HIPAA BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), effective _____, 2021 ("Effective Date") is entered into by and between _____ (the "Business Associate") and the **University of Kentucky** ("Covered Entity"), (each a "Party" and collectively the "Parties").

The Parties have entered into an arrangement by which the Business Associate uses and/or discloses PHI in performing Services on behalf of the Covered Entity ("Underlying Agreement"). When used in this Agreement, the term Underlying Agreement means all existing or future agreements or arrangements between the Parties in which Business Associate uses and/or discloses PHI in performing Services on behalf of the Covered Entity. The Parties are committed to complying with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as amended by the Health Information Technology for Economic and Clinical Health Act ("HITECH Act"), and its implementing regulations, including, without limitation, the Privacy and Security Rules (collectively "HIPAA Rules"). This Agreement, in conjunction with the Privacy and Security Rules, sets forth the terms and conditions pursuant to which PHI (electronic and non-electronic) that is created, received, maintained, or transmitted by, the Business Associate from or on behalf of Covered Entity, will be handled between the Business Associate and Covered Entity and with third Parties during the term of their Underlying Agreement and after its termination. Therefore, in consideration of the mutual promises, covenants, terms and conditions contained herein and intending to be legally bound, the Parties agree as follows:

1. PERMITTED USES AND DISCLOSURES OF PHI

1.1 Services. Pursuant to the Underlying Agreement, Business Associate provides services ("Services") for Covered Entity that involve the use and disclosure of PHI. Except as otherwise specified herein, the Business Associate may make any and all uses and disclosures of PHI in the amount minimally necessary to perform its obligations under the Underlying Agreement provided that such use or disclosure shall not violate the HIPAA Rules if done by the Covered Entity. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents, in accordance with Section 2.1(e) of this Agreement, or (ii) as otherwise permitted by or as required by the Privacy or Security Rule. All other uses or disclosures not authorized by this Agreement are prohibited.

1.2 Business Activities of the Business Associate and Other Specific Uses and Disclosures. Unless otherwise limited herein and if permitted under the Privacy and Security Rules, the Business Associate may:

a. Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of the Business Associate provided that such uses are permitted under state and Federal confidentiality laws.

b. Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of the Business Associate, provided that the Business Associate represents to Covered Entity, in writing, that (i) the disclosures are Required by Law or (ii) the Business Associate has received from the third party reasonable assurances that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the third party as required under 45 C.F.R. § 164.504(e)(4) and § 164.314, and the third party notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this Agreement, use the PHI to provide data aggregation services relating to the health care operations of the Covered Entity.

d. Use PHI to report violations of law to appropriate state and Federal authorities, consistent with 45 CFR § 164.502(j)(1).

e. De-identify any and all PHI in its possession but only if such de-identification is accomplished in accordance with the Privacy Rule.

2. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

2.1 Responsibilities of the Business Associate. With regard to its use and/or disclosure of PHI, the Business Associate hereby agrees to do the following:

a. Not use or disclose PHI other than as permitted or required by the Agreement or as Required by Law;

b. Use and maintain appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, including, without limitation, implementing administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of Electronic PHI to prevent use or disclosure of PHI other than as provided for by the Agreement. Such safeguards must meet the requirements set forth in 45 CFR §§ 164.308, 164.310, 164.312 and 164.316 and be undertaken in a manner consistent with any guidance issued by the Secretary commencing on the effective date of such guidance. The Business Associate shall document and keep these safeguards current as proscribed by the Security Rule. Upon request by Covered Entity, Business Associate will provide evidence of all such safeguards utilized by Business Associate to safeguard Electronic PHI;

c. Report to Covered Entity the following occurrences of PHI, including those occurrences by the Business Associate's employees, representatives, agents or subcontractors: (i) any access, acquisition, use or disclosure of PHI not provided for by this Agreement, (ii) any breach of unsecured PHI (actual or suspected), and (iii) any security incident of which it becomes aware. Business Associate shall notify Covered Entity's Privacy Officer by telephone call immediately following the first day on which the Business Associate knows or by exercising reasonable diligence would have known of the occurrence. Within five (5) days of verbal notice, the Business Associate shall provide a full written report

of the occurrence to the Covered Entity's Privacy Officer, including, without limitation, (i) the names and contact information of each Individual whose PHI has been or is reasonably believed by the Business Associate to have been accessed, acquired, used or disclosed during the occurrence, (ii) a brief description of what happened, including the date of the occurrence and the date of discovery of the occurrence, if known, (iii) a description of the types of unsecured PHI involved in the occurrence, (iv) any steps Individuals should take to protect themselves from potential harm resulting from the occurrence, (v) a brief description of what Business Associate is doing to investigate the occurrence, to mitigate harm to Individuals and to protect against any further occurrences, (vi) any other information requested by Covered Entity or deemed relevant by Business Associate. Business Associate shall promptly supplement such notice with additional information as it becomes available. Notwithstanding the foregoing, the Parties understand that pings and other broadcast scans, unsuccessful log-on attempts, denial of service attacks and any combination of the above shall not be considered a security Incident, so long as no such incident results in the defeat or circumvention of any security control, or in the unauthorized access, use or disclosure of PHI provided by Covered Entity. Business Associate shall provide specific details on any such unsuccessful security incident upon Covered Entity's request.

