**THE RICHARDS GROUP**

**BUSINESS ASSOCIATE ADDENDUM**

This Business Associate Addendum (“Addendum”) supplements and is made a part of the Advisory Agreement (“Contract”) by and between Norwich University (“Covered Entity”) and The Richards Group (“Business Associate”), dated February 15, 2021. This Addendum is effective as of February 15, 2021 (the “Addendum Effective Date”). This Addendum shall have a term equal to the term of the Contract (as such contract may be amended, extended, renewed, renegotiated or replaced with a contract with an extended term) unless terminated earlier as provided for in Paragraph 3, below.

RECITALS

A. Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).

B. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws.

C. As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

In consideration of the mutual promises below and the exchange of information pursuant to this Addendum, the parties agree as follows:

1. **Definitions**
2. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
3. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
4. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
5. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
6. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
7. **Electronic Health Record** shall have the meaning given to such term in the HITECT Act, including, but not limited to, 42 U.S.C. Section 17921.
8. **Electronic Protected Health Information** shall mean Protected Health Information that is maintained in or transmitted by electronic media.
9. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
10. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
11. **Protected Health Information or PHI** shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 160.103. Protected Health Information includes Electronic Protected Health Information.
12. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity’s behalf.
13. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
14. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).
15. **Obligations of Business Associate**
16. **Permitted Uses**. Business Associate shall not use Protected Information except for the purpose of performing Business Associate’s obligations under the Contract and as permitted under the Contract and Addendum. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)]; or (iv) all other purposes permitted by HIPAA and or the HITECH Act.
17. **Permitted Disclosures**. Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate’s obligations under the Contract and as permitted under the Contract and Addendum. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity; or (v) all other purposes permitted by HIPAA and or the HITECH Act. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Addendum and only disclosed as required by law or for the purposes for which it was disclosed to such third party; and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].
18. **Prohibited Uses and Disclosures**. Business Associate shall not use or disclose Protected Information for fund-raising or marketing purposes. Business Associate shall not disclose Protected Information to a health plan for payment or health care operation purposes if the patient has requested this special restriction and has paid out of pocket in full for the health care item or services to which the PHI solely relates 42 U.S.C. Section 17935(a). Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Contract.
19. **Appropriate Safeguards**. Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Contract or Addendum, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
20. **Reporting of Improper Access, Use or Disclosure**. Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Contract and Addendum, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than seven (7) days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
21. **Business Associate’s Agents**. Business Associate shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by Paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
22. **Access to Protected Information**. Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
23. **Amendment of PHI**. Within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within ten (10) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
24. **Accounting Rights**. Within seven (7) days of any disclosure of Protected Information for which Covered Entity is required to account to an individual, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(c). Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if know, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual’s authorization; or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within ten (10) days of a request forward it to Covered Entity in writing. It shall be Covered Entity’s responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Paragraph 2.b. of this Addendum [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this Paragraph 2.i. shall survive the termination of this Agreement.
25. **Governmental Access to Records**. Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (the “Secretary”) for purposes of determining Business Associate’s compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)].
26. **Minimum Necessary**. Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure, [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] Business Associate understands and agrees that the definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.”
27. **Notification of Breach**. During the term of the contract, Business Associate shall notify Covered Entity within seven (7) days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
28. **Breach Pattern or Practice by [Covered Entity]**. Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity’s obligations under the Addendum, the Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Contract or other arrangement if feasible or, if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of Covered Entity that Business Associate believes constitutes a material breach or violation of Covered Entity’s obligations under the Addendum within ten (10) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
29. **Audits, Inspection and Enforcement**. Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Addendum for the purpose of determining whether Business Associate has complied with this Addendum; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection; (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.
30. **Termination**
31. **Material Breach**. A breach of Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)]. Upon Covered Entity’s knowledge of a material breach by Business Associate of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws, Covered Entity shall either (i) provide an opportunity for Business Associate to cure the breach or end the violation and terminate the Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, or (ii) immediately terminate the Contract if Business Associate has breached a material term of this Addendum and cure is not possible.
32. **Effect of Termination**. Upon termination of the Contract for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, Business Associate shall continue to extend the protections of Section 2 of this Addendum to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed. The obligations of Business Associate under this Paragraph 3.c. shall survive the termination of this Addendum.
33. **Amendment**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Contract or Addendum may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Addendum embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws.

1. **Assistance in Litigation or Administrative Proceedings**

Business Associate shall make itself, and any subcontractors, employees or agents assisting Business Associate in the performance of its obligations under the Contract or Addendum, available to Covered Entity, at Covered Entity’s cost, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.

1. **No Third-Party Beneficiaries**

Nothing express or implied in the Contract or Addendum is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

1. **Effect on Contract**

Except as specifically required to implement the purposes of this Addendum, or to the extent inconsistent with this Addendum, all other terms of the Contract shall remain in force and effect.

1. **Notices**

All notices to be delivered under this Addendum shall be in writing and shall be to the following addresses:

To Covered Entity: Norwich University

 158 Harmon Drive

 Northfield, VT 05663

with a copy to:

To Business Associate: The Richards Group

 48 Harris Place

 Brattleboro VT 05301

with a copy to: Downs Rachlin Martin PLLC

 Attn: Craig Miskovich, Esq.

 28 Vernon Street

 Suite 501

 PO Box 9

 Brattleboro, VT 05302-0009

 Fax (802) 258-4875

 Telephone (802) 258-3070

1. **Interpretation**

The provisions of this Addendum shall prevail over any provisions in the Contract that may conflict or appear inconsistent with any provision in this Addendum. This Addendum and the contract shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Addendum shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

1. **Miscellaneous**

**a. Entire Agreement.** The parties acknowledge that this Addendum represents the entire agreement and understanding of the parties with reference to the subject matter of this Addendum. Each party acknowledges that no other promises, representations or agreements, written or verbal, have been made by the other party, its agents, employees or legal representatives as an inducement for the execution of this Addendum. The Addendum replaces all prior understandings and agreements of the parties, written or oral, with respect to the subject matter covered herein.

**b. Validity.** If any provision of the Addendum is determined to be unenforceable or invalid, such determination will not affect the validity of the other provisions contained in this Addendum. Failure to enforce any provision of this Addendum does not affect the rights of the parties to enforce such provision in another circumstance. Neither does it affect the rights of the parties to enforce any other provision of the Addendum at any time.

**c. Assignment.** The rights and duties of Business Associate and Covered Entity under this Agreement shall not be assignable by either party without the written consent of the other party.

**d. Counterparts.** This Addendum may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have duly executed this Addendum as of the Addendum Effective Date.

NORWICH UNIVERSITY THE RICHARDS GROUP

By: By:

Print Name: Print Name:

Title: Title:

Date: Date:

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