**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“BAA") is entered into as of the date of the last signature hereto **<<EFFECTIVE DATE>>** by and between **<<COVERED ENTITY NAME>>** (“Covered Entity”) **<<DESCRIPTION OF ENTITE AND ADDRESS HERE>>** and DARTNet Institute (“DARTNet”) (“Business Associate”), a body corporate in the state of Missouri, with a principal address of 11400 Tomahawk Creek Parkway, Leawood, KS 66211-2680 Attention: Deborah Graham (each, a “Party” and collectively, the “Parties”).

**WHEREAS**, Business Associate, as part of providing services to Covered Entity**,** will have access to certain patient-identifying Protected Health Information (“PHI”) for patients of Covered Entity through access to a common electronic medical record derived database between Covered Entity and Business Associate; and

**WHEREAS** Business Associate agrees to uphold the guidelines set forth by the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and American Recovery and Reinvestment Act of 2009 (“ARRA”) for accessing and managing Protected Health Information (“PHI”);

**NOW THEREFORE**, in consideration of the mutual promises set forth herein, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. **BACKGROUND AND PURPOSE.** The Parties have entered into one or more agreements, written or oral, pursuant to which Business Associate performs functions or activities for, or provides services to, Covered Entity that involve the use and disclosure of Protected Health Information (as defined below) (the “Underlying Contracts”). In connection with the Underlying Contracts, including any and all Business Associate Agreements currently in place between DARTNet and any Covered Entity, Parties wish to execute this Agreement (1) to ensure Business Associate and Covered Entity’s compliance with applicable provisions of the health information privacy and security rules promulgated under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and codified at 45 C.F.R. Part 160 and Part 164, subparts A and C (the “Security Rule”), subparts A and D (the “Breach Notification Rule”), and subparts A and E (the “Privacy Rule”), as amended by Subtitle D of the HITECH Act (Title XIII of the American Recovery and Reinvestment Act of 2009) and as clarified by guidance issued pursuant thereto, and (2) to ensure that Business Associate and Covered Entity safeguards the privacy and security of Covered Entity’s Protected Health Information as further provided herein. This Agreement is intended to apply to any existing relationships between Subcontractor and Business Associate involving the exchange of Protected Health Information.
2. **DEFINITIONS.**  Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the meanings ascribed to them in HIPAA, the Privacy Rule, the Security Rule, and the Breach Notification Rule; provided, however, that “Protected Health Information” or “PHI” shall mean Protected Health Information limited to the information Business Associate received from, or created, maintained, transmitted, or received on behalf of, Covered Entity.
3. **OBLIGATIONS OF THE PARTIES WITH RESPECT TO PHI.** 
   1. Obligations of Subcontractor. With regard to its use and disclosure of PHI, Business Associate agrees to:
      1. not use or further disclose PHI other than as permitted or required by this Agreement or as Required by Law.
      2. use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement. Without limiting the generality of the foregoing, Business Associate will:
         1. implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic PHI (or “EPHI”) that it receives from, or creates, receives, maintains, or transmits on behalf of, Covered Entity;
         2. ensure that any agent of Business Associate, including a subcontractor, to whom Business Associate provides such EPHI agrees, in writing, to implement substantially the same safeguards and other measures to protect such EPHI as set forth in this Agreement; and
         3. report to Covered Entity any Security Incident of which Business Associate becomes aware.
      3. promptly report to Covered Entity any use or disclosure of PHI in violation of this Agreement, as well as any incident which, in Business Associate’s view, compromises the security of PHI, of which Business Associate becomes aware. Business Associate shall mitigate any deleterious effects from any use or disclosure of PHI that Business Associate reports to Covered Entity as provided herein.
      4. ensure that any agent, including any subcontractor, to whom Business Associate provides PHI agrees in writing to the same restrictions and conditions on the use and disclosure of PHI that apply to Business Associate pursuant to this Agreement.
      5. make available, in the form, time, and manner reasonably requested by Covered Entity, any and all PHI required for Covered Entity to respond to an Individual’s request for access to PHI about them in accordance with 45 C.F.R. 164.524. Business Associate acknowledges that individuals may have the right to obtain PHI about them in an electronic format, and Business Associate will provide PHI in an electronic format as may be reasonably requested by Covered Entity to the extent the Business Associate maintains such PHI in an electronic format.
      6. make available, in the form, time, and manner reasonably requested by Covered Entity, PHI for amendment and incorporate any such amendment as directed by Covered Entity to allow Covered Entity to comply with 45 C.F.R. 164.526
      7. document any and all disclosures of PHI by Business Associate or its agents, including subcontractors, as well as any other information related to such disclosures of PHI that would be required for Covered Entity to respond to an Individual’s request for an accounting of disclosures in accordance with 45 C.F.R. 164.528.
      8. make available, in the form, time, and manner reasonably requested by Covered Entity, any and all information documented in accordance with subsection 3.1.7.
      9. subject to subsection 3.1.10. and any applicable privileges, and following consultation with Covered Entity, make available to the Secretary of the U.S. Department of Health and Human Services (“HHS”) any and all internal practices, books, and records of Business Associate or its agents, including subcontractors, relating to the use and disclosure of PHI, for purposes of determining Covered Entity’s compliance with the Privacy Rule.
      10. immediately notify Covered Entity of any and all requests by the Secretary of HHS for information described in subsection 3.1.i. prior to any release of information thereunder.
      11. comply with 45 C.F.R. 164.308, 164.310, 164.312, and 164.316 of the Security Rule.
      12. determine the Minimum Necessary PHI needed for uses, disclosures, or other requests of or for Covered Entity’s PHI, other than those exempt from the Minimum Necessary requirement specified in 45 C.F.R. 164.502(b)(2), in order to accomplish the intended purpose of the use, disclosure, or request, consistent with the terms of the Underlying Contract. To the extent practicable and consistent with the terms of the Underlying Contract, as determined by Business Associate, the Minimum Necessary PHI shall be the Limited Data Set, as defined in 45 C.F.R. § 164.514(e)(2). At such time as the Secretary issues guidance on what constitutes the “Minimum Necessary” for purposes of the HIPAA Privacy Rule, Business Associate and Covered Entity shall amend this Section 3.1.l. if necessary.
      13. not, directly or indirectly, receive remuneration in exchange for Covered Entity’s PHI unless Business Associate or Covered Entity has obtained an authorization from the subject individual(s) which complies with all applicable requirements, or unless an exception specified in Section 13405(d)(2) of the HITECH Act, codified at 42 U.S.C. § 17935(d)(2), or regulations published by the Secretary, applies. Business Associate may not rely on any of the foregoing exceptions as to Covered Entity’s PHI without advance notice to Covered Entity which describes the types of circumstances and the applicable exceptions to be relied upon by Business Associate.
   2. Permitted Uses and Disclosures of PHI by Business Associate. Except as otherwise specified in this Agreement, Business Associate may make any and all uses and disclosures of PHI necessary to perform its obligations under the Underlying Contracts. Unless otherwise limited by this Agreement, Business Associate may also: (a) use the PHI in its possession for its proper management and administration or to carry out the legal responsibilities of Business Associate; (b) disclose the PHI in its possession to a third party for the purpose of Business Associate’s proper management and administration or to carry out the legal responsibilities of Business Associate, provided that the disclosures are Required by Law or that Business Associate has obtained reasonable assurances from the third party to whom PHI is to be disclosed that the PHI will be held confidentially and the third party has agreed to notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached; and (c) provide Data Aggregation services relating to the Health Care Operations of the Covered Entity as permitted by the Privacy Rule. Business Associate may not, and may not permit its agents or subcontractors to, de-identify PHI or use or disclose de-identified data derived from PHI without the prior written consent of Covered Entity. As required by the HITECH Act, Business Associate may only use and disclose PHI as described above if such use and disclosure is in compliance with 45 C.F.R. 164.504(e).
   3. Obligations of Covered Entity.
      1. Covered Entity agrees to notify Business Associate, in writing, of any restrictions on uses and disclosures of PHI to which Covered Entity agrees that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this Agreement. The Parties acknowledge that the HITECH Act requires that Covered Entity comply with a requested restriction if: (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which Covered Entity has been paid out of pocket in full. Covered Entity agrees to notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI that will impact in any manner the use and/or disclosure of that PHI by Business Associate under this Agreement. Covered Entity agrees to notify Business Associate of any changes in its Notice of Privacy Practices that will impact in any manner the use and/or disclosure of PHI by Business Associate under this Agreement.
      2. If and to the extent that Covered Entity’s obligations under 45 C.F.R. 164.528 are amended by Section 13405 of Subtitle D of the HITECH Act and regulations and guidance issued pursuant thereto (that is, if Covered Entity is required to account for disclosures of PHI for treatment, payment, and health care operations made through an electronic health record), Covered Entity shall notify Business Associate to permit Business Associate to maintain an appropriate record of disclosures as required by Section 3.1.g. of this Agreement.
   4. Breach of Unsecured Protected Health Information. As required by the Breach Notification Rule, as it may be amended from time to time, Business Associate shall maintain systems to monitor and detect a Breach of Unsecured PHI, whether the Unsecured PHI is in paper or electronic form. Business Associate shall provide to Covered Entity notice of a Breach of Unsecured PHI within ten (10) business days of the first day the Breach is known, or reasonably should have been known, to Business Associate, including for this purpose any employee, officer, or other agent of Business Associate (other than the individual committing the Breach). The notice shall include, to the extent possible, the identification of each individual whose Unsecured PHI was, or is reasonably believed to have been, subject to the Breach and the circumstances of the Breach, as both are known to Business Associate at that time. To the extent possible, the description of the circumstances of the Breach shall include: (1) a brief description of what happened, including the date of the Breach and the date of the discovery of the Breach; (2) a description of the types of Unsecured PHI that were involved in the Breach; and (3) a brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches. The notice shall be given in writing to Covered Entity’s Privacy Officer. Following the notice, Business Associate shall conduct such further investigation and analysis as is reasonably required, and shall promptly advise Covered Entity of additional information pertinent to the Breach which Business Associate obtains. Business Associate shall cooperate with Covered Entity with respect to Covered Entity’s determination of whether the Breach “of unsecured PHI has been compromised (based upon a risk assessment in accordance with Breach Notification Rule),” thereby requiring notice to individuals, and will cooperate with Covered Entity as may be necessary, as determined by Covered Entity, to allow Covered Entity to provide notice of the Breach to individuals as required by the Breach Notification Rule. Covered Entity is responsible for the provision of notice to individuals in a timely manner, provided that Covered Entity shall consult with Business Associate as needed regarding the details of the notice.
   5. Marketing. The Parties agree to comply with the restrictions on marketing and fundraising communications contained in Section 13406 of the HITECH Act. If the Parties wish for Business Associate to engage in any such communications on behalf of Covered Entity, the Parties agree to amend the Underlying Contracts or this Agreement accordingly.
   6. Effect of Changes to HIPAA, the Privacy Rule, Security Rule, or Breach Notification Rule. To the extent that any relevant provision of HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule is amended in a manner that materially changes the obligations of Business Associate or Covered Entity that are embodied in the terms of this Agreement, the Parties agree to amend this Agreement in order to give effect to such revised obligations or, if the Parties cannot agree on an amendment to this Agreement, terminate this Agreement and the Underlying Contracts.
4. **TERMINATION.** 
   1. The term of this Agreement shall commence on the Effective Date and shall terminate when all of the PHI 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 PHI, protections are extended to such PHI in accordance with the provisions of Section 4.3, unless earlier terminated as provided herein.
   2. Upon either Party’s knowledge of a material breach of the terms of this Agreement by the other Party, the non-breaching Party shall provide the breaching Party written notice of that breach in sufficient detail to enable the breaching Party to understand the specific nature of that breach and afford the breaching Party an opportunity to cure the breach. If the breaching Party fails to cure the breach within a reasonable time as specified by the non-breaching Party, the non-breaching Party may terminate this Agreement and the Underlying Contracts.
   3. Upon the termination or expiration of this Agreement for any reason, Business Associate shall return to Covered Entity or destroy any and all PHI and EPHI in the possession or control of Business Associate and its agents, including subcontractors, and retain no copies, if it is feasible to do so. If return or destruction of PHI and EPHI is infeasible, as determined by Covered Entity, Business Associate agrees to: (a) provide written notification to Covered Entity of the conditions that make such return or destruction infeasible; and (b) for so long as Business Associate or its agents, including subcontractors, maintain such PHI or EPHI, (i) extend all protections contained in this Agreement to the use and/or disclosure of any retained PHI or EPHI by Business Associate or its agents, including subcontractors, and (ii) limit any further uses and/or disclosures of such PHI or EPHI by Business Associate or its agents, including subcontractors, to the purposes that make the PHI’s or EPHI’s return or destruction infeasible.
5. **MISCELLANEOUS.** 
   1. Interpretation. The terms of this Agreement shall prevail in the case of any conflict with the terms of any Underlying Contracts to the extent necessary to allow Covered Entity and Business Associate to comply with applicable provisions of HIPAA, the Privacy Rule, the Security Rule, or the Breach Notification Rule.
   2. Survival. The obligations imposed on Business Associate pursuant to this Agreement with respect to PHI shall survive termination of this Agreement and continue indefinitely with respect to PHI that Business Associate or its agents, including subcontractors, retain in accordance with Section 4.2.
   3. No Third Party Beneficiaries. Except as may be specifically set forth in this Agreement, nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
   4. Privileges and Protections Not Waived. Nothing herein shall be construed as waiver of applicable legal or other privileges or protections held or enjoyed by Covered Entity.
   5. Amendment. This Agreement shall not be amended except by the mutual written agreement of the Parties.
   6. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas.
   7. Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.
   8. Notice. Any notices required hereunder shall be given as set forth in the Underlying Contracts.
   9. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be executed in its name and on its behalf by its duly authorized representative.

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| **<<COVERED ENTITY NAME>>** | |  | **DARTNet Institute** | |
| By: | **(1)** |  | By: |  |
| Name: | **(2)** |  | Name: |  |
| Title: | **(3)** |  | Title: |  |
| Date: | **(4)** |  | Date: |  |