

**UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this "Agreement"), effective as of the day and year of the last signature set forth on the signature page ("Effective Date") is entered into by and between **University of Maryland Medical System Corporation** ("UMMS") on its own behalf and on behalf of its Affiliates, including, but not limited to, the Affiliates identified on Attachment 1 hereto (UMMS and the Affiliates are collectively and individually referred to herein as "Covered Entity") and _____ **[Insert Name of Business Associate]** _____ ("Business Associate") and supplements and is made a part of all agreements entered between the parties (collectively and individually referred to herein as the "Underlying Agreement") pursuant to which Business Associate will create, receive, transmit or maintain Protected Health Information on behalf of Covered Entity ("PHI") as that term is defined under the Health Insurance Portability and Accountability Act of 1996 including all pertinent regulations, including without limitation the Privacy, Security, Breach Notification, and Enforcement Rules, codified at 45 C.F.R. Parts 160 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act, and as may be further amended in the future ("HIPAA"); and

WHEREAS, in consideration of the covenants herein, the Covered Entity and Business Associate desire to enter into this Agreement for the purpose of ensuring compliance with HIPAA.

NOW THEREFORE, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt, adequacy, and sufficiency of which are hereby acknowledged, the parties agree as follows:

I. Definitions.

The following terms used in this Agreement shall have the same meaning as those terms in HIPAA: Breach, Data Aggregation, Designated Record Set, Disclosure, Electronic PHI, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information/PHI, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Specific definitions include:

- A. Affiliate. "Affiliate" shall mean, when used in connection with a particular entity, any corporation, partnership, trust, joint venture, professional association or other entity, directly or indirectly controlling, controlled by, or under common control with such entity. "Control," including "controlling," "controlled by," and "under common control with," shall mean the power to direct or cause the direction of the management and policies through ownership of voting securities, by contract or otherwise of a corporation, partnership, trust, joint venture, or other entity.
- B. Business Associate. "Business Associate" shall mean the party named above as "Business Associate" and will generally have the same meaning as the term "Business Associate" at 45 C.F.R. § 160.103.
- C. Covered Entity. "Covered Entity" shall mean the University of Maryland Medical System Corporation and its applicable Affiliates and will generally have the same meaning as the term "Covered Entity" at 45 C.F.R. § 160.103.

- D. Protected Health Information/PHI and Electronic Protected Health Information or Electronic PHI shall generally have the same meaning as the terms are defined at 45 C.F.R. § 160.103, but for purpose of this Agreement will be limited to the PHI created, received, transmitted or maintained by Business Associate on Covered Entity's behalf.

II. Scope of Use and Disclosure by Business Associate of PHI.

- A. Business Associate may access, Use and Disclose PHI that the Covered Entity Discloses to Business Associate as necessary to perform Business Associate's obligations under the Underlying Agreement, provided:
1. Business Associate's Disclosure is to only its employees, Subcontractors and/or agents in accordance with this Agreement, the Underlying Agreement, and state and federal privacy and security laws;
 2. Business Associate's access, Use or Disclosure of PHI would not violate HIPAA or if carrying out an obligation on Covered Entity's behalf, would not violate HIPAA if done by Covered Entity;
 3. Business Associate's Use or Disclosure for any fundraising purpose must be permitted by the Underlying Agreement and HIPAA;
 4. Business Associate will not access, Use or Disclose PHI for marketing purposes or directly or indirectly receive remuneration in exchange for PHI, except with Covered Entity's prior written consent and only as permitted by the Underlying Agreement and HIPAA; and
 5. Business Associate makes all reasonable efforts not to access, Use, or Disclose more than the Minimum Necessary amount of PHI to accomplish the purpose of the access, Use or Disclosure.
- B. Unless otherwise limited by this Agreement, Underlying Agreement, or HIPAA, Business Associate may:
1. Access and/or Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 2. Disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate, provided, however, that the Disclosures are Required by Law or Business Associate has received from the third party written assurances that:
 - a. the PHI will be held confidentially, as required under 45 C.F.R. § 164.504(e)(4) and 164.314, and accessed, Used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the third party;
 - b. the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the PHI has been Breached; and

