

SCHEDULE A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (this “*Agreement*”) is effective upon execution by and between _____ (“*Business Associate*”) and the NorthShore University HealthSystem, on behalf of itself each organization under common ownership or control with NorthShore University HealthSystem (its “*Affiliates*”) and that is a covered entity or business associate as defined by HIPAA (“*NorthShore*”). Business Associate will provide certain services as set forth more fully in the _____ between NorthShore and Business Associate (the “*Master Agreement*”), which may require NorthShore to disclose PHI to Business Associate or require Business Associate to create, receive, maintain, or transmit PHI on behalf of NorthShore.

Section I. Definitions:

- (a) Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those in HIPAA and the Privacy, Security, Breach Notification and Enforcement Rules, and any future regulations promulgated under HIPAA or the HITECH Act.
- (b) Protected Health Information (sometimes referred to herein as “*PHI*”) has the meaning set forth in 45 C.F.R. § 160.103, but is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of NorthShore Entity in connection with the Master Agreement, including, but not limited to electronic Protected Health Information (sometimes referred to herein as “*ePHI*”).
- (c) NorthShore University Health System and certain Affiliates have designated themselves as a single integrated covered entity known as the “*NorthShore ACE*.” The NorthShore ACE designation may be amended periodically to add new participants. A complete list of the participants may be obtained from NorthShore’s Health Information Management Department in writing at 4901 Searle Parkway, Suite 170, Skokie, IL 60076; by e-mail to: hipaa@northshore.org or by phone: 847.982.4450.

Section II. Obligations and Activities of Business Associate:

- (a) Use and Disclosure: Business Associate agrees to not use or further disclose Protected Health Information other than to perform its obligations under the Master Agreement, and then only as permitted or required by this Agreement or as Required by Law.
- (b) Security: Business Associate agrees to directly comply with the administrative, physical and technical safeguards outlined within the Security, Privacy, Breach Notification and Enforcement rules and subsequent amendments. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of PHI and ePHI other than as Required by Law or permitted or required by this Agreement.
- (c) Encryption. Business Associate agrees to encrypt all electronic Protected Health Information, in rest and in motion, such that it is rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in guidance by the Secretary of HHS.
- (d) Data Security Review: To monitor the security of PHI, NorthShore may request and Business Associate shall make available to NorthShore Business Associate’s security



program, including the most recent electronic Protected Health Information risk analysis, policies, procedures, Security Incident log and responses and evidence of training, including training materials and training logs.

- (e) Destruction of PHI: With respect to any PHI destroyed by Business Associate pursuant to this Agreement, Business Associate shall render all PHI unusable, unreadable, or indecipherable through the use of a technology or methodology specified in guidance by the Secretary of HHS.¹
- (f) Reporting: Business Associate agrees to initially report to NorthShore any use or disclosure of PHI not permitted by this Agreement, the Master Agreement, or that is a violation of any provision of HIPAA or its implementing regulations of which it becomes aware, including Breaches of Unsecured PHI and Security Incidents (each a "**PHI Incident**"), without unreasonable delay, and in no case later than forty-eight (48) hours after the date on which Business Associate learns or should have learned of such PHI Incident. This includes, but is not limited to, attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations in an information system. Notwithstanding the forgoing, this agreement serves as Business Associate's notice to NorthShore that the following attempted but unsuccessful Security Incidents regularly occur and that no further notice will be made by Business Associate related to these Security Incidents unless otherwise specifically requested by NorthShore: (i) pings and other unsuccessful broadcast attacks on Business Associate's external firewall; (ii) port or service scans on Business Associate's firewall that do not result in any unauthorized access or disrupt information system operation, and (iii) unsuccessful log-on attempts which do not create a denial of service condition for the system or any user.
- (g) After an initial report of a PHI Incident is made by the Business Associate under Section II(e) above, the Business Associate shall provide a detailed written report within ten (10) calendar days of the initial report, unless otherwise mutually agreed to by the parties of this Agreement. Reports will include the following information listed below:
 - i. the date of the PHI Incident;
 - ii. the date of the discovery of the PHI Incident;
 - iii. the identification of each individual whose unsecured PHI has been, or is reasonably believed by the business associate to have been, accessed, acquired, or disclosed during such PHI Incident;
 - iv. identify the nature of the non-permitted or violating use or disclosure;
 - v. identify the PHI used or disclosed;
 - vi. identify the type of employee who made the non-permitted or violating use or disclosure and provide NorthShore with information as to how the violation was addressed with the employee;
 - vii. identify who received the non-permitted or violating use or disclosure;
 - viii. identify what corrective action Business Associate took or will take to prevent further PHI Incidents;

