

ELON UNIVERSITY BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) is made effective the ____ day of _____, _____ (the “Effective Date”), by and between Elon University hereinafter referred to as “Covered Entity,” and _____, hereinafter referred to as “Business Associate” (individually, a “Party” and collectively, the “Parties”).

WITNESSETH:

WHEREAS, the Parties wish to enter into a Business Associate Agreement to ensure compliance with the Privacy and Security Rules of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA Privacy and Security Rules”), as may be amended from time to time (45 CFR Parts 160 and 164); and

WHEREAS, Sections 261 through 264 of the federal HIPAA Privacy and Security Rules, Public Law 104-191, known as “the Administrative Simplification provisions,” direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information, and the “Health Information Technology for Economic and Clinical Health” (“HITECH”) Act (Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5)) modified and amended the Administrative Simplification provisions; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the “HIPAA Privacy and Security Rules”), as further amended by the Omnibus Final Rule (78 Fed. Reg. 5566), (hereinafter, the Administrative Simplification provisions, HITECH, such rules, amendments, and modifications, including any that are subsequently adopted, will be collectively referred to as “HIPAA”); and

WHEREAS, the Parties wish to enter into or have entered into a written or oral arrangement or arrangements (the “Underlying Agreements”) whereby Business Associate will provide certain services and/or products to Covered Entity that require Business Associate to **create, receive, maintain, or transmit** Protected Health Information on Covered Entity’s behalf, and, pursuant to such arrangement, Business Associate may be considered a “business associate” of Covered Entity as defined by HIPAA; and

THEREFORE, in consideration of the Parties’ continuing obligations under the Underlying Agreements, compliance with HIPAA, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

1. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Agreement shall have the definitions set forth in the HIPAA Privacy and Security Rules. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy and Security Rules, as amended, the HIPAA Privacy and Security Rules in effect at the time shall control. Where provisions of this Agreement are different from those mandated by the HIPAA Privacy and Security Rules, but are nonetheless permitted by the HIPAA Privacy and Security Rules, the provisions of this Agreement shall control.

2. BUSINESS ASSOCIATE OBLIGATIONS

Business Associate acknowledges and agrees that all Protected Health Information that is disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units, to Business Associate, or Protected Health Information which, on behalf of Covered Entity, is created, maintained, transmitted or received by Business Associate or a Subcontractor, shall be subject to this Agreement.

2.1 Business Associate agrees:

2.1.1 not to use or further disclose Protected Health Information other than as permitted or required by this Agreement or the Underlying Agreement or as required by law;

2.1.2 that it shall require each Subcontractor that creates, receives, maintains, or transmits Protected Health Information on its behalf to enter into an appropriate business associate agreement with the Subcontractor, containing the same restrictions on access, use and disclosure of Protected Health Information as those applicable to the Business Associate under this Agreement and HIPAA, before any Protected Health Information is disclosed or made available to the Subcontractor. Furthermore, to the extent that Business Associate provides Electronic Protected Health Information to a Subcontractor, Business Associate shall require such Subcontractor to comply with all applicable provisions of 45 C.F.R. Part 164, Subpart C;

2.1.3 to use or disclose any Protected Health Information solely as would be permitted by HIPAA if such use or disclosure were made by Covered Entity: (1) for meeting its obligations as set forth in the Underlying Agreement, or any other agreements between the Parties evidencing their business relationship, or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information, or as otherwise permitted under this Agreement, the Underlying Agreement (if consistent with this Agreement and HIPAA), or HIPAA. All such uses and disclosures shall be subject to the limits set forth in 45 CFR § 164.514 regarding limited data sets and 45 CFR § 164.502(b) regarding the minimum necessary requirements;

2.1.4 at the request of the Secretary, to comply with any investigations and compliance reviews, permit access to information, provide records and compliance reports, and cooperate with any complaints, pursuant to 45 CFR § 160.310;

2.1.5 Business Associate shall, following the discovery of a Breach of Unsecured Protected Health Information, as defined in HIPAA, notify Covered Entity of such Breach pursuant to the terms of 45 CFR § 164.410 and cooperate in Covered Entity's breach analysis procedures, including risk assessment, if requested. A Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate will provide such notification to Covered Entity without unreasonable delay and in no event later than ten (10) business days after discovery of the Breach. Such notification will contain the elements required in 45 CFR § 164.410. If, following the Breach notification, Business Associate learns additional details about the Breach, Business Associate shall notify Covered Entity promptly as such information becomes available. Covered Entity shall determine any required actions with respect to any such Breach, and Business Associate shall cooperate with Covered Entity and comply with such actions;

2.1.5.1 Notwithstanding the provisions of Section 2.1.5, above, if a law enforcement official states to Business Associate that notification of a Breach would impede a criminal investigation or cause damage to national security, then:

1. if the statement is in writing and specifies the time for which a delay is required, Business Associate shall delay such notification for the time period specified by the official; or

2. if the statement is made orally, Business Associate shall document the statement, including the identity of the official making it, and delay such notification for no longer than thirty (30) days from the date of the oral statement unless the official submits a written statement during that time.