- c. the third party's access, Use and Disclosure of PHI are overall compliant with HIPAA.
 3. Upon Covered Entity's request, Business Associate shall provide Covered Entity with a copy of the third party's written assurances;
 4. Business Associate will notify Covered Entity within five (5) days of becoming aware of any instances covered under Section II.B.2(b);
 5. Business Associate may provide Data Aggregation services if related to Covered Entity's Health Care Operations and only to the extent specifically required in the Underlying Agreement and may not Disclose Covered Entity's aggregated data in a manner that identifies Covered Entity without Covered Entity's prior written consent; and
 6. To the extent permitted by HIPAA, Business Associate may de-identify PHI for Covered Entity but only to the extent specifically required in the Underlying Agreement and in accordance with HIPAA. Business Associate will not Disclose Covered Entity's de-identified PHI in a manner that identifies Covered Entity without Covered Entity's prior written consent.
- C. Confidentiality Obligations. In the course of performing under the Underlying Agreement and this Agreement, each party may receive, be exposed to or acquire Confidential Information including but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer data base or computer readable form, as well as any information identified as confidential ("Confidential Information") of the other party. For purposes of this Agreement, "Confidential Information" shall not include PHI, the security of which is the subject of this Agreement and is provided for elsewhere. The parties including their employees, agents or representatives (i) shall not disclose to any third party the Confidential Information of the other party except as otherwise permitted by the Underlying Agreement and this Agreement, (ii) only permit use of such Confidential Information by employees, agents and representatives having a need to know in connection with performance under the Underlying Agreement and this Agreement, and (iii) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential. Notwithstanding anything to the contrary herein, each party shall be free to use, for its own business purposes, any ideas, suggestions, concepts, know-how or techniques contained in information received from each other that directly relates to the performance under this Agreement. This provision shall not apply to Confidential Information: (a) after it becomes publicly available through no fault of either party; (b) which is later publicly released by either party in writing; (c) which is lawfully obtained from third parties without restriction; or (d) which can be shown to be previously known or developed by either party independently of the other party.

III. Obligations of Business Associate. In connection with its access, Use and Disclosure of PHI, Business Associate agrees that it shall:

- A. Access, Use or further Disclose PHI only as permitted or required by this Agreement or as Required by Law;

- B. Use and maintain reasonable and appropriate safeguards and comply with the applicable requirements of Part C of 45 C.F.R. Part 164 and any guidance issued by the Secretary of Health and Human Services with respect to Electronic PHI, to prevent access, Use or Disclosure of PHI other than as provided for by this Agreement;
- C. Report to the Covered Entity within five (5) business days of becoming aware of or discovering any Security Incident, Breach, and/or impermissible access, Use or Disclosure of PHI not permitted pursuant to this Agreement, the Underlying Agreement or applicable state and federal law. The content of such report shall include those elements requested by the Covered Entity, including, without limitation, (a) a brief description of the occurrence, including the date of incident, (b) a description of the type of PHI that was involved, and (c) contact information (name, phone number, email address) for a person that can assist with the Covered Entity's assessment of the incident. Business Associate shall cooperate and work with the Covered Entity as necessary to assess the incident and make timely notifications, as applicable;
- D. Implement and follow commercially reasonable administrative, physical, and technical safeguards and security procedures to protect the confidentiality, integrity, and availability of Electronic PHI as required by the Security Rule;
- E. To the extent practicable, mitigate any harmful effect that is known to Business Associate of an access, Use or Disclosure of PHI by Business Associate or its Subcontractors in violation of this Agreement and cooperate with Covered Entity in any mitigation or Breach reporting effort;
- F. Ensure that any Subcontractors that create, receive, maintain, or transmit PHI, in electronic or other form, on behalf of Business Associate agree to the same restrictions, and requirements that apply to Business Associate under this Agreement and enter a contract or other arrangement that meets the requirements of 45 C.F.R. § 164.308(b)(2) and 45 C.F.R. § 164.502(e)(2), provided that this provision will not be deemed to provide Business Associate with a right to assign or subcontract its responsibilities except as provided in the Underlying Agreement;
- G. Make available to the Secretary of Health and Human Services or to the Covered Entity on request, Business Associate's internal practices, books and records relating to the access, Use and Disclosure of PHI for purposes of determining compliance with the Privacy Rule, subject to any applicable legal privileges;
- H. Within five (5) days of receiving a request from the Covered Entity or an Individual, Business Associate will, in the form and format requested:
 - 1. Make available the PHI necessary for the Covered Entity to make an accounting of Disclosures of the Individual's PHI to the Individual, as provided under 45 C.F.R. § 164.528;
 - 2. Make available PHI necessary for the Covered Entity to respond to Individuals' requests for access to PHI in a Designated Record Set that is not in the possession of the Covered Entity, if applicable;