¹ See <https://www.hhs.gov/sites/default/files/cybersecurity-newsletter-july-2018-Disposal.pdf> and <https://www.hhs.gov/hipaa/for-professionals/breach-notification/guidance/index.html>.



- ix. identify what Business Associate did or will do to mitigate any deleterious effect of the PHI Incident; and
 - x. provide such other information as NorthShore may request.

- (h) **Breach Notification:** Business Associate agrees to reimburse NorthShore for the actual costs for the investigation, notification and/or any associated mitigation incurred by NorthShore related to a PHI Incident reported by Business Associate under Section II.e above, such as credit monitoring, if required by applicable law or if NorthShore determines that the PHI Incident is significant enough to warrant such measures. Business Associate agrees to investigate the PHI Incident, mitigate losses and protect against any future PHI Incidents, and to provide a description of these procedures and the specific findings of the investigation to NorthShore in the time and manner reasonably requested by NorthShore. NorthShore shall determine if Business Associate will be responsible to provide notification to individuals whose PHI has been Breached, as well as notification to the Secretary and the media, if required by the Breach Notification Rules.

- (i) **Mitigation:** Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a use or disclosure of PHI by Business Associate in violation of HIPAA or its implementing regulations, this Agreement, or the Master Agreement.

- (j) **Agents and Subcontractors:** Business Associate shall not use any Subcontractor to assist Business Associate with the provision of services under the Master Agreement without the prior written consent of NorthShore. Business Associate agrees to ensure that any agent, including a Subcontractor, to whom it provides PHI received from, or created, maintained, transmitted or received by Business Associate on behalf of NorthShore, agrees in writing to the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information. Business Associate shall ensure that any agent, including a Subcontractor, to whom it provides PHI and ePHI agrees to implement reasonable and appropriate safeguards to protect such information.

- (k) **Patient Right to Review:** Business Associate agrees to provide access, at the request of NorthShore, within ten (10) calendar days of receiving such request, to Protected Health Information in a Designated Record Set, to NorthShore. If any individual requests access to his or her own PHI from Business Associate, Business Associate shall, within seven (7) calendar days, notify NorthShore of the details of such request. Following receipt of such notice, NorthShore shall make the determination whether to grant or deny the request, in its sole discretion. If directed by NorthShore, Business Associate agrees to provide such PHI available to that individual patient in order to meet the requirements under 45 C.F.R. 164.524. This provision is not applicable if Business Associate does not maintain PHI in a Designated Record Set.

- (l) **Patient Right to Amend:** Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the NorthShore directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of NorthShore within fifteen (15) calendar days of receiving such request. If any individual patient submits to Business Associate a request to amend his or her own PHI, Business Associate shall, within seven (7) calendar days, notify NorthShore of the details of such request. Following receipt of such notice, NorthShore shall



make the determination whether to grant or deny the request, in its sole discretion. If NorthShore so requests, Business Associate agrees to respond to the individual patient for purposes of incorporating the amendment, as directed by NorthShore. This provision shall not apply if Business Associate does not maintain PHI in a Designated Record Set.

