

# BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective \_\_\_\_\_ (“Effective Date”), is entered into by and between the American Board of Neurological Surgery with an address at 6550 Fannin Street, Suite 2139, Houston, Texas 77030 (“Business Associate”) and \_\_\_\_\_ with an address at \_\_\_\_\_ (“Covered Entity”) (each a “Party” and collectively the “Parties”).

1. **BACKGROUND AND PURPOSE** The Parties have entered into an agreement pursuant to which the Business Associate agrees to evaluate the Covered Entity’s credentials, professional experience, and certain surgical cases submitted by Covered Entity to determine whether to grant board certification to Covered Entity (the “Underlying Contract”). The Underlying Contract may require the Business Associate to be provided with or to have access to Protected Health Information (“PHI”) that is subject to the federal privacy regulations and to Electronic Protected Health Information (“ePHI”) that is also subject to the federal security regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and codified at 45 C.F.R. parts 160 and 164 Subparts A and E and at 45 C.F.R. parts 160 and 164 Subparts A and C, respectively, as may be amended from time to time (hereafter, the “Privacy Rule” and the “Security Rule”). This Agreement shall govern the Business Associate’s receipt, use, and disclosure of PHI under the Underlying Contract. It supplements and/or amends the Underlying Contract as required (and only as required) to allow the Covered Entity to comply with the Privacy Rule and the Security Rule. Except as so supplemented and/or amended, the terms of the Underlying Contract shall continue unchanged and shall apply with full force and effect to govern the matters addressed in this Agreement and in the Underlying Contract. Unless otherwise specifically defined in this Agreement, all capitalized terms used shall have the meanings ascribed to them in the Privacy Rule and/or the Security Rule, as applicable.

## 2. **BUSINESS ASSOCIATE ARRANGEMENTS**

- 2.1 **Obligations of the Business Associate** With regard to its use and/or disclosure of PHI, the Business Associate agrees to:
- a. Not use or disclose PHI other than as permitted or required by this Agreement or as Required by Law.
  - b. Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement, including, but not limited to, the implementation of administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity.
  - c. Report to the Covered Entity any use or disclosure of PHI not provided for by this Agreement of which the Business Associate becomes aware, as well as any Security Incident of which it becomes aware (for

purposes of this Agreement, "Security Incident" shall not include any "pings" or similar request-response utilities).

- d. Ensure that all of its subcontractors and agents that receive, use, or have access to PHI agree in writing to essentially the same restrictions and conditions on the use and/or disclosure of PHI that apply through this Agreement to the Business Associate with respect to such information.
- e. Make available PHI necessary for the Covered Entity to respond to Individuals' requests for access to PHI about them in the event that the PHI in the Business Associate's possession constitutes a Designated Record Set.
- f. Make available PHI for amendment and to incorporate any amendments to PHI in accordance with the Privacy Rule in the event that PHI in the Business Associate's possession constitutes a Designated Record Set.
- g. Make its internal practices, books, and records relating to the use and disclosure of PHI available to the Secretary of Health and Human Services in the reasonable time and manner specified by the Secretary for purposes of the Secretary determining the Covered Entity's compliance with the Privacy Rule.
- h. Document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with the requirements of the Privacy Rule.
- i. Provide to the Covered Entity information collected in accordance with Section 2.1(h) of this Agreement in order to permit the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI.
- j. Return to the Covered Entity or destroy within forty-five (45) days of the termination of the Underlying Contract all PHI obtained from the Covered Entity or obtained by the Business Associate on behalf of the Covered Entity with respect to the Underlying Contract, including such PHI that is in the possession of the Business Associate's subcontractors and agents, and retain no copies if it is feasible to do so. If return or destruction of the PHI is infeasible, extend all protections contained in this Agreement to the Business Associate's use and/or disclosure of any retained PHI and limit any further uses and/or disclosures to the purposes that make the return or destruction of PHI infeasible. The Parties acknowledge and agree that health information that has been de-identified in accordance with the Privacy Rule is no longer PHI and does not need to be returned or destroyed by the Business Associate upon termination of this Agreement.

2.2 Uses and Disclosures of PHI by the Business Associate Except as otherwise specified in this Agreement, the Business Associate may use and disclose PHI as reasonably necessary to perform its obligations under the Underlying Contract provided that such use or disclosure would not violate

the Privacy Rule if done by the Covered Entity. Unless otherwise limited herein, the Business Associate may:

- a. Use PHI in its possession for its proper management and administration and to carry out the legal responsibilities of the Business Associate;
- b. Disclose PHI in its possession to a third party for the purpose of the Business Associate's proper management and administration or to carry out the legal responsibilities of the Business Associate provided that the disclosures are Required By Law or the Business Associate obtains reasonable assurances from the third party regarding the confidential handling of such PHI as required under the Privacy Rule;
- c. Provide Data Aggregation services to the Covered Entity; and
- d. De-identify any and all PHI obtained by the Business Associate under this Agreement at any location and use such de-identified data all in accordance with the de-identification requirements of the Privacy Rule.

3. **OBLIGATIONS OF THE COVERED ENTITY** The Covered Entity agrees to timely notify the Business Associate of any arrangements between the Covered Entity and the Individual that is the subject of PHI that may reasonably affect the use and/or disclosure of that PHI by the Business Associate under this Agreement.

4. **TERMINATION**

- 4.1 **Termination without Cause** This Agreement shall automatically terminate when all of PHI obtained from the Covered Entity or obtained by the Business Associate on behalf of the Covered Entity is destroyed or returned to the Covered Entity (or de-identified) in accordance with this Agreement.
- 4.2 **Termination for Cause** Upon the Covered Entity's knowledge of a material breach by the Business Associate, the Covered Entity may either:
  - a. Provide the Business Associate written notice of that breach in sufficient detail in order to enable the Business Associate to understand the specific nature of that breach and afford the Business Associate an opportunity to cure the breach and terminate this Agreement and/or the Underlying Contract if the Business Associate does not cure the breach or end the violation within forty-five (45) days of such notice; or
  - b. Immediately terminate this Agreement and/or the Underlying Contract if the Business Associate has breached a material term of this Agreement and cure is not possible.

5. **MISCELLANEOUS.**

- 5.1 **Interpretation** The terms of this Agreement shall prevail in the case of any conflict with the terms of the Underlying Contract to the extent necessary to allow the Covered Entity to comply with the Privacy Rule and the Security Rule.
- 5.2 **Survival** Notwithstanding any other provision of this Agreement to the contrary, the terms of this Agreement shall survive its termination and continue indefinitely solely with respect to PHI that the Business Associate retains in accordance with this Agreement.

- 5.3 No Third Party Beneficiaries Nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 5.4 Governing Law; Jurisdiction This Agreement shall be governed by the laws of the State of Texas (excluding the choice of law rules thereof) and shall be enforceable in the state and federal courts of the state of Texas. The Parties irrevocably submit to the exclusive jurisdiction of such courts.

**IN WITNESS WHEREOF**, each of the undersigned has caused this Business Associate Agreement to be executed in its name and on its behalf by its duly authorized representative.

**BUSINESS ASSOCIATE:**

**COVERED ENTITY:**

By: \_\_\_\_\_

By: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Title: \_\_\_\_\_

Print Title: \_\_\_\_\_