



BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (hereinafter, the “Agreement”) is made and entered into as of the _____ day of _____, 20__, by and between _____ (“Business Associate”) located at _____ and the University of Mississippi Medical Center with its primary campus located at 2500 North State Street, Jackson, MS 39216 and satellite locations located throughout the State (“Covered Entity”) (or, alternately, “UMMC”).

WITNESSETH:

WHEREAS, Covered Entity and Business Associate have entered into one or more arrangements (the “Underlying Arrangement”), pursuant to which Business Associate will perform services, activities or functions for, or on behalf of, Covered Entity which may require access to, or the use or disclosure of, Protected Health Information; and

WHEREAS, Business Associate and Covered Entity desire to enter into this Agreement in order to comply with the national standards for the privacy and security of Protected Health Information adopted by the Department of Health and Human Services (“DHHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the Health Information Technology for Economic and Clinical Health Act (“HITECH Act”), and the respective regulations promulgated thereto, including without limitation, the privacy standards set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and E (the “Privacy Rule”), the security standards set forth at 45 C.F.R. Part 160 and Part 164, Subparts A and C (the “Security Rule”), and the breach notification rule set forth at 45 C.F.R. Part 164, Subpart D (the “Breach Notification Rule”), as amended by the Final HIPAA Omnibus regulations published by DHHS on January 25, 2013 (collectively referred to herein as, the “HIPAA Regulations”).

NOW THEREFORE, in consideration of the mutual promises herein contained, it is agreed as follows:

1. Definitions. For purposes of this Agreement, terms used but not otherwise defined in this Agreement shall have the meaning ascribed to those terms by the HIPAA Regulations. “Protected Health Information” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created, received, maintained, or transmitted by Business Associate for, or on behalf of, Covered Entity. As used in this Agreement, Protected Health Information shall also include Electronic Protected Health Information.

2. Permitted Uses and Disclosures. Business Associate may Use and Disclose Protected Health Information solely to perform its duties, obligations and services under the Underlying Arrangement and in accordance with the terms of this Agreement. Business Associate may Use and Disclose Protected Health Information as necessary for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate (collectively, “Business Associate’s Operations”). Business Associate may Disclose Protected Health Information as necessary for Business Associate’s Operations only if:

(a) the Disclosure is required by law; or (b) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it 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 agrees to notify Business Associate immediately of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached. Except as otherwise limited by this Agreement, and to the extent necessary to provide services under the Underlying Arrangement, Business Associate may Use and Disclose Protected Health Information to provide Data Aggregation services relating to the health care operations of Covered Entity. For purposes of this Agreement, "Data Aggregation" shall have the meaning given such term in 45 C.F.R. § 164.501.

3. De-Identification. Business Associate shall not de-identify Protected Health Information except with the express written consent of, and for the benefit of, Covered Entity in its sole discretion. If such consent is given, Business Associate shall comply with the requirements of 45 C.F.R. § 164.514(b) relating to the de-identification of Protected Health Information. Any data created from de-identifying Protected Health Information by or on behalf of Business Associate, whether or not created in accordance with the terms of this Agreement, shall be and remain exclusively the property of Covered Entity, and Business Associate assigns to Covered Entity all of Business Associate's right, title, and interest in and to any such data, if any, and Business Associate shall neither use any such data for any purpose other than to provide the services under the Underlying Arrangement nor disclose such data to any third party except with the prior written consent of Covered Entity or as otherwise required by applicable law.

4. Duties of Business Associate. Business Associate agrees to comply in all material respects with the HIPAA Regulations when Using or Disclosing Protected Health Information, including:

a. Business Associate will not Use or Disclose Protected Health Information received from Covered Entity in any way other than as permitted or required by this Agreement or as required by law.

b. Business Associate will exercise appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as necessary for Business Associate to perform its obligations pursuant to the Underlying Arrangement.

c. Business Associate will promptly report to Covered Entity any Use or Disclosure of Protected Health Information which is not permitted or required by this Agreement or in violation of the HIPAA Regulations and mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any unauthorized Use or Disclosure.

d. Business Associate will ensure that any Subcontractor or agent to whom Business Associate Discloses Protected Health Information agrees, in a writing that complies with the requirements of 45 C.F.R. § 164.504(e)(2) through (e)(4), to be bound by the same restrictions, conditions and duties that apply to Business Associate with respect to such information. Business Associate shall also ensure that any Subcontractor or agent that creates, receives, maintains or transmits Electronic Protected Health Information on behalf of Business Associate agrees to comply with the applicable requirements of the Security Rule with respect to such information. Business Associate will identify all such Subcontractors and agents to the Covered Entity, upon request.

