

## COMMISSION ON DENTAL ACCREDITATION

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is made as of March 18, 2014 (the “Effective Date”), between the AMERICAN DENTAL ASSOCIATION, an Illinois nonprofit corporation (“ADA”), on behalf of the Commission on Dental Accreditation (“Commission”), and Chabot Las Positas Community College District (“Institution”), but only if (and then only to the extent that) the Institution is a HIPAA Covered Entity, Business Associate, or Subcontractor, and that the Commission is the Institution’s Business Associate or Subcontractor, as defined in 45 CFR 160.103.

#### RECITALS

A. The Commission accredits dental and dental-related education programs and operates under the auspices of the ADA. The Institution, based in Hayward, California, sponsors dental-related educational program(s), and desires to have such programs evaluated by the Commission for purposes of accreditation.

B. During the course of the Commission’s accreditation services to the Institution, the Commission may have access to Protected Health Information (“PHI”). If the Institution is a HIPAA Covered Entity, Business Associate, or Subcontractor, the HIPAA Rules require the Institution to obtain written assurances from its Business Associates or Subcontractors that they will appropriately safeguard the PHI to which they have access.

C. This Agreement is effective only if (and then only to the extent that) the Commission is the Institution’s Business Associate or Subcontractor under HIPAA.

THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, the parties agree as follows:

#### 1. DEFINITIONS

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

Security Rule shall mean 45 CFR Part 164 Subpart C.

Privacy Rule shall mean 45 CFR Part 164 Subpart E.

Protected Health Information and Unsecured Protected Health Information shall have the same meaning as those terms in the then-current HIPAA Rules, limited to the information created or received by the Commission from or on behalf of the Institution.

The following terms used in this Agreement shall have the same meaning as those terms in the then-current HIPAA Rules: Breach, Business Associate, Covered Entity, Designated Record Set, Disclosure,

Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required by Law, Secretary, Security Incident, Subcontractor, and Use.

## 2. OBLIGATIONS OF THE COMMISSION

The Commission agrees to:

- a) **Not further Use or Disclose.** Not Use or further Disclose the PHI other than as permitted or required by this Agreement or as Required by Law.
- b) **Appropriate safeguards.** Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic PHI, to prevent Use or Disclosure of the PHI other than as provided for by this Agreement.
- c) **Report to Institution.** Subject to any applicable delay under 45 CFR 164.412 regarding law enforcement delay, report to the Institution any Use or Disclosure of PHI not provided for by this Agreement of which the Commission becomes aware, including Breaches of Unsecured PHI as required by 45 CFR § 164.410, and any Security Incident of which the Commission becomes aware, provided that an attempted unauthorized access, for purposes of reporting to the Institution, means only those attempted unauthorized accesses that warrant the Commission to investigate the attempted unauthorized access.
- d) **Subcontractors.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of the Commission agree to the same restrictions, conditions, and requirements that apply to the Commission with respect to such information.
- e) **Access.** Make PHI in a Designated Record Set available to the Institution in accordance with § 164.524. If the Commission receives a request for access directly from an Individual, the Commission will forward the Individual's request to the Institution, and the Institution will be responsible for responding to and acting on the request.
- f) **Amendment.** Make PHI in a Designated Record Set available for amendment and incorporate any amendments to PHI in a Designated Record Set in accordance with § 164.526. If the Commission receives a request for amendment directly from an Individual, the Commission will forward the request to the Institution, and the Institution will be responsible for responding to and acting on the request.
- g) **Accounting of disclosures.** Make available the information required to provide an accounting of disclosures to the Institution in accordance with § 164.528. If the Commission receives a request for an accounting of disclosures directly from an Individual, the Commission will forward the request to the Institution, and the Institution will be responsible for responding to and acting on the request.

- h) **Privacy Rule obligations.** To the extent the Commission is to carry out one or more of the Institution's obligation(s) under the Privacy Rule, the Commission will comply with the requirements of the Privacy Rule that apply to the Institution in the performance of such obligation.
- i) **Inspection by Secretary.** Make its internal practices, books, and records available to the Secretary for purposes of determining the compliance with the HIPAA Rules.

