

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) dated _____, 2016 (the “Effective Date”), is entered into by and between **THE HOSPITAL AUTHORITY OF VALDOSTA AND LOWNDES COUNTY, GEORGIA, d/b/a South Georgia Medical Center**, a body corporate and politic, created pursuant to the Hospital Authority Law, hereinafter referred to as “Authority” and _____ hereinafter referred to as “ASSOCIATE”, for the purposes of complying with the privacy and security regulations issued by the United States Department of Health and Human Services under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and the security provisions of the American Recovery and Reinvestment Act of 2009 (“ARRA”). Authority and ASSOCIATE may be individually referred to as “Party”, and collectively referred to as the “Parties.”

WHEREAS, Authority and ASSOCIATE have entered into, or are entering into, or may subsequently enter into, agreements or other documented arrangements (collectively, the “Business Arrangements”) pursuant to which ASSOCIATE may provide services for Authority that require ASSOCIATE to access, create and use health information that is protected by state and/or federal law; and

WHEREAS, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the U.S. Department of Health & Human Services (“HHS”) promulgated the Standards for Privacy of Individually Identifiable Health Information (the “Privacy Standards”), at 45 C.F.R. Parts 160 and 164, requiring certain individuals and entities subject to the Privacy Standards (each a “Covered Entity”, or collectively, “Covered Entities”) to protect the privacy of certain individually identifiable health information (“Protected Health Information”, or “PHI”); and

WHEREAS, pursuant to HIPAA, HHS has issued the Security Standards (the “Security Standards”), at 45 C.F.R. Parts 160, 162 and 164, for the protection of electronic protected health information (“E PHI”); and

WHEREAS, in order to protect the privacy and security of PHI, including E PHI, created or maintained by or on behalf of Authority, the Privacy Standards and Security Standards require Authority to enter into a “business associate agreement” with certain individuals and entities providing services for or on behalf of Authority if such services require the use or disclosure of PHI or E PHI; and

WHEREAS, ASSOCIATE and Authority desire to enter into this Business Associate Agreement.

NOW THEREFORE, in consideration of the mutual promises set forth in this Agreement and the Business Arrangements, and other good and valuable consideration, the sufficiency and receipt of which are hereby severally acknowledged, the Parties agree as follows:

1. **ASSOCIATE Obligations.**

1.1 ASSOCIATE may receive from Authority, or create or receive on behalf of Authority, health information that is protected under applicable state and/or federal law, including without limitation, PHI and E PHI. All capitalized terms not otherwise defined in this Agreement shall have the meanings set forth in the Privacy Standards or Security Standards, as

applicable, and all references to PHI herein shall be construed to include EPHI. ASSOCIATE agrees not to use or disclose (or permit the use or disclosure of) PHI in a manner that would violate the requirements of the Privacy Standards or Security Standards if the PHI were used or disclosed by Authority in the same manner. ASSOCIATE shall use appropriate safeguards to prevent the use or disclosure of PHI other than as expressly permitted under this Agreement.

1.2 ASSOCIATE shall implement appropriate administrative, physical and technical safeguards and in all other respects comply with Subpart C of 45 CFR Part 164 in order to protect the confidentiality, integrity and availability of the PHI and EPHI that it creates, receives, maintains or transmits on behalf of Authority. ASSOCIATE covenants that such safeguards shall include, without limitation, implementing written policies and procedures in compliance with HIPAA and ARRA, conducting a security risk assessment, and training ASSOCIATE employees who will have access to PHI with respect to the policies and procedures required by HIPAA and ARRA.

1.3 In the event of a Security Incident, including a Breach (as hereinafter defined) or any other use or disclosure which is not permitted under this Agreement of any PHI or EPHI that ASSOCIATE accesses, maintains, retains, modifies, records, stores, destroys, or otherwise holds or uses on behalf of Authority in connection with the Business Arrangement, ASSOCIATE shall report such Security Incident or other incident to the Authority within ten (10) days of discovery by the ASSOCIATE. "Breach" shall mean the unauthorized acquisition, access, use, or disclosure of PHI which compromises the security or privacy of such information.

