



Not-for-Profit Hospital Corporation

NOT-FOR-PROFIT HOSPITAL CORPORATION BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into this _____ day of _____, 2022 by and among **NOT-FOR-PROFIT HOSPITAL CORPORATION, commonly known as United Medical Center**, (herein known as "Covered Entity"), whose business address is 1310 Southern Avenue, SE Washington DC, and **[Insert Business Associate Name]** (herein known as "Business Associate"), whose business address is **[Insert Business Associate Address]**. Covered Entity and Business Associate shall collectively be known herein as "the parties".

WHEREAS, Covered Entity is a health care provider as defined in 45 CFR § 160.103.

WHEREAS, Business Associate is in the business of providing services to the healthcare industry and its activities are generally described as _____.

WHEREAS, Covered Entity wishes to commence a business relationship with this Business Associate that shall be memorialized in a separate services agreement titled **[Insert Name of Underlying Services Agreement]**.

WHEREAS, the nature of the contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information ("PHI") as that term is defined under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") as amended by Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") including pertinent regulations issued by the Department of Health and Human Services ("HHS") (collectively the "HIPAA Rules").

The premises have been considered and with acknowledgement of the mutual promises and of other good and valuable consideration herein contained, "The Parties", intending to be legally bound, hereby agree as follows:

1. **Definitions.** Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the HIPAA Rules.
 - a. **Business Associate.** "Business Associate" shall generally have the same meaning as defined in 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean **[Insert Business Associate Name]**.
 - b. **Covered Entity.** "Covered Entity" shall generally have the same meaning as defined in 45 CFR § 160.103, and in reference to the party to this Agreement, shall mean NOT-FOR-PROFIT HOSPITAL CORPORATION, commonly known as United Medical Center.
 - c. **Individual.** "Individual" shall generally have the same meaning as defined in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
 - d. **Breach.** "Breach" shall have the same meaning as defined in 45 CFR § 164.402.
 - e. **Designated Record Set.** "Designated Record Set" has the same meaning as defined in 45 CFR § 164.501
 - f. **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
 - g. **Protected Health Information.** "Protected Health Information" shall have the same meaning as defined in 45 CFR §160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - h. **Required By Law.** "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
 - i. **Secretary.** "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his or her designee.
 - j. **Unsecured Protected Health Information.** "Unsecured Protected Health Information" shall have the same meaning as defined in 45 CFR § 164.402, or as otherwise defined in §13402(h) of the HITECH Act.



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2. Obligations and Activities of Business Associate.

- a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted by the HIPAA Rules, required by this Agreement, or as Required By Law. All other uses not authorized by this agreement are prohibited. Nothing in this Agreement shall prohibit Business Associate's disclosure of PHI received from or created or received on behalf of the Covered Entity, to the Covered Entity.
- b. Business Associate agrees to employ administrative, physical, and technical safeguards in order to comply with Subpart C of 45 CFR Part 164 with respect to meeting required Security Standards for electronic Protected Health Information for business associates as Required By Law to prevent disclosure or use of PHI other than as allowable by this Agreement.
- c. 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.
- d. Business Associate agrees to promptly report to Covered Entity any use or disclosure of Protected Health Information not permitted or required by this Agreement of which it becomes aware within five (5) business days of Business Associate's learning of such Use or Disclosure.
- e. Business Associate agrees to promptly report to Covered Entity any Security Incident of which Business Associate becomes aware. Specifically, Business Associate will report to Covered Entity any successful unauthorized access, Use, Disclosure, modification, or destruction of ePHI or interference with system operations in an information system containing ePHI of which Business Associate becomes aware within five (5) business days of Business Associate learning of such Security Incident. Business Associate also will report the aggregate number of unsuccessful, unauthorized attempts to access, Use, Disclose, modify, or destroy ePHI or interfere with system operations in an information system containing ePHI, of which Business Associate becomes aware, provided that: (i) such reports will be provided only as frequently as the parties mutually agree, but no more than once per month; and (ii) if the definition of "Security Incident" under the Security Standards is amended to remove the requirement for reporting "unsuccessful" attempts to Use, Disclose, modify or destroy ePHI, the portion of this Section addressing the reporting of unsuccessful, unauthorized attempts will no longer apply as of the effective date of such amendment.
- f. Business Associate agrees to promptly report in writing to Covered Entity any Breach of Unsecured Protected Health Information as required by 45 CFR 164.410, of which Business Associate becomes aware within five (5) business days of the date Business Associate learns of the incident giving rise to the Breach. Business Associate will provide such information to Covered Entity as required in the Breach Notification Rule. Business Associate will reimburse Covered Entity for any reasonable expenses Covered Entity incurs in notifying Individuals of a Breach caused by Business Associate or Business Associate's subcontractors or agents, and for reasonable expenses Covered Entity incurs in mitigating harm to those Individuals. Business Associate also will defend, hold harmless and indemnify Covered Entity and its employees, agents, officers, directors, shareholders, members, contractors, parents, and subsidiary and affiliate entities, from and against any claims, losses, damages, liabilities, costs, expenses, penalties or obligations (including attorneys' fees), which the Covered Entity may incur due to a Breach caused by Business Associate or Business Associate's Subcontractors or agents.
- g. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Covered Entity, agrees in writing to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to PHI.
- h. In the event that Business Associate maintains PHI in a Designated Record Set, Business Associate will make available PHI in a Designated Record Set, within ten (10) days of Covered Entity's request and in the manner requested, to Covered Entity, or as directed by Covered Entity to an Individual, in order to meet the requirements under 45 C.F.R. §164.524.