- (m) Patient Right to Request Accounting: Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for NorthShore to respond to a request by an individual patient for an accounting of disclosures of PHI made within six (6) years of an individual patient request in accordance with 45 C.F.R. 164.528. Business Associate agrees to provide to NorthShore within fifteen (15) calendar days of receiving such request, information collected to permit NorthShore to respond to a request by an individual patient for an accounting of disclosures of Protected Health Information. If an individual submits to Business Associate a request for an accounting, Business Associate shall, within seven (7) calendar days, notify NorthShore of the details of such request. Following receipt of such notice, NorthShore shall make the determination whether to grant or deny the request. If NorthShore requests, Business Associate shall respond directly to the individual patient for purposes of providing the accounting and shall promptly provide NorthShore with a written report of the details of its handling of such requests. To comply with these requirements, Business Associate agrees to implement an appropriate record keeping process which includes, at a minimum, the following information:
- i. The date of the disclosure;
 - ii. The name of the entity or person who received the PHI, and if known, the address of such entity or person;
 - iii. A brief description of the PHI disclosed; and,
 - iv. A brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure.
- (n) Compliance: To the extent Business Associate is to carry out one or more of NorthShore's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate must comply with the requirements of Subpart E that apply to NorthShore in the performance of such obligations(s).
- (o) Audit: Business Associate agrees to make internal practices, books, and records, including policies and procedures relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, NorthShore available to NorthShore in a time and manner designated by NorthShore and to the Secretary of Health and Human Services, in a time and manner designated by the Secretary, for purposes of determining Business Associate's and NorthShore's compliance with the HIPAA Rules.
- (p) Subpoenas: Business Associate shall provide written notice to NorthShore of any subpoena or other legal process seeking PHI received from or created on behalf of NorthShore, or otherwise relating to the provision of services by Business Associate. Such written notice



shall be provided within forty-eight (48) hours of receipt of a subpoena or other legal process. Business Associate will cooperate with NorthShore to seek any protections deemed appropriate by the NorthShore with respect to such subpoena or legal process, including filing a motion to quash or seeking a qualified protective order.

Section III. Permitted Uses and Disclosures by Business Associate:

- (a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, NorthShore under the Master Agreement, provided that such use or disclosure would not violate the Privacy and Security Rules if done by NorthShore. 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. Except as otherwise limited in this Agreement, Business Associate may disclose PHI in its possession to third parties for the proper management and administration of the Business Associate, provided that (i) disclosures are Required by Law, as defined in 45 C.F.R. 164.103, or (ii) Business Associate obtains third party written assurances from the recipient of the information that (A) it will remain confidential as required under 45 C.F.R. 164.504(e)(4), (B) the third party agrees in writing to notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached, and (C) the third party will not further disclose the information for any reason. For purposes of all uses and disclosures, the Business Associate shall apply the minimum necessary standard of the Privacy Rule. All other uses not authorized by this Agreement are prohibited.
- (b) Business Associate shall not, directly or indirectly, receive remuneration in exchange for any PHI.
- (c) Business Associate shall not transmit, to any individual for whom Business Associate has PHI, any communication about a product or service that encourages the recipient of the communication to purchase or use that product or service.
- (d) Business Associate shall not send or disclose PHI to any party outside of the United States or store PHI outside of the United States without the prior written consent of NorthShore.
- (e) Business Associate shall not receive or store PHI in a cloud environment without the prior written consent of NorthShore, which shall require the Business Associate to demonstrate compliance with NorthShore's cloud security requirements.

Section IV. Obligations of NorthShore:

- (a) NorthShore shall notify Business Associate of any limitation(s) in its notice of privacy practices of NorthShore in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- (b) NorthShore shall notify Business Associate of any changes in, or revocation of, permission by individual patients to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of PHI.



- (c) NorthShore shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that NorthShore has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

Section V. Term and Termination:

- (a) Term: The term of this Agreement shall be effective as of the effective date of the Master Agreement, and shall terminate when all of the PHI provided by NorthShore to Business Associate, or created, maintained or received by Business Associate on behalf of NorthShore, is destroyed or returned to NorthShore, or, if it is infeasible to return or destroy PHI protections are extended to such information, in accordance with the termination provisions in Section V.
- (b) Termination for Failure to Comply: Upon NorthShore's knowledge of a breach of this Agreement by Business Associate, NorthShore may, in its discretion, immediately terminate this Agreement.
- (c) Effect of Termination: Except as provided in paragraph i. of this section (c), upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from NorthShore, or created or received by Business Associate on behalf of NorthShore. This provision shall apply to PHI that is in the possession of Subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
- i. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to NorthShore written notification of the conditions that make return or destruction infeasible. Upon NorthShore's agreement that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.
- (d) Injunctive Relief: In addition to any other rights or remedies of NorthShore, in the event of a breach of any material term of this Agreement by Business Associate, Business Associate agrees that NorthShore has a right to seek injunctive relief to enforce the terms of this Agreement without the necessity of proving actual damages.
- (e) Survival: The obligations of Business Associate under this Section V. shall survive the termination of this Agreement.