1.4 In the event of a Breach of Unsecured PHI, ASSOCIATE shall provide Authority with Notice thereof. Notice of a Breach shall include: (i) the identification of each individual whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the Breach; (ii) a brief description of the circumstances surrounding the Breach; (iii) the date of the Breach; (iv) the date of discovery of the Breach; (v) the scope of the Breach; (vi) ASSOCIATE's response to the Breach and the identification of the party responsible for causing the Breach, if known; (vii) a description of the types of unsecured PHI involved in the Breach (e.g. names, social security numbers, dates of birth, addresses, account numbers, diagnostic and disability codes, etc.); (viii) any steps which should be taken by affected individuals to protect themselves from potential harm resulting from the Breach; (ix) a brief description of what ASSOCIATE is doing to investigate the Breach, to mitigate harm to individuals, and to protect against any further Breaches; and (x) the name and contact information of a liaison whom the Authority may contact with inquiries concerning the Breach.

1.5 ASSOCIATE shall supplement any Notice of Breach provided to the Authority as information which was not known at the time of the original Notice of Breach becomes available.

1.6 In the event of a Breach, ASSOCIATE shall, in consultation with Authority, mitigate, to the extent practicable, any harmful effect of such Breach that is known to ASSOCIATE.

2. **Use of PHI.** ASSOCIATE shall use PHI: (i) solely for Authority's benefit and only for the purpose of performing services for Authority as such services are defined in Business Arrangements; and (ii) as necessary for the proper management and administration of ASSOCIATE or to carry out its legal responsibilities, provided that such uses are permitted under federal and state law. Except as otherwise expressly permitted herein or as required by

law, ASSOCIATE shall not use or disclose PHI for any purposes other than those stated above. Authority shall retain all rights in the PHI not granted herein. Use, creation and disclosure of de-identified health information by ASSOCIATE are not permitted unless expressly authorized in writing by Authority.

3. **Disclosure of PHI.** Subject to any limitations in this Agreement, ASSOCIATE may disclose PHI to any third party persons or entities as necessary to perform its obligations under the Business Arrangement with Authority and as permitted or required by applicable federal or state law. Further, ASSOCIATE may disclose PHI for the proper management and administration of ASSOCIATE, provided that: (i) such disclosures are required by law; or (ii) ASSOCIATE: (a) obtains reasonable assurances from any third party to whom the information is disclosed that it will be held confidential and further used and disclosed only as required by law or for the purpose for which it was disclosed to the third party; (b) requires the third party to agree to immediately notify ASSOCIATE of any instances of which it is aware that PHI is being used or disclosed for a purpose that is not otherwise provided for in this Agreement or for a purpose not expressly permitted by the Privacy Standards; and (c) ensures that all disclosures of PHI by ASSOCIATE and the third party comply with the principle of “minimum necessary use and disclosure,” i.e., only the minimum PHI that is necessary to accomplish the intended purpose may be disclosed. If ASSOCIATE discloses PHI received from Authority, or created or received by ASSOCIATE on behalf of Authority, to agents, including a subcontractor (collectively, “Recipients”), ASSOCIATE shall require Recipients to agree in writing to the same restrictions and conditions that apply to ASSOCIATE under this Agreement. To the extent permitted by law, ASSOCIATE shall be fully liable to Authority for any acts, failures or omissions of Recipients in furnishing the services as if they were ASSOCIATE’s own acts, failures or omissions. ASSOCIATE shall report to Authority any use or disclosure of PHI not permitted by this Agreement, of which it becomes aware, such report to be made within five (5) days of ASSOCIATE becoming aware of such use or disclosure. ASSOCIATE agrees to mitigate, to the extent practical and unless otherwise requested by Authority in writing, any harmful effect that is known to ASSOCIATE and is the result of a use or disclosure of PHI by ASSOCIATE or Recipients in violation of this Agreement.

