



## **BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this “B.A. Agreement”), dated [\_\_\_\_\_] (the “Effective Date”) is entered into by and between the AMERICAN BOARD OF NEUROLOGICAL SURGERY, INC., with an address at 2766 Commerce Drive NW, Rochester, MN 55901 (“Business Associate”), and [\_\_\_\_\_] with an address at [\_\_\_\_\_] (“Covered Entity”) (each a “Party” and collectively the “Parties”).

Covered Entity has submitted a written application and related materials (which may be updated and/or supplemented from time to time) to Business Associate, in order to be considered by Business Associate for initial certification in neurological surgery (the “Initial Certification Application”). If Covered Entity becomes certified by Business Associate, Covered Entity thereafter will submit a written application and related materials (which will be updated and/or supplemented from time to time) to Business Associate in order to comply with Business Associate’s Maintenance of Certification Program (the “MOC Application”). The Initial Certification Application and the MOC Application are hereafter referred to collectively as the “Application.”

The Parties have agreed that Business Associate will (a) evaluate Covered Entity’s credentials, professionalism, professional experience and related matters as set forth in the Application; and (b) review files related to certain of the Covered Entity’s surgical (and, in some instances, non-surgical) cases, which have been and will in the future be submitted to Business Associate by Covered Entity as part of the Application, to determine whether to grant a certification in neurological surgery to Covered Entity, and thereafter, to determine whether Covered Entity meets the requirements for continued certification pursuant to Covered Entity’s Maintenance of Certification Program (the “Services”). The Parties acknowledge that provision of the Services may involve PHI (as defined in Section 1.5), and the purpose of this B.A. Agreement is to set forth the obligations of Business Associate with respect to such PHI in accordance with applicable federal law.

The Parties hereby agree as follows:

### **1. DEFINITIONS**

1.1 Unless otherwise specified in this B.A. Agreement, all capitalized terms used in this B.A. Agreement not otherwise defined have the meanings established for purposes of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (collectively, “HIPAA”) and ARRA (as defined in Section 1.2), as each is amended from time to time.

1.2 “ARRA” shall mean the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of

2009, Pub. Law No. 111-5 and its implementing regulations. References in this B.A. Agreement to a section or subsection of title 42 of the United States Code are references to provisions of ARRA, and any reference to provisions of ARRA in this B.A. Agreement shall be deemed a reference to that provision and its existing and future implementing regulations, when and as each is effective.

1.3 “Compliance Date” shall mean, in each case, the date by which compliance is required under the referenced provision of ARRA.

1.4 “Electronic Protected Health Information” (“ePHI”) shall mean PHI as defined in Section 1.5 that is transmitted or maintained in electronic media.

1.5 “PHI” shall mean Protected Health Information, as defined in 45 C.F.R. § 160.103, limited to the Protected Health Information received from, or received or created on behalf of, Covered Entity by Business Associate in connection with the Application.

1.6 “Privacy Rule” shall mean the federal privacy regulations issued pursuant to the Health Insurance Portability and Accountability Act of 1996, as amended from time to time.

## **2. RESPONSIBILITIES OF BUSINESS ASSOCIATE**

2.1 With regard to its use and/or disclosure of PHI, Business Associate agrees to:

- (a) use and/or disclose PHI only as necessary to provide the Services, specifically as permitted or required by this B.A. Agreement and in compliance with each applicable requirement of 45 C.F.R. § 164.504(e) or as otherwise Required by Law;
- (b) implement and use appropriate technical, physical and administrative safeguards to (i) prevent use or disclosure of PHI other than as permitted or required by this B.A. Agreement; (ii) reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, maintains, or transmits on behalf of the Covered Entity; and (iii) as of the Compliance Date of 42 U.S.C. § 17931, comply with the requirements set forth in 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316;
- (c) promptly report to Covered Entity: (i) any use or disclosure of PHI of which it becomes aware that is not permitted by this B.A. Agreement; and/or (ii) any Security Incident of which Business Associate becomes aware;

