliance with its security program and the terms of this Agreement. Business Associate shall cooperate in such audits by providing copies of any documents reasonably requested by Covered Entity at no charge.

3. Report (and maintain such records as are necessary to enable it to report) to Covered Entity, without unreasonable delay and in no case later than ten (10) business days after discovery, any use or disclosure of Protected Health Information not provided for by this Agreement, or as required to accomplish the intended purposes of the Business Relationship, or as Required by Law of which it becomes aware, including any Breach of Unsecured Protected Health Information as required by 45 CFR §164.410 and any Security Incident as required by 45 CFR §164.314(2)(i)(C). Notice of a Breach or Security Incident shall include, at a minimum:
  - a. In the case of a Breach, the identification of each Individual whose Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach;
  - b. The date of the Breach or Security Incident, if known;
  - c. The scope of the Breach or Security Incident; and
  - d. A description of the Business Associate's response to the Breach or Security Incident.
4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate agree to the same restrictions and conditions that apply to Business Associate with respect to such Protected Health Information.
5. Make available to Covered Entity, within five (5) business days after receipt of a request from Covered Entity, Protected Health Information in a Designated Record Set as necessary to allow Covered Entity to satisfy its obligations under 45 CFR §164.524 and if applicable Texas Health & Safety Code §181.102(a).

The parties agree and acknowledge that it is Covered Entity's responsibility to respond to all requests for access to Protected Health Information. In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days. Before forwarding

any Protected Health Information to Covered Entity, Business Associate shall, if applicable, indicate any material in the Designated Record Set it deems unavailable to the Individual pursuant to 45 CFR §164.524.

6. Incorporate, within ten (10) business days of receipt of a request from Covered Entity to amend an Individual's Protected Health Information in the Designated Record Set, any approved amendments, statements of disagreement, and/or rebuttals into its Designated Record Set as required by 45 CFR §164.526 or, if Business Associate does not maintain Covered Entity's Protected Health Information in a Designated Record Set, take other reasonable measures, within ten (10) business days after receipt of a request from Covered Entity, as may be necessary to allow Covered Entity to satisfy its obligations under 45 CFR §164.526.

The parties agree and acknowledge that it is Covered Entity's responsibility to respond to all requests for amendment(s) of Protected Health Information. In the event any Individual requests amendment of Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days. Before forwarding any Protected Health Information to Covered Entity, Business Associate shall, if applicable, indicate any material in the Designated Record Set it deems unavailable to the Individual pursuant to 45 CFR §164.526.

7. Maintain and make available, within ten (10) business days after receipt of a request from Covered Entity, any information required to allow Covered Entity to provide an accounting of disclosures or otherwise satisfy Covered Entity's obligations under 45 CFR §164.528, including, but not limited to, the following:
  - a. The date of the disclosure;
  - b. The name of the entity or person who received the Protected Health Information and, if known, the address of such entity or person;
  - c. A brief description of the Protected Health Information disclosed; and
  - d. A brief statement of the purpose of such disclosure.

The parties agree and acknowledge that it is Covered Entity's responsibility to respond to all requests for accounting of disclosures of Protected Health Information. In the event any Individual requests an accounting of disclosure of Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity within five (5) business days, and provide the information set forth above within ten (10) business days after receipt of the request.

8. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Privacy Rule, comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s).
9. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary's determining Covered Entity's compliance with the HIPAA Rules.
10. Limit, to the extent practicable and except as permitted by 45 CFR §164.502(b)(2), its use and disclosure of Protected Health Information, or requests for Protected Health Information, to the minimum necessary Protected Health Information required to accomplish the intended purpose of such use, disclosure, or request.
11. Maintain, during the term of this Agreement and for as long thereafter as necessary, appropriate insurance coverage sufficient to cover losses which might be incurred based on claims asserting violation of Business Associate's obligations under this Agreement and sufficient to cover Business Associate's indemnification obligations under this Agreement. Business Associate will provide evidence to Covered Entity of such insurance coverage upon Covered Entity's request. Business Associate further agrees to notify Covered Entity within thirty (30) days of any cancellation, termination, or non-renewal of such coverage.

III. Permitted Uses of Protected Health Information by Business Associate.

- A. Business Associate may use and disclose Protected Health Information only as permitted or required to accomplish the intended purposes of the Business Relationship, this Agreement, or as Required by Law.
- B. Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- C. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that:
  1. Disclosures are Required by Law; or
  2. Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that the information will remain confidential and used or further disclosed only as Required by Law or for the purposes 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.

IV. Effects of HIPAA Breach or Violation of Other Obligations Under this Agreement.

- A. Mitigation. In the event of a Breach by Business Associate of Protected Health Information covered by this Agreement, Business Associate shall, in consultation with Covered Entity, mitigate, to the extent practicable and at Business Associate's expense, any harmful effect of such Breach that is known to Business Associate.
- B. Cure. If Covered Entity becomes aware of a violation by Business Associate of Business Associate's obligations under this Agreement or a Breach of Protected Health Information received by Business Associate from Covered Entity, or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity and cure is possible, Covered Entity shall provide Business Associate with an opportunity to cure within ten (10) business days.

If Business Associate does not cure such violation or Breach within the time frames set forth in the previous paragraph, Covered Entity may, but is not required to, elect to cure the violation or Breach if it is possible for Covered Entity to do so. Covered Entity shall give Business Associate advance notice if it makes the election to cure any such violation or Breach. Business Associate shall cooperate fully in any reasonable efforts by Covered Entity to cure Business Associate's violation or Breach and shall reimburse Covered Entity for any costs which it incurs in connection with its reasonable efforts to cure. Payment of such costs of Covered Entity shall be paid within thirty (30) business days after receiving written notice of such costs from Covered Entity.

