**Business Associate AGREEMENT**

 This Business Associate Agreement (this “Agreement”) is entered into by and between [Name of Contractor], a [state] [business entity type] with an address located at [add address] (herein referred to as “Business Associate”), and University Dental Associates, with an address located at 4000 East Campus Loop South, #2037, Lincoln NE 68583-0740 (herein referred to as “Covered Entity”) and shall be effective on the later of the dates of the parties’ signatures below (the “Effective Date”).

1. **Definitions**.
	1. “HIPAA Regulations” means the Administrative Simplification requirements of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), and the regulations promulgated thereunder, including (i) the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 (Subparts A and E) (the “HIPAA Privacy Rule”); (ii) the Administrative Requirements applicable to Transactions at 45 C.F.R. Parts 160 and 162 (Subparts A and I) (the “Electronic Transactions Rule”); (iii) the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. Parts 160 and 164 (Subparts A and C) (the “HIPAA Security Rule”); and (iv) the Standards for Notification in the Case of Breach of Unsecured Protected Health Information at 45 C.F.R. Parts 160 and 164 (Subparts A and D).
	2. “HITECH Act” means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5).
	3. “Protected Health Information” or “PHI” means information, including demographic information, that (i) relates to the past, present, or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual; (ii) identifies the individual (or there is a reasonable basis for believing that the information can be used to identify the individual); and (iii) is received by Business Associate from or on behalf of Covered Entity, is created by Business Associate on behalf of Covered Entity, or is made accessible to Business Associate by Covered Entity.
	4. “Services” means ***[add description of services being provided by Business Associate that necessitates the BAA]***
	5. “Successful Security Incident” shall mean a Security Incident that results in the unauthorized access, use, disclosure, modification, or destruction of PHI.
	6. “Unsuccessful Security Incident” shall mean a Security Incident that does not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for example, and not for limitation, pings on Business Associate’s firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses).
	7. Except as otherwise set forth in this Agreement, capitalized terms used, but not otherwise defined, in this Agreement shall have the same meanings as those terms in the HIPAA Regulations. A reference in this Agreement to the HIPAA Regulations, the HIPAA Privacy Rule, the Electronic Transaction Rule, the HIPAA Security Rule and the HITECH Act means the law or regulation as may be amended from time to time. Any ambiguity in this Agreement shall be resolved to permit compliance with the HIPAA Regulations.
2. **Business Associate’s Satisfactory Assurances**.
	1. *Permitted Uses of PHI.* Business Associate shall Use PHI only as necessary to perform the Services, for Business Associate’s proper management and administration, or to carry out Business Associate’s legal responsibilities. If and only to the extent part of the Services, Business Associate may perform data aggregation with regard to the health care operations of Covered Entity.
	2. *Permitted Disclosures of PHI.* Business Associate shall Disclose PHI only:
		1. As necessary to perform the Services;
		2. For Business Associate’s proper management and administration or to carry out Business Associate’s legal responsibilities, provided that:
			1. The Disclosure is Required By Law; provided, however, that Business Associate shall notify Covered Entity no less than five (5) business days prior to any such Disclosure and provide Covered Entity with the opportunity to seek confidential treatment for any PHI Disclosed and cooperate with Covered Entity if it should seek confidential treatment; or
			2. Prior to the Disclosure, Business Associate obtains reasonable written assurances from the person or entity to whom the PHI is Disclosed that:

(a) the PHI will be held in confidence and Used or further Disclosed only as Required By Law or for the lawful purpose for which it was Disclosed to the person or entity; and

(b) the person or entity will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached within two (2) days of becoming aware of such an occurrence.