d. Mitigate, to the extent practicable and at Business Associate's sole cost and expense, any harmful effect that is known to exist as a result of an occurrence of PHI described in Section 2.1(c) of this Agreement. Additionally, the Business Associate shall cooperate with the Covered Entity in its mitigation efforts, including without limitation, its efforts to recover its PHI or prevent or curtail such threatened or actual occurrence of PHI. In the event of an occurrence of PHI, Business Associate agrees to cooperate with the Covered Entity in complying with all state and Federal public notification requirements arising from such occurrence, including, without limitation, providing Covered Entity with any information necessary to comply with such notification requirements upon Covered Entity's request and, at Covered Entity's discretion, paying all costs and expenses related to notifying the effected Individuals. Such costs, if appropriate and reasonable under the circumstances, may include the actual cost of notification, setting-up and managing a toll-free number, email address, website and postal address and credit monitoring.

e. Ensure that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate through this Agreement with respect to such information, including, without limitation, using and maintaining safeguards in accordance with Section 2.1(b) of this Agreement.

f. Ensure that any agent or subcontractor to whom the Business Associate provides PHI, as well as Business Associate, not export PHI beyond the borders of the United States of America.

g. To the extent Business Associate has PHI in a designated record set and within the time and manner specified by Covered Entity, make available PHI in a designated record set to Covered Entity, or, as directed by Covered Entity, to the Individual entitled to access and copy of that PHI as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.524. If an Individual makes a request for access to PHI directly to Business Associate, Business Associate shall promptly notify Covered Entity in writing of the request and obtain Covered Entity's prior written consent before making such disclosure. If the Covered Entity is required to provide access to the Individual in electronic format, the Business Associate shall provide access to the Covered Entity, or, as directed by the Covered Entity, to the Individual in such electronic format if such format is readily producible, or in another readable electronic format as may be agreed to by the Business Associate or Covered Entity and Individual.

h. Within the time and manner specified by Covered Entity, make any amendment(s) or correction(s) to PHI in its possession contained in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526.

i. Document, maintain and, within the time and manner specified by the Covered Entity, make available to the Covered Entity or to the Individual, upon the Covered Entity's request, the information required to provide an accounting of disclosures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.528 and Section 13405(c) of the HITECH Act. Business Associate shall implement a process that allows for an accounting to be collected and maintained for any disclosure of PHI made by Business Associate or its employees, agents, representatives or subcontractors for which Covered Entity is required to maintain. If the Business Associate uses or maintains an electronic health record with respect to PHI, Business Associate agrees to document disclosures made through an electronic health record for treatment, payment or health care operations and information related to such disclosures as would be required for Covered Entity to respond to a request by Individual for an accounting of disclosures in accordance with 45 CFR § 164.528 and Section 13405(c) of the HITECH Act.

j. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation(s).

k. Upon request, make its internal practices, books, records, agreements, policies and procedures available to the Secretary in a time and manner specified by the Secretary for purposes of determining compliance with the HIPAA Rules and the terms of this Agreement. Unless otherwise prohibited by law, Business Associate shall promptly notify Covered Entity of communications with the Secretary regarding PHI provided by or created by Covered Entity and shall provide Covered Entity with copies of any information Business Associate has made available to the Secretary under this provision.

l. With respect to uses, disclosures and requests of PHI, comply with the minimum necessary requirements of the HIPAA Rules and any guidance from the Secretary on what constitutes minimum necessary commencing on the effective date of such guidance.

m. To the extent that Business Associate's Services provided for or on behalf of Covered Entity include regularly extending, renewing, or continuing credit to Individuals, or regularly allowing Individuals to defer payment for Services, including setting up payment plans in connection with one or more covered accounts as the term is defined by the Federal Trade Commission's Red Flag Rules, comply with the Red Flag Rules and, specifically, have in place and implement a written identity theft prevention program designed to identify, detect, mitigate and respond to suspicious activities that could indicate that identity theft has occurred in Business Associate's business practices.

n. Not sell any PHI. Further, Business Associate shall not receive any other remuneration, directly or indirectly, in exchange for PHI, unless so allowed by the terms of the Underlying Agreement, with the Covered Entity's prior approval, and in accordance with the HIPAA Rules.

o. Not engage in any marketing or fundraising activities or communications with any individual unless such marketing or fundraising activities or communications are allowed by the terms of the Underlying Agreement and are made with the Covered Entity's prior approval and in accordance with the HIPAA Rules. Further, any payment for marketing activities shall be in accordance with the HIPAA Rules.

p. Cooperate in good faith in response to any reasonable requests by Covered Entity to discuss, review and evaluate Business Associate's compliance with the HIPAA Rules and this Agreement. Should the Covered Entity determine that the Business Associate is not in compliance, the Business Associate shall cooperate with the Covered Entity to develop a mutually agreeable plan for becoming compliant.

