BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is made as of the ____ day of ____, 201_ (the "Effective Date"), by and between _____ ("Covered Entity"), and the Arkansas Foundation for Medical Care ("AFMC"), a business associate of Covered Entity (collectively the "Parties") to comply with privacy standards adopted by the United States Department of Health and Human Services ("HHS"), 45 C.F.R. parts 160 and 164 (the "Privacy Rules") and security standards adopted by HHS, 45 C.F.R. parts 160, 162 and 164, subpart C (the "Security Rules"), the Health Insurance and Portability Accountability Act of 1996 as amended ("HIPAA"), 42 U.S.C.S. § 1320d *et seq*., the Health Information Technology for Economic and Clinical Health Act ("HITECH"), Title of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, and implementing regulations, as well as any applicable Arkansas confidentiality laws (collectively, the "Privacy and Security Laws and Regulations"). This Agreement revokes any previous business associate agreement between the parties executed for the same purposes.

I. RECITALS

WHEREAS, AFMC may provide services to Covered Entity under one or more AFMC contracts:

WHEREAS, in connection with the services provided under AFMC contracts, AFMC may have access to certain protected health information ("PHI") that is private and must be kept secure; and

WHEREAS, the Privacy and Security Laws and Regulations require, among other things, that Covered Entity receive adequate assurances that AFMC will comply with the Privacy and Security Laws and Regulations in the course of providing services to Covered Entity:

NOW THEREFORE, in consideration of the mutual promises and covenants herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree as follows:

II. DEFINITIONS:

a. Any terms used in this Business Associate Agreement that are not otherwise defined have the meanings ascribed by the Privacy and Security Laws and Regulations.

b. "Appropriate safeguards" means reasonable safeguards that are in accordance with current industry standards and practices.

c. "Breach" means any instance in which PHI is used, maintained, retained, modified, recorded, stored, destroyed, held or disclosed for a purpose that is not provided for in this agreement or expressly required or permitted under the Privacy and Security Laws and regulations.

d. "Breach notice" means a written notice containing all information necessary for Covered Entity to comply with 45 C.F.R. § 404(c).

e. "Individual" means the person who is the subject of PHI.

f. "Initial breach notice" means a written notice provided to the Covered Entity privacy officer within 5 days upon the discovery (within the meaning of 45 C.F.R. §164.410(a)) of a breach.

g. "Required by law" means a use or disclosure that is required by law as described in 45 C.F.R. § 164.412(a).

h. “Secretary” means the HHS Secretary.

i. “Subcontractor” means a person or entity that creates, receives, maintains, or transmits protected health information on behalf of a AFMC.

III. PURPOSES FOR WHICH COVERED ENTITY MAY DISCLOSE PHI TO AFMC. In connection with the services provided by AFMC to Covered Entity, Covered Entity may disclose PHI to AFMC for the purposes within the scope of each and every program listed in § I above with respect to which there is a current and effective agreement between AFMC and Covered Entity.

IV. COVERED ENTITY’S OBLIGATIONS: COVERED ENTITY will:

a. If applicable, provide AFMC a copy of its Notice of Privacy Practices (“Notice”) produced in accordance with 45 C.F.R. § 164.520 as well as any changes made to such Notice.

b. If applicable, provide AFMC with any changes in, or revocations of, authorization by Individuals relating to the use, disclosure, or both, of PHI if such changes affect AFMC’s permitted or required uses, disclosures, or both.

c. Notify AFMC of any restriction to the use or disclosure of PHI to which Covered Entity has agreed under 45 C.F.R. § 164.522, to the extent that such restriction may affect AFMC’s PHI use or disclosure.

d. Not ask AFMC to use or disclose PHI in any manner that is not permissible under the Privacy and Security Laws and Regulations if done by Covered Entity.

e. Notify AFMC of any amendment to PHI to which Covered Entity has agreed that affects a Designated Record Set maintained by AFMC in connection with the services provided by AFMC to or on behalf of Covered Entity.

f. Provide notice of any breach proximately caused by AFMC’s act or omission in accordance with the Privacy and Security Laws and Regulations.

g. If AFMC maintains a Designated Record Set, provide AFMC with a copy of any applicable Covered Entity policies and procedures related to an Individual’s right to:

(1) Access PHI;

(2) Request an amendment to the Individual’s PHI:

(3) Request confidential communications of the Individual’s PHI:

(4) Request an accounting of disclosure of the Individual’s PHI.

V. AFMC’s OBLIGATIONS.

a. AFMC will review, understand, and comply with the Privacy and Security Laws and Regulations applicable to AFMCs, and without limitation to such obligations:

(1) Will:

A. Not use or disclose PHI except as necessary to:

(i) Provide the services described in § III; or

(ii) Provide for AFMC’s proper management and administration;

(iii) Carry out AFMC's legal responsibilities; or

(iii) Comply with the Privacy and Security Laws and Regulations.

B. Not use or disclose PHI if the use or disclosure would violate the Privacy and Security Laws and Regulations if used or disclosed by Covered Entity.

C. Maintain appropriate safeguards to ensure that PHI is not used or disclosed other than as provided by this Agreement or as required by law. AFMC will implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any paper or electronic PHI it creates, receives, maintains, or transmits on behalf of Covered Entity.

D. Not directly or indirectly receive remuneration in exchange for any PHI except as permitted under the Privacy and Security Laws and Regulations.

E. Assure that PHI is secured when accessed by AFMC's employees, agents, or subcontractors. Access to PHI by AFMC's employees, agents, or subcontractors will be limited to legitimate business needs while working with PHI. Any AFMC personnel changes that eliminate the legitimate business needs for employees', agents' or contractors' access to PHI – either by revision of duties or termination – will result in immediate termination of unnecessary PHI access.

