

## ATTACHMENT C

### HIPAA Business Associate Agreement

This HIPAA Business Associate Agreement ("BAA"), effective as of \_\_\_\_\_, is made by and between The University of Kentucky (the "UNIVERSITY" and \_\_\_\_\_ (the "COMPANY") for the purpose of compliance with the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, and regulations issued pursuant thereto ("**HIPAA**"). This BAA hereby amends and is incorporated into any underlying agreement between UNIVERSITY and the Company (the "Agreement"). In consideration of the foregoing and of the mutual covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree to the foregoing and as follows:

#### **1. HIPAA Privacy Regulations.**

- (a) **General.** COMPANY acknowledges that it is a Business Associate of UNIVERSITY for purposes of HIPAA's Standards for Privacy of Individually Identifiable Health Information, (as the same may be amended from time to time, the "**Privacy Regulations**"). Accordingly, from and after April 14, 2003 or the effective date of this Agreement, whichever is later, (the "**Privacy Compliance Date**"), COMPANY shall comply with the provisions set forth in **Attachment A** with respect to UNIVERSITY's Protected Health Information.
- (b) **Uses and Disclosures of Protected Health Information.** From and after the Privacy Compliance Date, Company shall Use and Disclose Protected Health Information only as necessary to perform its obligations under the Agreement between UNIVERSITY and the Company dated (insert date of underlying agreement here) ("Agreement"). Notwithstanding the foregoing, COMPANY may Use Protected Health Information received by COMPANY in its capacity as a Business Associate of UNIVERSITY if necessary: (i) for the proper management and administration of COMPANY; and/or (ii) to carry out the legal responsibilities of COMPANY. COMPANY may Disclose Protected Health Information received by COMPANY in its capacity as a Business Associate of UNIVERSITY for the purposes described in **subsections (i) and (ii)** of this **subsection (b)** only if the Disclosure is: (iii) Required by Law; or (iv) COMPANY obtains reasonable assurances from the person to whom the Protected Health Information is disclosed that it will: (x) be held confidentially and Used or further Disclosed only as Required by Law or for the purpose for which it was Disclosed to the person; and (y) notify COMPANY of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.
- (c) **Failure to Comply with HIPAA Obligations; Opportunity to Cure; Termination.** If, following the Privacy Compliance Date, COMPANY notifies UNIVERSITY, or UNIVERSITY otherwise has reason to believe, that COMPANY has violated a material term of any of the requirements set forth in this **Section 1**, not later than five (5) calendar days following UNIVERSITY's request, the parties shall meet (in person or by telephone, as requested by UNIVERSITY) to discuss UNIVERSITY's concerns. Following such meeting, COMPANY shall advise UNIVERSITY whether it agrees or disagrees with UNIVERSITY's concerns. If COMPANY agrees with UNIVERSITY's concerns, not later than five (5) calendar days after such meeting, COMPANY shall propose to UNIVERSITY a plan for addressing UNIVERSITY's concerns (the "**Corrective Plan**") and, if necessary, the parties thereafter shall engage in good faith discussions in an effort to reach agreement on the terms of the Corrective Plan. If COMPANY materially fails to implement the terms of the mutually agreed Corrective Plan, then, in addition to any other rights and remedies that may be available to UNIVERSITY, UNIVERSITY shall have the right to terminate the Agreement. If COMPANY

disagrees with UNIVERSITY's concerns, then COMPANY and UNIVERSITY will follow the dispute resolution procedures set forth in the Agreement, or, if dispute resolution procedures are not set forth in the Agreement, then the parties will engage in good faith discussions at successively higher levels of management until the dispute has been resolved. Notwithstanding the foregoing or any contrary provisions or terms in the Agreement, if the parties are unable to reach agreement on the terms of the Corrective Plan or otherwise are unable to reach agreement with respect to UNIVERSITY's concerns within ninety (90) calendar days following UNIVERSITY's initial request for a meeting as described above, then, upon written notice to COMPANY, UNIVERSITY shall have the right to terminate the Agreement if UNIVERSITY has determined that COMPANY has violated a material term of any of its HIPAA-related obligations hereunder. Such termination shall be without liability or further obligation on the part of UNIVERSITY to COMPANY, except for those provisions that survive any termination of the Agreement.

