

BUSINESS ASSOCIATE AGREEMENT

CUSTOMER (“COVERED ENTITY”) AGREES THAT BY PLACING AN ORDER WITH STRYKER SALES, LLC OR ONE OF ITS AFFILIATES (“BUSINESS ASSOCIATE”) FOR STRYKER SOFTWARE OR HOSTING SERVICES THAT COVERED ENTITY AGREES TO BE BOUND BY THIS BUSINESS ASSOCIATE AGREEMENT (“BAA”). PLEASE READ THIS BAA CAREFULLY BEFORE INSTALLING, ACTIVATING OR OTHERWISE ACCESSING OR USING ANY STRYKER SOFTWARE OR HOSTING SERVICES, OR ANY SOFTWARE OR SERVICES ACCESSIBLE BY USING ANY STRYKER SOFTWARE OR HOSTING SERVICES. IF YOU ARE PLACING AN ORDER ON BEHALF OF COVERED ENTITY, YOU REPRESENT AND WARRANT TO BUSINESS ASSOCIATE THAT YOU ARE DULY AUTHORIZED TO AGREE TO THIS BAA ON BEHALF OF COVERED ENTITY. IF COVERED ENTITY DOES NOT AGREE TO THIS BAA, COVERED ENTITY MAY NOT INSTALL, ACTIVATE OR OTHERWISE ACCESS OR USE STRYKER SOFTWARE OR HOSTING SERVICES, OR ANY SOFTWARE OR SERVICES ACCESSIBLE BY USING THE STRYKER SOFTWARE OR HOSTING SERVICES.

RECITALS

WHEREAS, Covered Entity has entered into one or more services agreements (the “**Agreement**”) under which Business Associate may create, receive, maintain and/or transmit Protected Health Information (as defined below) in order to provide services to, or perform functions for or on behalf of, Covered Entity (the “**Services**”).

Covered Entity and Business Associate hereto agree to the foregoing and as follows:

1. Definitions.

The following terms, when used in this BAA, shall have the following meanings:

- (a) “*Breach*” shall have the meaning set forth in 45 C.F.R. § 164.402.
- (b) “*Electronic Protected Health Information*” or “*Electronic PHI*” means Protected Health Information that is transmitted by or maintained in Electronic Media.
- (c) “*HIPAA*” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- (d) “*HIPAA Breach Notification Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to require notification in the event of a Breach, 45 C.F.R. Part 164, Subparts A and D.
- (e) “*HIPAA Privacy Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and E.
- (f) “*HIPAA Rules*” means the HIPAA Privacy Regulations, HIPAA Security Regulations, and HIPAA Breach Notification Regulations.
- (g) “*HIPAA Security Regulations*” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of Electronic Protected Health Information, 45 C.F.R. Parts 160 and 164, Subparts A and C.
- (h) “*Protected Health Information*” or “*PHI*” shall have the same meaning as “protected health information” in 45 C.F.R. § 160.103 but limited to the Protected Health Information received from, or created or received on behalf of, Covered Entity by Business Associate in connection with the Services.

(i) “*Security Incident*” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as described in 45 C.F.R. § 164.304.

(j) Any terms capitalized, but not otherwise defined, in this BAA shall have the same meaning as those terms have under HIPAA, the HIPAA Privacy Regulations, the HIPAA Security Regulations, and the HIPAA Breach Notification Regulations.

2. Scope

(a) *Scope.* The terms of this BAA apply to Business Associate only to the extent Business Associate creates, receives, maintains or transmits Protected Health Information in order to provide the Services in its capacity as a business associate (as defined in the HIPAA Privacy Regulations) to Covered Entity. For the avoidance of doubt, this BAA does not apply to the extent that Covered Entity discloses Protected Health Information to Business Associate in Business Associate’s capacity as a Health Care Provider for Treatment purposes or as permitted by 45 C.F.R. § 164.512(b)(1)(iii).

3. Obligations and Activities of Business Associate.

(a) *Use or Disclosure.* Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement, this BAA, or as Required by Law. To the extent that Business Associate is to carry out any of Covered Entity’s obligations under the HIPAA Privacy Regulations, Business Associate will comply with the requirements of the HIPAA Privacy Regulations that apply to Covered Entity in the performance of those obligations.

(b) *Safeguards.* Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this BAA. Business Associate further agrees to comply with applicable provisions of the HIPAA Security Regulations with respect to Electronic PHI.

(c) *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 Protected Health Information by Business Associate in violation of the requirements of this BAA.

