

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), dated _____ is entered into between the **University of Houston, on behalf of its College of Optometry**, ("Covered Entity") and _____ ("Business Associate") and is made a part of that certain Agreement between the parties (the "Service Agreement") pursuant to which Business Associate provides a service or services to Covered Entity that involves the use and/or disclosure of Protected Health Information ("PHI").

RECITALS

WHEREAS, Business Associate provides _____ and related services ("Services") to or on behalf of Covered Entity;

WHEREAS, in the course of providing Services to or on behalf of Covered Entity, Business Associate will have access to PHI, maintained by Covered Entity that is protected as confidential pursuant to the Health Insurance Portability and Accountability Act of 1996 codified at 42 USC § 1320d ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act of 2009, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, codified at 42 USCA prec. § 17901 and/or 42 USC 83000 ("HITECH Act"), and any current and future regulations promulgated under HIPAA, including but not limited to the Standards for Privacy of Individually Identifiable Health Information and the Security Standards published in 45 CFR Parts 160 and 164, and/or the HITECH Act, as amended or superseded (collectively the "HIPAA Laws"), as well as Texas laws related to privacy and security of health information, including but not limited to the Texas Medical Records Privacy Act, the Texas Identity Theft Enforcement and Protection Act, and any amending or superseding law and regulations (collectively, the "Texas Laws"). (The HIPAA Laws and the Texas Laws are collectively referred to hereinafter as the "Health Privacy Laws".)

WHEREAS, Covered Entity and Business Associate are required by the HIPAA Laws to enter into and keep this Agreement in full force and effect in order to protect, disclose and/or grant access to PHI maintained by Covered Entity to Business Associate in connection with the performance of the Services;

WHEREAS, this Agreement is intended to comply with the provisions of the HIPAA;

WHEREAS, Business Associate is required to comply with the HIPAA Laws as a Business Associate;

WHEREAS, the Texas Legislature has adopted additional privacy and security requirements, some of which are more restrictive than those required by the HIPAA Laws and such requirements are applicable to Covered Entity and Business Associate; and

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WHEREAS, Covered Entity agrees to disclose PHI to Business Associate, so Business Associate may provide Services to or on behalf of Covered Entity in compliance with the Health Privacy Laws.

NOW, THEREFORE, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

I. DEFINITIONS

Terms used but not otherwise defined in this Agreement shall have the same meaning as the meaning ascribed to those terms in the applicable Health Privacy Laws.

A. "Breach" means the unauthorized acquisition, access, use, or disclosure of PHI, which compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

B. "Business Associate" shall include Business Associate, its directors, officers, owners, subcontractors, employees, affiliates, agents and representatives.

C. "Capitalized Terms" shall mean any capitalized term not otherwise defined in this Agreement which shall have the meanings set forth in the applicable HIPAA Laws.

D. "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 CFR Section 164.501.

E. "EPHI" shall mean electronic protected health information and shall have the meaning given to such term under the HIPAA Laws.

F. "Health Privacy Laws" shall mean the HIPAA Laws, and Texas laws related to privacy and security of health information, including but not limited to the Texas Medical Records Privacy Act, the Texas Identity Theft Enforcement and Protection Act, and their related regulations and amendments.

G. "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, codified at 42 USC § 1320d and any current and future regulations promulgated under HIPAA, including but not limited to 45 CFR Parts 160 and 164.

H. "HIPAA Laws" shall mean collectively HIPAA and the HITECH Act, 42 CFR Part 2 (if applicable), and their related regulations and amendments.

I. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-5, codified at 42 USCA prec. § 17901 and/or 42 USC 83000, and any

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current and future guidance, amendments, and regulations promulgated under the HITECH Act, including but not limited to 45 CFR Parts 160 and 164.

J. "Individual" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103, a person who qualifies as a personal representative in accordance with 45 C.F.R. Section 164.502(g), and any Individual who has applied for or been given a diagnosis or treatment for alcohol or drug abuse.