4. **Individual Rights Regarding Designated Record Sets.** If ASSOCIATE maintains a Designated Record Set on behalf of Authority, ASSOCIATE shall: (i) provide access to, and permit inspection and copying of PHI by Authority or, as directed by Authority, an individual who is the subject of the PHI under conditions and limitations required under 45 CFR §164.524, as it may be amended from time to time; and (ii) amend PHI maintained by ASSOCIATE as requested by Authority. ASSOCIATE shall respond to any request from Authority for access by an individual within five (5) days of such request and shall make any amendment requested by Authority within ten (10) days of such request. The information shall be provided in the form or format requested, if it is readily producible in such form or format, or in summary, if the individual has agreed in advance to accept the information in summary form. A reasonable, cost-based fee for copying PHI may be charged. Authority shall determine whether a denial is appropriate or an exception applies. ASSOCIATE shall notify Authority within five (5) days of receipt of any request for access or amendment by an individual. Authority shall determine whether to grant or deny any access or amendment requested by the individual. ASSOCIATE shall have a process in place for requests for amendments and for appending such requests to the Designated Record Set, as requested by Authority.

5. **Accounting of Disclosures.** ASSOCIATE shall make available to Authority in response to a request from an individual, information required for an accounting of disclosures of PHI with respect to the individual, in accordance with 45 CFR §164.528, as it may be amended from time to time, incorporating exceptions to such accounting designated under the regulation. Such accounting is limited to disclosures that were made in the six (6) years prior to the request and shall not include any disclosures that were made prior to the compliance date of the Privacy Standards. ASSOCIATE shall provide such information necessary to provide an accounting within thirty (30) days of Authority's request. Such accounting must be provided without cost to the individual or to Authority if it is the first accounting requested by an individual within any twelve (12) month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if ASSOCIATE informs Authority and Authority informs the individual in advance of the fee, and the individual is afforded an opportunity to withdraw or modify the request. Such accounting obligations shall survive termination of this Agreement and shall continue as long as ASSOCIATE maintains PHI.

6. **Withdrawal of Authorization.** If the use or disclosure of PHI in this Agreement is based upon an individual's specific authorization for the use of his or her PHI, and: (i) the individual revokes such authorization in writing, (ii) the effective date of such authorization has expired, or (iii) the consent or authorization is found to be defective in any manner that renders it invalid, ASSOCIATE agrees, if it has notice of such revocation or invalidity, to cease the use and disclosure of any such individual's PHI except to the extent it has relied on such use or disclosure, or where an exception under the Privacy Standards expressly applies.

7. **Records and Audit.** ASSOCIATE shall make available to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") or its agents, its internal practices, books, and records relating to the use and disclosure of PHI received from, created, or received by ASSOCIATE on behalf of Authority for the purpose of determining Authority's compliance with the Privacy Standards or any other health oversight agency, in a time and manner designated by the Secretary. Except to the extent prohibited by law, ASSOCIATE agrees to notify Authority immediately upon receipt by ASSOCIATE of any and all requests by or on behalf of any and all government authorities served upon ASSOCIATE for PHI.

8. **Confidentiality.**

8.1 ASSOCIATE shall take any steps reasonably required to: (i) protect PHI from unauthorized uses or disclosures, and (ii) maintain the confidentiality and integrity of PHI.

8.2 The Parties shall comply with all federal and state laws governing the confidentiality and privacy of health information that are applicable to them, respectively, including, without limitation, HIPAA and the regulations promulgated thereunder, and ARRA and the regulations promulgated thereunder.

9. **Term and Termination.**

9.1 This Agreement shall commence on the Effective Date and shall remain in effect until terminated in accordance with the terms of this Section 9, provided, however, that any termination shall not affect the respective obligations or rights of the Parties arising under this Agreement prior to the effective date of termination, all of which shall continue in accordance with their terms.

9.2 Authority shall have the right to terminate this Agreement for any reason upon thirty (30) days written notice to ASSOCIATE.

9.3 Authority, at its sole discretion, may immediately terminate this Agreement and shall have no further obligations to ASSOCIATE hereunder if any of the following events shall have occurred and be continuing:

- (i) ASSOCIATE shall fail to observe or perform any material covenant or obligation contained in this Agreement for ten (10) days after written notice thereof has been given to ASSOCIATE by Authority; or
- (ii) A violation by ASSOCIATE of any provision of the Privacy Standards or applicable federal or state privacy law relating to the obligations of ASSOCIATE under this Agreement.