* 1. *Confidentiality Obligation.* Business Associate will not Use or Disclose PHI other than as permitted by this Agreement or as Required By Law.
	2. *Safeguards.* Business Associate agrees to implement appropriate administrative, physical, and technical safeguards to prevent the unauthorized Use and Disclosure of Protected Health Information, and to protect the confidentiality, integrity, and availability of Electronic Protected Health Information, as required by the HIPAA Regulations. Without limiting the foregoing, Business Associate agrees to comply with the requirements of the HIPAA Security Rule.
	3. *Deidentification*. Business Associate may not de-identify Protected Health Information except as necessary to provide the Services. Business Associate is prohibited from Using or Disclosing any such deidentified information for its own purposes without the prior written consent of Covered Entity. Business Associate is further prohibited from Disclosing such deidentified information to any third party who may reidentify such information, in violation of 45 C.F.R. 164. Such disclosure shall constitute a breach of this Agreement.
	4. *Access.* If and to the extent Business Associate maintains PHI in a Designated Record Set, Business Associate shall make the PHI specified by Covered Entity available to the individual(s) identified by Covered Entity as being entitled to access in accordance with 45 C.F.R. § 164.524, as amended by the HITECH Act. If Covered Entity determines that an Individual is entitled to such access, and that such PHI is under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Covered Entity shall provide access to the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual’s request to access his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days.
	5. *Amendment.* Upon request by an Individual, Covered Entity shall determine whether any Individual is entitled to amend his or her PHI pursuant to 45 C.F.R. § 164.526. If Covered Entity determines that an Individual is entitled to such an amendment, and that such PHI is both in a Designated Record Set and under the control of Business Associate, Covered Entity will communicate the decision to Business Associate. Business Associate shall provide an opportunity to amend the PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual’s request to amend his or her PHI, Business Associate shall forward such request to Covered Entity within five (5) business days.
	6. *Accounting.* Upon Covered Entity’s request, Business Associate shall make available to Covered Entity the information necessary to provide an accounting of each Disclosure of PHI made by Business Associate in accordance with 45 C.F.R. § 164.528. If Business Associate receives an Individual’s request for an accounting of Disclosures, Business Associate shall forward such request to Covered Entity within five (5) business days and will thereafter follow the directions of Covered Entity with respect to such a request for an accounting.
	7. *Restrictions on Disclosures.* Upon request by an Individual, Covered Entity shall determine whether an Individual is entitled to a restriction on disclosure of PHI pursuant to 45 C.F.R. § 164.522. If Covered Entity determines that an Individual is entitled to such a restriction, Covered Entity will communicate the decision to Business Associate. Business Associate will restrict its Disclosures of the Individual’s PHI in the same manner as would be required for Covered Entity. If Business Associate receives an Individual’s request for a restriction, Business Associate shall forward such request to Covered Entity within five (5) business days.
	8. *Activities to Assist Covered Entity’s Compliance with the HIPAA Privacy Rule*. In the event the performance of the Services requires Business Associate to perform any activity on behalf of Covered Entity in order to assist Covered Entity in complying with the HIPAA Privacy Rule, Business Associate agrees to comply with the requirements of the HIPAA Privacy Rule that apply to Covered Entity in the performance of such activity.
	9. *Access to Books and Records.* Business Associate shall make its internal practices, books and records relating to the Use and Disclosure of PHI available to the Secretary for purposes of determining compliance with the HIPAA Regulations.
