



Lexington-Fayette Urban County Government  
DIVISION OF FIRE & EMERGENCY SERVICES

Jim Gray  
Mayor

Keith L. Jackson  
Fire Chief

**BUSINESS ASSOCIATE AGREEMENT ("BAA")**

This Business Associate Agreement ("BAA") is entered into by and between Lincoln Memorial University DeBusk College of Osteopathic Medicine ("Business Associate") and LFUCG Division of Fire and Emergency Services ("Covered Entity") and is effective as of this 25th day of February 2014 (the "BAA Effective Date").

**RECITALS**

- A. Business Associate is providing services to Covered Entity under an existing written agreement (the "Underlying Agreement"), and Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of such Underlying Agreement, 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 Underlying Agreement in compliance with (i) the Health Insurance Portability and Accountability Act of 1996, Public Law No. 104-191 ("HIPAA"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations"); and (ii) Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), also known as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-005 ("ARRA").
- C. The purpose of this BAA is to satisfy certain standards and requirements of HIPAA, the Privacy Rule and the Security Rule (as those terms are defined below), and the HITECH Act, including, but not limited to, Title 45, §§ 164.314(a)(2)(i), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R."), and 42 U.S.C. §§ 17931(a) and 17934(a).

**SECTION 1: DEFINITIONS**

"Breach" shall have the same meaning given to such term in 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

"Designated Record Set" shall have the same meaning as the term "designated record set" in 45 C.F.R. § 164.501.

"Electronic Health Record" shall have same meaning given to such term in 42 U.S.C. § 17921(5).

**“Electronic Protected Health Information”** or **“Electronic PHI”** 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. § 160.103, as applied to the information that Business Associate creates, receives, maintains or transmits from or on behalf of Covered Entity.

**“Individual”** shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

**“Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and E.

**“Protected Health Information”** or **“PHI”** shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, as applied to the information created or received by Business Associate from or on behalf of Covered Entity.

**“Required by Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

**“Secretary”** shall mean the Secretary of the Department of Health and Human Services or his or her designee.

**“Security Incident”** shall have the meaning given to such term in 45 C.F.R. § 164.304, but shall not include, (a) unsuccessful attempts to penetrate computer networks or servers maintained by Business Associate and (b) immaterial incidents that occur on a routine basis, such as general “pinging” or “denial of service” attacks.

**“Security Rule”** shall mean the Security Standards at 45 C.F.R. Parts 160 and 162 and Part 164, Subparts A and C.

**“Unsecured PHI”** shall have the same meaning given to such term under 42 U.S.C. § 17932(h), and guidance promulgated thereunder.

Capitalized Terms. Unless the context indicates otherwise, Capitalized terms used in this BAA and not otherwise defined herein shall have the meanings set forth in the Privacy Rule, the Security Rule, and the HITECH Act, which definitions are incorporated in this BAA by reference.

## **SECTION 2: PERMITTED USES AND DISCLOSURES OF PHI**

2.1 Uses and Disclosures of PHI Pursuant to the Underlying Agreement. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

2.2 Permitted Uses of PHI by Business Associate. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

2.3 Permitted Disclosures of PHI by Business Associate. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that the disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person (which purpose must be consistent with the limitations imposed upon Business Associate pursuant to this BAA), and that the person agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached. Business Associate may use PHI to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1).

2.4 Data Aggregation. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B), including use of PHI for statistical compilations, reports, research and all other purposes allowed under applicable law.

2.5 De-identified Data. Business Associate may create de-identified PHI in accordance with the standards set forth in 45 C.F.R. § 164.514(b) and may use or disclose such de-identified data for any purpose.

2.6 Disclosure Pursuant to Authorization. Without limiting the generality of the foregoing, Business Associate reserves the right at its sole discretion to disclose an Individual's PHI in response to and in accordance with a valid authorization executed by such individual that meets the requirements set forth in the Privacy Rule.