9.4 Termination of this Agreement for either of the two reasons set forth in Subsection 9.3 above shall be cause for Authority to immediately terminate for cause any Business Arrangement pursuant to which ASSOCIATE is entitled to receive PHI from Authority.

9.5 In the event that either Party has knowledge of a material breach of this Agreement by the other Party, and cure is not possible, the non-breaching Party shall terminate this Agreement. When neither cure nor termination is feasible, the non-breaching Party shall report the violation to the Secretary.

9.6 Upon the termination of all Business Arrangements, either Party may terminate this Agreement by providing written notice to the other Party.

9.7 Upon termination of this Agreement for any reason, ASSOCIATE agrees either to return to Authority or to destroy all PHI received from Authority or otherwise through the performance of services for Authority, that is in the possession or control of ASSOCIATE or its agents. In the case of PHI which is not feasible to “return or destroy,” ASSOCIATE shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as ASSOCIATE maintains such PHI. ASSOCIATE further agrees to comply with other applicable state or federal law, which may require a specific period of retention, redaction, or other treatment of such PHI. This provision shall survive termination of this Agreement for any reason.

10. **Compliance with Red Flag Rules.** In the event that ASSOCIATE is engaged to perform an activity in connection with any “covered account” as defined in 16 CFR §681.1 (as applicable to Authority as a “creditor” and therefore to ASSOCIATE as a “service provider” providing any service to Authority) ASSOCIATE agrees to: (i) fully adopt and comply with the Red Flag Rules (16 CFR §681.1) currently in effect and as may be promulgated in the future; (ii) adopt a Red Flag program (a pattern, practice, or specific activity that indicates the possible existence of identity theft) that is compliant with federal regulations as promulgated in 16 CFR §681.1; and (iii) take all necessary and appropriate steps to ensure that its activities undertaken as a part of this Agreement are conducted in accordance with the Red Flag Rules and its Red Flag program, including, without limitation, ensuring the adoption of and continued compliance with reasonable policies and procedures designed to detect, prevent, and mitigate risk of identity theft, detecting any Red Flag that may arise during the term of this Agreement, reporting any such Red

Flag to Authority, and taking any further steps as may be necessary to prevent or mitigate identity theft.

11. **Indemnification.** ASSOCIATE shall indemnify, defend, and hold Authority, its officers, directors, employees, agents, successors and assigns harmless, from and against any and all losses, claims, actions, demands, liabilities, damages, costs, and expenses (including costs of judgments, settlements, court costs and reasonable attorneys' fees, arising from or related to: (i) the use or disclosure of PHI in violation of the terms of this Agreement or applicable law; (ii) any Breach of Unsecured PHI caused by the acts or omissions of ASSOCIATE; and (iii) the failure of ASSOCIATE or any of its employees, subcontractors, or agents to abide by and comply with the Privacy Rules and the Security Rules. Authority shall have the right, at its expense, to participate in the defense of any claim or action for which ASSOCIATE must indemnify Authority.

12. **No Warranty.** PHI IS PROVIDED TO ASSOCIATE SOLELY ON AN "AS IS" BASIS. AUTHORITY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

13. **Ineligible Persons.** ASSOCIATE represents and warrants to Authority that ASSOCIATE: (i) is not currently excluded, debarred, or otherwise ineligible to participate in any federal health care program as defined in 42 U.S.C. Section 1320a-7b(f) ("the Federal Healthcare Programs"); (ii) has not been convicted of a criminal offense related to the provision of health care items or services and not yet been excluded, debarred, or otherwise declared ineligible to participate in the Federal Healthcare Programs, and (iii) is not under investigation or otherwise aware of any circumstances which may result in ASSOCIATE being excluded from participation in the Federal Healthcare Programs. This shall be an ongoing representation and warranty during the term of this Agreement, and ASSOCIATE shall immediately notify Authority of any change in the status of the representations and warranty set forth in this Section. Any breach of this Section shall give Authority the right to terminate this Agreement immediately for cause.