K. "Information" shall mean any "health information" as defined in 45 C.F.R. Section 160.103 and "Patient Identifying Information" as defined in 42 C.F.R. Part 2, Section 2.11.

L. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act.

M. "PHI" shall mean protected health information and shall have the meaning ascribed to this term in 45 C.F.R. Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity maintained or transmitted in any form or medium, including, but not limited to, EPHI.

N. "Required by Law" shall have the meaning ascribed to this term in the HIPAA Laws.

O. "Secretary" shall have the meaning ascribed to this term in 45 C.F.R. Section 160.103.

P. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

Q. "Security Rule" shall mean the Security Standards published in 45 CFR Parts 160 and 164, as amended by the HITECH Act.

R. "Services Agreement" shall mean that certain Agreement between the parties pursuant to which Business Associate provides Services to Covered Entity that involve the use and/or disclosure of PHI.

S. "Texas Identity Theft Enforcement and Protection Act" shall mean Chapter 521 of the Texas Business and Commerce Code, and any related regulations.

T. "Texas Medical Records Privacy Act" shall mean Chapter 181 of the Texas Health and Safety Code, and any related regulations.

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U. “Unsecured PHI” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary.

V. “Workforce” means employees, volunteers, and any other individual performing work for Business Associate who is under the direct control of Business Associate (as applicable), regardless of whether paid or not.

II. CONFIDENTIALITY UNDER HIPAA AND 42 CFR PART 2

Except as otherwise provided, the parties shall comply with all federal and state laws governing the privacy and security of Protected Health Information including, without limitation, the Health Privacy Laws.

- If this box is checked, Covered Entity and Business Associate are required to comply with 42 CFR Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.**

III. OBLIGATIONS OF BUSINESS ASSOCIATE

In order for Covered Entity and Business Associate to comply with the Health Privacy Laws, Business Associate agrees as follows:

A. Use and Disclosure of PHI. Business Associate shall only use and disclose PHI as permitted by this Agreement or as required by the Health Privacy Laws. Business Associate may:

1. use and disclose PHI only as necessary to perform its obligations as set forth in the Service Agreement;
2. disclose PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities, if such disclosure is Required by Law; or if Business Associate obtains reasonable assurances from the recipient that the recipient will keep the PHI confidential, use or further disclose the PHI only as Required by Law, or for the purpose for which it was disclosed to the recipient, and notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been Breached;
3. use PHI to provide data aggregation services relating to the health care operations of Covered Entity;
4. use or disclose PHI to report violations of the law to law enforcement; and

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5. use PHI to create de-identified information consistent with the standards set forth at 45 CFR Section 164.514. Business Associate will not sell PHI or use or disclose PHI for purposes of marketing, as defined and proscribed in the Health Privacy Laws;

6. make PHI available to an individual in accordance with the Health Privacy Laws.

B. Minimum Necessary Requirement/Limited Data Set. Business Associate shall limit its uses and disclosures of, and requests for PHI (a) when practical or as Required by Law, to the information making up a Limited Data Set, as defined in the Health Privacy Laws; and (b) in all other cases subject to the requirements of 45 CFR 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure or request.

C. Administrative, Physical and Technical Safeguards.

1. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity. Such safeguards shall include, without limitation, implementing written policies and procedures in compliance with the Health Privacy Laws to the extent applicable, conducting a security risk assessment, and training Business Associate's employees who will have access to PHI in accordance with the timelines, obligations, policies and procedures required by the Health Privacy Laws and implementing regulations.

2. Business Associate shall require all of its subcontractors, agents, and/or other third parties that receive, use or have access to PHI to agree, in writing, to adhere to the same restrictions and conditions on the use or disclosure of PHI that apply to the Business Associate pursuant to this Agreement and/or the Health Privacy Laws.

D. Availability of Books and Records.

1. Business Associate shall, upon reasonable notice and prior written request, make available during normal business hours at Business Associate's offices all records, books, agreements, internal practices, policies and procedures relating to the use or disclosure of PHI to any and all persons or entities entitled to such information by law, in a time and manner so designated, for purposes of determining the Covered Entity's and/or Business Associate's compliance with the Health Privacy Laws, subject to attorney-client and other applicable legal privileges.