- C. Equitable Remedies. Business Associate acknowledges that violation of its obligations under this Agreement or a Breach of Protected Health Information covered by this Agreement would cause irreparable harm to Covered Entity not adequately compensable by monetary damages. In addition to any other relief which may be available, Covered Entity shall be entitled to seek injunctive relief to prevent any such actual or threatened violation by Business Associate or Breach of Protected Health Information covered by this Agreement. If such a situation arises, proceedings may be initiated before any Court having jurisdiction to issue an injunction or preside over any legal proceedings to cure or stop such violation or Breach.

V. Term and Termination.

- A. Term. The Term of this Agreement shall begin on the Effective Date as set forth above and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or on the date either party terminates this Agreement for cause as authorized in paragraph B of this Section V below, whichever first occurs.
- B. Termination for Cause. Covered Entity may terminate this Agreement for cause in the event Business Associate violates its obligations under this Agreement and fails to cure within the time frames set forth in Section IV.B of this Agreement. If cure

is not possible, Covered Entity may immediately terminate this Agreement. If the violation is material, then the Agreement shall be terminated, if feasible.

Business Associate may terminate this Agreement for cause in the event Covered Entity violates its obligations under this Agreement, provided that, where cure is possible, Covered Entity has failed to cure the violation within ten (10) business days after receiving notice of the violation from Business Associate. If cure is not possible, Business Associate may immediately terminate this Agreement. If the violation is material, then the Agreement shall be terminated, if feasible.

Where one of the parties has violated its obligations under this Agreement and neither termination nor cure is feasible, the other party may report the violation to the Secretary.

- C. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, Business Associate, with respect to Protected Health Information received from Covered Entity, or created, received, maintained, or transmitted by Business Associate and any of its Subcontractors on behalf of Covered Entity, shall:
1. Retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
  2. Return to Covered Entity – or, if agreed to by Covered Entity, destroy – the remaining Protected Health Information that Business Associate or any of its Subcontractors still maintains in any form;
  3. Continue to use appropriate safeguards and comply with the Security Rule with respect to Electronic Protected Health Information to prevent use or disclosure of the Protected Health Information, other than as provided for in this Section, for as long as Business Associate or any of its Subcontractors retains the Protected Health Information;
  4. Not use or disclose the Protected Health Information retained by Business Associate or any of its Subcontractors other than for the purposes for which such Protected Health Information was retained and subject to the same conditions set out at Sections III.B and III.C, above, which applied prior to termination; and
  5. Return to Covered Entity – or, if agreed to by covered entity, destroy – the Protected Health Information retained by Business Associate and any of its Subcontractors when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- D. Survival. The obligations of Business Associate under Section V.C above shall survive the termination of this Agreement.

VI. Miscellaneous Provisions.

- A. Ownership of Protected Health Information. All Protected Health Information received by Business Associate from Covered Entity, or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity shall be and remains the sole property of Covered Entity, including any and all forms thereof developed by Business Associate as required to accomplish the intended purposes of the Business Relationship.
- B. Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended, and for which compliance is required.
- C. Amendment. The parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.
- D. Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- E. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the Province of Ontario.
- F. Notices. All notices, requests, approvals, demands and other communications required or permitted to be given under this Agreement shall be in writing and delivered either personally, or by certified mail with postage prepaid and return receipt requested, or by overnight courier to the party to be notified. All communications will be deemed given when received. The addresses of the parties shall be as follows; or as otherwise designated by any party through notice to the other party:

If to Business Associate:  
Multi-Health Systems Inc.  
3770 Victoria Park Avenue  
Toronto, Ontario, M2H 3M6, Canada  
Attn: Contracts Department

If to Covered Entity:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attn: \_\_\_\_\_

- G. Independent Contractors. Business Associate and Covered Entity are independent contractors and this Agreement will not establish any relationship of partnership, joint venture, employment, franchise, or agency between Business Associate and Covered Entity. Neither Business Associate nor Covered Entity will have the power to bind the other or incur obligations on the other party's behalf without the other

party's prior written consent, except as otherwise expressly provided in this Agreement.

- H. Mutual Indemnification. Each party (each an "Indemnifying Party") shall mutually, to the fullest extent permitted by law, indemnify and hold harmless the other party and its directors, officers, Subcontractors, employees, affiliates, agents, and representatives (each an "Indemnified Party") from and against any and all losses, penalties (including civil money penalties), fines, demands, liabilities, costs, judgments, settlements, and expenses of every kind (including reasonable attorneys' fees to defend or appeal a claim, respond to governmental inquiry or other legal process) incurred as a result of any claim, demand, governmental investigation, lawsuit, proceeding, or other legal action asserted against or imposed upon any Indemnified Party arising out of the acts or omissions of the Indemnifying Party or any agent, Subcontractor, officer, director, employee or consultant of the Indemnifying Party related to the performance or nonperformance of this Agreement, without regard to any limitation or exclusion of damages provision otherwise set forth in the Agreement or Service Agreement. The indemnification provisions of this Section VI.H shall survive the termination of this Agreement.
  
- I. Entire Agreement. This Agreement shall constitute the entire agreement of the parties hereto with respect to the parties' respective obligations under HIPAA, the Privacy Rule, and related regulations regarding the confidentiality, security, and privacy of Protected Health Information and supersedes all prior agreements, oral or written, and all other communications between the parties hereto relating to such subject matter.

Each of the undersigned has duly executed this Agreement on behalf of the party and on the date set forth below.

<b>MULTI-HEALTH SYSTEMS INC.</b>		<b>COVERED ENTITY</b>	
ASO Name: <i>ASO Title:</i>		ASO Name: <i>ASO Title:</i>	
Date		Date	