Business Associate Agreement

If and to the extent this schedule is referenced in a transaction document where HPE is acting as a business associate or subcontractor with respect to Customer Personal Data pertaining to U.S. patients that qualifies as Protected Health Information under HIPAA, the terms of the following BAA shall apply.

For purposes of this BAA, Customer will be referred to as "Covered Entity" and HPE will be referred to as "Business Associate," and this BAA is applicable when referenced in or attached to a transaction document.

Covered Entity is subject to the federal Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. § 1320d—1320d-8 ("HIPAA"), as amended from time to time, and is required to safeguard individually identifiable health information that the Covered Entity creates, receives, maintains, or transmits (hereinafter "Protected Health Information" or "PHI") in accordance with the requirements HIPAA establishes and also the requirements set forth in the Health Information Technology for Economic and Clinical Health ("HITECH") Act and their respective implementing regulations.

1. **Definitions**

   The following terms shall have the meaning ascribed to them in this Section. Other capitalized terms shall have the meaning ascribed to them in the context in which they first appear. Terms used but not otherwise defined in this BAA shall have the same meaning as those terms in the federal Standards for Privacy of Individually Identifiable Health Information, 45 CFR Parts 160 subpart A and 164 subparts A and E (the "Privacy Rule"); the federal Security Standards for the Protection of Electronic Protected Health Information, 45 CFR Parts 160 subpart A and 164 subparts A and C (the "Security Rule"); and the Notification in the Case of Breach of Unsecured Protected Health Information, 45 CFR Part 164 subpart D (the "Breach Notification Rule") (collectively the "HIPAA Rules").

a. **Breach:** "Breach" shall have the same meaning as the term "Breach" as defined in 45 CFR 164.402.

b. **Business Associate:** "Business Associate" shall have the same meaning as the term "Business Associate" in 45 CFR 160.103 and, as used in this BAA, refers to Business Associate in its capacity as an entity that creates, receives, maintains, or transmits Protected Health Information in providing services to a Covered Entity.

c. **Covered Entity:** "Covered Entity" shall have the same meaning as the term "Covered Entity" in 45 CFR 160.103 and, as used in this BAA, refers to the Covered Entity identified above.

d. **Individual:** "Individual" shall have the same meaning as the term "Individual" in 45 CFR 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

e. **Protected Health Information:** "Protected Health Information" or "PHI" shall have the same meaning as the term "Protected Health Information" in 45 CFR 160.103, and shall refer to PHI obtained from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, including any PHI that is created, received, maintained, or transmitted in an electronic form ("Electronic PHI").

f. **Required By Law:** "Required By Law" shall have the same meaning as the term "Required By Law" in 45 CFR 164.103.

g. **Secretary:** "Secretary" shall mean the Secretary of the Department of Health and Human Services or his/her designee.

h. **Security Incident:** "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as defined at 45 CFR 164.304.

i. **Unsecured Protected Health Information:** "Unsecured Protected Health Information" or "Unsecured PHI" shall mean Protected Health Information that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued under section 13402(h)(2) of Pub. L. 111-5, as defined at 45 CFR § 164.402.

2. **Obligations and activities of Business Associate**

a. **Uses and Disclosures of PHI:** With respect to each use and disclosure of PHI Business Associate makes pursuant to this BAA, or otherwise, Business Associate agrees as follows:

i. Business Associate agrees not to use or disclose PHI other than as permitted or required by this BAA or as Required By Law. To the extent that Business Associate performs any of Covered Entity's obligations under the Privacy Rule, Business Associate will comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation.

ii. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this BAA.

iii. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA of which it becomes aware.

iv. If applicable, in accordance with 45 CFR 164.504(e)(1)(ii) and 164.308(b)(2), Business Associate agrees to enter into written BAAs with any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of Business Associate, and the terms of such BAAs shall incorporate substantially similar restrictions, conditions, and requirements that apply to Business Associate through this BAA.