2. Business Associate shall permit the Secretary and other regulatory and accreditation authorities, or their designees, to audit Business Associate's internal practices, books and records at reasonable times as they pertain to use and disclosure of

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PHI received from, or created or received by, Business Associate on behalf of Covered Entity in order to comply with the requirements of the HIPAA Laws.

3. Upon reasonable notice and during normal business hours, Covered Entity shall have the right to audit Business Associate's compliance with its Privacy and Security Policies and the terms of this Agreement. Business Associate shall cooperate in such audits and shall provide copies of any documents reasonably requested by Covered Entity at no charge.

E. Training. Business Associate shall adequately train its employees and contractors who might come into contact with PHI in accordance with the timelines, obligations, policies and procedures required by the Health Privacy Laws and implementing regulations.

F. Access of Individuals to Information.

1. In order for Covered Entity to respond to an Individual's request for access pursuant to 45 C.F.R. Section 164.524, Business Associate shall make available to Covered Entity all PHI in Business Associate's possession or control within three (3) business days of a written request by Covered Entity.

2. In the event any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.

3. Business Associate shall support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 C.F.R. Section 164.524.

4. Business Associate must provide Covered Entity and/or an Individual access to PHI in electronic form or any other reasonable format requested by Covered Entity or the Individual.

G. Amendment of Information.

1. In order for Covered Entity to respond to a request by an Individual for an amendment of PHI pursuant to 45 C.F.R. Section 164.526, Business Associate shall, within five (5) business days of a written request by Covered Entity, make available to Covered Entity such PHI in Business Associate's control and possession.

2. Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. 164.526 at the request of Covered Entity or an Individual, and in the time and manner reasonably designated by Covered Entity.

3. Handling Requests for Amendment. In the event any Individual requests amendment of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.

4. Business Associate shall support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 C.F.R. Section 164.526.

H. Accounting of Disclosures.

1. As required by the Health Privacy Laws, Business Associate shall track all disclosures of PHI to third parties, including those made to Business Associate's directors, officers, subcontractors, employees, affiliates, agents, and representatives, other than those disclosures that meet the exception criteria of 45 C.F.R. Section 164.528.

2. In order to allow Covered Entity to respond to a request by an Individual for an accounting pursuant to 45 C.F.R. Section 164.528, Business Associate shall, within five (5) business days of a written request by Covered Entity, make available to Covered Entity such PHI in such format as requested by Covered Entity.

3. At a minimum, Business Associate shall provide Covered Entity with the following information: (a) the date of the disclosure; (b) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (c) a brief description of the PHI disclosed; and (d) a brief statement of the purpose of such disclosure.

4. In the event any Individual requests an accounting of disclosure of PHI directly from Business Associate, Business Associate shall forward such request to Covered Entity within two (2) business days.

5. Business Associate shall implement an appropriate auditing process to enable it to comply with the requirements of this subsection.

6. Business Associate shall support Covered Entity in a manner that enables Covered Entity to meet its obligations under 45 C.F.R. Section 164.528.

7. Within ten (10) business days of a written request from Covered Entity, Business Associate shall provide documentation regarding any disclosures by Business Associate that would have to be included in an accounting of disclosures to an Individual under 45 CFR 164.528, including without limitation any disclosures permitted under 45 CFR 164.512, and as applicable, required to comply with the HITECH Act, and/or as otherwise required by the Health Privacy Laws.

I. Prohibitions on Selling, Marketing or Reidentification of PHI. Under no circumstances may Business Associate sell PHI, use PHI for marketing purposes, or attempt to re-identify any information in violation of the Health Privacy Laws.

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J. Ownership of PHI. Business Associate acknowledges that, as between Covered Entity and Business Associate, all PHI shall be and remain the sole property of Covered Entity.

IV. OBLIGATIONS OF COVERED ENTITY

A. Notice of Privacy Practices. Covered Entity shall provide Business Associate with its Notice of Privacy Practices, as well as any changes to such notice, if such changes affect Business Associate's use or disclosure of PHI.

