

## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is dated JAN 10th, 20 14 (the "Effective Date"), is entered into by and between \_\_\_\_\_ ("Covered Entity"), which operates a healthcare facility located in \_\_\_\_\_ (the "Center") and MAYO SURGICAL ("Business Associate") (individually, a "Party" and collectively, the "Parties"), and supersedes and amends any prior Business Associate Agreement, and any amendments thereto between the Parties.

### **RECITALS**

WHEREAS, Covered Entity and Business Associate have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the "Business Arrangements"), pursuant to which Business Associate may create, receive, maintain, or transmit data for or from Covered Entity that constitutes Protected Health Information to perform services ("Services") on behalf of Covered Entity; and

WHEREAS, Covered Entity is or may be subject to the requirements of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), and the implementing regulations set forth at 45 CFR Parts 160, 162, and 164 (the "HIPAA Regulations"); and

WHEREAS, to the extent required by the HIPAA Regulations and applicable state law, Business Associate is or may be directly subject to certain privacy and security obligations and penalty provisions of the HIPAA Regulations and state law.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual covenants contained herein, the Parties, intending to be legally bound, agree as follows:

### **I. DEFINITIONS**

Capitalized terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in the HIPAA Regulations. "PHI" shall have the same meaning as the term "Protected Health Information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity. "Electronic PHI" shall have the same meaning as the term "Electronic Protected Health Information" in 45 CFR § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity. "Unsecured PHI" shall have the same meaning as the term "Unsecured Protected Health Information" in 45 CFR 164.402, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity.

### **II. EFFECT OF AGREEMENT**

The Parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, the HITECH Act, the HIPAA Regulations, and applicable state law.

### **III. BUSINESS ASSOCIATE OBLIGATIONS**

(A) **Permitted Uses and Disclosures:** Business Associate shall not use and disclose PHI other than as expressly permitted or required by this Business Associate Agreement or as Required By Law. Except as otherwise limited in this Business Associate Agreement, Business Associate is permitted to use and disclose PHI as follows:

- (i) Business Associate may use and disclosure PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Business Arrangements, provided that use or disclosure would not violate the HIPAA Regulations if done by Covered Entity.

- (ii) Business Associate may use and disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate (collectively, "Business Associate's Operations"), provided that Business Associate may only disclose PHI for Business Associate's Operations if the disclosure is Required By Law or Business Associate obtains reasonable assurances, evidenced by a written contract, from the recipient that the recipient will: (1) hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the recipient or as Required By Law; and (2) notify Business Associate of any instance of which the recipient becomes aware in which the confidentiality of such PHI has been breached without unreasonable delay and in no event later than five (5) days.
  - (iii) Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B) to the extent expressly required pursuant to the Business Arrangements.
  - (iv) To the extent Covered Entity notifies Business Associate of a restriction request granted by Covered Entity that would limit Business Associate's use or disclosure of PHI, Business Associate will comply with the restriction.
  - (v) To the extent Business Associate is authorized to make disclosures directly to health plans, Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates, as required by 42 USC 17935(a).
  - (vi) Notwithstanding anything herein to the contrary, Business Associate may not use PHI to create information that is not Individually Identifiable Health Information (i.e., de-identified information) unless expressly required pursuant to the Business Arrangements.
  - (vii) Notwithstanding anything herein to the contrary, Business Associate shall not use or disclose PHI for purposes of marketing or fundraising, as defined in the HIPAA Regulations, the HITECH Act, and applicable state law.
  - (viii) Notwithstanding anything herein to the contrary, Business Associate shall not sell or receive remuneration, directly or indirectly, in exchange for PHI; provided, however, that this prohibition shall not be construed to limit or otherwise affect payment by Covered Entity to Business Associate for services provided pursuant to the Business Arrangements.
- (B) **Compliance:** Business Associate shall be directly responsible for full compliance with the applicable requirements of the HIPAA Regulations to the same extent as Covered Entity. To the extent Business Associate is to carry out an obligation of Covered Entity under the HIPAA Regulations, Business Associate shall comply with the requirements of the HIPAA Regulations that apply to Covered Entity in the performance of such obligation.
- (C) **Minimum Necessary:** Business Associate represents that the PHI requested, used, or disclosed by Business Associate shall be the minimum amount necessary to carry out the purposes of the Business Arrangements. To the extent the requirements of 45 CFR 164.502(b) apply, Business Associate will limit all of its uses and disclosures of, and requests for, PHI (1) when practical, to the information making up a Limited Data Set, and (2) in all other cases, to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.
- (D) **Business Associate Agents:** Business Associate shall ensure that each agent or subcontractor that creates, receives, maintains, or transmits PHI on behalf of Business Associate agrees in writing to

the same restrictions and conditions that apply to Business Associate pursuant to this Business Associate Agreement.