### 3. PERMITTED USES AND DISCLOSURES BY COMMISSION

- a) **Accreditation services.** The Commission may only Use or Disclose PHI in the course of performing accreditation services to the Institution.
- b) **De-identification.** The Commission is authorized to use PHI to de-identify the information in accordance with 45 CFR 514(a)-(c).
- c) **Required by Law.** The Commission may Use or Disclose PHI as Required by Law.
- d) **Reporting violations of law.** The Commission may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).
- e) **Minimum Necessary.** The Commission agrees to make Uses and Disclosures and requests for PHI subject to the following Minimum Necessary requirements:
  - i. The Commission requests that the Institution provide PHI to the Commission only at the Institution's location, and that the Institution not send PHI to the Commission in any form or format.
  - ii. Subject to the provisions of this Agreement, the Commission may Use and Disclose any PHI to perform accreditation services to the Institution or to comply with the Commission's rights and obligations under this Agreement and under the HIPAA Rules.
- f) **Privacy Rule.** The Commission may not Use or Disclose PHI in a manner that would violate the Privacy Rule if done by the Institution, except for the specific Uses and Disclosures set forth below.
- g) **Management and administration and legal responsibilities of the Commission.**
  - i. **Use.** The Commission may Use PHI for the proper management and administration of the Commission or to carry out the legal responsibilities of the Commission.
  - ii. **Disclosure.** The Commission may Disclose PHI for the proper management and administration of the Commission or to carry out the legal responsibilities of the Commission, provided the Disclosures are Required by Law, or the Commission obtains reasonable assurances from the person to whom the PHI is Disclosed that the PHI will be

held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was Disclosed to the person, and the person notifies the Commission of any instances of which it is aware in which the confidentiality of the PHI has been breached.

#### 4. OBLIGATIONS OF THE INSTITUTION

- a) **Notice of Privacy Practices.** The Institution shall promptly notify the Commission of any limitation(s) in an applicable Notice of Privacy Practices, to the extent that such limitation may affect the Commission's Use or Disclosure of PHI.
- b) **Changes or revocation of permission.** The Institution shall promptly notify the Commission of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her PHI to the extent that such changes may affect the Commission's Use or Disclosure of PHI.
- c) **Restrictions.** The Institution shall promptly notify the Commission of any restriction on the Use or Disclosure of PHI that the Institution has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect the Commission's Use or Disclosure of PHI.
- d) **Privacy Rule.** The Institution shall not request the Commission to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Institution, or that is not otherwise permitted by this Agreement, except that the Commission may Use or Disclose PHI for management and administration and legal responsibilities of the Commission.
- e) **Minimum necessary.** The Institution agrees that it will make PHI available to the Commission only on-site at the Institution's location(s), and that the Institution shall not:
  - i. Send PHI to the Commission or to any workforce member of the Commission in any form or format, nor
  - ii. Include PHI in any document, including but not limited to a self-assessment report, that the Institution provides to the Commission.

#### 5. TERM AND TERMINATION

- a) **Term.** The Term of this Agreement shall be effective as of the Effective Date, and shall terminate upon discontinuation of the Institution in the Commission's accreditation process, or on the date the Institution terminates for cause as authorized in paragraph 5(b) of this Agreement, whichever is sooner.
- b) **Termination for cause.**
  - i. If either party determines that the other party has violated a material term of this Agreement, or upon either party's discovery that of a pattern of activity or practice of

the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, the non-breaching party shall notify the other party of the breach without unreasonable delay but in no case later than 30 days after discovery of the breach or violation. The non-breaching party may:

- 1) Immediately terminate this Agreement;
- 2) Take reasonable steps to cure the breach or end the violation; or
- 3) Provide the breaching party 30 days from the breaching party's receipt of notification of the breach to cure the breach.

ii. If the non-breaching party notifies the breaching party that the breaching party shall have 30 days from the breaching party's receipt of such notification to cure the breach pursuant to paragraph 5(b)(i) of this Agreement, and the breaching party fails to cure the breach within said period, the non-breaching party may immediately terminate this Agreement.

