

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made effective on _____ between the entity Eastern Virginia Medical School Academic Physicians and Surgeons Health Services Foundation (hereinafter "EVMS Medical Group") and _____ (hereinafter the "Business Associate").

WHEREAS, both parties are committed to complying with federal and state confidentiality laws and regulations, including, but not limited to the Health Insurance Portability and Accountability Act, codified at 45 CFR Parts 160 and 164 ("HIPAA").

NOW, THEREFORE, in consideration of the promises and mutual covenants contained herein and in the Agreement(s), the Parties agree to amend any existing agreements by incorporating the following:

1. DEFINITIONS. Unless otherwise defined herein, all terms used herein shall have the meanings ascribed to them in the Agreement or in HIPAA.

1.1 Health Care Operations shall have the meaning defined in 45 CFR §164.501, as currently drafted and amended.

1.2 Protected Health Information ("PHI") shall have the meaning defined in 45 CFR §160.103 as currently drafted and amended.

1.3 Electronic Protected Health Information ("ePHI") shall have the meaning defined in 45 CFR §160.103, as currently drafted and amended.

2. PERMISSIVE USES OF PHI BY BUSINESS ASSOCIATE

2.1 Services. Except as otherwise specified herein, Business Associate may make only those uses and disclosures of PHI necessary to perform its obligations under the Agreement; provided that Business Associate may use and disclose PHI only if such use and disclosure is in compliance with the Privacy Rule. All other uses not authorized by this Amendment are prohibited, unless required by law or agreed to in writing by EVMS Health Services.

2.2 Activities. Unless otherwise limited herein, Business Associate may:

a. use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate provided that such uses are permitted under state and federal confidentiality laws.

b. use the PHI in its possession to third parties for the purpose of its proper management and administration related to the Agreement or to fulfill any present or future legal responsibilities of Business Associate, provided that Business Associate represents to EVMS Health Services in writing, (i) that the disclosures are required by law, or (ii) Business Associate has received from the third party written assurances regarding its confidential handling of such PHI.

c. aggregate the PHI in its possession with the PHI of other covered entities that Business Associate has in its possession through its capacity as business associate to said other covered entities provided that the purpose of such aggregation is to provide EVMS Health Services with data analysis relating to the Health Care Operations of EVMS Health Services.

d. de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 CFR §164.514(b).

3. RESPONSIBILITIES WITH RESPECT TO PHI

3.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, Business Associate hereby agrees to:

a. report to EVMS Medical Group, in writing, any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which it becomes aware within fifteen (15) days of Business Associate's discovery of such unauthorized use and/or disclosure.

b. establish procedures for mitigating, to the greatest extent possible, any deleterious effects from any improper use and/or disclosure of PHI that the Business Associate reports to EVMS Medical Group.

c. use commercially reasonable efforts to maintain the security of the PHI and to prevent its unauthorized use and/or disclosure.

d. require all of its subcontractors and agents that receive, use or have access to PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate.

e. make available all records, books, agreements, policies and procedures relating to other use and/or disclosure of PHI to the Secretary of HHS for purposes of determining EVMS Medical Group compliance with the Privacy Rule and Security Rule, subject to applicable legal privileges.

f. upon prior written request, make available to EVMS Medical Group during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to Business Associate's use and/or disclosure of PHI within 7 days for purposes of enabling EVMS Health Services to determine Business Associate's compliance with the terms of this Agreement.

g. within 30 days of receiving a written request from EVMS Medical Group, provide to EVMS Medical Group such information as is requested by EVMS Health Services to permit EVMS Medical Group to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR §164.528.

h. disclose to its subcontractors, agents or other third parties, and request from EVMS Medical Group only the minimum PHI necessary to perform or fulfill a specific function required or permitted under the Agreement.

i. at the request of and in the time and manner chosen by EVMS Medical Group, provide access to PHI to EVMS Health Services or the individual to whom such PHI relates or his or her authorized representative in order to meet a request by such individual.

j. make any amendment(s) to the PHI that EVMS Medical Group directs pursuant to 45 CFR §164.526.

k. implement Administrative Safeguards, Physical Safeguards and Technical Safeguards (collectively, "Safeguards") that reasonably and appropriately protect the Confidentiality, integrity and Availability of ePHI as required by the Security Rule.

l. ensure that any agent and subcontractor to whom Business Associate provides ePHI agrees to implement reasonable and appropriate standards to protect ePHI.

m. report, in writing, to EVMS Medical Group any successful Security Incident of which Business Associate becomes aware within five (5) days of Business Associate's discovery of such Security Incident.

n. if Business Associate accesses, maintains, retains, modifies, records, stores, destroys or otherwise holds, uses or discloses Unsecured Protected Health Information, it shall, following the discovery of a breach of such information, notify EVMS Medical Group of such breach. Such notice shall include the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Business Associate to have been accessed, acquired or reasonably disclosed during such breach.

