

**HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (the "BA Agreement") is entered into this 1st day of December 2006 between Nevada State Health Division - Emergency Medical Services, (the "Covered Entity") and the NEMSIS Technical Assistance Center (NEMSIS TAC), Department of Pediatrics, University of Utah School of Medicine ("Business Associate") for purposes of compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA").

RECITALS

A. Covered Entity and Business Associate have entered into certain agreement(s) existing as of the effective date of this BA Agreement and may enter into other future agreements (the "Applicable Agreements"), as more specifically defined at Section 3.0 below; and

B. In performing their respective obligations under the Applicable Agreements, Covered Entity may from time to time disclose to Business Associate certain Protected Health Information; and

C. Covered Entity and Business Associate wish to enter into this BA Agreement for the purpose of addressing certain requirements of HIPAA with respect to the performance of their obligations under the Applicable Agreements and this BA Agreement.

NOW THEREFORE, in consideration of the foregoing and other good and valuable consideration, the parties agree as follows:

1.0 **DEFINITIONS.**

The following terms are defined for purposes of this BA Agreement. Terms used, but not otherwise defined in this BA Agreement shall have the same meaning as those terms in the Privacy Rule.

- (a) "Business Associate" shall mean University of Utah.
- (b) "Covered Entity" shall mean the Nevada State Health Division - Emergency Medical Services.
- (c) "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- (d) "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.
- (e) "Security Rule" shall mean the Standards for Security of Individually Identifiable Health Information at 45 CFR parts 160, 162 and 164
- (f) "Protected Health Information" shall have the same meaning as the term "Protected Health Information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(g) "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR 160.103, limited to information created, received, maintained, or transmitted by Business Associate on behalf of the Covered Entity

(h) "De-identified Health Information" shall be any information not identified as "Protected Health Information" from the above definition and shall include any information that cannot be associated with any individual.

(i) "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501.

(j) "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

2.0 **OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE.**

(a) Business Associate agrees to not use or disclose Protected Health Information or De-identified Health Information other than as permitted or required by the BA Agreement or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this BA Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this BA Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this BA Agreement of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this BA Agreement to Business Associate with respect to such information.

(f) Upon advance written notice and during normal business hours, Business Associate agrees to provide access to Protected Health Information and De-identified Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526 in the time and manner as reasonably requested by Covered Entity or an Individual.

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, and/or to the Secretary, in a time and manner as reasonably requested by the Covered Entity or as otherwise designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner as reasonably requested by Covered Entity or an Individual, information collected in accordance with Section 2.0 (i) of this BA Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(k) Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Electronic Protected Health Information that it creates, receives, maintains or transmits on behalf of the Covered Entity.

i. Business Associate agrees to patch devices/software that will be connected to the UUHSC network

ii. Business Associate agrees to run anti-virus software that is updated regularly (weekly at a minimum) on all devices that are or will be connected to the UUHSC network.

(l) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Electronic Protected Health Information, agrees to implement reasonable and appropriate safeguards to protect it.

(m) Business Associate agrees to report to the Covered Entity any security incident of which it becomes aware.

(n) Business Associate agrees to make its policies, procedures and documentation required by the Security Rule relating to the administrative, physical, and technical safeguards available to the Secretary of HHS for purposes of determining Covered Entity's compliance with the Security Rule.

(o) Business Associate will register the following with the UUHSC Information Security Office (security@hsc.utah.edu) within seven business days of any new, modified, or removed items/connections:

i. Any device (computer, printer, hub, switch, wireless access point, etc) attached to the UUHSC network (includes direct connection dialup connections, or site-to-site VPNs).

ii. Any physical connection to the UUHSC network (includes direct connection, or site-to-site VPNs).

iii. Any wireless devices the Business Associate has placed, or required to be placed, on the UUHSC network.