3. Incorporate any amendments or corrections to the PHI in a Designated Record Set that is not in the possession of the Covered Entity, if applicable, in accordance with 45 C.F.R. § 164.526; and
 4. Make available PHI in a Designated Record Set, if applicable, to Covered Entity, in accordance with 45 C.F.R. § 164.524.
- I. To the extent the Business Associate is to carry out one or more of Covered Entity's obligations under HIPAA, comply with the applicable requirements under HIPAA;
 - J. Cooperate with the Covered Entity to facilitate the Covered Entity's compliance with HIPAA; and
 - K. Not send any notice or communication regarding any unauthorized access, Use or Disclosure of PHI to an Individual, the federal or any state government, or the media without prior written consent from the Covered Entity unless Required by Law.

IV. Term and Termination.

- A. Term. The Term of this Agreement shall commence on the Effective Date, and shall remain in effect unless termination by either party is requested and received in writing.
- B. Termination for Breach. The Covered Entity may terminate the Underlying Agreement and this Agreement at any time if the Covered Entity determines that Business Associate has breached a material term of this Agreement. Alternately, the Covered Entity may choose to provide Business Associate with notice of the existence of a breach of a material term of this Agreement and afford Business Associate an opportunity to cure the material breach. In the event Business Associate fails to cure the breach to the satisfaction of the Covered Entity, the Covered Entity may immediately thereafter terminate the Underlying Agreement and this Agreement.
- C. Effect of Termination. Upon termination of the Underlying Agreement or Agreement, Business Associate will return (or if agreed to by Covered Entity, destroy) all PHI created, received, maintained or transmitted by Business Associate on behalf of the Covered Entity in any form and retain no copies of such PHI.
 1. Notwithstanding the foregoing, if such return or destruction is not feasible, Business Associate will notify Covered Entity in writing. Said notification shall include: (i) a statement that Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Upon mutual agreement of the parties that return or destruction of PHI is infeasible, Business Associate may maintain PHI after termination, provided that Business Associate will extend the protections of this Agreement and applicable law to the PHI, including those specific to Electronic PHI, and limit further access, Uses and Disclosures to those purposes that make the return or destruction of the PHI infeasible.
 2. If it is infeasible for Business Associate to obtain, from a Subcontractor or agent, any PHI in the possession of the Subcontractor or agent, Business Associate must provide a written explanation to Covered Entity detailing the type of PHI in the Subcontractor or agent's possession and the reasons it is not feasible to return or

destroy such PHI and require the Subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement and applicable law to the Subcontractors' and/or agents' Use and/or Disclosure of any PHI retained after the termination of this Agreement, and to limit any further Uses and/or Disclosures to the purposes that make the return or destruction of the PHI infeasible.

3. This Section IV.C shall survive termination or expiration of this Agreement and the Underlying Agreement until such time as all PHI has been returned or otherwise properly destroyed.