Section VI. Indemnification; Insurance:

- (a) Business Associate shall defend, indemnify and hold harmless the NorthShore from and against any or all cost (including but not limited to any and all costs incurred by NorthShore in complying with the Breach notification requirements of 45 C.F.R. Part 164, Subpart D), loss, interest, damage, liability, claim, legal action or demand by third parties, (including costs, expenses, reasonable attorney fees, expert witness fees and costs of investigation, litigation or dispute resolution on account thereof) arising out of Business Associate's activities under the Agreement, including but not limited to, any breach of this Agreement



or any Breach of Unsecured Protected Health Information by the Business Associate. Business Associate may elect to control the defense of any claim indemnified hereunder or tender control of such defense to NorthShore at the expense of Business Associate. Business Associate shall fully indemnify NorthShore for all legal fees and costs incurred in such defense. NorthShore shall have the right, but not the obligation, to participate in the defense of any claims controlled by Business Associate with its own counsel. If Business Associate elects to control the defense of any claim, Business Associate shall provide frequent updates to NorthShore regarding the progress of and any significant changes in such claim, and shall not approve or enter into any final determination or settlement of such claim without the written consent of NorthShore. The provisions of this Section VI will survive the termination of this Agreement.

- (b) Business Associate agrees to maintain during the term of this Agreement liability insurance covering claims based on Business Associate's unauthorized use or disclosure of PHI in violation of HIPAA or any other applicable state law or regulation concerning the privacy of an individual's health information in coverage amounts no less than \$2,000,000 per claim and \$5,000,000 in the aggregate. A copy of such policy or a certificate evidencing the policy shall be provided to NorthShore upon written request.

Section VII. Relationship of the Parties:

The parties are independent contractors of each other. Nothing in this Agreement shall be construed to create an employer/employee, joint venture, or other similar relationship between the parties. Neither party shall have the right to exercise control or direction over the business of the other party.

Section VIII. Amendment of Agreement:

The NorthShore may amend this Agreement from time to time as is necessary for NorthShore to comply with the requirements of HIPAA, the Privacy, Security, Breach Notification and Enforcement Rules, and any current and future regulations promulgated under HIPAA or the HITECH Act. NorthShore shall provide Business Associate with written notice of any such amendment. If Business Associate does not object to the amendment in writing within thirty (30) days of the notice, the amendment shall become effective without further action of either party. If Business Associate objects to the amendment in writing within thirty (30) days of notice, the parties will negotiate in good faith to agree on an amendment that is acceptable to NorthShore, provided that NorthShore shall have the right to terminate this Agreement and the Master Agreement immediately if the parties are unable to agree on an amendment within thirty (30) days of Business Associate's notice of objection.

Section IX. Interpretation:

Any ambiguity in this Agreement shall be resolved to permit NorthShore to comply with the HIPAA Privacy, Security, Breach Notification and Enforcement Rules, and any current and future regulations promulgated thereunder. The terms and conditions of this Agreement will override and control any conflicting term or condition of any other agreements that may be in place between the parties, including the Master Agreement. All non-conflicting terms and conditions of this Agreement and any other agreement between the parties remain in full force and effect.



Section X. No Third Party Beneficiary:

Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

Section XI. Governing Law:

With respect to contract interpretation principles, this Agreement shall be governed by and construed in accordance with the laws of the State of Illinois. Any disputes relating to this Agreement shall be resolved by the state or federal courts located in Chicago, Illinois, and Business Associate consents to venue in those courts as proper.

Section XIII. Assignment:

Neither party may assign its rights or obligations under this Agreement except upon the prior written consent of the other party.

Section XIV. Notices:

Any notices provided under this Agreement shall be delivered in accordance with the notice provisions of the Master Agreement.

Section XIII. Counterparts:

This Agreement may be executed in two or more counterparts and each such counterpart executed shall for all purposes be deemed an original, and all counterparts together shall constitute but one and the same instrument. This shall be binding upon all signatories hereof who sign below.



Business Associate:

NorthShore University HealthSystem, for itself
and its Affiliates

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____