v. At the sole cost and expense of the Covered Entity, Business Associate agrees to make available and provide Covered Entity with access to PHI to meet the requirements under 45 CFR 164.524. The obligations of Business Associate in this paragraph apply only to PHI in Designated Record Sets in Business Associate's possession or control as such term is defined at 45 CFR § 164.501. Such access shall be in a timely and reasonable manner, as agreed upon by the Parties.

vi. At the sole cost and expense of the Covered Entity, Business Associate agrees to make any amendment(s) to PHI that Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity, in a time and manner reasonably agreed upon by the Parties. The obligations of Business Associate in this paragraph apply only to PHI in Designated Record Sets in Business Associate's possession or control as such term is defined at 45 CFR § 164.501.

vii. Business Associate agrees to make its internal practices, books, and records, including any policies and procedures, relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary, in a time and manner reasonably agreed upon or designated by the Secretary, for purposes of the Secretary determining a Covered Entity's compliance with the Privacy and Security Rule.

viii. Business Associate agrees to maintain and make available, in a time and manner reasonably negotiated between the Parties, the information required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI, as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.

b. **Securing Electronic PHI:**

i. Business Associate agrees to use appropriate safeguards and comply with applicable and mandatory requirements of the Security Rule set forth at 45 CFR 164.308, 164.310, 164.312, and 164.316 with respect to Electronic PHI to prevent the use or disclosure of Electronic PHI other than as provided for by this BAA.

ii. Business Associate shall report to Covered Entity any Security Incident that results in the unauthorized disclosure of Electronic PHI of which Business Associate becomes aware with respect to Electronic PHI Business Associate creates, transmits, receives or maintains on behalf of Covered Entity. Business Associate shall report unsuccessful Security Incidents to Covered Entity upon request. Parties recognize, however, that a significant number of meaningless attempts to access, without authorization, use, disclose, modify or destroy PHI in Business Associate's systems will occur on an ongoing basis and could make a real-time reporting requirement formidable for Parties. Therefore, Parties agree that the following are illustrative of unsuccessful Security Incidents that, if they do not result in a pattern of Security Incidents or the unauthorized access, use, disclosure, modification, or destruction of PHI or interference with an information system, do not need to be reported:

i.) Pings on a firewall

ii.) Ports scans

iii.) Attempts to log on to a system or enter a database with an invalid password or username

iv.) Malware (e.g., worms, viruses)

c. **Notification of Breaches of Unsecured PHI:** Business Associate will notify Covered Entity of Breaches of Unsecured PHI without unreasonable delay and in no case later than thirty (30) calendar days after the Discovery of such a Breach of the Covered Entity's Unsecured PHI, as those terms are defined at 45 CFR Part 164 subpart D. Business Associate's notice to the Covered Entity shall include the applicable elements as set forth at 45 CFR 164.410(c).

3. **Permitted uses and disclosures by Business Associate**

In accordance with the limitations in this BAA, Business Associate may use or disclose PHI as necessary to perform functions on behalf of and/or provide services to Covered Entity to the extent such uses or disclosures are permitted by the Privacy Rule, as it may be amended from time to time.

4. **Specific use and disclosure provisions**

a. In accordance with the limitations in this BAA, Business Associate may use PHI as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, to the extent such use is permitted by the Privacy Rule, as it may be amended from time to time.

b. In accordance with the limitations in this BAA, Business Associate may disclose PHI as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided that such disclosures are (i) Required By Law, (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as Required By Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been Breached, or (iii) are otherwise permitted by the Privacy Rule, as it may be amended from time to time.

c. Business Associate may use PHI as necessary to report violations of law to appropriate federal and state authorities, to the extent permitted by 45 CFR 164.502(j)(1).

d. In accordance with 45 CFR 164.504(e)(2)(i)(B), Business Associate may use PHI to provide data aggregation services.