3.0 **PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE.**

Except as otherwise limited in this BA Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified below or in future Applicable Agreements, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity. For purposes of this BA Agreement, the Applicable Agreements shall include the activities listed below and all other existing or future agreements between the parties. Failure to list any other agreements between the parties shall not limit the application of this BA Agreement to any such other agreements. The authorized activities include:

1. The Business Associate may use Protected Health Information and De-identified Health Information to populate the National EMS Database that are necessary to accomplish the objectives of National EMS Technical Assistance Center's contractual obligations. Protected Health Information will not be obtainable by those accessing the National EMS Database unless such information cannot be associated to an individual.

In addition to the foregoing general permitted uses and disclosures, and except as otherwise limited in this BA Agreement:

(a) Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with Sec. 164.502(j)(1).

(e) With permission from the Covered Entity, the Business Associate may use De-identified Health Information for purposes of training in EMS data analysis as long as the Covered Entity is provided full disclosure and credit.

4.0 **OBLIGATIONS OF COVERED ENTITY.**

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

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

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

5.0 **PERMISSIBLE REQUESTS BY COVERED ENTITY.**

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity; provided however, that Business Associate may use or disclose Protected Health Information for data aggregation and other management and administrative activities to the extent permitted under the Applicable Agreement(s) and all applicable laws.

6.0 **TERM AND TERMINATION.**

(a) **Term.** The Term of this BA Agreement shall commence as of the effective date set forth above and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section, regardless of the termination date of any Applicable Agreement.

(b) **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

(1) Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BA Agreement and the Applicable Agreement(s) if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; or

(2) Immediately terminate this BA Agreement and the Applicable Agreement(s) if Business Associate has breached a material term of this BA Agreement; or

(3) If neither termination nor cure are feasible, Covered Entity shall report the violation to the Secretary.

(c) **Effect of Termination.**

(1) Except as provided in paragraph (c)(2) of this Section 6, upon termination of this BA Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions and reasons that make return or destruction infeasible. If Covered Entity agrees with Business Associate's determination that the return or destruction of Protected Health Information is infeasible, Covered Entity shall provide written notice of its agreement to Business Associate and upon receipt of such written notice, Business Associate shall extend the protections of this BA Agreement to such Protected Health Information and limit further uses and disclosures

of such Protected Health Information to only those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7.0 MISCELLANEOUS.

(a) Regulatory References. Any reference in this BA Agreement to HIPAA or the Privacy Rule shall mean the referenced section as is then in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this BA Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

(c) Survival. The respective rights and obligations of Business Associate under Section 6(b) and Section 7(f) of this BA Agreement shall survive the termination of this BA Agreement.

(d) Interpretation. Any ambiguity in this BA Agreement shall be interpreted in a manner consistent with the Privacy Rule.

(e) Compliance with Laws. In performing their respective obligations under this BA Agreement, Covered Entity and Business Associate shall at all times comply with all applicable provisions of HIPAA, the Privacy Rule, and all other applicable state and federal laws and regulations.

(f) Mutual Indemnity. Covered Entity and Business Associate shall each defend, indemnify and hold harmless the other from and against any and all claims, losses, causes of action, judgments, damages and expenses including, but not limited to attorney's fees, to the extent caused by any breach of this BA Agreement or failure to perform its obligations hereunder, by the indemnifying party, its employees, officers, volunteers or subcontractors.

(g) Injunctive Relief. Business Associate agrees that the remedies at law for any breach by it of the terms of this BA Agreement shall be inadequate and that monetary damages from any such breach may not be sufficient or readily measured. Accordingly, in the event of any breach or threatened breach by Business Associate of any terms of this BA Agreement, Covered Entity shall be entitled to immediate injunctive relief. Covered Entity's right to injunctive relief shall be cumulative and nothing herein shall prohibit Covered Entity from seeking all other available remedies.

IN WITNESS WHEREOF, the parties have caused this BA Agreement to be executed by their duly authorized representatives effective as of the day and year set forth above.

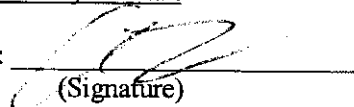
Nevada State Health Division -
Emergency Medical Services

By: 
(Signature)

Name: Fergus Laughridge
(Please Print)

Title: Program Manager

University of Utah

By: 
(Signature)

Name: _____
(Please Print)

Title: _____