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- i. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526, or take other measures necessary to satisfy the covered entity's obligations under 45 CFR 164.526, at the request of Covered Entity or an Individual, in a prompt and commercially reasonable manner, but not later than 10 business days after Covered Entity's request.
- j. Unless otherwise protected or prohibited from discovery or disclosure by law, Business Associate agrees to make internal practices, books, and records, including policies and procedures, relating to the use or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity or to the Secretary (including official representatives of the Secretary), in a prompt and commercially reasonable manner for purposes of determining Covered Entity's compliance with the Privacy Rule or Security Rule.
- k. Business Associate agrees to maintain necessary and sufficient documentation of disclosures of Protected Health Information as would be required for Covered Entity to respond to a request by an Individual for an accounting of such disclosures, in accordance with 45 CFR §164.528.
- l. On request of Covered Entity, Business Associate agrees to provide to Covered Entity documentation made in accordance with this Agreement to permit 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. Business Associate shall respond promptly, but not later than 10 business days after Covered Entity's request.
- m. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate will comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- n. Except as provided for in this Agreement, in the event Business Associate receives an access, amendment, accounting of disclosure, or other similar request directly from an Individual, Business Associate will redirect the Individual to the Covered Entity.

3. Permitted Uses and Disclosures by Business Associate.

- a. Except as otherwise limited by this Agreement, Business Associate may make any uses and disclosures of Protected Health Information necessary to perform its services to Covered Entity and otherwise meet its obligations under this Agreement, if such use or disclosure would not violate the HIPAA Rules if done by Covered Entity. All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited.
- b. Business Associate may use or disclose protected health information as Required By Law.
- c. Business Associate agrees to comply with the minimum necessary standard for Business Associates as set forth in the HIPAA Rules.
- d. Business Associate may not use or disclose Protected Health Information in a manner that would violate Subpart E of 45 CFR Part 164 if done by the Covered Entity, except for the specific uses and disclosures set forth below:
 1. Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
 2. Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and 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 the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.



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- e. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services relating to the health care operations of the covered entity as permitted by 45 CFR §164.504.

4. **Term and Termination.**

- a. Term. The Term of this Agreement shall be effective as of the date given at the top of page herein, 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, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Agreement.

- b. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall give Business Associate written notice of such breach and provide reasonable opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement, and Business Associate agrees to such termination, if Business Associate has breached a material term of this Agreement and does not cure the breach or cure is not possible.

- c. Effect of Termination.

- 1. Except as provided in paragraph (2) of this section, upon termination of this Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from, 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 or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

- 2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity, within ten (10) business days, written notification of the conditions that make return or destruction infeasible. Upon such determination, Business Associate 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 maintains such Protected Health Information.

- 5. **State Law.** If the State or District law applicable to the relationship between Business Associate and Covered Entity contains additional or more stringent requirements than federal law for Business Associates regarding any aspect of PHI privacy, then Business Associate agrees to comply with the higher standard contained in applicable state law.

- 6. **Modifications.** This agreement may only be modified through a writing signed by the parties and, thus, no verbal modification hereof shall be permitted. The parties agree to take such action as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules, as amended.

7. **Miscellaneous.**

- a. Regulatory References. A reference in this Agreement to a section in the Privacy Rule or Security Rule means the section as in effect or as amended.

- b. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the HIPAA Rules.

- c. Survival. The respective rights and obligations of Business Associate under Section 4(c) of this Agreement shall survive the termination of this Agreement.

- d. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule or the Security Rule.



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8. **Notice to Covered Entity.** Any notice required under this agreement to be given to the Covered Entity shall be made in writing to:

Risk Manager
NOT-FOR-PROFIT HOSPITAL CORPORATION
1310 Southern Avenue, SE
Washington, D.C. 20032-4623

9. **Notice to Business Associate.** Any notice required under this agreement to be given to the Business Associate shall be made in writing to:

[Vendor Name]
[Vendor Street & Suite #]
[Vendor City, State & Zip]

ATTN: _____

IN WITNESS WHEREOF and acknowledging acceptance and agreement of the foregoing, the Parties affix their signatures hereto.

COVERED ENTITY

Not-for-Profit Hospital Corporation,
commonly known as United Medical Center

BUSINESS ASSOCIATE

[Insert Business Associate Name]

Name: _____

Title: _____

Title: _____

Title: _____

Date: _____

Date: _____