B. Revocation of Permitted Use or Disclosure of PHI. 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 or 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 C.F.R. 164.522.

D. Requested Uses or Disclosures of PHI. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by Covered Entity, except that Business Associate may use or disclose Protected Health information for management and administrative activities of Business Associate and for Data Aggregation.

V. DISCLOSURE TO THIRD PARTIES.

Subject to any limitations in this Agreement, Business Associate may disclose PHI received from Covered Entity to any third party persons or entities as necessary to perform its obligations under the Services Agreement and as permitted or required by applicable federal or Texas law.

A. Business Associate shall not, and shall require that its directors, officers, owners, employees, subcontractors, and agents do not, disclose PHI to any other person (other than members of their respective Workforce) unless such disclosure is Required by Law or authorized by this Agreement or the person whose PHI is to be disclosed. Such disclosures shall be made only if the third party receiving the information has previously signed a written agreement that:

1. Binds the recipient to the provisions, restrictions, and conditions of this Agreement pertaining to PHI for the express benefit of Business Associate and Covered Entity.
2. Contains reasonable assurances from recipient that the PHI will be held confidential, safeguarded and protected as provided in this Agreement, and only disclosed as Required by Law for the purposes for which it was disclosed to recipient.

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3. Obligates recipient to immediately notify Business Associate of any Breaches of the confidentiality of the PHI as more fully described in this Agreement.

4. Obligates Business Associate and recipient to comply with the principle of "minimum necessary use and disclosure," in compliance with the requirements of the HIPAA Laws.

5. Prohibits redisclosures of PHI pertaining to alcohol and substance abuse treatment except as authorized under 42 C.F.R. §2.22, unless the Covered Entity has obtained a consent compliant with the requirements of 42 C.F.R §2.31.

B. Mitigation.

1. Business Associate agrees to mitigate, to the extent practicable and as otherwise requested by Covered Entity, any harmful effect known to Business Associate that is the result of a use or disclosure of PHI by Business Associate, or by its contractors, agents or recipients of PHI, in violation of this Agreement.

2. Business Associate shall take appropriate disciplinary action against any member of its Workforce, or its contractors or agents, who use or disclose PHI in contravention of this Agreement or state or federal law.

VI. REPORTING OF BREACHES AND IMPROPER DISCLOSURES

A. Notice of Breach.

1. In the event of a Breach of any Unsecured PHI that Business Associate accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Covered Entity, Business Associate shall notify immediately Covered Entity of the Breach, but in no event more than two (2) days after discovering the Breach.

2. Notice of Breach shall include, at a minimum:

a. the identification of each Individual whose PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach;

b. a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;

c. a description of the types of PHI that were involved in the Breach (*i.e.*, full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information that were involved);

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d. any steps that Covered Entity or the Individual (impacted by the Breach) should take to protect himself or herself from potential harm resulting from the Breach;

e. a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to the Individual, and to protect against further Breaches;

f. contact procedures for Covered Entity to ask Business Associate questions or learn additional information from Business Associate, which shall include a telephone number, an e-mail address, and postal address;

g. details necessary to complete an assessment of the risk of harm to the Individual whose PHI may have been accessed or disclosed; and

h. any other reasonable information requested by Covered Entity.

B. Business Associate shall be responsible for any and all costs related to the notification to Covered Entity, Individuals or their representatives or next of kin of any security or privacy Breach that should be reported by Business Associate to Covered Entity.

C. As soon as practicable, Business Associate shall report to Covered Entity any Security Incident or unauthorized or improper use or disclosure of PHI under the terms and conditions of this Agreement or applicable federal and Texas laws, but in no event later than two (2) days of the date on which Business Associate becomes aware of such use or disclosure.

D. For purposes of this Agreement, a Breach of Unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate (including any person, other than the individual committing the Breach, who is an employee, officer, owner, or other agent, contractor or representative of Business Associate, as determined in accordance with the federal common law of agency) or should reasonably have been known to Business Associate following the exercise of reasonable diligence.