	10. *Background Screenings*. Business Associate warrants and represents that Business Associate has obtained, at Business Associate’s own expense and in a manner compliant with all applicable local, state, federal and international laws, a background screening for all of its Workforce members with access to any Protected Health Information, which background screening was completed consistent with current industry standards and included, without limitation, a national federal criminal database check, a seven (7) year county of residence criminal conviction search, and, as applicable, an international criminal record check (a “Satisfactory Background Screening”). If additional Workforce members (whether existing or new hires) will have access to any Protected Health Information, Business Associate shall ensure Business Associate has obtained a Satisfactory Background Screening for each such additional Workforce member prior to permitting him/her any access to Protected Health Information. Business Associate agrees to update any Workforce background screening upon reasonable request by Covered Entity, it being agreed that any request based upon the occurrence of any Breach or other illegal activity involving Business Associate or its personnel, or the reasonable suspicion of illegal activity involving Protected Health Information, or any regulatory requirements requiring such updates, would be deemed reasonable hereunder. Business Associate shall provide Covered Entity with evidence of the completion of the required Satisfactory Background Screenings upon Covered Entity’s request. Business Associate shall not hire, retain or engage any Workforce who will have access to any PHI who has been convicted (felony or misdemeanor) of or entered into a court-supervised diversion program for theft or fraud (including, but not limited to, embezzlement, larceny, perjury, forgery, credit card fraud, check fraud, identity theft), terrorism, or any other breach of trust or fiduciary duty crime.
	11. *Agents and Subcontractors.* Business Associate shall not permit any agent, Subcontractor or other third party to create, access, receive, maintain, transmit, use, disclose or store PHI in any form on behalf of Business Associate without Covered Entity’s prior written consent. Business Associate agrees to ensure that any permitted agent or permitted Subcontractor to which it provides Protected Health Information agrees to the same requirements that apply through this Agreement to Business Associate with respect to such information and to enter into a written business associate agreement with any such agent or Subcontractor. Business Associate shall be liable to Covered Entity for any acts, failures or omissions of the agent or Subcontractor in providing the services as if they were Business Associate’s own acts failures or omissions to the extent permitted by law.
	12. *Reporting of Violations.* Business Associate shall report to Covered Entity any of the following events within two (2) business days of becoming aware of the occurrence of the event:
		1. Any Use or Disclosure of PHI not authorized by this Agreement;
		2. Any Successful Security Incident; and
		3. Any acquisition, access, Use or Disclosure of Unsecured PHI in a manner not permitted by the HIPAA Privacy Rule. Such report shall include the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, Used or Disclosed. As soon as possible thereafter, and to the extent known, Business Associate shall also provide Covered Entity with a description of:
			1. What happened, including the date of the acquisition, access, Use or Disclosure and the date of its discovery;
			2. The types of Unsecured PHI involved in the acquisition, access, Use or Disclosure;
			3. Any steps Individuals should take to protect themselves from potential harm from the acquisition, access, Use or Disclosure; and
			4. What Business Associate is doing to investigate the acquisition, access, Use or Disclosure, to mitigate harm to Individuals, and to protect against any further unpermitted acquisition, access, Use or Disclosure of Unsecured PHI.
	13. *Reporting Unsuccessful Security Incidents.* The Parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of Unsuccessful Security Incidents. The foregoing notwithstanding, Business Associate shall, upon Covered Entity’s written request, report to Covered Entity Unsuccessful Security Incidents in accordance with the reporting requirements herein. For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (a) identifies the categories of Unsuccessful Security Incidents; (b) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.
	14. *Cooperation with Violations*. Business Associate will cooperate with Covered Entity’s investigation and/or risk assessment with respect to any report made pursuant to Section 2.14, will abide by Covered Entity’s decision with respect to whether such acquisition, access, Use or Disclosure constitutes a Breach of PHI and will follow Covered Entity’s instructions with respect to any event reported to Covered Entity by Business Associate pursuant to Section 2.14. Business Associate shall maintain complete records regarding any event requiring reporting for the period required by 45 C.F.R. 164.530(j) or such longer period as may be required by state law and shall make such records available to Covered Entity promptly upon request but in no event later than within five (5) business days.
	15. *Mitigation*. Business Associate agrees to mitigate, at its sole expense: (i) any harmful effect resulting from a Security Incident involving PHI or any Use or Disclosure of PHI by Business Associate or its Subcontractors in violation of the requirements of this Agreement, the HIPAA Regulations, or other applicable law; and (ii) any risks identified or discovered as a result of an Unsuccessful Security Incident.