- (E) **Appropriate Safeguards; Security:** Business Associate shall use and maintain reasonable and appropriate administrative, technical, and physical safeguards to prevent uses and disclosures of PHI other than as permitted in this Business Associate Agreement. In addition, Business Associate agrees to comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C with respect to Electronic PHI and any guidance issued by the Secretary of the Department of Health and Human Services.
- (F) **Access to Records:** Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or to the Secretary of the Department of Health and Human Services, for purposes of determining compliance with the HIPAA Regulations. In the event Business Associate provides such information to the Secretary of the Department of Health and Human Services, Business Associate shall provide Covered Entity with a copy of such information. Covered Entity may, at its option, access and audit the records of Business Associate related to Business Associate's use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as Covered Entity may determine are necessary to ensure compliance with the HIPAA Regulations.
- (G) **Improper Access, Use, or Disclosure; Security Incident; Breach:** Business Associate shall report to Covered Entity in writing any access, use, or disclosure of PHI not permitted by this Business Associate Agreement, any Security Incident, and any Breach of Unsecured PHI of which it becomes aware or which it discovers without unreasonable delay and in no event later than five (5) days after discovery.
  - (i) 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 shall be deemed to have knowledge of a Breach if the Breach is known by, or by exercising reasonable diligence would have been known to, any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business Associate.
  - (ii) Any report of Breach required by this section shall include the information specified in 45 CFR 164.410 and such other information as Covered Entity requires.
  - (iii) Business Associate shall promptly provide Covered Entity with updates of information concerning the details of any unauthorized access, use, or disclosure of PHI, Security Incident, or Breach.
  - (iv) Business Associate shall perform a preliminary risk assessment immediately following the discovery of any unauthorized access, use, or disclosure of PHI. Such preliminary risk assessment must take into account those factors set forth in 45 CFR 164.402 as well as such other factors as Covered Entity requests. The results of such preliminary risk assessment shall be provided to Covered Entity in writing without unreasonable delay and in no case later than fifteen (15) days from the date of discovery of the unauthorized access, use, or disclosure of PHI. Business Associate shall promptly provide Covered Entity with updates of information material to a risk assessment undertaken by Covered Entity.
  - (v) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Business Associate Agreement, a Security Incident, or a Breach of Unsecured PHI. Business Associate shall promptly reimburse Covered Entity for all reasonable costs incurred by Covered Entity with respect to mitigating a

Breach involving Business Associate. Business Associate shall undertake mitigation activities under this section in consultation with, and in accordance with the instructions of, Covered Entity.

- (vi) It is the sole responsibility of Covered Entity to notify individuals of any Breach of Unsecured PHI. Business Associate shall cooperate with Covered Entity in the provision of any such notification. Business Associate shall promptly reimburse Covered Entity for all reasonable costs incurred by Covered Entity with respect to providing notification of a Breach involving Business Associate, including without limitation costs related to printing, postage, and the establishment of hotlines.
- (vii) Business Associate shall report to Covered Entity in writing any security incident or breach of personal information for which applicable state law may require notification or other action by either Business Associate or Covered Entity. Any such report shall be made in accordance with the requirements of the relevant state law.

(H) **Access to PHI; Amendment of PHI:** To the extent that the Parties mutually agree in writing that PHI is part of a Designated Record Set, and that such Designated Record Set (or a portion thereof) is to be maintained by Business Associate, as set forth and agreed to in Schedule A:

- (i) Business Associate shall within ten (10) days after a written request from Covered Entity provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to such PHI to Covered Entity or, as directed by the Covered Entity, to an Individual in order to meet the requirements of 45 CFR § 164.524.
- (ii) If the requested PHI is maintained electronically, Business Associate shall provide a copy of the PHI in the form and format requested by the Individual, if it is readily producible, or, if not, in a readable electronic form and format agreed to by Covered Entity and the Individual.
- (iii) In the event that any individual requests access to PHI directly from Business Associate, Business Associate shall immediately and in no event later than ten (10) days of receiving such request forward the request to Covered Entity. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.
- (iv) Business Associate shall within ten (10) days after a written request from Covered Entity make amendments to such PHI as directed or agreed to by Covered Entity in accordance with the requirements of 45 CFR 164.526.
- (v) In the event that a request for an amendment is delivered directly to Business Associate, Business Associate shall immediately and in no event later than ten (10) days of receiving such request forward the request to Covered Entity.

(I) **Accounting:** Business Associate shall document such disclosures of PHI and information related to such disclosures and, within ten (10) days after Covered Entity's written request, shall provide to Covered Entity or to an Individual, in time and manner designated by Covered Entity, information collected in accordance with this section, as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. In the event that a request for an accounting is delivered directly to Business Associate, Business Associate shall immediately and in no event later than ten (10) days of receiving such request forward the request to Covered Entity.

#### IV. **COVERED ENTITY'S OBLIGATIONS**

- (A) **Notice of Privacy Practices:** Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any subsequent changes to such notice of privacy practices.
- (B) **Changes in Access by Individual:** Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.
- (C) **Restrictions on Use and Disclosure of PHI:** Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR 164.522.