2.2 Responsibilities of Covered Entity. With regard to the use and/or disclosure of PHI by the Business Associate, Covered Entity hereby agrees:

a. to inform the Business Associate of any limitations in the form of notice of privacy practices that Covered Entity provides to Individuals pursuant to 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

b. to inform the Business Associate of any changes in, or revocation of, the permission by an Individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

c. to notify the Business Associate, in writing and in a timely manner, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 CFR § 164.522, to the extent that such restriction may impact in any manner the use and/or disclosure of PHI by the Business Associate under this Agreement. If the Business Associate receives a request to restrict the disclosure of PHI directly from an Individual, Business Associate shall notify Covered Entity of such request and Covered Entity shall be responsible for making the determination, in accordance with the Privacy, as to whether Business Associate shall comply with that request.

d. Except if the Business Associate will use or disclose PHI for (and the Underlying Agreement includes provisions for) data aggregation or management, administration and legal activities and responsibilities of the Business Associate, the Covered Entity will not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by the Covered Entity.

3. TERMS AND TERMINATION

a. Term. The Term of this Agreement shall commence on the Effective Date, and shall remain in full force and effect unless terminated on the date Covered Entity terminates this Agreement for cause as authorized in Section 3(b) of this Agreement or the termination or expiration of the relevant Underlying Agreement as authorized in paragraph (d) of this Section, whichever is sooner.

b. Termination for Cause by Covered Entity. The Covered Entity may terminate immediately this Agreement and any related agreements covering the services provided by the Business Associate or on behalf of the Covered Entity if Covered Entity determines Business Associate has engaged in an activity or practice that constitutes a material breach or violation of the Agreement. Alternatively, the Covered Entity may elect to provide written notice of the material breach to the Business Associate, after which the Business Associate shall have thirty (30) days to take reasonable steps to cure the breach or end the violation. The Covered Entity may also require Business Associate to submit a plan of monitoring and reporting mutually agreed to by the Parties as Covered Entity may determine necessary to maintain compliance with this Agreement. If the Business Associate does not cure the breach or end the violation within the specified time, the Covered Entity may terminate this Agreement.

c. Obligations of Business Associate upon Termination, Cancellation or Expiration. Upon termination, cancellation or expiration of this Agreement for any reason, Business Associate agrees to return or destroy all PHI created or received from Covered Entity or created or received by Business Associate on behalf of Covered Entity in whatever form or medium in the possession or control of Business Associate or its agents and subcontractors. The Business Associate and its subcontractors or agents shall retain no copies of the PHI, including any compilations derived from and allowing identification of PHI. Prior to return or destruction, the Business Associate further agrees to recover any PHI in the possession or control of its subcontractors or agents and to notify its subcontractors or agents of the obligations set forth herein. If the Business Associate destroys PHI, it shall be done with the use of technology or methodology that renders PHI unusable, unreadable, or undecipherable to unauthorized individuals as specified by the Secretary's guidance.

If it is not feasible for the Business Associate to return or destroy the PHI, the Business Associate shall (i) notify Covered Entity in writing of the conditions making return or destruction infeasible, (ii) extend any and all protections, limitations and restrictions contained in this Agreement to such PHI, and (iii) limit any further uses and disclosures to the purposes that make the return or destruction infeasible for so long as Business Associate

maintains such PHI. If it is infeasible for the Business Associate to obtain, from a subcontractor or agent any PHI in the possession of the subcontractor or agent, the Business Associate must provide a written explanation to Covered Entity and require the subcontractors and agents to agree in writing to extend any and all protections, limitations and restrictions contained in this Agreement to the subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible for so long as the subcontractor or agent maintains such PHI.

d. Automatic Termination. This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Underlying Agreement.

4. INDEMNIFICATION

4.1 Indemnification. The Business Associate shall indemnify, defend and hold harmless Covered Entity and Covered Entity's employees, directors, officers, subcontractors, agents or other members of its workforce from any claims, inquiries, costs, damages, expenses, judgments, losses, and attorney's fees arising from any breach of this Agreement by Business Associate, or arising from any negligent or wrongful acts or omissions of Business Associate, including failure to perform its obligations under the Privacy Rule. The Business Associate's indemnification obligation shall survive the expiration or termination of this Agreement for any reason.

5. MISCELLANEOUS

5.1 Business Associate. For purposes of this Agreement, Business Associate shall include the named Business Associate herein.

