USM STUDENT HEALTH SERVICE
BUSINESS ASSOCIATE AGREEMENT

WHEREAS, The University of Southern Mississippi Student Health Service (USM SHS) also known as the “Covered Entity” and _____________________________________ also known as the “Business Associate” are parties to an agreement in which _____________________________________ has agreed to provide certain patient services for or on behalf of USM SHS. Covered Entity and Business Associate, collectively, may hereinafter be referred to as the “Parties.”

WHEREAS, Covered Entity and Business Associate are parties to one or more agreements and/or may in the future become parties to additional agreements (collectively, the “Underlying Agreements”), pursuant to which Business Associate provides certain services to Covered Entity; In connection with such services, Business Associate creates, receives, uses or discloses for or on behalf of Covered Entity certain individually identifiable Protected Health Information (PHI) relating to patients of Covered Entity that is subject to protection under the Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) and the regulations promulgated thereunder by the U.S. Department of Health and Human Services (hereinafter, “HIPAA Regulations”), and other applicable federal and state laws.

WHEREAS, the Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed pursuant to this Agreement and wish to comply in all respects with the requirements of HIPAA, including requirements applicable to the relationship between a Covered Entity and its Business Associates;

NOW, THEREFORE, in consideration of the foregoing and of the desire of USM SHS, the Covered Entity, and _____________________________________, the Business Associate, to continue providing or receiving services under Agreement, the parties agree as follows:

I. DEFINITIONS

a. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms set forth in the HIPAA Regulations.

b. “Breach” shall mean the acquisition, access, use or disclosure of Protected Health Information in a manner not permitted by the HIPAA Privacy Rule that compromises the security or privacy of the Protected Health Information as defined, and subject to the exceptions set forth in 45 CFR 164.402.

c. “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to 45 CFR 164.501.

d. “Electronic Protected Health Information” or “ePHI” means PHI that is transmitted by or maintained in electronic media as defined in 45 CFR 160.103.
e. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Parts 160 and 164, subparts A and E.

f. “Protected Health Information” or “PHI” shall mean Protected Health Information, as defined in 45 CFR 160.103, and is limited to the Protected Health Information received, maintained, created, or transmitted on behalf of Covered Entity by Business Associate in performance of the Agreement.

g. “Security Rule” shall mean the Standards for Security of Electronic Protected Health Information as specified in 45 CFR Parts 160 and 164 (subparts A and C).

II. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate specifically agrees to:

a. not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;

b. use appropriate physical, technical, and administrative safeguards to 1) prevent use or disclosure of PHI other than as permitted under this Agreement or as required by law; and 2) to reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity;

c. mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement;

d. report in writing to Covered Entity within two (2) business days after discovery, any suspected or actual: a) access, use or disclosure of PHI not permitted by this Agreement; b) breach of unsecured PHI in accordance with 45 CFR 164.410; c) security breach or intrusion; d) use or disclosure of PHI in violation of any applicable federal or state law or regulation. Business Associate will implement a reasonable system for discovery of breaches.

e. In accordance with 45 CFR 164.502(d)(1)(ii) and 45 CFR 164.308(b)(2), Business Associate shall ensure that any agents, including subcontractors, that create, receive, maintain, or transmit PHI on behalf of Business Associate, agree to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such PHI;

f. as required under and within the period of time permitted under 45 CFR 164.524, each Business Associate shall permit any individual whose PHI is maintained by the Business Associate, as provided for in terms of this agreement, to have access to and to obtain a copy of his or her PHI, including providing or sending a copy to a designated third party and providing or sending a copy in electronic format, to the extent that the PHI in Business Associate’s possession constitutes a
Designated Record Set. The Business Associate granting access may charge a reasonable, cost-based fee as permitted under 45 CFR 164.524 (e)(4);

g. Make available and make any amendment(s) to PHI in a Designated Record Set after receipt of a request from the Covered Entity or an individual, all in accordance with the requirements of 45 CFR 164.526.

h. Document 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 CFR 164.528.

i. Make available or provide to Covered Entity or an individual in the time and manner designated by Covered Entity, information collected in accordance with Section II(h) of this Agreement to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528.

j. To the extent Business Associate is to carry out Covered Entity’s obligation under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the HIPAA Privacy Rules that apply to Covered Entity in the performance of such obligations.

k. Make available 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, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary of the U.S. Department of Health and Human Services determining Covered Entity’s compliance with the Privacy and Security Rules. In the event such a request comes directly from the Secretary, Business Associate agrees to notify Covered Entity immediately of such request.