### **SECTION 3: OBLIGATIONS OF BUSINESS ASSOCIATE**

#### **3.1 Appropriate Safeguards.**

3.1.1 Privacy of PHI. Business Associate will develop, implement, maintain, and use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by the Underlying Agreement and this BAA. The safeguards must reasonably protect PHI from any intentional or unintentional use or disclosure in violation of the Privacy Rule and this BAA, and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this BAA.

3.1.2. Security of PHI. Business Associate will develop, implement, maintain, and use appropriate administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI, as required by the Security Rule. Commencing on February 17, 2010, Business Associate will comply with the provisions of 45 C.F.R. §§ 164.308, 164.310, 164.312 and 164.316 relating to implementation of administrative, physical and technical safeguards with respect to Electronic PHI in the same manner that such provisions apply to a HIPAA covered entity. Business Associate will also comply with any additional security requirements contained in the HITECH Act that are applicable to a business associate.

3.2 Reporting of Improper Use or Disclosure, Security Incident or Breach. Business Associate will report to Covered Entity any use or disclosure of PHI not provided for by the Underlying Agreement of which it becomes aware. Business Associate will report to Covered Entity any Security Incident of which it becomes aware. Business Associate will notify Covered Entity of any Breach of Unsecured PHI as soon as practicable, and no later than 30 days after discovery of such Breach. Business Associate's notification to Covered Entity of a Breach will include: (a) the identification of each individual whose Unsecured PHI has been, or is reasonably

believed by Business Associate to have been, accessed, acquired or disclosed during the Breach; and (b) any particulars regarding the Breach that Covered Entity would need to include in its notification, as such particulars are identified in 42 U.S.C. § 17932 and 45 C.F.R. § 164.404.

**3.3 Business Associate's Agents.** Business Associate will ensure that any agent or subcontractor to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to restrictions and conditions that are substantially similar to those that apply through this BAA to Business Associate with respect to such PHI. Business Associate will ensure that any agent, including a subcontractor, to whom it provides Electronic PHI agrees to implement reasonable and appropriate safeguards to protect such information.

**3.4 Access to PHI.** The parties do not intend for Business Associate to maintain any PHI in a Designated Record Set for Covered Entity. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity pursuant to 45 C.F.R. § 164.524 and 42 U.S.C. § 17935(e)(1), as applicable, within ten business days of Business Associate's receipt of a written request from Covered Entity; provided, however, that Business Associate is not required to provide such access where the PHI contained in a Designated Record Set is duplicative of the PHI contained in a Designated Record Set possessed by Covered Entity. If an Individual makes a request for access pursuant to 45 C.F.R. § 164.524 directly to Business Associate, or inquires about his or her right to access, Business Associate will direct the Individual to Covered Entity.

**3.5 Amendment of PHI.** The parties do not intend for Business Associate to maintain any PHI in a Designated Record Set for Covered Entity. To the extent Business Associate possesses PHI in a Designated Record Set, Business Associate agrees to make such information available to Covered Entity for amendment pursuant to 45 C.F.R. § 164.526 within 20 business days of Business Associate's receipt of a written request from Covered Entity. If an Individual submits a written request for amendment pursuant to 45 C.F.R. § 164.526 directly to Business Associate, or inquires about his or her right to amendment, Business Associate will direct the Individual to Covered Entity.

**3.6 Documentation of Disclosures.** Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and 42 U.S.C. § 17935(c), as applicable. Business Associate will document, at a minimum, the following information ("Disclosure Information"): (a) the date of the disclosure; (b) the name and, if known, the address of the recipient of the PHI; (c) a brief description of the PHI disclosed; (d) the purpose of the disclosure that includes an explanation of the basis for such disclosure; and (e) any additional information required under the HITECH Act and any implementing regulations.

**3.7 Accounting of Disclosures.** Business Associate agrees to provide to Covered Entity, within 20 business days of Business Associate's receipt of a written request from Covered Entity, information collected in accordance with Section 3.6 of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528, and 42 U.S.C. § 17935(c), as applicable.