	16. *Breach*. In the event of a Breach of PHI arising out of the acts or omissions of Business Associate or any permitted agent or permitted Subcontractor of Business Associate and as instructed by Covered Entity, Business Associate agrees to either perform at its sole cost and expense, or pay the cost of Covered Entity’s performance of, reasonable mitigation or remediation services which shall include at a minimum: (i) providing any notice to individuals affected by the Breach as Covered Entity reasonably determines to be required; (ii) providing any required notice of the Breach to government agencies, media, and/or other entities as Covered Entity reasonably determines to be required; (iii) providing individuals affected by the Breach of Protected Health Information with credit protection services designed to prevent fraud associated with identity theft crimes for a specific period not to exceed twelve (12) months, except to the extent applicable law specifies a longer period for such credit protection services, in which case such longer period shall then apply; (iv) providing reasonable contact support in the form of a toll-free number for affected individuals for a specific period not less than ninety (90) calendar days, except to the extent applicable law specifies a longer period of time for such contact support, in which case such longer period shall then apply; vi) paying reasonable fees associated with computer forensics work required for investigation activities related or relevant to the Breach of Protected Health Information; (vii) paying nonappealable fines or penalties assessed by governments or regulators; (viii) paying reasonable costs or fees associated with any obligations imposed by applicable law, including HIPAA, in addition to the costs and fees defined herein; and (ix) undertaking any other action both Parties agree to be appropriate.
	17. *No Remuneration for PHI.* Business Associate shall not receive remuneration, either directly or indirectly, in exchange for PHI, except as may be permitted by Section 13405(d) of the HITECH Act or any regulations adopted as a result of that provision.
	18. *Activities Outside the United States*. Business Associate represents that neither it nor any permitted agents nor permitted Subcontractors will transfer, access or otherwise handle Protected Health Information outside the United States without the prior written consent of Covered Entity.
1. **Standard Transactions**. To the extent Business Associate conducts on behalf of Covered Entity all or part of a Transaction, Business Associate shall comply with the Electronic Transactions Rule.
2. **Term and Termination**.
	1. *Term.* This Agreement begins on the Effective Date and remains in effect until the Business Associate ceases to perform the Services for Covered Entity.
	2. *Termination.* Covered Entity may terminate this Agreement in the event it determines that Business Associate has violated a material term of this Agreement and such violation has not been remedied within ten (10) days following written notice to Business Associate.
	3. *Survival.* Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations and warranties, express and implied, shall survive the execution of this Agreement, and shall remain in effect and binding upon the Parties until they have fulfilled all of their obligations hereunder, and the statute of limitations shall not commence to run until the time such obligations have been fulfilled. Any terms of this Agreement that must survive the expiration or termination of this Agreement in order to have their intended effect shall survive the expiration or termination of this Agreement whether or not expressly stated.
	4. *Duties Upon Termination.* Upon termination of this Agreement, Business Associate shall either return or destroy all PHI in the possession or control of Business Associate or its agents and Subcontractors. However, if Covered Entity determines that neither return nor destruction of PHI is feasible, Business Associate may retain PHI, provided that it extends the protections of this Agreement to the information and limits further Uses and Disclosures to those purposes that make the return or destruction of the information infeasible.
3. **General Provisions**
	1. *No Third Party Beneficiaries*. This Agreement is for the sole benefit of the Parties, and there are no third‑party beneficiaries to the Agreement.
	2. *Future Amendments to HIPAA or HIPAA Regulations*. To the extent HIPAA and/or the HIPAA Regulations are amended in the future and to the extent such amendments contain requirements and/or provisions not already contained in this Agreement required to be incorporated into this Agreement, the Parties agree that either (i) this Agreement shall be deemed to be automatically amended to the extent necessary to incorporate such additional requirements and/or provisions, or (ii) if determined necessary by Covered Entity, they will enter into an amendment to this Agreement in order to incorporate any such additional requirements and/or provisions.
