**Business Associate Agreement**

This Business Associate Agreement (Agreement) is being entered into between Western Michigan University Board of Trustees (Covered Entity/Business Associate) [if WMU is covered entity: on behalf of [Unified Clinics/Sindecuse Health Center/Department of Human Resources/Kalamazoo Autism Center] and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (Covered Entity/Business Associate) (collectively, “Parties”) to facilitate compliance with the HIPAA Rules, as defined below. In consideration for the compensation paid to Business Associate to provide services relating to and on behalf of Covered Entity, the Parties agree to the terms set forth in this Agreement.

**Article 1**

**Definitions**

1.1. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, HIPAA Transactions, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Transactions, Unsecured Protected Health Information, and Use.

1.2. Business Associate shall generally have the same meaning as the term “business associate” at 45 CFR § 160.103, and in reference this Agreement, shall mean [Insert Name of Business Associate].

1.3. Covered Entity shall generally have the same meaning as the term “covered entity” at 45 CFR § 160.103, and in reference to this Agreement, shall mean [Insert Name of Covered Entity].

1.4. HIPAA Rules shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Parts 160 and 164.

# **Article 2**

# **Obligations and Activities of Business Associate**

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2.1. Business Associate agrees to:

2.1.1. Not use or disclose Protected Health Information other than as permitted or required by the Agreement or as required by law;

2.1.2. Develop, implement, maintain, use and document appropriate safeguards that will protect the confidentiality, integrity, and availability of the electronic Protected Health Information, comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, and prevent use or disclosure of Protected Health Information, other than as permitted by this Agreement;

2.1.3. Report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware and/or any Security Incident of which it becomes aware in accordance with Section 2.2, below;

2.1.4. Mitigate, to the extent practicable, any known harmful effect of its use or disclosure of Protected Health Information in violation of the requirements of this Agreement;

2.1.5. Enter into a written agreement with any agents, including subcontractors, that create, receive, maintain, or transmit Protected Health Information on its behalf, in which such agents agree to the same restrictions, conditions, and requirements that apply to the Business Associate under this Agreement with respect to such Protected Health Information;

# 2.1.6. Make available to the Covered Entity Protected Health Information in a Designated Record Set as necessary to satisfy Covered Entity’s obligations under 45 CFR § 164.524. If Business Associate receives a request directly from an Individual or the Individual’s designee, Business Associate shall notify Covered Entity as soon as administratively feasible in order for the Parties to coordinate a response.

# 2.1.7. Make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy covered entity’s obligations under 45 CFR § 164.526. If Business Associate receives a request directly from an Individual or the Individual’s designee, Business Associate shall notify Covered Entity as soon as administratively feasible in order for the Parties to coordinate a response;

2.1.8. Maintain and make available the information required to provide an Accounting of Disclosures to the Covered Entity or Individual as necessary to satisfy Covered Entity’s obligations under 45 CFR § 164.528; provided that if Business Associate receives a request directly from an Individual or the Individual’s designee, Business Associate shall notify Covered Entity as soon as administratively feasible in order for the Parties to coordinate a response;

2.1.9. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of Protected Health Information, respond as permitted by 45 CFR §§ 164.512(e) and (f). If not prohibited by applicable law, Business Associate shall notify Covered Entity of the request as soon as administratively feasible.

2.1.10. If designated to perform Covered Entity’s obligation(s) under 45 CFR Part 164, comply with the applicable HIPAA Rules requirements related to such obligation(s).

2.1.11. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules; and

2.1.12. Ensure that, to the extent it is electronically transmitting Transactions for Covered Entity, the format and structure of such transmissions shall comply with the Standards for Electronic Transactions set forth in 45 CFR § Parts 160 and 162.