- (d) **Treatment of Protected Health Information.** Notwithstanding anything contained in the Agreement to the contrary, Protected Health Information shall not be included within any definition of "confidential" or "proprietary" information or any other similar term(s) in the section(s) of the Agreement related to protection of confidential or proprietary information, if any. COMPANY's obligations with respect to Protected Health Information are set forth in this BAA.
- (e) **Defined Terms.** Capitalized terms used in this **Section (1)** and in **Attachment A**, but not defined herein, shall have the meanings ascribed to them in the Privacy Regulations.

**2. Changes or Modifications to HIPAA and/or HIPAA Regulations.** If, following the effective date of this BAA, HIPAA and/or any of the HIPAA regulations are modified and/or additional regulations are issued pursuant to HIPAA (each, a "**Modification**") and, as a result, UNIVERSITY determines that modifications to the terms of the Agreement are required in order for UNIVERSITY to comply with such Modification(s) (including by way of example and not of limitation, if additional provisions are required to be included in agreements between Covered Entities and Business Associates), promptly following UNIVERSITY's request, the parties shall engage in good faith negotiations regarding any modifications to the terms of this Agreement that may be necessary or appropriate. If the parties are unable to agree on any such modifications to the terms of the Agreement following such good faith negotiations, which negotiations shall not exceed ninety (90) calendar days from the date of UNIVERSITY's request for negotiations unless otherwise agreed to by the parties, then following expiration of such ninety (90) calendar day period, UNIVERSITY shall have the right to terminate the Agreement as of a date specified in a notice of termination to COMPANY, which date shall be any date on or before the applicable compliance date relating to such Modification. Such termination shall be without liability or further obligation on the part of UNIVERSITY to COMPANY, except for those provisions that survive any termination of the Agreement.

**3. Effect of BAA.** If there are any conflicts between the terms of the Agreement and the terms of this BAA, the terms of the BAA shall control. All non-conflicting terms of the Agreement shall survive and continue in full force and effect.

**IN WITNESS WHEREOF**, duly authorized representatives of each of UNIVERSITY and the Company have executed this BAA as of the Effective Date.

**UNIVERSITY OF KENTUCKY**

**COMPANY:** \_\_\_\_\_

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

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

Name: \_\_\_\_\_

Name: \_\_\_\_\_

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

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

**BUSINESS ASSOCIATE REQUIREMENTS UNDER PRIVACY REGULATIONS**

1. COMPANY shall not Use or further Disclose Protected Health Information except as permitted or required by the Agreement (including this BAA) or as Required by Law.
2. COMPANY shall use appropriate safeguards to prevent Use or Disclosure of Protected Health Information other than as provided for in the Agreement (including this BAA).
3. COMPANY shall report to UNIVERSITY any Use or Disclosure of Protected Health Information not permitted under the terms of the Agreement (including this BAA) of which it becomes aware.
4. COMPANY shall ensure that any agents, including subcontractors, to whom COMPANY provides Protected Health Information received from, or created or received by COMPANY on behalf of, UNIVERSITY agree to the same restrictions and conditions that apply to COMPANY with respect to such Protected Health Information.
5. COMPANY shall make available Protected Health Information to Individuals in accordance with Section 164.524 of the Privacy Regulations.
6. COMPANY shall make available Protected Health Information for BAA and incorporate any BAAs to Protected Health Information in accordance with Section 164.526 of the Privacy Regulations.
7. COMPANY shall make available the information required to provide an accounting of disclosures in accordance with Section 164.528 of the Privacy Regulations.
8. COMPANY shall make available its internal practices, books and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by COMPANY on behalf of, UNIVERSITY available to the Secretary for purposes of determining UNIVERSITY's compliance with the Privacy Regulations.
9. Upon termination of the Agreement, if feasible, COMPANY shall return or destroy all Protected Health Information received from, or created or received by COMPANY on behalf of, UNIVERSITY that COMPANY still maintains in any form and retain no copies of such Protected Health Information. If such return or destruction of Protected Health Information is not feasible, COMPANY shall comply with the terms of the Agreement (including this BAA) that are applicable to Protected Health Information for as long as COMPANY retains the Protected Health Information and shall limit its further Uses and Disclosures of such Protected Health Information to those purposes that make the return or destruction of the Protected Health Information infeasible.