(d) without unreasonable delay and in no case later than sixty (60) calendar days after discovery, Business Associate shall notify Covered Entity of a Breach of any Unsecured PHI all in accordance with 42 U.S.C. § 17932(b) as of its Compliance Date;

(e) require all of its subcontractors and agents that create, receive, maintain, or transmit PHI to agree, in writing, to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate; to the extent that Business Associate provides ePHI to a subcontractor or agent, it shall require the subcontractor or agent to implement reasonable and appropriate safeguards to protect the ePHI;

(f) make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for purposes of determining Covered Entity's compliance with the Privacy Rule;

(g) within thirty (30) days after receiving a written request from Covered Entity, make available information necessary for Covered Entity to make an accounting of disclosures of PHI about an Individual as provided in 45 C.F.R. § 164.528 and, as of its Compliance Date, in accordance with 42 U.S.C. 17935(c), and when directed by Covered Entity, make that accounting directly to the Individual;

(h) mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate that is not permitted by the requirements of this B.A. Agreement;

(i) provide access (at the request of the Covered Entity, and in the time and manner designated by Covered Entity) to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, in accordance with the requirements of 45 C.F.R. § 164.524;

(j) in the event that Business Associate in connection with the Services uses or maintains an Electronic Health Record of information of or about an Individual, then the Business Associate shall provide an electronic copy (at the request of Covered Entity, and in the time and manner designated by Covered Entity) of the PHI, to Covered Entity or, when and as directed by Covered Entity, to an Individual or a third party designated by the Individual, all in accordance with 42 U.S.C. § 17935(e) as of its Compliance Date;

(k) to the extent that the PHI in Business Associate's possession constitutes a Designated Record Set, make available, within thirty (30) days of a written request by Covered Entity, PHI for amendment and incorporate any amendments to the PHI as directed by Covered Entity, all in accordance with 45 C.F.R. § 164.526;

(l) request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure;

provided, that Business Associate shall comply with 42 U.S.C. § 17935(b) as of its Compliance Date;

(m) not directly or indirectly receive remuneration in exchange for any PHI in compliance with 42 U.S.C. § 17935(d) as of its Compliance Date;

(n) not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a) as of its Compliance Date;

(o) not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b) as of its Compliance Date; and

(p) take all necessary steps, at the direction of Covered Entity, to comply with requests by Individuals not to send PHI to a Health Plan in accordance with 42 USC 17935(a).

### **3. RESPONSIBILITIES OF COVERED ENTITY**

In addition to any other obligations set forth in this B.A. Agreement, Covered Entity:

(a) shall identify which of the records it furnishes to Business Associate it considers to be PHI for purposes of this B.A. Agreement;

(b) shall provide to Business Associate only the minimum PHI necessary to accomplish the Services;

(c) in the event that the Covered Entity honors a request to restrict the use or disclosure of PHI pursuant to 45 C.F.R. § 164.522(a) or makes revisions to its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520 that increase the limitations on uses or disclosures of PHI or agrees to a request by an Individual for confidential communications under 45 C.F.R. § 164.522(b), Covered Entity agrees not to provide Business Associate any PHI that is subject to any of those restrictions or limitations to the extent any may limit Business Associate's ability to use and/or disclose PHI as permitted or required under this B.A. Agreement unless Covered Entity notifies Business Associate of the restriction or limitation and Business Associate agrees to honor the restriction or limitation. In addition, should such limitations or revisions materially increase Business Associate's cost of providing services under this B.A. Agreement, Covered Entity shall reimburse Business Associate for such increase in cost;

(d) shall be responsible for using administrative, physical and technical safeguards at all times to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this B.A. Agreement, in accordance with the standards and requirements of HIPAA, until such PHI is received by Business Associate; and

(e) shall obtain any consent or authorization that may be required by applicable federal or state laws and regulations prior to furnishing Business Associate the PHI.