5.2 Survival. The respective rights and obligations of Business Associate and Covered Entity under this Agreement, shall survive termination of this Agreement indefinitely.

5.3 Amendments; Waiver. This Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events. The Parties agree to take such action as is necessary to amend this Agreement from time to time in order for the Parties to comply with the HIPAA Rules and any other applicable law.

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

5.5 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

5.6 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

_____
_____
_____
Attention: _____
Fax: _____

with a copy (which shall not constitute notice) to:

_____
_____
_____
Attn: _____
Fax: _____

If to Covered Entity, to:

University of Kentucky
Attn: Lynn Crothers
Privacy Officer
2333 Alumni Park Plaza, Suite 330
Lexington, Kentucky 40517
Email: lynn.crothers@uky.edu
Fax: (859) 257-8325
Phone: (859) 323-1184

with a copy (which shall not constitute notice) to:

University of Kentucky
Attn: Jennifer Collins
Director of Clinical Contracting
Charles T. Wethington Building
900 Limestone Street, Suite 309G
Lexington, KY 40506-0020
Email: Jennifer.collins@uky.edu
Fax: (859) 257-5123
Phone: (859) 323-0006

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

5.7 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same document. Facsimile copies hereof shall be deemed to be originals.

5.8 Disputes. If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally, it being the intention of the Parties that they reasonably cooperate with each other in the performance of the mutual obligations under this Agreement.

5.9 Contradictory Terms. Any provision of the Underlying Agreement or any other agreement between the Business Associate and the Covered Entity that is directly contradictory to, conflicts with or is inconsistent with one or more terms of this Agreement ("Contradictory Term") shall be superseded by the terms of this Agreement as of the Effective Date of this Agreement to the extent and only to the extent of the contradiction, only for the purpose of the Covered Entity's compliance with the HIPAA Rules and only to the extent that it is reasonably impossible to comply with both the Contradictory Term and the terms of this Agreement.

5.10 Governing Law. This Agreement and any Underlying Agreement shall be governed by the laws of the Commonwealth of Kentucky notwithstanding any conflicts of law provisions to the contrary. The Parties further agree that any legal action which is brought on the basis of this Agreement and Underlying Agreement shall be filed in Franklin Circuit Court of the Commonwealth of Kentucky.

5.11 Assignment. Neither Party may assign any of its rights or obligations under this Agreement without the prior written consent of the other Party.

5.12 Nature of Agreement. Nothing in this Agreement shall be construed to create a partnership, joint venture, or other joint business relationship between the Parties or any of their affiliates, or a relationship of employer and employee between the Parties. Rather, it is the intention of the Parties that their relationship shall be that of independent contractors.

5.13 Entire Agreement. This Agreement constitutes the entire agreement between the Business Associate and the Covered Entity relating to matters specified in this Agreement and supersedes all prior representations or agreements, whether oral or written, with respect to such matters.

6. DEFINITIONS.

a. Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean the named Business Associate hereinabove.

b. Covered Entity. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean the named Covered Entity hereinabove, as well as any other entity specifically identified in any joint notice of privacy practices utilized pursuant to the Privacy Rule

c. HIPAA Rules. "HIPAA Rules" shall mean HIPAA, the HITECH Act, and their implementing regulations, including, without limitation, the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended for which compliance is required.

d. Electronic Protected Health Information or Electronic PHI. Electronic PHI which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media limited to the information created, received, maintained or transmitted by the Business Associate from or on behalf of the Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction or obligation in this Agreement related to the use or disclosure of PHI shall apply equally to Electronic PHI.

e. Privacy Officer. Privacy Officer shall have the meaning as set out in its definition at 45 C.F.R. § 164.530(a)(1) as such provision is currently drafted and as it is subsequently updated, amended or revised.

f. Privacy Rule. Privacy Rule shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164 and any other applicable provision of HIPAA and any amendments thereto.

g. Security Rule. Security Rule shall mean the Standards for Security of Electronic Protected Health Information at 45 CFR Parts 160, 162, and 164 and any other applicable provision of HIPAA and any amendments thereto.

h. Secretary. Secretary shall mean the Secretary of the United States Department for Health and Human Services or his designee.

i. Terms used, but not otherwise defined in this Agreement, shall have the same meaning as those terms in the HIPAA Rules.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf on the date set forth above.

Covered Entity

BUSINESS ASSOCIATE

By: _____

By:

_____

_____

_____

Print Name: _____

Print Name:

_____

_____

_____

Print Title: _____

Print Title:

_____

_____

_____

Date: _____

Business Associate

BUSINESS ASSOCIATE

By: _____

By:

_____

_____

_____

Print Name: _____

Print Name:

_____

_____

_____

Print Title: _____

Print Title:

_____

_____

_____

Date: _____