(d) *Reporting.* Business Associate agrees to report to Covered Entity, without unreasonable delay, any use or disclosure of Protected Health Information that is not permitted by this BAA; and/or any Security Incident of which Business Associate becomes aware. Notwithstanding the foregoing, Covered Entity acknowledges that Business Associate routinely experiences unsuccessful Security Incidents that do not result in unauthorized access to, or use or disclosure of, PHI, such as pings, port scans, phishing attempts and other unsuccessful Security Incidents. The Parties acknowledge and agree that no further notice shall be required of such unsuccessful Security Incidents.

(e) Notwithstanding Section 3(d), Business Associate shall, without unreasonable delay and in no case later than ten (10) business days after discovery, notify Covered Entity of a Breach of Unsecured PHI in accordance with the HIPAA Breach Notification Regulations.

(f) *Subcontractors.* Business Associate agrees to require any Subcontractors that create, receive, maintain or transmit Protected Health Information on behalf of Business Associate to agree, in writing, to no less restrictive restrictions and conditions that apply through this BAA to Business Associate with respect to such information, including requiring such Subcontractors to

agree to comply with applicable requirements of the HIPAA Security Regulations with respect to Electronic Protected Health Information.

(g) *Access.* In the event that Business Associate, in connection with the Services, maintains a Designated Record Set, Business Associate shall make available Protected Health Information in the Designated Record Set in accordance with 45 C.F.R. § 164.524. In the event any Individual requests access to Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity promptly and without unreasonable delay so that Covered Entity can respond to such Individual in accordance with 45 C.F.R. § 164.524. Any denials of access to the Protected Health Information requested shall be the responsibility of Covered Entity.

(h) *Amendment.* In the event that Business Associate, in connection with the Services, maintains Protected Health Information in a Designated Record Set, Business Associate will provide Protected Health Information to Covered Entity for amendment or incorporate any such amendments requested by Covered Entity pursuant to 45 C.F.R. § 164.526. In the event any Individual requests amendment of Protected Health Information directly from Business Associate, Business Associate shall forward such request to Covered Entity promptly and without unreasonable delay so that Covered Entity can respond to the Individual in accordance with 45 C.F.R. § 164.526.

(i) *Audit and Inspection.* Business Associate shall make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary of Health and Human Services (the “**Secretary of HHS**”) or any officer or employee to whom the Secretary of HHS has delegated such authority for the purposes of determining Covered Entity’s compliance with the HIPAA Privacy Regulations.

(j) *Documentation of Disclosures.* Business Associate agrees to document and maintain documentation of such disclosures of Protected Health Information, and such information related to such disclosures, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

(k) *Accounting.* Upon receipt of written notice by Covered Entity that Covered Entity has received a request from an Individual for an accounting of disclosures of Protected Health Information, Business Associate shall make available to Covered Entity, in the reasonable time period specified by Covered Entity, that information collected in accordance with Section 3(j) (“Documentation of Disclosures”) of this BAA, to permit Covered Entity to respond to the request from an Individual in accordance with 45 C.F.R. § 164.528. In the event any Individual requests an accounting of disclosures directly from Business Associate, Business Associate shall forward such request to Covered Entity promptly and without unreasonable delay such that Covered Entity can respond to such Individual in accordance with 45 C.F.R. § 164.528.

(l) *Minimum Necessary Use and Disclosure.* Business Associate shall make reasonable efforts to limit the use and disclosure of, and request for, Protected Health Information to the minimum amount of information necessary to accomplish the intended purpose of the use, disclosure, or request, subject to any applicable exceptions under the HIPAA Privacy Regulations.

4. Permitted Uses and Disclosures by Business Associate.

(a) *General Use and Disclosure Provisions.* Except as otherwise limited in this BAA, Business Associate may use or disclose Protected Health Information in connection with its

performance of the Services and as otherwise permitted or required by the Agreement, this BAA or Required by Law.

(b) *Specific Use and Disclosure Provisions.*

- (1) Except as otherwise limited in this BAA, Business Associate may use and disclose Protected Health Information for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that any such disclosures are Required by Law or any third party to which Business Associate discloses PHI for those purposes provides reasonable assurances that:
 - a. the information will remain confidential;
 - b. the information will be used or further disclosed only as Required by Law or for the purposes for which the information was disclosed to the third party; and
 - c. the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Business Associate may use and disclose Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).
- (3) Business Associate may use and disclose Protected Health Information to provide Data Aggregation services relating to the Health Care Operations of Covered Entity and other customers of Business Associate.
- (4) Business Associate may de-identify Protected Health Information in accordance with the standards set forth in 45 C.F.R. § 164.514(b). Business Associate's use and disclosure of such de-identified information will not be subject to the requirements set forth in this BAA.

5. Obligations of Covered Entity.

(a) *Permissible Requests by Covered Entity.* Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Privacy Regulations.

(b) *Notice of Privacy Practices.* Covered Entity shall notify Business Associate in writing of any limitation(s) in its notice of privacy practices that may affect Business Associate's use or disclosure of Protected Health Information.