- c) **Return or destruction of PHI upon termination.** Upon termination of this Agreement for any reason, the Commission, with respect to PHI received from the Institution, or created, maintained, or received by the Commission on behalf of the Institution, shall:
- i. Retain only that PHI which is necessary for the Commission to continue its proper management and administration or to carry out its legal responsibilities;
  - ii. Return to the Institution or destroy the remaining PHI that the Commission still maintains in any form;
  - iii. Continue to use appropriate safeguards and comply with the Security Rule with respect to electronic protected health information to prevent Use or Disclosure of the PHI, other than as provided for in this section, for as long as the Commission retains the PHI;
  - iv. Not Use or Disclose the PHI retained by the Commission other than for the purposes for which such PHI was retained and subject to the same conditions set out at Section 3 of this Agreement which applied prior to termination; and

Return to the Institution or destroy the PHI retained by the Commission when it is no longer needed by the Commission for its proper management and administration or to carry out its legal responsibilities.

## 6. MISCELLANEOUS

1. **Regulatory References.** A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

2. **Amendments, waiver.** The parties shall take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. This Agreement may not be modified, nor will any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

3. **Survival.** The following Sections and/or provisions will survive the expiration or termination of this Agreement: (i) Sections 4(a), (b) and (c), (ii) the respective rights and obligations of the Commission and the Institution under the provisions of Section 2 and Section 5 solely with respect to PHI that the Commission retains in accordance with Section 2 and Section 5 because it is not feasible to return or destroy such PHI, and (iii) any provision of this Agreement that, given its purpose, interpretation or context, logically should survive the expiration or termination of this Agreement.

4. **Interpretation.** Any ambiguity in this Agreement will be resolved to permit parties to comply with the HIPAA Rules and any other applicable law.

5. **Designated Record Set.** The parties acknowledge that the Commission does not maintain a Designated Record Set on behalf of the Institution, any Covered Entity or Business Associate.

6. **Family Educational Rights and Privacy Act.** The parties acknowledge that, pursuant to 45 CFR 160.103, PHI does not include individually identifiable health information contained in education records covered by the Family Educational Rights and Privacy Act, as amended, at 20 USC 1232g.

7. **Governing Law and Venue.** The terms of this Agreement are governed by and construed in accordance with the laws of Illinois, without regard to where the challenge arises and without regard to conflict of law principles. Any suit pertaining to this Agreement will be brought in the state or federal courts sitting in Chicago, Illinois, each party to this Agreement waiving any claim or defense that such forum is not convenient or proper. Each party further agrees that any such court shall have in personam jurisdiction over it and consents to service of process in any manner authorized by Illinois law.

8. **No Third Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor will anything herein confer, upon any person other than the parties, any rights, remedies, obligations or liabilities whatsoever.

9. **Notices.** Any notices to be given hereunder to a party will be made via U.S. Mail or express courier to such party's address given below.

If to the Commission, to:

Attn: Director, Commission on Dental Accreditation  
American Dental Association  
211 East Chicago Avenue  
Chicago, Illinois 60611

With a copy to "Chief Legal Counsel" at the above address.

If to the Institution, to:

Attn: Nancy Cheung  
Address:  
25555 Hesperian Blvd, Room 2222,  
Hayward, California 94545

Email address: [ncheung@chabotcollege.edu](mailto:ncheung@chabotcollege.edu)

Each party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner provided in this subsection.

10. **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. The parties acknowledge and agree that faxed and/or electronically affixed signatures shall act as original signatures that bind each faxing, or electronically affixing, signatory to the terms and provisions of this Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or electronic mail shall be equally effective as delivery of a manually executed counterpart.

11. **Entire Agreement; Amendment.** This Agreement embodies the entire understanding between the parties pertaining to the subject matter contained in it; supersedes any and all prior negotiations, correspondence, understandings, or agreements of the parties with respect to its subject matter; and may be waived, altered, amended, modified, revised or repealed, in whole or in part, only on the written consent of the parties to this Agreement (except to the extent expressly provided herein).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**BUSINESS ASSOCIATE**

AMERICAN DENTAL ASSOCIATION,  
on behalf of Commission on Dental

By: \_\_\_\_\_  
Dr. Sherin Tookes  
Director  
Commission on Dental Accreditation

Date: \_\_\_\_\_

**COVERED ENTITY**

CHABOT LAS POSITAS COMMUNITY COLLEGE DISTRICT  
on behalf of Chabot College  
Dental Hygiene Program  
Accreditation

By: \_\_\_\_\_  
Name: Lorenzo Legaspi  
Title: Vice Chancellor, Business Services

Date: \_\_\_\_\_