2.2. Breach Notification:

Business Associate shall put in place policies and procedures that are designed to detect inappropriate acquisition, access, use, or disclosure of Protected Health Information and adequately train its work force and agents on these procedures. Business Associate will notify Covered Entity within five business days of discovering a Security Incident or other acquisition, access, use or disclosure of Protected Health Information in a manner or for a purpose not permitted by the HIPAA Rules. Business Associate will further provide Covered Entity with the identification of each individual affected by such incident within thirty days of discovery. Business Associate will assist Covered Entity in assessing whether such incident constitutes a Breach of such Protected Health Information. If Covered Entity determines that there is a Breach requiring notification pursuant to the HIPAA Breach Notification Standards or other applicable law, Business Associate will reimburse Covered Entity’s reasonable mitigation and notification costs, including, as applicable, legal fees and other costs associated with determining its notification duty, drafting its notifications, sending the notifications, staffing a call center, providing identity theft prevention and mitigation services, and will reasonably assist Covered Entity with such efforts.

**Article 1**

**Article 2**

# **Article 3**

# **Permitted Uses and Disclosures by Business Associate**

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# 3.1. Business Associate may only use or disclose Protected Health Information as necessary to perform the services set forth in the underlying agreement between the Parties. Specifically, unless otherwise provided in such agreement, Business Associate may not use or disclose Protected Health Information except to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes of payment, treatment, or health care operations as those terms are defined in the HIPAA Rules; provided that such use or disclosure would not violate the HIPAA Rules if done by Covered Entity.

# 3.2. Business Associate may use or disclose Protected Health Information as required by law.

# 3.3. Business Associate may only use, disclose, or request Protected Health Information consistent with Covered Entity’s minimum necessary policies and procedures.

# 3.4. Business Associate may not use or disclose Protected Health Information in a manner that, if done by Covered Entity, would violate 45 CFR Part 164, Subpart E, except for the specific uses and disclosures set forth below:

# 3.4.1. Business Associate may use Protected Health Information to de-identify the information in accordance with 45 CFR §§ 164.514(a)-(c). Before proceeding with any such de-identification, Business Associate shall inform Covered Entity in writing of the manner in which it will de-identify the Protected Health Information and of Business Associate’s proposed use and disclosure of the de-identified information.

# 3.4.2. Business Associate may use Protected Health Information for its proper management and administration or to carry out its legal responsibilities.

# 3.4.3. Business Associate may disclose Protected Health Information for its proper management and administration; to carry out its legal responsibilities, provided that disclosures are required by law; or if it obtains reasonable assurances, in writing, from the person or entity to whom the information is disclosed that the information will remain confidential and only be used or further disclosed either to or for the purpose for which it was disclosed; or as Required by Law.

# In such instances, Business Associate must obtain from the person or entity to whom it discloses any Protected Health Information assurances that the person or entity will notify the Business Associate of any instances of which it is aware that there has been a breach of confidentiality.

# 3.4.4. Business Associate may use Protected Health Information to provide data aggregation services relating to the health care operations of the Covered Entity.

# **Article 4**

# **Obligations of Covered Entity**

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# 4.1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of its privacy practices under 45 CFR § 164.520 if such limitation may affect Business Associate’s use or disclosure of Protected Health Information.

# 4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information if such changes may affect Business Associate’s use or disclosure of Protected Health Information.

# 4.3. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, if such restriction may affect Business Associate’s use or disclosure of Protected Health Information.

# 4.4. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity, except as provided in Section 3.4 above.

# **Article 5**

# **Term and Termination**

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# 5.1. Term

# This Agreement shall take effect on [date] and shall terminate on [date or event], or on the date Covered Entity terminates for cause as authorized in Section 5.2, whichever is sooner. This Agreement replaces and takes precedence over any prior Business Associate Agreement entered into between the Parties.

# 5.2. Termination for Cause

# 5.2.1. Business Associate authorizes termination of this Agreement by Covered Entity if Covered Entity determines that Business Associate has breached this Agreement or the underlying agreement or business relationship. In such a situation, Covered Entity may either:

# 5.2.1.1. In the case of a non-material breach, provide the Business Associate with ten days to cure the breach before terminating this Agreement; or

# 5.2.1.2. In the case of a material breach, immediately terminate this Agreement.

# 5.3. Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall meet the following requirements with respect to Protected Health Information it received from Covered Entity or created, maintained, or received on behalf of Covered Entity:

## 5.3.1. Retain only the Protected Health Information which is necessary for it to continue its proper management and administration or to carry out its legal responsibilities; and return to Covered Entity or, if directed by Covered Entity in writing, destroy such information when it no longer needs the information for its proper management and administration or to carry out its legal responsibilities;

## 5.3.2. Return to Covered Entity, or if directed by Covered Entity in writing, destroy any remaining Protected Health Information that it maintains in any form;

## 5.3.3. Continue to use appropriate safeguards and comply with HIPAA Rules to prevent unauthorized use or disclosure of any Protected Health Information it retains; and

## 5.3.4. Not use or disclose any Protected Health Information it retains other than for the purposes for which the Protected Health Information was retained, subject to the restrictions set forth in this Agreement.

# 5.4. Upon Termination, Covered Entity may authorize Business Associate to transmit Protected Health Information to another business associate of the Covered Entity pursuant to Covered Entity’s written instructions.

# 5.5. This Section shall also apply to Protected Health Information that is in the possession of Business Associate’s subcontractors. Business Associate shall ensure the return or destruction (if directed by Covered Entity) of such Protected Health Information.

# 5.6. The rights and obligations of Business Associate under Articles 2 and 3 of this Agreement shall survive the termination of this Agreement.

# **Article 6**

# **Miscellaneous**

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# 6.1. Notice

# Notices will be deemed effectively given: (a) when received, if delivered by hand, with signed confirmation of receipt; (b) when received, if sent by a nationally recognized overnight courier, signature required; (c) when sent, if by facsimile or electronic mail, in each case, with confirmation of transmission, if sent during the addressee’s normal business hours; on the next business day, if sent after the addressee’s normal business hours; and (d) on the third day after the date mailed by certified or registered mail, return receipt requested, postage prepaid.

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| **To: [partner]** | **To: WMU** |
| [name] | Keith A. Hahn |
| [title] | General Counsel & HIPAA Officer |
| [address] | Western Michigan University  1903 W Michigan Ave.  Kalamazoo, MI 49008-5421 |
| Ph: | Ph: 269-387-1900 |
| E-mail: | E-mail: [hipaa-officer@wmich.edu](mailto:hipaa-officer@wmich.edu) |

# 6.2. Regulatory References

# A reference in this Agreement to a section in the HIPAA Rules means the section as they exist now or as they may be amended.

# 6.3. Amendment

# This Agreement may only be amended in a written document signed by an authorized representative of each Party. The Parties agree to take such action as is necessary to amend this Agreement from time to time for compliance with the HIPAA Rules and any other applicable law. If the Business Associate refuses to sign such an amendment, this Agreement shall automatically terminate.

# 6.4. Interpretation

# Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

# 6.5. Successors

# This Agreement is binding on each Party’s legal successors.

# 6.6. Indemnification

# 6.6.1. To the extent permissible under applicable law, and regardless of whether Business Associate is Covered Entity’s agent, Business Associate agrees to indemnify, defend and hold harmless Covered Entity, its directors, officers, and employees from and against any and all claims, lawsuits, settlements, judgments, costs, penalties, and expenses, including attorneys’ fees, resulting from or arising out of or in connection with Business Associate, its subcontractors’, or its agents’ use or disclosure of Protected Health Information in violation of this Agreement.

# 6.6.2. To the extent permissible under applicable law, Covered Entity agrees to indemnify, defend and hold harmless Business Associate and its directors, officers and employees from and against any and all claims, lawsuits, settlements, judgments, costs, penalties and expenses including attorneys’ fees resulting from or arising out of or in connection with Covered Entity’s, or its agents’ use or disclosure of Protected Health Information in violation of this Agreement.

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| **The Board of Trustees of Western Michigan University** | **[Other Party]** |
| By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | By:  \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |
| Keith A. Hahn  University HIPAA Officer | [Printed Name and Title] |
| General Counsel |  |
| [Date] | [Date] |
|  |  |