e. If Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall provide access to such information at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual (or Individual's designee), in accordance with the requirements of 45 C.F.R. § 164.524. Business Associate shall notify Covered Entity within five (5) business days of any request for access by an Individual. Covered Entity shall determine whether to grant or deny any access requested by the Individual.

f. If Business Associate maintains Protected Health Information in a Designated Record Set, Business Associate shall make any amendments to such Protected Health Information that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526, within fifteen (15) days of such request. Business Associate shall have a process in place for appending such requests to the Designated Record Set, as requested by Covered Entity. Business Associate shall notify Covered Entity within five (5) business days of any request for amendment by an Individual. Covered Entity shall determine whether to grant or deny any amendment requested by the Individual.

g. Business Associate will make its internal policies and procedures, and its books and records relating to Uses and Disclosures of Protected Health Information received from Covered Entity or created or received by the Business Associate on behalf of Covered Entity, available to the Covered Entity or to the Secretary of DHHS (or its designee) for purposes of determining Business Associate's and Covered Entity's compliance with the HIPAA Regulations. Business Associate agrees to notify Covered Entity immediately upon receipt by Business Associate of a request by or on behalf of any federal, state or local government authority served upon Business Associate for Protected Health Information or information relating to this Agreement. Notwithstanding the foregoing, no attorney-client or other privilege shall be deemed waived by Business Associate or Covered Entity by virtue of this provision.

h. Business Associate agrees to document and make available to Covered Entity or, at the request of Covered Entity, to the Individual, and within such time and manner reasonably requested by Covered Entity, such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request for an accounting of disclosures in accordance with 45 C.F.R. § 164.528 and Section 13405(c) of the HITECH Act, and any regulations promulgated thereto. Business Associate shall notify Covered Entity within five (5) business days of any request for an accounting of disclosures by an Individual. This Section shall survive termination of the Agreement.

i. Business Associate will comply with the applicable provisions of the Security Rule, including, but not limited to, implementing Administrative Safeguards, Physical Safeguards, and Technical Safeguards (the "Safeguards") that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Covered Entity. To the extent feasible, Business Associate will use commercially reasonable efforts to ensure that the technology safeguards used by Business Associate to secure Electronic Protected Health Information will render such information unusable, unreadable and indecipherable to individuals not authorized to acquire or access such information in accordance with DHHS Guidance published at 74 Federal Register 19006 (April 17, 2009) or such later regulations or guidance promulgated by DHHS or issued by the National Institute for Standards and Technology (NIST) concerning the protection of identifiable data.

j. Business Associate will request, Use or Disclose only the minimum amount of Protected Health Information necessary to serve the intended purposes of this Agreement, in accordance with the minimum necessary standards at 45 C.F.R. § 164.502(b).

k. Business Associate will not export Protected Health Information, nor permit its Subcontractors or agents to export Protected Health Information beyond the borders of the United States of America, without the prior written consent of Covered Entity.

l. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of Security Incidents. Business Associate shall report promptly to Covered Entity any successful Security Incident within five (5) business days of Business Associate becoming aware of such Security Incident; provided, however, that with respect to any unsuccessful attempt at unauthorized access, Use, Disclosure, modification, or destruction of information or interference with system operations in an information system, such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denial of service attacks and any combination of the above, Business Associate shall make such report available to

Covered Entity upon request. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of any successful Security Incident.

m. To the extent Business Associate is to carry out any obligation of Covered Entity under the Privacy Rule, Business Associate will comply with the same Privacy Rule requirements that apply to Covered Entity in the performance of such obligation.

n. Business Associate shall not Use or Disclose Protected Health Information for purposes of marketing or fundraising, or receive remuneration, directly or indirectly, in exchange for Protected Health Information.

o. Business Associate shall notify Covered Entity of any breach of computerized sensitive personal information to assure Covered Entity's compliance with the security breach notification requirements of Title 75, Chapter 24, Section 29, Mississippi Code, as amended from time to time.