(c) *Notification of Changes Regarding Individual Permission.* Covered Entity shall obtain all consents and authorizations that may be required by the HIPAA Privacy Regulations and/or applicable state law, prior to furnishing Business Associate with Protected Health Information. Covered Entity shall notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information that may affect Business Associate's use or disclosure of Protected Health Information.

(d) *Notification of Restrictions to the Use or Disclosure of Protected Health Information.* Covered Entity shall notify Business Associate in writing of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522 that may affect Business Associate's use or disclosure of Protected Health Information.

6. Term and Termination.

(a) *Term.* This BAA shall be effective as of the Effective Date and shall continue until the expiration or termination of the Agreement, unless terminated in accordance with the provisions of Section 6(b) ("Termination for Cause").

(b) *Termination for Cause.* Upon either Covered Entity's or Business Associate's knowledge of a material breach of this BAA by the other entity, the non-breaching entity may provide the breaching entity with notice of and a reasonable opportunity to cure such breach and then terminate this BAA if the breaching entity does not cure the breach within the reasonable time period specified by the non-breaching entity. In the event that termination of the BAA is not feasible, the Covered Entity and Business Associate acknowledge and agree that the non-breaching entity may report the breach to the Secretary of HHS.

(c) *Effect of Termination.*

(1) Upon termination of this BAA, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, if feasible to do so. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

(2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall extend the protections of this BAA to Business Associate's use and/or disclosure of any PHI retained after the termination or expiration of this BAA, and limit further uses and/or disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible.

7. Limitation of Liability.

(a) *Limitation of Liability.* Business Associate's liability, if any, for damages to Covered Entity for any cause whatsoever arising out of or related to this BAA, and regardless of the form of the action, shall be limited to Covered Entity's actual damages, in an amount no more than fees paid to Business Associate for the prior twelve (12) month period. Business Associate shall not be liable for any indirect, incidental, punitive, exemplary, special or consequential damages of any kind whatsoever sustained as a result of a breach of this BAA or any action, inaction, alleged tortious conduct, or delay by Covered Entity.

8. Miscellaneous.

(a) *Regulatory References.* A reference in this BAA to a section in HIPAA, and the HIPAA Rules means the section as in effect or as amended from time to time, and for which compliance is required.

(b) *Amendment.* Covered Entity and Business Associate agree that amendment of this BAA may be required and agree to negotiate in good faith to amend this BAA to ensure that Covered Entity and Business Associate comply with changes in applicable state and federal laws and regulations relating to the privacy, security and confidentiality of Protected Health Information, including, but not limited to, changes under the HIPAA Privacy Regulations, the HIPAA Security Regulations and the HIPAA Breach Notification Regulations.

(c) *Assignment.* Covered Entity may not transfer or assign any or all of its rights or interests under this BAA or delegate any of its obligations without the prior written consent of Business Associate. This BAA shall be binding upon, and inure to the benefit of the Covered Entity and Business Associate and their successors and permitted assigns, and the agreements, representations, warranties, covenants and acknowledgments contained herein shall be deemed to be made by, and be binding upon, such successors and permitted assigns.

(d) *Survival.* The respective rights and obligations of Business Associate under Section 6(c) ("Effect of Termination"), 7(a) ("Limitation of Liability"), and Section 8(d) ("Survival") of this BAA shall survive the termination of this BAA.

(e) *Interpretation.* Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with applicable law protecting the privacy, security and confidentiality of Protected Health Information, including, but not limited to, HIPAA and the HIPAA Rules.

(f) *No Third-Party Beneficiaries.* Nothing express or implied in this BAA is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

(g) *Primacy.* To the extent that any provisions of this BAA conflict with the provisions of any other agreement or understanding between Covered Entity and Business Associate, this BAA shall control with respect to the subject matter of this BAA.

(h) *Independent Contractors.* No provision of this BAA is intended to create, nor shall be deemed or construed to create, any employment, agency or joint venture relationship between Covered Entity and Business Associate other than that of independent entities contracting with each other hereunder solely for the purpose of effectuating the provisions of this BAA. None Covered Entity, Business Associate, nor any of their respective representatives shall be construed to be the agent, employer, or representative of the other. Covered Entity and Business Associate have reviewed the factors to determine whether an agency relationship exists under the federal common law of agency and it is not the intention of either Covered Entity or Business Associate that Business Associate constitute an "agent" under such common law. Business Associate shall retain sole and absolute discretion in the manner and means of carrying out its activities and responsibilities under this BAA.

(i) *General.* This BAA is governed by, and shall be construed in accordance with, the laws of the state that governs the Agreement. All notices relating to the legal rights and remedies under this BAA shall be provided in writing.