	3. *Indemnification*. Business Associate agrees to indemnify and hold harmless Covered Entity from any and all liability, damages, costs (including reasonable attorneys’ fees and costs) and expenses imposed upon or asserted against Covered Entity arising out of any claims, demands, awards, settlements or judgments relating to any breach of the terms of this Agreement by Business Associate, including, but not limited to, any Use or Disclosure of PHI by Business Associate, or its agents or Subcontractors that is contrary to the provisions of this Agreement or applicable law. This Section shall survive the termination or expiration of this Agreement.
	4. *Insurance*. Business Associate agrees to keep in full force and effect and maintain at its sole cost and expense a policy of data breach and cyber liability insurance covering theft, loss, or unauthorized Disclosure of Protected Health Information, personally identifiable nonpublic information or third-party corporate information in the care, custody or control of Business Associate in an amount sufficient to cover Business Associate’s obligations hereunder, regardless of when the claim is brought, which amount shall be not less than one million dollars ($1,000,000) per occurrence, three million dollars ($3,000,000) aggregate. All insurance shall name Covered Entity as a certificate holder, and Business Associate shall furnish or cause its insurance carrier to furnish a certificate of insurance to Covered Entity as evidence of such agreement on the Effective Date hereof. This insurance shall be not changed or canceled without Business Associate providing at least thirty (30) days’ prior written notice to Covered Entity (unless such cancellation is due to nonpayment of premiums, in which event ten (10) days’ prior written notice shall be provided).
	5. *No Assignment*. Business Associate’s duties under this Agreement may not be transferred, assigned or assumed by any other person, in whole or in part, without the prior written consent of Covered Entity. Subject to the foregoing, this Agreement shall be binding upon, and shall inure to the benefit of, the Parties hereto and their respective permitted successors and assigns.
	6. *No Ownership*.Any Protected Health Information provided by Covered Entity, its employees, agents, consultants or Subcontractors to Business Associate, or created, obtained, procured, Used or accessed by Business Associate on Covered Entity’s behalf, shall at all times be and remain the sole property of Covered Entity, and Business Associate shall not have or obtain any rights therein except as stated herein.
	7. *Remedies*. The Parties agree that the remedies at law for a violation of the terms of the Agreement may be inadequate and that monetary damages resulting from such violation may not be readily measured. Accordingly, in the event of a violation by either Party of the terms of the Agreement, the other Party shall be entitled to immediate injunctive relief. Nothing herein shall prohibit either Party from pursuing any other remedies that may be available to either of them for such violation.
	8. *Independent Contractors*. It is expressly agreed that Business Associate, including its employees and Subcontractors, are performing services for Covered Entity as independent contractors. Neither Business Associate nor any of its employees, agents or Subcontractors is an employee or agent of Covered Entity. Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or their affiliates, or (ii) an agency relationship for purposes of the HITECH Act.
	9. *Notices*. All notices and other communications required under this Agreement will be in writing, addressed to either party to the attention of its Privacy Officer at its address set forth above, and will be deemed effectively delivered (i) upon personal delivery, or (ii) upon receipt from a courier service as confirmed by written verification of receipt. Either party may change its address for such communications by giving an appropriate notice to the other party in conformity with this Section.

If to Covered Entity:

Nebraska Medicine

987400 Nebraska Medical Center

Omaha, NE 68198-7400

Attn: Privacy Officer

 With a copy to:

Nebraska Medicine

988102 Nebraska Medical Center

Omaha, NE 68198-8102

Attn: Director of Legal Services

If to Business Associate:

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 Attn: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

* 1. *Counterparts*. This Agreement may be executed in counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument. An executed Agreement delivered by facsimile or other electronic transmission shall be treated as if an original.

IN WITNESS WHEREOF, the parties hereto have caused their authorized representatives to execute this Agreement as of the dates set forth below.

University Dental Associates

By:

Name:

Title:

Date:

[Name of Business Associate]

By:

Name:

Title:

Date: