

MEMORANDUM OF AGREEMENT (MOA)

BETWEEN

NATIONAL NAVAL MEDICAL CENTER (NATNAVMEDCEN), BETHESDA,

NATIONAL INSTITUTES OF HEALTH (NIH) CLINICAL CENTER,

NATIONAL LIBRARY OF MEDICINE (NLM)

AND

SUBURBAN HOSPITAL HEALTH CARE SYSTEM

1. **Introduction.** As a major population center and destination, the Bethesda Metropolitan Area is susceptible to disasters, both natural and man-made, that could exceed the resources of any individual hospital. A disaster could result from incidents generating an overwhelming number of patients, (e.g., major transportation accident, terrorism, etc.), or from incidents such as building or plant problems resulting in the need for partial or complete evacuation.

2. **Purpose.** This MOA is a voluntary agreement among NATNAVMEDCEN, NIH Clinical Center, NLM and Suburban Hospital (each, a Partnership Facility) to provide mutual aid at the time of a disaster. For purposes of this MOA, a disaster is defined as an overwhelming incident that exceeds the effective response capability of the impacted area.

3. **Maintenance of Individual Hospital's Disaster Program.** This MOA is not intended to replace a Partnership Hospital's Disaster Plan. Each Partnership Hospital has the responsibility for maintaining its own Emergency Management Plan that includes, at a minimum, provisions for the care of patients in an emergency or disaster situation, maintenance of disaster equipment, appropriate training of staff and the implementation of an internal Incident Command System based on the principles of the Hospital Incident Command System (HICS). Additionally, each Partnership Hospital agrees to participate jointly in periodic exercises conducted to improve their collective emergency response capabilities.

4. **Hospital Participation.** Each Partnership Hospital will designate representatives to attend ongoing committee meetings for the purpose of developing operational procedures and coordinating mutual aid initiatives. The partnership initiatives will facilitate coordination with other disaster relief and emergency medical providers and public agencies involved in disaster response efforts.

5. **Mutual Aid Received by or Provided to a Participating Hospital.**

a. **Authority and Communication.** In the event of a disaster, the Partnership Hospitals agree to establish communication; to assure notification among the three institutions Incident Command Centers or Emergency Operations Centers. As part of this MOA, each Participating Hospital will provide and communicate information during disasters using a secure radio network. To accomplish this in the event of interruption of the phone system, each Participating Hospital will agree to use, maintain, and upgrade

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4 when necessary the equipment necessary to participate in the following communication
5 systems:
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- 8 (1) Emergency Medical Resources Center (EMRC).
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- 10 (2) Facilities Resource Emergency Database (FRED).
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- 12 (3) Portable Radios (compatible among Partnership Hospitals).
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- 14 (4) Routine Communication Devices (Intranet/Fax/Phone).
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18 **b. Staffing/Credentialing Personnel.** The Partnership Hospitals have agreed to
19 share personnel resources in the event of an emergency to the extent practical. When the
20 Partnership Hospitals' Emergency Management Plans have been activated, the Director,
21 Chief Executive Officer (CEO), Commander, or their designee may grant emergency
22 privileges to licensed independent practitioners or non licensed support personnel with
23 evidence of appropriate identification from one of the partner hospitals, in accordance
24 with and subject to the relevant provisions of their respective Medical Staff Bylaws, and
25 state or federal law as applicable. Requests for staff personnel must be coordinated
26 through each Partnership Hospital's Incident Command Center.
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30 **c. Transfer of Pharmaceuticals, Supplies or Equipment.** This MOA established
31 that the Partnership Hospitals are committed to the sharing of equipment and supplies
32 during a disaster to the extent practical, and as permitted by law. Each Partnership
33 Hospital is responsible for tracking borrowed inventory and agrees to reimburse the
34 transferring hospital for any damage to requested equipment. The requests for equipment
35 and supplies must be coordinated through the Partnership Hospital's Incident Command
36 Center. The Partnership Hospitals agree to ensure, as applicable, compliance with the
37 Economy Act (31 USC 1535) and Federal Acquisition Regulations (FAR) concerning
38 any transfer or procurement of services and/or supplies under this agreement.
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42 **d. Transfer of Patients.** This MOA establishes that the Partnership Hospitals are
43 committed to the continuation of patient care during a disaster and inter-facility patient
44 transfer if necessary, and if space is available. All requests for patient transfer from one
45 facility to another must be coordinated through the Partnership Hospital's Incident
46 Command Center.
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49 **6. Media Relations and Release of Information.** This MOA establishes that each
50 Partnership Hospital agrees to participate in a Joint Public Information Center that would
51 serve as a primary source of information for the media during a disaster. The Public
52 Information Officers or designee from each facility will coordinate and speak on behalf
53 of the Partnership Hospitals to assure consistent messages and flow of information.
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58 **7. Miscellaneous.**

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60 **a. Confidentiality.** Each Partnership Hospital shall maintain the confidentiality
61 of all patient health information and medical records in accordance with applicable State
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4 and Federal laws, including, but not limited to, the Health Insurance Portability and
5 Accountability Act (HIPAA) privacy regulations.
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8 b. **HIPAA**. Pursuant to C.F.R. Parts 160 and 164, DODINST 6025.18, Privacy
9 of Individually Identifiable Health Information in DoD Health Care Programs, December
10 19, 2002, and DoD 6025.18-R, NATNAVMEDCEN and Suburban Hospital agree to
11 enter into a Business Associate Agreement, attached as Appendix A to this agreement.
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14 c. **Insurance and Liability**. Each Partnership Hospital shall maintain, at its own
15 expense (through purchased insurance or by self-insurance as permitted or established by
16 law) professional liability, worker's compensation and general liability insurance
17 coverage in amounts that are reasonable and customary in the community for the
18 appropriate specialty or function, covering liability for personal injury and property
19 damage, including legal representation and expense of defense of any such liability
20 claims, actions, or litigation resulting under this agreement for itself and its respective
21 employees. Liability for all negligent or wrongful acts or omissions of an employee of
22 the United States Government, acting with the scope of his/her employment and under
23 the terms of this MOA, is governed by the Federal Torts Claim Act (FTCA), 28 USC
24 2671, et seq. Consequently, the provisions of the FTCA, including its defenses and
25 immunities, will apply to allegations of negligence or wrongful acts or omissions of an
26 employee of the United States Government while acting within the scope of duties
27 pursuant to this agreement. Under the FTCA, the exclusive remedy, if any, for any claim
28 arising from the acts of an employee of the government, lies against the United States of
29 America and not the individual employee. The determination as to the scope of
30 employment and, consequently, whether the FTCA applies, is made by the Attorney
31 General (or his/her designee) pursuant to 28 USC 2679.
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37 d. **Defense and Indemnification**. Each Partnership Hospital will assume the
38 defense for liability claims arising from alleged negligent acts and omissions of their own
39 employees. Each Partnership Hospital agrees not to seek indemnification from the other
40 party or its trainees for any settlement, verdict, or judgment resulting from any claim or
41 lawsuit arising out of the performance of their employee's professional duties while
42 acting under the control of the supervising institution and its employees.
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45 e. **Effective Period**. This agreement is effective upon date of signature, for a
46 period of five years. It may be continued without change during that period, but must be
47 reviewed annually by all parties.
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50 f. **Termination**. The agreement may be cancelled at any time by mutual consent
51 of the parties concerned. The agreement may also be terminated by either party upon
52 giving 30 days written notice to the other party. In the case of mobilization or other
53 emergency, the agreement may be terminated immediately upon written notice by
54 NATNAVMEDCEN, and it will remain in force during mobilization or other emergency
55 only within NATNAVMEDCEN's capabilities.
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58 g. **Modification, Change, or Amendment**. Any modifications, changes, or
59 amendments to this agreement must be in writing, and are contingent upon Bureau of
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Medicine and Surgery (BUMED) (M8) approval. Subsequent to BUMED approval, the modification, change, or amendment must be signed by all parties.

h. **Concurrence**. It is agreed that this written statement embodies the entire agreement of the parties regarding this affiliation, and no other agreements exist between the parties except as expressed in this document. All parties to this agreement concur with the level of support and resource commitments that are documented herein.

Signatories

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APPENDIX A

PRIVACY OF PROTECTED HEALTH INFORMATION

(a) Definitions. As used in this Appendix:

Business Associate has the same meaning as the term “Business Associate” in 45 CFR 160.103.

Covered Entity has the same meaning as the term “Covered Entity” in 45 CFR 160.103.

Individual has 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 164.502 (g).

Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Protected Health Information has the same meaning as the term “protected health information” in 45 CFR 164.501, limited to the information created or received by The Business Associate from or on behalf of The Covered Entity.

Required by Law has the same meaning as the term “required by law” in 45 CFR 164.501.

Secretary means the Secretary of the Department of Health and Human Services or his/her designee.

Terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501.

(b) In this Memorandum of Agreement, National Naval Medical Center, Bethesda, and Suburban Hospital are Covered Entities as defined above; likewise, National Naval Medical Center, Bethesda, and Suburban Hospital are Business Associates as defined above.

(c) The Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(d) The Business Associate agrees to use appropriate safeguards to prevent use of disclosure of the Protected Health Information other than as provided for by this Agreement.

(e) The Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of Protected

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4 Health Information by the Business Associate in violation of the requirements of this
5 Agreement.
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8 (f) The Business Associate agrees to report to the Covered Entity any use or
9 disclosure of the Protected Health Information not provided for by this Agreement.
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11 (g) The Business Associate agrees to ensure that any agent, including a
12 subcontractor, to whom it provides Protected Health Information received from, or
13 created or received by the Business Associate on behalf of the Covered Entity agrees to
14 the same restrictions and conditions that apply through this Agreement to the Business
15 Associate with respect to such information.
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19 (h) The Business Associate agrees to provide access, at the request of the
20 Covered Entity, and in the time and manner designated by the Covered Entity to
21 Protected Health Information in a Designated Record Set, to the Covered Entity or, as
22 directed by the Covered Entity, to an Individual in order to meet the requirements under
23 45 CFR 164.524.
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26 (i) The Business Associate agrees to make any amendment (s) to Protected
27 Health Information in a Designated Record Set that the Covered Entity directs or agrees
28 to pursuant to 45 CFR 164.526 at the request of the Covered Entity or an Individual, and
29 in the time and manner designated by the Covered Entity.
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32 (j) The Business Associate agrees to make internal practices, books, and records
33 relating to the use and disclosure of Protected Health Information received from, or
34 created or received by the Business Associate on behalf of, the Covered Entity, available
35 to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time
36 and manner designated by the Covered Entity or the Secretary, for purpose of the
37 Secretary determining the Covered Entity's compliance with the Privacy Rule.
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41 (k) The Business Associate agrees to document such disclosures of Protected
42 Health Information and information related to such disclosures as would be required for
43 the Covered Entity to respond to a request by an Individual for an accounting of
44 disclosures of Protected Health Information in accordance with 45 CFR 164.528.
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47 (l) The Business Associate agrees to provide to the Covered Entity or an
48 Individual, in time and manner designated by the Covered Entity, information collected
49 in accordance with this Appendix of the Agreement, to permit the Covered Entity to
50 respond to a request by an Individual for an accounting of disclosures of Protected Health
51 Information in accordance with 45 CFR 164.528.
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54 General Use and Disclosure Provisions
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56 Except as otherwise limited in this Agreement, the Business Associated may use
57 or disclose Protected Health Information on behalf of, or to provide services to, the
58 Covered Entity for the following purposes, if such use or disclosure of Protected Health
59 Information would not violate the Privacy Rule or the Department of Defense Health
60 Information Privacy Regulation if done by the Covered Entity:
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5 *[List Purposes] – None.*
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8 Specific Use and Disclosure Provisions
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10 (a) Except as otherwise limited in the Agreement, the Business Associate may
11 use Protected Health Information for the proper management and administration of the
12 Business Associate or to carry out the legal responsibilities of the Business Associate.
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15 (b) Except as otherwise limited in this Agreement, the Business Associate may
16 disclose Protected Health Information for the proper management and administration of
17 the business Associate, provided that disclosures are required by law, or the Business
18 Associate obtains reasonable assurances from the person to whom the information is
19 disclosed that it will remain confidential and used or further disclosed only as required by
20 law or for the purpose for which it was disclosed to the person, and the person notifies the
21 Business Associate of any instances of which it is aware in which the confidentiality of
22 the information has been breached.
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25 (c) Except as otherwise limited in this Agreement, the Business Associate may
26 use Protected Health Information to provide Data Aggregation services to the Covered
27 Entity as permitted by 45 CFR 164.504 (e) (2) (i) (B).
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30 (d) Business Associate may use Protected Health Information to report violations
31 of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502 (j)
32 (1).
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36 Obligations of the Covered Entity
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38 Provisions for the Covered Entity to Inform the Business Associate of Privacy Practices
39 and Restrictions
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41 (a) Upon request the Covered Entity shall provide the Business Associate with
42 the notice of privacy practices that the Covered Entity produces in accordance with 45
43 CFR 164.520, as well as any changes to such notice.
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46 (b) The Covered Entity shall provide the Business Associate with any changes in,
47 or revocation of, permission by Individual to use or disclose Protected Health
48 Information, if such changes affect the Business Associate's permitted or required uses
49 and disclosures.
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52 (c) The Covered Entity shall notify the Business Associate of any restriction to
53 the use or disclosure of Protected Health Information that the Covered Entity has agreed
54 to in accordance with 45 CFR 164.522.
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58 Permissible Requests by the Covered Entity
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60 The Covered Entity shall not request the Business Associate to use or disclose Protected
61 Health Information in any manner that would not be permissible under the Privacy Rule
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4 if done by the Covered Entity, except for providing Data Aggregation services to the
5 Covered Entity and for management and administrative activities of the Business
6 Associate as otherwise permitted by this Appendix.
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9 Termination

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11 (a) Termination. A breach by the Business Associate of this Appendix, may
12 subject the Business Associate to termination under any applicable default or termination
13 provision of this Agreement.
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16 (b) Effect of Termination.

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18 (1) If this Agreement has records management requirements, the records
19 subject to the Appendix should be handled in accordance with the records management
20 requirements. If this Agreement does not have records management requirements, the
21 records should be handled in accordance with paragraphs (2) and (3) below.
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25 (2) If this Agreement does not have records management requirements,
26 except as provided in paragraph (3) of this section, upon termination of this Agreement,
27 for any reason, the Business Associate shall return or destroy all Protected Health
28 Information received from the Covered Entity, or created or received by the Business
29 Associate on behalf of the Covered Entity. This provision shall apply to Protected Health
30 Information that is in the possession of subcontractors or agents of the Business
31 Associate. The Business Associate shall retain no copies of the Protected Health
32 Information.
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36 (3) If this Agreement does not have records management provisions and
37 the Business Associate determines that returning or destroying the Protected Health
38 Information is infeasible, the Business Associate shall provide to the Covered Entity
39 notification of the conditions that make return or destruction infeasible. Upon mutual
40 Agreement of the Covered Entity and the Business Associate that return or destruction of
41 Protected Health Information is infeasible, the Business Associate shall extend the
42 protections of this Agreement to such Protected Health Information and limit further uses
43 and disclosures of such Protected Health Information to those purposes that make the
44 return or destruction infeasible, for so long as the Business Associate maintains such
45 Protected Health Information.
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49 Miscellaneous

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51 (a) Regulatory References. A reference in this Appendix to a section in the
52 Privacy Rule means the section as in effect or as amended, and for which compliance is
53 required.
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57 (b) Survival. The respective rights and obligations of Business Associate under
58 the “Effect of Termination” provision of this Appendix shall survive the termination of
59 this Agreement.
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(c) Interpretation. Any ambiguity in this Appendix shall be resolved in favor of a meaning that permits the Covered Entity to comply with the Privacy Rule.

Signatories