5. Duties of Covered Entity. Covered Entity agrees to:

a. Notify Business Associate of any limitation(s) in its Notice of Privacy Practices to the extent that such limitation(s) may affect Business Associate's Use or Disclosure of Protected Health Information;

b. Notify Business Associate of any changes in, or revocation of, the permission by an Individual to Use or Disclose his or her Protected Health Information, to the extent such changes affect Business Associate's Use or Disclosure of Protected Health Information;

c. Notify Business Associate of any restriction to the Use or Disclosure of Protected Health Information that Covered Entity has agreed to in accordance with the HIPAA Regulations; and

d. Not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under the HIPAA Regulations if done by Covered Entity, unless such Use or Disclosure is included in the Services to be performed pursuant to this Agreement and is for Data Aggregation or Business Associate's Operations as specified herein.

6. Breach of Unsecured Protected Health Information. Business Associate agrees to implement reasonable systems for the discovery and prompt reporting of any unauthorized use or disclosure or Breach of Unsecured Protected Health Information. Upon an actual or suspected Breach of any Unsecured Protected Health Information, Business Associate shall notify Covered Entity without unreasonable delay and in no case later than five (5) business days of Business Associate discovering such Breach, or of when Business Associate should have discovered such Breach by exercising reasonable diligence. Such notice shall include identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, Breached, and such other information as Covered Entity may require in order to meet its obligations under 45 C.F.R. § 164.404, including, without limitation, (i) a description of the Breach, including the date of the Breach and its discovery; (ii) the types of information involved in the Breach; (iii) to extent known, the identity of the individual(s) who caused the Breach and the recipient(s) of the data; (iv) a description of Business Associate's investigation efforts; and (v) a description of Business Associate's mitigation and prevention efforts. Business Associate agrees to cooperate with Covered Entity in investigating any potential Breach and in complying with its reporting obligations under the Breach Notification Rule, and Business Associate shall have a continuing duty to inform Covered Entity of new information learned by Business Associate regarding a Breach. Business Associate agrees to reimburse Covered Entity for all reasonable costs incurred by Covered Entity in connection with a Breach, including without limitation, the cost of preparing and distributing notifications to affected Individuals and, as applicable, to DHHS and the media; the cost of providing affected Individuals with credit monitoring services for a specified period not to exceed twenty-four (24) months, or longer if required by law, to the extent the Breach could lead to a compromise of the data

subject's credit or credit standing; call center support for such affected Individuals for a specific period not to exceed thirty (30) days from the date notice is sent to affected Individuals; and the costs of any other measures required under applicable law. This Section shall survive expiration or termination of this Agreement and shall remain in effect for so long as Business Associate maintains Protected Health Information.

7. Term; Termination. This Agreement shall be in effect for the entire length of the Underlying Arrangement, unless earlier terminated as provided below.

a. Covered Entity may terminate this Agreement and the Underlying Arrangement upon written notice to Business Associate of a material breach of the Agreement or violation of the HIPAA Regulations that remains uncured following ten (10) days written notice, or immediately if cure is not possible or there has been a breach of Protected Health Information.

b. Upon termination or expiration of this Agreement, Business Associate shall return to Covered Entity or destroy, upon Covered Entity's written consent, all Protected Health Information received from or on behalf of Covered Entity or created for or on behalf of Covered Entity that Business Associate maintains in any form and all copies of such Protected Health Information. This provision shall also 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. All rights, duties and obligations established in this Agreement shall survive termination of the Underlying Arrangement. The effective date of termination of this Agreement shall be when all of the Protected Health Information received from or on behalf of Covered Entity or created for or on behalf of Covered Entity is destroyed or returned to Covered Entity. 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.

8. Change of Law. In the event any state or federal laws or regulations now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that any provision of this Agreement may be in violation of such laws or regulations, the parties shall negotiate in good faith any amendments to this Agreement as necessary to comply with such laws and regulations. To the maximum extent possible, any such amendment shall preserve the underlying rights, duties and obligations established in this Agreement.

9. Injunction. The parties acknowledge and agree that irreparable harm may result to Covered Entity in the event of a breach of this Agreement or violation of the HIPAA Regulations by Business Associate, and Business Associate hereby agrees that Covered Entity shall be entitled to seek an injunction to enjoin and restrain Business Associate from any continued breach or violation. Such right shall be in addition to the remedies otherwise available to Covered Entity at law or in equity. Business Associate expressly waives the defense that a remedy in damages will be adequate and further waives any requirement in an action for specific performance or injunction for the posting of a bond by Covered Entity.