Following the period of time specified by the official, Business Associate shall promptly deliver a copy of the official's statement to Covered Entity.

2.1.5.2 Business Associate shall bear all of Covered Entity's costs of any Breach and resultant notifications, if applicable, when the Breach arises from Business Associate's negligence, willful misconduct, violation of law, violation of the Underlying Agreements, or violation of this Agreement.

2.1.6 Unless expressly authorized in the Underlying Agreements, Business Associate will not:

(A) use or disclose Protected Health Information in exchange for remuneration of any kind, whether directly or indirectly, financial or non-financial, other than such remuneration as Business Associate receives from Covered Entity in exchange for Business Associate's provision of the services specified in the Underlying Agreements without a valid authorization from the applicable individual except in compliance with 45 CFR § 164.502(a)(5)(ii); or

(B) use Protected Health Information for marketing or fundraising.

2.1.7 Business Associate will implement administrative, physical, and technical safeguards set forth in 45 CFR §§ 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of any Protected health Information that it creates, receives, maintains or transmits on behalf of Covered Entity, and in accordance with 45 C.F.R. § 164.316, implement and maintain reasonable and appropriate policies and procedures to enable it to comply with the requirements outlined in 45 CFR §§ 164.308, 164.310, and 164.312.

2.2 Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:

2.2.1 if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:

(A) the disclosure is required by law; or

(B) Business Associate obtains reasonable assurances from the third parties to whom the Protected Health Information is disclosed that it will remain confidential and be used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that such third parties will notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

2.2.2 for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the Protected Health Information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

2.3 Business Associate agrees that it will 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, in a time and manner designated by the Secretary, to enable the Secretary to determine Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules. Business Associate also shall cooperate with the Secretary and, upon the Secretary's request, pursuant to 45 C.F.R. § 160.310, shall disclose Protected Health Information to the Secretary to enable the Secretary to investigate and review Business Associate's or Covered Entity's compliance with the HIPAA Privacy and Security Rules.

2.4 Business Associate shall report to Covered Entity any Security Incident that does not rise to the level of a Breach of Unsecured Protected Health Information, and any use or disclosure of Protected Health Information that is not provided for by this Agreement but that does not rise to the level of a Breach, of which Business Associate becomes aware. The report shall be made as soon as practical, and in any event within ten (10) business days of Business Associate's discovery of the Security Incident or impermissible use or disclosure, and in the manner required by Covered Entity. A Security Incident shall be treated as discovered by Business Associate as of the first day on which such Security Incident is known to Business Associate or, through the exercise of reasonable diligence, would have been known to Business Associate. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

2.5 Should Business Associate transmit Protected Health Information over public or wireless networks or store Protected Health Information on mobile devices, portable backup media, or in the cloud, Business Associate shall provide for encryption of Protected Health Information in transmission and/or at rest.

3. AVAILABILITY OF PROTECTED HEALTH INFORMATION

3.1 Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to 45 CFR § 164.522 to which Covered Entity has agreed and of which Business Associate has been notified by Covered Entity.

3.2 At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make available Protected Health Information required for Covered Entity to respond to an individual's request for access to his or her Protected Health Information in accordance with 45 CFR § 164.524. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information electronically available to Covered Entity, or, upon Covered Entity's specific request, to the applicable individual or to a person or entity specifically designated by such individual, upon such individual's request.

3.3 At the request of Covered Entity and in a reasonable time and manner, Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of 45 CFR § 164.526.

3.4 Business Associate agrees to document any disclosures of Protected Health Information, and to make Protected Health Information available for purposes of accounting of disclosures, as required by 45 CFR § 164.528. Business Associate and Covered Entity shall cooperate in providing any accounting required on a timely basis.

4. OBLIGATIONS OF COVERED ENTITY

4.1 Upon request of Business Associate, Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520.

4.2 Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an individual to use or disclose Protected Health Information, if such changes could reasonably be expected to affect Business Associate's permitted or required uses and disclosures.

4.3 Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information to which Covered Entity has agreed in accordance with 45 C.F.R. § 164.522, and Covered Entity shall inform Business Associate of the termination of any such restriction, and the effect that such termination shall have, if any, upon Business Associate's use and disclosure of such Protected Health Information.