14. **Miscellaneous.**

14.1 **Notices.** All notices, requests, demands and other communications required or permitted to be given or made under this Agreement shall be in writing, shall be effective upon receipt or attempted delivery, and shall be sent by: (i) personal delivery; (ii) certified or registered United States mail, return receipt requested; or (iii) overnight delivery service with proof of delivery. Notices shall be sent to the addresses below. Neither Party shall refuse delivery of any notice hereunder.

If to Authority: Mr. Robert G. Foster
Chief Information Officer
South Georgia Medical Center
P. O. Box 1727
Valdosta, GA 31603-1727

With a Copy to: Mr. Walter H. New
Hospital Authority Counsel
P. O. Box 111
Quitman, GA 31643-0111

or

Mr. Walter H. New
Hospital Authority Counsel
201 Pendleton Drive, Suite 110
Valdosta GA 31602

If to ASSOCIATE: _____

Attention: _____

14.2 **Waiver.** No provision of this Agreement or any breach thereof shall be deemed waived unless such waiver is in writing and signed by the Party claimed to have waived such provision or breach. No waiver of a breach shall constitute a waiver of or excuse any different or subsequent breach.

14.3 **Assignment.** Neither Party may assign (whether by operation of law or otherwise) any of its rights or delegate or subcontract any of its obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, Authority shall have the right to assign its rights and obligations hereunder to any entity that is an affiliate or successor of Authority, without the prior approval of ASSOCIATE.

14.4 **Severability.** Any provision of this Agreement that is determined to be invalid or unenforceable will be ineffective to the extent of such determination without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such remaining provisions.

14.5 **Amendment.** This Agreement may be modified or amended only by a written agreement signed by the Parties hereto. If any of the regulations promulgated under HIPAA or ARRA are amended or interpreted in a manner that renders this Agreement inconsistent therewith, the Parties shall amend this Agreement to the extent necessary to comply with such amendments or interpretations.

14.6 **Entire Agreement.** This Agreement constitutes the complete agreement between ASSOCIATE and Authority relating to the matters specified in this Agreement, and supersedes all prior representations or agreements, whether oral or written, with respect to such matters. In the event of any conflict between the terms of this Agreement and the terms of the Business Arrangements or any such later agreement(s), the terms of this Agreement shall control unless the terms of such Business Arrangements are more strict with respect to PHI and comply with the Privacy Standards and/or Security Standards, or the Parties specifically otherwise agree in writing. No oral modification or waiver of any of the provisions of this Agreement shall be binding on either Party. No obligation on either Party to enter into any transaction is to be implied from the execution or delivery of this Agreement. This Agreement is for the benefit of, and shall be binding upon the Parties, their affiliates and respective successors and assigns. 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.

14.7 **Governing Law.** This Agreement shall be governed by and interpreted in accordance with the laws of the state in which Authority is located, excluding its conflicts of laws provisions. Jurisdiction and Venue for any dispute relating to this Agreement shall exclusively rest with the state and federal courts in the county in which Authority is located.

14.8 **Equitable Relief.** ASSOCIATE understands and acknowledges that any disclosure or misappropriation of any PHI in violation of this Agreement will cause Authority irreparable harm, the amount of which may be difficult to ascertain, and therefore agrees that

Authority shall have the right to apply to a court of competent jurisdiction for specific performance and/or an order restraining and enjoining any such further disclosure or breach and for such other relief as Authority shall deem appropriate. Such right of Authority is to be in addition to the remedies otherwise available to Authority at law or in equity. 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 Authority.

14.9 **Nature of Agreement.** Nothing in this Agreement shall be construed to create (i) a partnership, joint venture or other joint business relationship between the Parties or any of their affiliates, or (ii) a relationship of employer and employee between the Parties. This Agreement does not express or imply any commitment to purchase or sell goods or services.

14.10 **Counterparts.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document. In making proof of this Agreement, it shall not be necessary to produce or account for more than one such counterpart executed by the Party against whom enforcement of this Agreement is sought.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

AUTHORITY:

ASSOCIATE:

[The Hospital Authority of Valdosta and Lowndes County, Georgia, d/b/a South Georgia Medical Center]

[ASSOCIATE, Inc.]

By: _____

By: _____

Robert G. Foster

(Print or Type Name)

(Print or Type Name)

Chief Information Officer

(Title)

(Title)

Date: _____

Date: _____