# HIPAA BUSINESS ASSOCIATE CONTRACT

 This Agreement is made effective the \_\_\_\_\_\_\_\_day of \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, 20\_\_\_,

by and between Western Carolina University (hereinafter “Covered Entity”) and \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

(hereinafter “Business Associate”).

1. **DEFINITIONS**. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy Rule.

a. **Business Associate**. "Business Associate" shall mean xxxxxxxx

b. **Covered Entity**. "Covered Entity" shall mean Western Carolina University.

c. **Individual**. “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 § 164.402 (g).

1. **Privacy Rule**. "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. **Protected Health Information**. “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.

f. **Required By Law**. “Required By Law” shall have the same meaning as the term
 “required by law” in 45 CFR § 164.501.

g. **Secretary**. “Secretary” shall mean the Secretary of the Department of Health and
 Human Services or his designee.

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

a. Business Associate agrees to not use or disclose Protected Health Information
 other than as permitted or required by this 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
 Agreement.

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

d. 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
 Agreement. Mitigation efforts shall be reported to Covered Entity.

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 Agreement to Business
 Associate with respect to such information.

f. Business Associate agrees to make available Protected Health Information to the
 extent, for the purposes and in the manner required by 45 CFR 164.524 (Access of
 individuals to Protected Health Information) and 45 CRF 164.526 (Amendment of
 Protected Health Information) and incorporate any amendment to Protected Health
 Information as required under 45 CFR 164.526.

g. 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, or
 to the Secretary, in a reasonable time and manner or as designated by the Secretary,
 for purposes of the Secretary determining Covered Entity's compliance with the Privacy
 Rule.

h. 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.

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.

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

a. General Use and Disclosure Provisions. Except as otherwise limited in this 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 in the previously signed Western Carolina University Services Agreement (“Services Agreement”), 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.

b. **Specific Use and Disclosure Provisions**.

 i. Except as otherwise limited in this Agreement, 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.

 ii. Except as otherwise limited in this Agreement, 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.

 iii. Except as otherwise limited in this Agreement, Business Associate may use
 Protected Health Information to provide Data Aggregation services to Covered
 Entity as permitted by 42 CFR § 164.50(e)(2)(1)(B).

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

1. **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.

1. **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, except as set forth in Section 3(b) above.
2. **TERM AND TERMINATION**

 a. **Term**. The Term of this Agreement shall be effective as established 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.

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

 i. Provide an opportunity for Business Associate to cure the breach or end the
 violation. This Agreement and the Services Agreement may be terminated if
 Business Associate does not cure the breach or end the violation within the
 time specified by Covered Entity;

 ii. Immediately terminate this Agreement and the Services Agreement if
 Business Associate has breached a material term of this Agreement and
 cure is not possible; or

 iii. If neither termination nor cure is feasible, Covered Entity shall report
 the violation to the Secretary.

 c. **Effect of Termination**.

 i. Except as provided in paragraph 6.c.ii, upon termination of this 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.

 ii. 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 that make return or
 destruction infeasible. Upon mutual agreement of the parties that return or
 destruction of Protected Health Information is infeasible, Business Associate
 shall extend the protections of this Agreement to such Protected Health
 Information and limit further uses and disclosures of such Protected Health
 Information to those purposes that make the return or destruction infeasible,
 for so long as Business Associate maintains such Protected Health
 Information.

1. **MISCELLANEOUS**

 a. **Regulatory References**. A reference in this Agreement to a section in the
 Privacy Rule means the section as in effect or as amended.

 b. **Amendment**. The Parties agree to take such action as is necessary to amend
 this Agreement from time to time as is necessary for Covered Entity to
 comply with the requirements of the Privacy Rule and the Health Insurance
 Portability and Accountability Act of 1996, Pub. L. No. 104-191.

 c. **Survival**. The respective rights and obligations of Business Associate under
 Section 6.c. of this Agreement shall survive the termination of this Agreement.

 d. **Interpretation**. Any ambiguity in this Agreement shall be resolved to permit
 Covered Entity to comply with the Privacy Rule.

e. **Indemnification**. Business Associate shall indemnify, defend, and hold Covered Entity, their employees, directors, trustees, officers, representatives and agents (collectively the Indemnitees) harmless from and against all claims, causes of action, liabilities, judgments, fines, assessments, penalties, damages, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, incurred by the University and relating to or arising out of any breach or alleged breach of the terms of this Agreement by Business Associate.

[Signatures appear on the next page]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed as of the day and year first written above.

WESTERN CAROLINA UNIVERSITY

 BUSINESS ASSOCIATE

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_