**3.8 Governmental Access to Records.** As may be required by law, Business Associate will make its internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule and the Security Rule.

3.9 Mitigation. To the extent practicable, Business Associate will cooperate with Covered Entity's efforts to mitigate a harmful effect that is known to Business Associate of a use or disclosure of PHI not provided for in this BAA.

3.10 Minimum Necessary. Business Associate will request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with 42 U.S.C. § 17935(b) and regulations promulgated thereunder.

3.11 Limitation on Marketing. Business Associate may use and disclose PHI for marketing purposes only as expressly directed by Covered Entity, and in accordance with 42 U.S.C. § 17936(a). Business Associate will not use or disclose PHI for fundraising purposes.

3.12 Limitation on Sale of Electronic Health Records and PHI. Business Associate will comply with the prohibition on the sale of Electronic Health Records and PHI set forth in 42 U.S.C. § 17935(d).

3.13 HITECH Act Applicability. Business Associate acknowledges that enactment of the HITECH Act amended certain provisions of HIPAA in ways that now directly regulate, or will on future dates directly regulate, Business Associate under the Privacy Rule and Security Rule. To the extent not referenced or incorporated herein, requirements applicable to Business Associate under the HITECH Act are hereby incorporated by reference into this BAA. Business Associate agrees to comply with applicable requirements imposed under the HITECH Act, as of the effective date of each such requirement.

#### **SECTION 4: OBLIGATIONS OF COVERED ENTITY**

4.1 Notice of Privacy Practices. Covered Entity will notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI. Covered Entity will provide such notice no later than 15 days prior to the effective date of the limitation.

4.2 Notification of Changes Regarding Individual Permission. Covered Entity will notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI. Covered Entity will provide such notice no later than 15 days prior to the effective date of the change. Covered Entity will obtain any consent or authorization that may be required by the Privacy Rule, or applicable state law, prior to furnishing Business Associate with PHI.

4.3 Notification of Restrictions to Use or Disclosure of PHI. Covered Entity will notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522 or 42 U.S.C. § 17935(a), to the extent that such restriction may affect Business Associate's use or disclosure of PHI. Covered Entity will provide such notice no later than 15 days prior to the effective date of the restriction. If Business Associate reasonably believes that any restriction agreed to by Covered Entity pursuant to this Section may materially impair Business Associate's ability to perform its obligations under the Underlying Agreement or this BAA, the parties will mutually agree upon any necessary modification of Business Associate's obligations under such agreements.

4.4 Permissible Requests by Covered Entity. Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule, the Security Rule or the HITECH Act if done by Covered Entity, except as permitted pursuant to the provisions of Sections 2.2, 2.3, 2.4, 2.5 and 2.6 of this BAA.

## **SECTION 5: TERM AND TERMINATION**

5.1 Term. The term of this BAA will commence as of the BAA Effective Date, and will terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with Section 5.3.

5.2 Termination for Cause. Upon either party's knowledge of a material breach by the other party of this BAA, such party will provide written notice to the breaching party detailing the nature of the breach and providing an opportunity to cure the breach within 30 business days of receipt of such notice. Upon the expiration of such 30 day cure period, the non-breaching party may terminate this BAA and, at its election, the Underlying Agreement, if cure is not accomplished or possible.

5.3 Effect of Termination.

5.3.1 Except as provided in Section 5.3.2, upon termination of the Underlying Agreement or this BAA for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity, and will retain no copies of the PHI. This provision will apply to PHI that is in the possession of subcontractors or agents of Business Associate.

5.3.2 If it is infeasible for Business Associate to return or destroy the PHI upon termination of the Underlying Agreement or this BAA, Business Associate will: (a) extend the protections of this BAA to such PHI; (b) limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI; and (c) never disclose such PHI to another Business Associate client or third party unless such information has been de-identified in accordance with the standards set forth in 45 C.F.R. § 164.514(b).