5. **Specific use and disclosure restrictions**

a. Business Associate will restrict the disclosure of an Individual's PHI in accordance with 45 CFR 164.522(a)(1)(i)(A), notwithstanding paragraph (a)(1)(ii) of that section, when, except as otherwise Required By Law, the Covered Entity notifies Business Associate that the Individual has made such a restriction request, and each of the following conditions is satisfied:

i. The disclosure would be to a health plan for the purposes of carrying out payment or healthcare operations, as that term may be amended from time to time.

ii. The PHI pertains solely to a healthcare item or service for which the healthcare provider involved has been paid out of pocket in full.

b. In accordance with 45 CFR 164.502(b)(1), Business Associate will limit to the extent practicable the use, disclosure, or request of PHI to the minimum necessary to accomplish the intended purposes of such use, disclosure, or request, respectively, except that the restrictions set forth herein shall not apply to the exceptions set forth in CFR 164.502(b)(2).

c. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless the Business Associate obtains written authorization (from the Individual) that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving the PHI of that Individual, except that this prohibition shall not apply in the following cases, which Business Associate will limit remuneration to a reasonable, cost-based fee to cover the cost to prepare and transmit the Protected Health Information for such purpose or a fee otherwise expressly permitted by other law:

i. The purpose of the exchange is for research or public health activities, as described at 45 CFR 154.501, 164.512(i), 164.512(b) and 164.514(e), or

ii. The purpose of the exchange is for the treatment of the Individual, subject to 164.506(a) and any regulation that the Secretary may promulgate to prevent PHI from inappropriate access, use or disclosure, or

iii. The purpose of the exchange is the healthcare operation specifically described in subparagraph (iv) of paragraph (6) of the definition of healthcare operations at 45 CFR 164.501 and pursuant to 164.506(a), or

iv. The purpose of the exchange is for remuneration that is provided by Covered Entity to the Business Associate for activities involving the exchange of PHI that Business Associate undertakes on behalf of and at the specific request of the Covered Entity as set forth in this BAA, or

v. The purpose of the exchange is to provide an Individual with a copy of the Individual's PHI pursuant to 45 CFR 164.524 or an accounting of disclosures pursuant to 164.528, or

vi. The purpose of the exchange is otherwise determined by the Secretary in regulations to be similarly necessary and appropriate

6. **Obligations of Covered Entity**

a. Covered Entity shall notify Business Associate of any limitation(s) in a Covered Entity's notice of privacy practices, in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that a Covered Entity has agreed to or is required to abide by in accordance with 45 CFR 164.522, or as mandated pursuant to Section 13405(c) of the HITECH Act, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

d. Covered Entity agrees to disclose to Business Associate only the minimum amount of PHI necessary to accomplish the services covered in the Transaction Document.

e. Covered Entity understands and agrees that in addition to obligations Required By Law, Business Associate provides services in the Transaction Document on the express condition that the Covered Entity fulfills its additional obligations set forth therein.

7. **Permissible requests by Covered Entity**

Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by Covered Entity.

8. **Termination**

a. Termination for Cause for Failure to Comply with this BAA by Business Associate. Upon any material failure to comply with this BAA by Business Associate, Covered Entity shall either:

i. Provide an opportunity for Business Associate to cure the failure to comply or end the violation and terminate this BAA if Business Associate does not cure the failure to comply or end the violation within a reasonable time specified by Covered Entity

ii. Immediately terminate this BAA if Business Associate has failed to comply with a material term of this BAA and cure is not possible and the Business Associate has not implemented reasonable steps to prevent a reoccurrence of such failure to comply

b. Termination for Cause for Failure to Comply with this BAA by Covered Entity. Upon any material failure to comply with this BAA by Covered Entity, Business Associate shall either:

i. Provide an opportunity for Covered Entity to cure the failure to comply or end the violation and terminate this BAA if Covered Entity does not cure the failure to comply or end the violation within the time specified by Business Associate

ii. Immediately terminate this BAA if Covered Entity has failed to comply with a material term of this BAA and cure is not possible and the Covered Entity has not implemented reasonable steps to prevent a reoccurrence of such failure to comply

c. Effect of termination

i. Except as provided below in paragraph (2) of this subsection, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity in accordance with HIPAA. This provision shall apply to PHI in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of PHI.

ii. In the event Business Associate determines returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon written notification that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of PHI for so long as Business Associate maintains such PHI.

a00046996ENW, Rev. 1

HEWLETT PACKARD ENTERPRISE

hpe.com