E. Mitigation of Breach.

1. In the event of a Breach, Business Associate shall in consultation with, and at the direction of, Covered Entity assist the Covered Entity in conducting a risk assessment of the Breach, and mitigate, to the extent practicable, any harmful effect of such Breach known to Business Associate.

2. Covered Entity, in its sole discretion, will determine whether Covered Entity or Business Associate will be responsible to provide notification to Individuals whose unsecured PHI has been disclosed, as well as the Secretary, as defined under the Health Privacy Laws, and the media, as required by the HITECH Act.

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3. Business Associate agrees to pay the costs for notification and mitigating damages, including, but not limited to, the expenses for credit monitoring, if Covered Entity determines that the Breach warrants such measures.

4. Business Associate agrees to establish procedures to investigate the Breach, mitigate losses, and protect against any future Breaches, and to provide a description of these procedures and the specific findings of the investigation to Covered Entity in the time and manner reasonably requested by Covered Entity.

VII. TERM AND TERMINATION

A. Term. This Agreement shall become effective on the effective date of the Service Agreement, and shall terminate upon the termination or expiration of all applicable Service Agreement(s) and, except as otherwise provided, the return or destruction of all PHI.

B. Termination for Cause. Upon Covered Entity's learning of a material breach by Business Associate of this Agreement, Covered Entity shall either:

1. provide a reasonable opportunity, not to exceed ten (10) business days, for Business Associate to cure the breach or end the violation;

2. immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

3. if neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary and/or any other individual or entity as required by the Health Privacy Laws.

C. Effect of Termination.

1. Upon termination or expiration of this Agreement, Business Associate agrees to return to Covered Entity or destroy all PHI in the possession of Business Associate and/or in the possession of any subcontractor or agent of Business Associate (including without limitation destroying all backup tapes and permanently deleting all electronic PHI) and to retain no copies of the PHI.

2. In the event that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Upon mutual agreement by the parties that return or destruction of the 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 the PHI, in which case Business Associate's obligations under this Section shall survive the termination of this Agreement.

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3. Business Associate agrees that all paper, film, or other hard copy media shall be shredded or destroyed such that it may not be reconstructed, and EPHI shall be purged or destroyed concurrent with NIST Guidelines for media sanitization at <http://www.csrc.nist.gov/>.

VIII. INDEMNIFICATION

BUSINESS ASSOCIATE AGREES TO INDEMNIFY, DEFEND AND HOLD HARMLESS COVERED ENTITY AND ITS RESPECTIVE EMPLOYEES, DIRECTORS, OWNERS, OFFICERS, CONTRACTORS, SUBCONTRACTORS, AGENTS OR OTHER MEMBERS OF ITS WORKFORCE (EACH OF THE FOREGOING HEREINAFTER REFERRED TO AS "INDEMNIFIED PARTY") AGAINST ALL ACTUAL AND DIRECT LOSSES SUFFERED BY THE INDEMNIFIED PARTY AND ALL LIABILITY TO THIRD PARTIES ARISING FROM OR IN CONNECTION WITH ANY BREACH OF THIS AGREEMENT OR FROM ANY ACTS OR OMISSIONS RELATED TO THIS AGREEMENT BY BUSINESS ASSOCIATE OR ITS EMPLOYEES, DIRECTORS, OFFICERS, OWNERS, CONTRACTORS, SUBCONTRACTORS, AGENTS OR OTHER MEMBERS OF ITS WORKFORCE. ACCORDINGLY, ON DEMAND, BUSINESS ASSOCIATE SHALL REIMBURSE ANY INDEMNIFIED PARTY FOR ANY AND ALL ACTUAL AND DIRECT LOSSES, LIABILITIES, DAMAGES, LOST PROFITS, FINES, PENALTIES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES) WHICH MAY FOR ANY REASON BE IMPOSED UPON ANY INDEMNIFIED PARTY BY REASON OF ANY SUIT, CLAIM, ACTION, PROCEEDING OR DEMAND BY ANY THIRD PARTY WHICH RESULTS FROM THE BUSINESS ASSOCIATE'S ACTS OR OMISSIONS HEREUNDER. BUSINESS ASSOCIATES' OBLIGATION TO INDEMNIFY ANY INDEMNIFIED PARTY SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT.

IX. EQUITABLE REMEDIES

A. Business Associate acknowledges and agrees that Covered Entity will suffer irreparable damage upon Business Associate's breach of this Agreement, and that such damages shall be difficult to quantify.

B. Business Associate acknowledges and agrees that Covered Entity may file an action for an injunction to enforce the terms of this Agreement against Business Associate, in addition to any other remedy Covered Entity may have. Where Covered Entity has knowledge of any material breach by Business Associate, and Business Associate has failed to cure such breach, Covered Entity may take proceedings against Business Associate before any Court having jurisdiction in Harris County, Texas to obtain an injunction or any legal proceedings to cure or stop such material breach.

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X. AMENDMENT

If any of the regulations promulgated under the Health Privacy Laws are amended or interpreted in a manner that renders this Agreement inconsistent with such laws, Covered Entity may, on thirty (30) days written notice to Business Associate, amend this Agreement to the extent necessary to comply with such amendments or interpretations. Business Associate agrees that it will fully comply with all such regulations promulgated under the Health Privacy Laws and that it will agree to amend this Agreement to incorporate any material changes required therein.

XI. NOTICE

Any notice which may be or is required to be given under this Agreement shall be written and shall be sent by first class mail, fax, courier or as an electronic record attached to an e-mail. All notices shall be effective upon receipt at the addresses stated below which may be changed from time to time upon thirty (30) days' written notice. Any notices given hereunder shall be in writing and addressed as follows:

If to Business Associate:

If to Covered Entity:

University of Houston
College of Optometry
4901 Calhoun Road
Houston, Texas 77204

XII. MISCELLANEOUS

A. **Amendments.** This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. Except as otherwise provided, the parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to achieve and maintain compliance with the requirements of the Health Privacy Laws.

B. **Independent Contractors.** The parties are and shall be independent contractors to one another, and nothing in this Agreement shall be deemed to cause this Agreement to create an agency, partnership, or joint venture between the parties. Except as expressly provided herein, neither party shall be liable for any debts, accounts, obligations, or other liabilities of the other party.

C. Survival. The respective rights and obligations of Business Associate and Covered Entity set forth in Articles VI, VII and VIII shall survive termination of this Agreement.

D. Regulatory References. Any reference herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended or modified.

E. Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Health Privacy Laws.

F. Entire Agreement. This Agreement, as amended from time to time, constitutes the entire agreement and understanding between the parties with respect to the Services specified and agreed upon in this Agreement and supersedes all prior oral or written agreements and understandings between them with respect to such Services.

G. Severability. The invalidity of any portion of this document shall not invalidate the remainder, and the remainder shall continue in full force and effect.

H. Assignment. No party may assign or transfer any or all of its rights or obligations under this Agreement or any part of it, nor any benefit or interest in or under it, to any third party without the prior written consent of the other party. This Agreement shall be binding upon all successors or assigns of the parties, provided that any assignment must be performed as per the requirements of the previous sentence.

I. Headings. Headings are for convenience only and form no part of this Agreement and shall not affect its interpretation.

J. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas without regard to the conflicts of law principles. Venue shall be in Harris County, Texas.

K. Counterparts. For the convenience of the parties, this Agreement may be executed in multiple counterparts and by different parties hereto in separate counterparts, each of which for all purposes shall be deemed to be an original, and all such counterparts shall together constitute but one and the same agreement.

(Signatures begin on next page)

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed by its duly authorized representative, to be effective as of the effective date of the Service Agreement.

BUSINESS ASSOCIATE

**UNIVERSITY OF HOUSTON
(COVERED ENTITY)**

By: _____
Name: _____
Title: _____
Date: _____

By: _____
Name: _____
Title: _____
Date: _____

Privacy Officer

Privacy Officer