5.3.3 Upon termination of this Agreement for any reason, business associate, with respect to protected health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity, shall:

1. Retain only that protected health information which is necessary for business associate to continue its proper management and administration or to carry out its legal responsibilities;
2. Return to covered entity [or, if agreed to by covered entity, destroy] the remaining protected health information that the business associate still maintains in any form;
3. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as business associate retains the protected health information;
4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at [Insert section number related to paragraphs (e) and (f) above under "Permitted Uses and Disclosures By Business Associate"] which applied prior to termination; and

5. Return to covered entity [or, if agreed to by covered entity, destroy] the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

## **SECTION 6: SURVIVAL**

The respective rights and obligations of Business Associate under Section 5.3 of this BAA will survive the termination of the BAA and the Underlying Agreement.

## **SECTION 7: EFFECT OF BAA**

In the event of any inconsistency between the provisions of this BAA and the Underlying Agreement, the provisions of the BAA will control. In the event of inconsistency between the provisions of this BAA and mandatory provisions of the Privacy Rule, the Security Rule or the HITECH Act, as amended, or their interpretation by any court or regulatory agency with authority over Business Associate or Covered Entity, such interpretation will control; provided, however, that if any relevant provision of the Privacy Rule, the Security Rule or the HITECH Act is amended in a manner that changes the obligations of Business Associate or Covered Entity that are embodied in terms of this BAA, then the parties agree to negotiate in good faith appropriate non-financial terms or amendments to this BAA to give effect to such revised obligations. Where provisions of the BAA are different from those mandated in the Privacy Rule, the Security Rule, or the HITECH Act, but are nonetheless permitted by such rules as interpreted by courts or agencies, the provisions of the BAA will control.

## **SECTION 8: GENERAL MISCELLANEOUS**

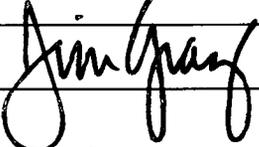
**General.** This BAA is governed by, and will be construed in accordance with, the laws of the State that govern the Underlying Agreement. Any action relating to this BAA must be commenced within one year after the date upon which the cause of action accrued. Covered Entity will not assign this BAA without the prior written consent of Business Associate, which will not be unreasonably withheld. If any part of a provision of this BAA is found illegal or unenforceable, it will be enforced to the maximum extent permissible, and the legality and enforceability of the remainder of that provision and all other provisions of this BAA will not be affected. All notices relating to the parties' legal rights and remedies under this BAA will be provided in writing to a party, will be sent to its address set forth in the Underlying Agreement, or to such other address as may be designated by that party by notice to the sending party, and will reference this BAA. This BAA may be modified, or any rights under it waived, only by a written document executed by the authorized representatives of both parties. Nothing in this BAA will confer any right, remedy, or obligation upon anyone other than Covered Entity and Business Associate. This BAA is the complete and exclusive agreement between the parties with respect to the subject matter hereof, superseding and replacing all prior agreements, communications, and understandings (written and oral) regarding its subject matter.

**Designation of Transmission of Information.** At the written direction of Covered Entity at termination, the Business Associate shall transmit PHI to another Business Associate of Covered Entity

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

**Interpretation.** Any ambiguity in the terms of this Agreement shall to be interpreted to permit compliance with HIPAA Rules.

IN WITNESS WHEREOF, the parties have caused this Business Associate Agreement to be executed in their names by their duly authorized representatives as of the date first above written.

<b>Business Associate</b> Lincoln Memorial University DeBusk College of Osteopathic Medicine Address: 6965 Cumberland Gap Parkway Harrogate, TN 37752	<b>Covered Entity</b> LFUCG Division of Fire and Emergency Services 219 East Third Street Lexington KY 40508
Signed 	Signed 
Name B. James Dawson	Name JIM GRAY
Title President	Title MAYOR
Date 3-18-14	Date 5-28-14