4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on _____ or there after on date agreement is executed and shall continue in effect until all obligations of the Parties have been met, unless terminated as provided in this Section 4.

4.2 Termination by EVMS Medical Group. EVMS Medical Group may immediately terminate the Agreement any related agreements if EVMS Medical Group makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, EVMS Medical Group may choose to: (i) provide the Business Associate with ten (10) days written notice of the existence of an alleged material breach; and (ii) afford the Business Associate an opportunity to cure said alleged material breach upon mutually agreeable terms. Nonetheless, in the event that mutually agreeable terms cannot be achieved within 7 days, Business Associate must cure said breach to the satisfaction of EVMS Medical Group within 30 days. Failure to

cure in the manner set forth in this paragraph is grounds for the immediate termination of the Agreement.

4.3 Automatic Termination. This Agreement will automatically terminate upon the termination or expiration of the Agreement.

4.4 Effect of Termination. Upon termination of the Agreement, Business Associate agrees to return or destroy all PHI and retain no copies thereof, if it is feasible to do so, within 60 days of the termination of the Agreement. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its subcontractors or agents. If it is not feasible for Business Associate to return or destroy said PHI, Business Associate will notify EVMS Medical Group in writing that it has determined that it is infeasible to return or destroy PHI and the specific reasons for such determination. Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after termination of the Agreement, and to limit any further uses/and disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for Business Associate to obtain, from a subcontractor or agency any PHI in the possession of the subcontractor or agent, Business Associate must provide a written explanation to EVMS Medical Group and require the subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents; use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/disclosures to the purposes that make the return or destruction of the PHI infeasible.

4.5 Severability. In the event that any provision of this Agreement violates any applicable statute, ordinance or rule of law in any jurisdiction that governs this Agreement, such provision shall be ineffective to the extent of such violation without invalidating any other provision of this Agreement.

4.6 Injunctive Relief. Business Associate acknowledges that the remedy at law for any breach by it of the terms of this Agreement shall be inadequate and that the damages resulting from such breach are not readily susceptible to being measured in monetary terms. Accordingly, in the event of a breach or threatened breach by Business Associate of the terms of this Agreement, EVMS Medical Group shall be entitled to immediate injunctive relief and may obtain a temporary order restraining any threatened or further breach. Nothing herein shall be construed as prohibiting such breach or threatened breach, including recovery of damages from Business Associate. Business Associate further represents that it understands and agrees that the provisions of this Agreement shall be strictly enforced and construed against it.

4.7 Hold Harmless. Business Associate agrees to indemnify, defend and hold harmless EVMS Medical Group, its directors, officers, agents, shareholders, and employees against all claims, demands or causes of action that may arise from Business Associate's employees, agents, or independent contractors or negligent acts or omissions that result in the improper disclosure of PHI.

5. MISCELLANEOUS

5.1 Survival. Sections 4.4, and Section 2.1 solely with respect to Protected Health Information, Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such Protected Health Information, shall survive termination of the Agreement.

5.2 Entire Agreement; Amendment; No Waiver. Should the terms of the Agreement conflict with the terms of the Agreement, the terms providing for more stringent protections of PHI shall apply. Nothing herein contained shall be held to vary, alter, vary or extend any of the terms, conditions, provisions, agreements, or limitations of the Agreement, other than as above stated in this Agreement.

5.3 Authority. The persons signing below have the right and authority to execute this Agreement for their respective entities and no further approvals are necessary to create a binding Agreement.

5.4 Governing Law. This Agreement shall be governed by the laws of the Commonwealth of Virginia and shall be construed in accordance therewith.

IN WITNESS WHEREOF, the Parties have executed this Agreement through their duly authorized representatives as of the Effective date to amend all agreements or act as an agreement between Partier for which the provisions herein apply.

EVMS Academic Physicians and Surgeons
Health Services Foundation

By: _____
James F. Lind, Jr.
Chief Executive Officer

By: _____

Name: _____

Date: _____

Title: _____

Date: _____