V. Insurance, Indemnification and Limitation of Liability.

- A. Insurance. Business Associate will procure and maintain in effect during the term of this Agreement: (1) general liability insurance coverage with minimum limits of \$1 million per event and \$3 million annual aggregate; (2) as applicable, professional liability insurance coverage and/or professional errors and omissions, within minimum limits of \$1 million per event and \$3 million annual aggregate; (3) workers' compensation insurance coverage within statutory limits of state law in which Business Associate is located; (4) Network security, cyber liability, and privacy breach coverage with minimum limits of \$2,000,000 per event and \$5,000,000 aggregate; and (5) umbrella liability coverage over all of the above listed policies, excluding workers compensation, with limits of \$5 million per occurrence and \$5 million annual aggregate.
- B. Tail. If a policy listed above is claims made and is terminated for any reason, an extended reporting endorsement (commonly referred to as "tail coverage") will be procured by Business Associate to respond to any events that occurred while the policy was active but reported after the policy ended.
- C. Survival. The insurance obligations in this Section V shall survive the expiration or termination of this Agreement for any reason.
- D. Indemnification. Business Associate agrees to indemnify, defend and hold harmless Covered Entity and Covered Entity's Affiliates, employees, directors, officers, Subcontractors, agents or other members of its workforce from any costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate, its employees, Subcontractors and/or agents or arising from any negligent or wrongful acts or omissions of Business Associate, its employees, Subcontractors and/or agents, including failure to perform its obligations under HIPAA. Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.
- E. Limitation of Liability.
 1. Covered Entity shall not be liable to Business Associate for any incidental, consequential, special, or punitive damages of any kind or nature, whether such liability is asserted on the basis of contract, tort (including negligence or strict liability), or otherwise, even if Business Associate has been advised of the possibility of such loss or damages.

2. To the extent that Business Associate has limited its liability under the terms of the Underlying Agreement, whether with a maximum recovery for direct damages or a disclaimer against any incidental, consequential, special, or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate's, its employees', Subcontractors' or agents' breach of its obligations relating to the access, Use and Disclosure of PHI.

- VI. **Amendment**. Business Associate and the Covered Entity agree to take such action as is necessary to amend this Agreement from time to time as necessary for Business Associate and Covered Entity to comply with the requirements of HIPAA and guidance from the Secretary as they may be issued or amended from time to time.
- VII. **Changes in Law**. The parties recognize that this Agreement is at all times subject to applicable state, local, and federal laws. The parties further recognize that this Agreement may become subject to amendments in such laws and regulations and to new legislation, regulatory guidance and instructions and decisional law ("Change in Law"). Any provisions of law that invalidate, or are otherwise inconsistent with, the material terms and conditions of this Agreement, or that would cause one or both of the parties hereto to be in violation of law, shall be deemed to have superseded the terms of this Agreement. In such event, the parties agree to utilize their best efforts to modify the terms and conditions of this Agreement to be consistent with the requirements of such law(s) in order to effectuate the purposes and intent of this Agreement. Within thirty (30) days of a Change in Law, either party may submit to the other party proposed modifications to the terms and conditions of this Agreement in light of the Change in Law. If the parties fail to agree upon proposed modifications to the terms and conditions of this Agreement by executing a written amendment within an additional thirty (30) days, either party may, by giving the other party an additional sixty (60) days written notice, terminate this Agreement, unless it would terminate earlier by its terms. In the event a Change in Law precludes or substantially precludes a contractual relationship between the parties similar to that expressed in this Agreement, then, under such circumstances, where renegotiation of the applicable terms of this Agreement would be futile, either party may, upon at least sixty (60) days advance written notice, terminate this Agreement, unless it would terminate earlier by its terms. Upon termination of this Agreement as hereinabove provided, neither party shall have any further obligation hereunder except for (i) obligations occurring prior to the date of termination, and (ii) obligations, promises or covenants contained herein which are expressly made and intended to extend beyond the term of this Agreement.
- VIII. **Data Ownership**. Business Associate acknowledges that it has no ownership rights with respect to PHI.
- IX. **Construction of Terms**. The terms of this Agreement shall be construed in light of any applicable interpretation or guidance on HIPAA and/or the Privacy Rule issued by the United States Department of Health and Human Services or the federal Office for Civil Rights from time to time.
- X. **Inconsistent Provisions**. To the extent that the Underlying Agreement has any provisions inconsistent with this Agreement, the provisions in this Agreement shall prevail.
- XI. **No Third Party Beneficiaries**. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.
- XII. **Applicable Law**. This Agreement shall be governed by the laws of the State of Maryland and applicable federal law.