l. Request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure as per the requirements of 45 CFR 164.502(b) and 164.514(d).

m. Pursuant to the HITECH Act and its implementing regulations, Business Associate shall comply with all additional requirements of the Privacy Rule and the Security Rule at such time as the requirements are applicable to Business Associate. Business Associate will not directly or indirectly receive remuneration in exchange for any PHI subject to the exceptions contained in the HITECH Act, without a valid authorization from the applicable individual. Business Associate will not engage in any communication which might be deemed to be “marketing” under the HITECH Act.

n. Shall take all necessary steps, at the request of Covered Entity, to comply with requests by individuals not to send PHI to a health plan in accordance with 45 CFR 164.522(a).
o. Shall take reasonable steps to ensure that its employees’ actions or omissions do not cause Business Associate to breach the terms of this Agreement or violate provisions of HIPAA that apply to Business Associates.

III. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

Business Associate may use or disclose PHI under the following conditions:

a. as necessary to perform functions, activities, or provide the underlying services for, or on behalf of, Covered Entity provided that such use or disclosure would not violate the Privacy Rule of 45 CFR 164.504(e) if done by the Covered Entity;

b. for the proper management and administration of the Business Associate;

c. to carry out the legal responsibilities of the Business Associate;

d. to provide data aggregation services relating to the health care operations of the Business Associate;

e. as required by law; or

f. as expressly otherwise authorized under this Agreement.

Business Associate shall not use or disclose PHI for any other purpose or in any other manner.

IV. TERM AND TERMINATION

a. The term of this Agreement shall be effective as of the date the first PHI is released to Business Associate pursuant to this Agreement, and shall terminate on the termination date of the underlying service Agreement or on the date Covered Entity terminates this Agreement for cause as authorized in this Section, whichever is sooner.

b. Upon Covered Entity’s knowledge of a violation of a material term of the Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. Covered Entity may terminate this Agreement if Business Associate does not cure the breach or end the violation within the time specific by Covered Entity.

c. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

1. Retain only that PHI 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 PHI 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 PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

4. Not use or disclose the PHI retained by Business Associate other than for the purpose for which such PHI was retained and subject to the same conditions set out in Section III “Permitted Uses and Disclosures by Business Associate” which applies prior to termination; and

5. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI 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.

d. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

MISCELLANEOUS

a. Except as modified herein, the terms of the Agreement remain in full force and effect.

b. Business Associate agrees that it shall not attempt to nor shall it assign this agreement to any party and that any attempt to do so shall be void.

c. The failure by Covered Entity at any time to enforce the provisions of this agreement shall not be construed as a waiver of any such provision. Such failure to enforce shall not affect the validity of the contract or any part thereof or the right for Covered Entity to enforce the provisions at any time in accordance with the terms.

d. A reference in this Agreement to a section in the HIPAA rules means the section as in effect or as amended, and for which compliance is required.

e. The Parties agree to take such action as is necessary to amend the underlying Agreement from time to time as necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

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

g. No revision or modification of this Agreement shall be effective unless in writing and executed by authorized representative of both parties.
h. If any portion of this Agreement is held invalid, such invalidity shall not affect the validity of the remaining portions of the Agreement, and the parties will substitute for any such invalid portion hereof a provision which best approximates the effect and intent of the invalid provision.

i. This Agreement shall be governed by the laws of the State of Mississippi. Each of the parties to this Agreement hereby irrevocably and unconditionally: (i) consents to submit to the exclusive jurisdiction of the courts of Forrest County, Mississippi for any proceeding arising in connection with this Agreement and each such party agrees not to commence any such proceeding except in such courts, and (ii) waives any objection to the laying of venue of any such proceeding in the courts of Forrest County, Mississippi.

IN WITNESS WHEREOF, the parties have agreed to all of the terms and conditions of this agreement as of the day and year first written above, and the person executing this agreement on behalf of each party represents and warrants that this agreement has been authorized by all necessary parties, is validly executed by an authorized officer or agent, and is binding upon and enforceable against the Clinic in accordance with its terms.

THE UNIVERSITY OF SOUTHERN MISSISSIPPI

By:______________________________________

Printed Name: ____________________________

Title: ________________________________

Date:_______________________________

[BUSINESS ASSOCIATE NAME]

By:______________________________________

Printed Name: ____________________________

Title: ________________________________

Date:_______________________________