10. Indemnification; Insurance. Business Associate will indemnify and hold Covered Entity and its officers, directors, employees, agents, affiliates, successors and assigns harmless from and against any and all claims, damages, liabilities, losses and expenses (including reasonable attorney's fees) based upon or arising out of: (1) Business Associate's breach of this Agreement or violation of the HIPAA Regulations; or (ii) any third-party claim based upon any breach of this Agreement or violation of the HIPAA Regulations by Business

Associate. Upon Covered Entity's written request, Business Associate shall obtain and maintain, throughout the term of this Agreement, liability insurance coverage for reasonable costs and expenses associated with a data breach or privacy or security violation, with policy limits of not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) in the aggregate. Promptly following Covered Entity's written request, Business Associate shall deliver to Covered Entity a certificate evidencing Business Associate's maintenance of such insurance. This Section shall survive termination or expiration of this Agreement, and Business Associate's indemnity obligation hereunder is without regard to any limitation or exclusion of damages or liability provision otherwise set forth in the Agreement or in any other agreement.

11. Audit and Inspection. Within ten (10) business days of a written request by Covered Entity, Business Associate shall allow Covered Entity (or its agents) to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures governing the privacy and security of Protected Health Information; provided, however, that (i) the parties shall mutually agree in advance upon the reasonable scope, timing and location of such 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) upon request of Business Associate, Covered Entity agrees to execute a nondisclosure agreement prior to such inspection, upon terms mutually agreed upon by the parties. Business Associate shall notify Covered Entity promptly within five (5) business days of learning that Business Associate has become the subject of an audit or compliance review or investigation by DHHS or other state or federal government authority with respect to Business Associate's compliance with the HIPAA Regulations.

12. General Provisions.

a. Notices. Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been delivered when given in the manner set forth below to the following addresses or fax numbers:

If to Business Associate:

If to Covered Entity:

University of Mississippi Medical Center
Office of Integrity and Compliance
2500 North State Street
Jackson, MS 39216
ATTN: Privacy Officer
Fax: (601) 815-3946
CC: Office of the General Counsel

Counsel to a party may give notice on behalf of a party. Such communications shall be deemed to have been given (a) three days after mailing, when mailed by registered or certified postage-paid mail, (b) on the next business day, when delivered by a same-day or overnight national courier service or the U.S. Post Office Express Mail or (c) upon the date of receipt by the addressees when delivered personally or by fax. A party must receive a notice of change of address for it to be effective.

b. Entire Agreement; Amendment. This writing constitutes the entire and only agreement of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, understandings and agreements concerning the obligations regarding the Use and Disclosure of Protected Health Information; provided, however, if any written agreement between the parties imposes obligations and

restrictions on Business Associate regarding Protected Health Information over and above those imposed by this agreement, those obligations and restrictions are not superseded hereby and shall survive. This Agreement may be amended, modified, superseded, canceled, renewed or extended only by a written instrument executed by the parties herein.

c. **Waiver.** The failure by any party at any time to require performance or compliance by another of any of its obligations or agreements shall in no way affect the right to require such performance or compliance at any time thereafter. The waiver by any party of a breach of any provision hereof shall not be taken or held to be a waiver of any preceding or succeeding breach of such provision or as a waiver of the provision itself. No waiver of any kind shall be effective or binding, unless it is in writing and is signed by the party against which such waiver is sought to be enforced.

d. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and permitted assigns.

e. **Assignment.** Neither party may assign or otherwise transfer its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other party to this Agreement.

f. **Captions: Language.** The section headings contained in this Agreement are for the purposes of convenience only and are not intended to define or limit the contents of such sections. In this Agreement, unless the context requires otherwise, the singular includes the plural, the plural the singular, and the word "or" is used in the inclusive sense.

g. **No Third-Party Beneficiaries.** Except as otherwise provided herein, no third party shall be considered a third-party beneficiary under this Agreement, nor shall any third party have any rights as a result of this Agreement.

h. **Relationship of the Parties.** Nothing contained herein is intended to create, nor shall this Agreement be construed as creating, a relationship of employer-employee, principal-agent, partnership or any relationship between the parties other than that of an independent contractor.

i. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed to evidence one and the same agreement.

j. **Applicable Law.** This Agreement and its validity, construction, and performance shall be governed in all respects by the laws of the State of Mississippi. In the event of any action or proceeding arising under this Agreement, the parties consent and agree that the forum for such action shall be in a court of competent jurisdiction located in Hinds County, Mississippi.

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

BUSINESS ASSOCIATE:

COVERED ENTITY:

Business Associate

University of Mississippi Medical Center

By: _____

By: _____
Stacy Baldwin

Title: _____

Title: Chief Integrity Officer