- XIII. Attorney's Fees.** If any legal action or other proceeding of any kind is brought for the enforcement of this Agreement, or because of any alleged breach, default, or any other dispute in connection with any provision of this Agreement, the successful or prevailing party shall be entitled to recover all reasonable attorney's fees and other costs incurred in any such action or proceedings, in addition to any relief to which it may be entitled.
- XIV. Entire Agreement.** This Agreement constitutes the entire agreement between the Covered Entity and Business Associate. This Agreement supersedes all prior and contemporaneous business associate agreements or agreements between the parties.
- XV. Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.
- XVI. Notice.** Unless otherwise directed in writing, all notices given hereunder shall be sent to the applicable addressee at the applicable address set forth beneath the signatures of the parties below.

[SIGNATURES ON FOLLOWING PAGE]

ATTEST: UNIVERSITY OF MARYLAND MEDICAL SYSTEM CORPORATION

BY: _____

[Name]

[Title]

[Date]

Notice Address: compliance@umm.edu

ATTEST: BUSINESS ASSOCIATE

BY: _____

[Name]

[Title]

[Date]

Notice Address:

ATTACHMENT 1

UMMS Affiliates
Baltimore Washington Medical Center, Inc.
Arundel Physicians Associates, Inc.
Arundel Physicians Associates, LLC
Baltimore Washington Professional Services, Inc.
BW Health Services, LLC
NAH/Sunrise Severna Park, LLC
Baltimore Washington Emergency Physicians, Inc.
Baltimore Washington Health Enterprises, Inc.
Baltimore Washington Imaging, LLC
Baltimore Washington Healthcare Services, Inc.
University of Maryland Baltimore Washington Medical System, Inc.
Baltimore Washington Medical Center Foundation, Inc.
Civista Medical Center, Inc.
University of Maryland Charles Regional Health, Inc.
Civista Partners - Ambulatory Surgery Center, LLC
Chesapeake Potomac Healthcare Alliance, LLC
University of Maryland Charles Regional Care Partners, Inc.
Civista Clinical Services, LLC
NRH/CPT Regional Rehab, LLC
Charles Regional Medical Center Foundation, Inc.
University of Maryland Shore Regional Health, Inc.
Shore Health System, Inc.
Shore Clinical Foundation, Inc.
Chester River Hospital Center, Inc.
Chester River Home Care & Hospice, LLC
Chester River Manor, Inc.
Care Health Services, Inc.
Innovative Health Services, LLC
Memorial Hospital Foundation, Inc.
Dorchester General Hospital Foundation, Inc.
Chester River Health Foundation, Inc.
Maryland General Hospital, Inc.
Maryland General Clinical Practice Group, Inc.
University of Maryland Midtown Health, Inc.
Maryland Care, Inc.
University of Maryland St. Joseph Medical Center, LLC

University of Maryland St. Joseph Medical Group, LLC
University of Maryland St. Joseph Orthopaedics, LLC
University of MD Regional Professional Services, LLC
SJMC Physicians, LLC
UMSJ Health System, LLC
University of Maryland Medical Regional Supplier Services, LLC
University of Maryland St. Joseph Medical Center Foundation, Inc.
University of Maryland Medical System Corporation
UniversityCare, Limited Liability Company
University of Maryland Ecare, LLC
Shipley's Imaging Center, LLC
CMROC, LLC
University of Maryland Medical System Foundation, Inc.
Mt. Washington Pediatric Hospital, Inc.
Mt. Washington Pediatric Foundation, Inc.
James Lawrence Kernan Hospital, Inc.
Shipley's Physical Therapy Center, LLC
James Lawrence Kernan Hospital Endowment Fund, Incorporated
University of Maryland Upper Chesapeake Health System, Inc.
Harford Memorial Hospital, Inc.
Upper Chesapeake Medical Center, Inc.
University of Maryland Community Medical Group, Inc.
Dimensions Healthcare Associates, Inc.
Dimensions Health Corporation
Bowie Health Center Foundation, Inc.
Laurel Regional Hospital Foundation, Inc.
Madison Manor, Inc.
Prince George's General Hospital and Medical Center Foundation, Inc.
Dimensions Assurance, Ltd.