## V. **TERMINATION**

- (A) **Term:** The Term of this Agreement shall be effective as of the Effective Date and shall remain in effect until termination of the Business Arrangements; provided, however, that certain obligations shall survive termination of this Agreement as set forth in Section V(C).
- (B) **Termination for Cause:** Covered Entity may immediately terminate this Agreement in the event that Business Associate materially breaches any provision of this Agreement. In its sole discretion, Covered Entity may permit Business Associate the ability to cure or take substantial steps to cure such material breach to Covered Entity's satisfaction within thirty (30) days after receipt of written notice from Covered Entity. If termination pursuant to this section is infeasible, Covered Entity shall report the breach to the Secretary of the Department of Health and Human Services. The Parties understand and agree that termination of this Business Associate Agreement pursuant to this section shall constitute a material breach by Business Associate under the Business Arrangements.
- (C) **Return or Destruction of PHI:** Upon termination, if feasible, Business Associate shall return or destroy, at no cost to Covered Entity, all PHI that Business Associate still maintains in any form and shall retain no copies of such information. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is infeasible to return or destroy PHI, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction of PHI infeasible and Business Associate shall continue to extend the protections of this Agreement to such PHI, and limit further use of such PHI solely to those purposes that make the return or destruction of such PHI infeasible. The provisions of this section shall survive the expiration or termination of this Business Associate Agreement.

## VI. **MISCELLANEOUS**

- (A) **Ownership of PHI:** Business Associate acknowledges that Business Associate has no ownership rights with respect to PHI.
- (B) **Amendment to Comply with Law:** The Parties acknowledge that it may be necessary to amend this Business Associate Agreement to comply with modifications to HIPAA, the HITECH Act, the HIPAA Regulations, and applicable state law, including but not limited to statutory or regulatory modifications or interpretations by a regulatory agency or court of competent jurisdiction. The Parties agree to use good faith efforts to develop and execute any amendments to this Business Associate Agreement as may be required by any such modifications.
- (C) **Amendment:** This Business Associate Agreement may be amended or modified only in writing signed by the Parties.
- (D) **Assignment:** Notwithstanding anything in the Business Arrangements to the contrary, neither Party may assign this Business Associate Agreement, in whole or in part, without the prior written

consent of the other Party; provided, however, that Covered Entity may assign this Business Associate Agreement without the consent of the other Party to an affiliate or in conjunction with a merger, reorganization, consolidation, change of control or sale of all or substantially all of its assets. Subject to the requirements of this paragraph, this Business Associate Agreement shall be binding upon and inure to the benefit of the respective successors and permitted assigns of the Parties.

- (E) **No Third Party Beneficiaries; Agency Relationship:** Nothing expressed or implied in this Business Associate Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever. Nothing in this Business Associate Agreement shall be construed to create any agency relationship between the parties.
- (F) **Governing Law:** This Business Associate Agreement shall be governed by and construed in accordance with the substantive law of the state in which the Center is located without regard to conflicts of laws principles.
- (G) **Paragraph Headings:** The paragraph headings in this Business Associate Agreement are for convenience only. They form no part of this Business Associate Agreement and shall not affect its interpretations.
- (H) **Notice:** Any notice required by the Business Associate under the terms of this Business Associate Agreement, including notifications of breach, should be made in writing and without unreasonable delay to the following:

**COVERED ENTITY:**

[enter facility name]  
Attn: Administrator  
[enter facility address]  
[enter facility address]

With a copy to:  
Surgical Care Affiliates, LLC  
Attn: Privacy Officer, Compliance  
3000 Riverchase Galleria, Suite 500  
Birmingham, Alabama 35244

## **VII. INDEMNIFICATION**


Each Party (the “Indemnifying Party”) agrees to indemnify, defend and hold harmless the other Party and such other Party’s parent corporation, affiliates, employees, directors, officers, subcontractors, agents or other members of such other Party’s workforce (collectively referred to as the “Indemnified Party”), against all costs suffered by the Indemnified Party, including but not limited to any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees), arising from or in connection with a material breach of this Business Associate Agreement by the Indemnifying Party. This provision shall survive the expiration or termination of this Business Associate Agreement.

IN WITNESS WHEREOF, the Parties have executed this Business Associate Agreement as of the day and year written below to be effective as of the Effective Date.

**COVERED ENTITY:**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: Jan 10th, 2014

**BUSINESS ASSOCIATE:**

By:  \_\_\_\_\_  
Title: President & CEO  
Date: Jan 10th, 2014

**Schedule A**

**Identification of Designated Record Set**

As contemplated in Section III(H), the Parties agree to the provision marked below:

- ☐ The PHI that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity, or has access to, in the course of providing services pursuant to the Business Arrangements constitutes a Designated Record Set (or a part thereof), and such Designated Record Set (or portion thereof) shall be maintained by Business Associate.
  
- ☐ The PHI that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity, or has access to, in the course of providing services pursuant to the Business Arrangements DOES NOT constitute a Designated Record Set (or a part thereof), and NO such Designated Record Set (or portion thereof) shall be maintained by Business Associate.