5. TERM AND TERMINATION

5.1 Term. The Term of this Agreement shall commence on the Effective Date first written above, and shall terminate upon the later of the following events: (i) in accordance with Section 4.3, 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 returned to Covered Entity or destroyed (and a certificate of destruction is provided) or, if such return or destruction is infeasible, when protections are extended to such information; or (ii) upon the expiration or termination of the last of the Underlying Agreements.

5.2 Termination. Upon either Party's knowledge of a material breach by the other Party of its obligations under this Agreement, the non-breaching Party shall, within twenty (20) days of that determination, notify the breaching Party, and the breaching Party shall have twenty (20) days from receipt of that notice to cure the breach or end the violation. If the breaching Party fails to take reasonable steps to effect such a cure within such time period, the non-breaching Party may terminate this Agreement and the Underlying Agreements without penalty.

Where either Party has knowledge of a material breach by the other Party and determines that cure is infeasible, prior notice of the breach is not required, and the non-breaching Party shall terminate the portion of the Underlying Agreements affected by the breach without penalty. Where neither cure nor termination is feasible, the non-breaching Party shall report the violation to the Secretary.

5.3 Effect of Termination

5.3.1 Except as provided in paragraph 5.3.2 below, upon termination of this Agreement, the Underlying Agreements or upon request of Covered Entity, whichever occurs first, Business Associate shall within ten (10) days return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of Subcontractors of Business Associate. Neither Business Associate nor its Subcontractors shall retain copies of the Protected Health Information.

5.3.2 In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide within ten (10) days to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate, and its applicable Subcontractors, shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate and its applicable Subcontractors maintain such Protected Health Information.

6. MISCELLANEOUS

6.1 Indemnification. Each party shall indemnify and hold the other harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards, or other expenses, of any kind or nature whatsoever, including, without limitation, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach of this Agreement, or any Breach, by that Party or its Subcontractors or agents.

6.2 No Rights in Third Parties. Except as expressly stated herein or in HIPAA, the Parties to this Agreement do not intend to create any rights in any third parties.

6.3 Survival. The obligations of Business Associate under this Agreement shall survive its expiration, termination, or cancellation of this Agreement, the Underlying Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

6.4 Amendments. Except as otherwise set forth in this Section, this Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in HIPAA are necessary for each of them to comply with the current requirements of the HIPAA, unless a particular statutory or regulatory provision requires that the terms of this Agreement be amended to reflect any such change. In those instances where an amendment to this Agreement is required by law or in the event a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of HIPAA, the Parties shall negotiate in good faith to amend the terms of this Agreement. If, following such good faith negotiations, the Parties cannot agree upon an amendment to implement the requirements of said law or final rule, then either Party may terminate this Agreement and the Underlying Agreements upon written notice to the other Party.

6.5 Assignment. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.

6.6 Independent Contractors. None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship.

6.7 No Waiver. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

6.8 Interpretation. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control.

6.9 Severability. 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.

6.10 Certain Provisions Not Effective in Certain Circumstances. The provisions of this Agreement relating to the HIPAA Security Rule shall not apply to Business Associate if Business Associate does not receive, create, maintain, or transmit any Electronic Protected Health Information from or on behalf of Covered Entity.

6.11 Counterparts. This Agreement, and facsimile or electronic (e.g., pdf) versions thereof, may be executed in one or more counterparts, each of which shall be deemed an original and all of which, when fully executed, shall constitute one and the same instrument.

6.12 Governing Law. To the extent this Agreement is not governed exclusively by HIPAA or other provisions of federal law, this Agreement will be governed by the laws of the State of North Carolina.

6.13 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below. The parties agree that notice may be sent by email if receipt of the email content can be confirmed, such as with a "read receipt," confirmation of receipt from the receiver, or by using a registered e-mail service, with time of receipt being the uniform time the email enters the information processing system (or server) that the recipient has designated or uses for the purpose of receiving email.

6.14 Entire Agreement. This Agreement constitutes the entire understanding of the Parties with respect to the subject matter hereof and **supersedes all prior Business Associate Agreements** between the parties.

If to Covered Entity, to:

Elon University
100 Campus Drive
Elon, NC 27244
Attention: **Jana Lynn Patterson**
Fax: **336-278-2875**
Email: **patters@elon.edu**

With a copy (which shall not constitute notice) to:

Elon University
100 Campus Drive
Elon, NC 27244
Attention: **Jeff Hendricks**
Fax: **336-278-4915**
Email: **jhendricks4@elon.edu**

If to Business Associate, to:

Attention: _____
Fax: _____
Email: _____

With a copy (which shall not constitute notice) to:

Attention: _____
Fax: _____
Email: _____

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY

BUSINESS ASSOCIATE:

By: **Elon University**
Print Name: **Jeff Hendricks**
Title: **Director of Purchasing**

By: _____
Print Name: _____
Title: _____