#### **4. OTHER PERMITTED USES AND DISCLOSURES OF PHI**

Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or required by this B.A. Agreement, Business Associate may:

(a) use and disclose the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate, provided that any third party to which Business Associates discloses PHI for those purposes provides written assurances in advance that: (i) the information will be held confidentially and used or further disclosed only as Required by Law; (ii) the information will be used only for the purpose for which it was disclosed to the third party; and (iii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached;

(b) on behalf of Covered Entity, de-identify any and all PHI obtained by Business Associate under this B.A. Agreement, and use such de-identified data on Business Associate's own behalf, all in accordance with the de-identification requirements of the Privacy Rule; and

(c) provide data aggregation services relating to the health care operations of the Covered Entity in accordance with the Privacy Rule.

#### **5. TERM, TERMINATION AND DAMAGES**

5.1 Term. The Term of this B.A. Agreement shall be effective as of the date it is fully executed by both Parties below. This B.A. Agreement shall automatically terminate when all of the PHI obtained from Covered Entity, or obtained by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity (or de-identified) in accordance with this Agreement. This B.A. Agreement may also terminate as set forth in Section 5.2.

5.2 Termination.

(a) Upon Covered Entity's determination of a breach of a material term of this B.A. Agreement by Business Associate, Covered Entity may terminate this B.A. Agreement.

(b) Notwithstanding Section 6.2(a), as of the Compliance Date of 42 U.S.C. § 17934(b), if either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this B.A. Agreement then the non-breaching Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party, then the non-breaching Party may do the following:

(i) if feasible, terminate this B.A. Agreement; or

(ii) if termination of this B.A. Agreement is infeasible, report the problem to HHS.

5.3 Effect of Termination or Expiration. Within thirty (30) days after the termination or expiration of this B.A. Agreement, Business Associate shall return or destroy all PHI, if feasible to do so, including all PHI in possession of Business Associate's subcontractors. If return or destruction of the PHI is not feasible, Business Associate shall notify Covered Entity in writing of the reasons return or destruction is not feasible and, if Covered Entity agrees, Business Associate shall extend any and all protections, limitations and restrictions contained in this B.A. Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination or expiration of this B.A. Agreement, and to limit any further uses and/or disclosures solely to the purposes that make return or destruction of the PHI infeasible.

5.4 Penalties, Investigations and Cooperation. In addition to any damages recoverable under this B.A. Agreement, the Parties acknowledge that certain breaches or violations of this B.A. Agreement may result in litigation or investigations resulting in civil liability and/or criminal penalties pursued by federal or state governmental authorities of the United States. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

## 6. MISCELLANEOUS

6.1 Incorporation into Application. The parties hereby agree that this B.A. Agreement is incorporated into and made a part of the Application.

6.2 Construction of Terms. To the extent they are not clear, the terms of this B.A. Agreement shall be construed to allow for compliance by both Parties with HIPAA and ARRA.

6.3 No Third Party Beneficiaries. Nothing in this B.A. Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

6.4 Survival. Sections 5.3, 5.4, 6.2, 6.3, 6.4 and 6.5 shall survive the termination for any reason or expiration of this B.A. Agreement.

6.5 Governing Law. This B.A. Agreement will be governed by and construed in accordance with the laws of the State of Minnesota (excluding its choice of law rules).

6.6 Counterparts. This B.A. Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

IN WITNESS WHEREOF, each of the undersigned has caused this B.A. Agreement to be duly executed in its name and on its behalf effective as of the Effective Date.

**BUSINESS ASSOCIATE**

**COVERED ENTITY**

**AMERICAN BOARD OF NEUROLOGICAL SURGERY, INC.**

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

By: \_\_\_\_\_, M.D.

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

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

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

Date: \_\_\_\_\_

Date: \_\_\_\_\_