F. Ensure that all PHI uses and disclosures conform to the principle of "minimum necessary use and disclosure" such that only PHI that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request is used or disclosed; and that limited data sets are used when possible.

G. Provide comprehensive information and training regarding the Privacy and Security Laws and Regulations to its agents, employees, and contractors who have access to PHI.

H. Require its agents and subcontractors to agree that the same restrictions contained in this Agreement apply to the agents' and subcontractors' use and disclosure of any PHI that AFMC received from Covered Entity.

I. Warrant that its agents or subcontractors will be specifically advised of, and will comply in all respects with, the terms of this Agreement.

J. Reimburse Covered Entity for its actual and reasonable cost of providing breach notices under § IV. f.

K. Obtain reasonable assurances from any person or entity to whom PHI is disclosed that:

(i) The PHI will be held confidential and further used and disclosed only as required by law or for the purpose for which it was lawfully disclosed to the person or entity; and

(ii) The person or entity will notify AFMC of any instances of which it is aware in which confidentiality of the PHI has been breached.

L. Provide:

(i) Initial breach notice to the Covered Entity Privacy Officer within 5 days. Initial breach notification does not have to comply with 45 C.F.R. §164.404(c) but must include the name of each individual whose PHI was breached, a description of the information breached, the date of the breach, and the manner in which the breach occurred.

(ii) Breach notice without unreasonable delay, and no later than 25 days after the initial breach notice.

M. If AFMC maintains a Designated Record Set on behalf of Covered Entity:

(i) Permit Covered Entity, or at Covered Entity's direction, an Individual, to inspect or copy PHI about the Individual in that set as directed to meet the requirements of 45 C.F.R. § 164.524. If the PHI is in electronic format, the Individual has the right to obtain a copy of such information in electronic format and, if the Individual chooses, to direct that an electronic copy be transmitted directly to an entity or person designated by the individual in accordance with HITECH section 13405 (c). Under the Privacy and Security Laws and Regulations, Covered Entity must act on such requests as soon as possible, but not later than 30 days after receiving the request. AFMC agrees to make reasonable efforts to assist Covered Entity in meeting this deadline. The information will 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 health information may be charged. If Covered Entity maintains the requested records, Covered Entity, not AFMC, will permit access according to its policies and procedures implementing the Privacy Rule.

(ii) Amend PHI at the request and direction of Covered Entity under 45 C.F.R. §164.526. If AFMC maintains a record in a Designated Record Set that is not also maintained by Covered Entity, AFMC agrees that it will accommodate an Individual's request to amend PHI only in conjunction with a determination by Covered Entity that the amendment is appropriate according to the Privacy and Security Laws and Regulations.

N. Maintain documentation of the information required to provide an accounting of disclosures of PHI, whether PHI is paper or electronic format, in accordance with the Privacy and Security Laws and Regulations and to make this information available to Covered Entity upon Covered Entity's request to enable Covered Entity to respond to an Individual's request for accounting of disclosures. Under the Privacy and Security Laws and Regulations, Covered Entity must act on such requests as soon as possible but not later than 60 days after receiving the request. AFMC agrees to use its best efforts as soon as possible to assist Covered Entity to meet this deadline and to complete such assistance within 45 days after receiving the request. Such accounting must be provided without cost to the individual or Covered Entity if it is the first accounting requested by an individual within any 12-month period; however, a reasonable, cost-based fee may be charged for subsequent accountings if AFMC informs the individual in advance of the fee and the individual is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the six (6) years before the request (not including disclosures before the compliance date of the Privacy and Security Laws and Regulations) and must be provided for as long as AFMC maintains the PHI.

O. Make available its internal practices, policies, procedures, books and records relating to the use and disclosure of PHI, received from or on behalf of Covered Entity to the Secretary or his or her agents for the purpose of determining Covered Entity's compliance with the Privacy and Security Laws and Regulations, and to Covered Entity. Records requested that are not protected by an applicable legal privilege will be made available in the time and manner specified in the subpoena or request.

P. With respect to subpoenas other than those issued by or on behalf of the Secretary for the purpose of determining Covered Entity's compliance with the Privacy and Security Laws and Regulations, oppose such subpoenas to the extent such opposition is based on a reasonable inquiry and is well-

grounded in fact, legally tenable, and not interposed for any improper purpose.

Q. Abide by the limitations of Covered Entity's Notice of which it has knowledge. Any use or disclosure permitted by this Agreement may be amended by changes to Covered Entity's Notice; provided, however, that the amended Notice will not affect permitted uses and disclosures on which AFMC relied before receiving notice of such amended Notice.

R. Cease the use, disclosure, or both, of an Individual's PHI if the use or disclosure of PHI is based upon an Individual's specific authorization for the use or disclosure of his or her PHI and AFMC receives notice that the Individual revoked such authorization, the effective date of such authorization has expired, or such authorization is found to be defective in any manner that renders it invalid, unless an exception under the Privacy and Security Laws and Regulations expressly permits such use, disclosure, or both.

S. Notify Individuals whose PHI has been breached by AFMC only in compliance with Covered Entity's direction, control, and express written permission. AFMC will bear the cost of this notification.

T. Permit Covered Entity to inspect and copy records of AFMC, and to audit AFMC, to determine whether AFMC is in compliance with the terms of this Agreement. However, this provision does not obligate Covered Entity to conduct any inspection or audit.

(2) Except as otherwise limited in this agreement may:

A. Use and disclose PHI for data aggregation purposes in the course of working for more than one covered entity, provided that such use and disclosure is limited to data analysis for permitted health care operations, and only to the extent such use is permitted by the Privacy and Security Laws and Regulations.

B. Use and disclose de-identified health information with Covered Entity's written approval provided that the PHI is de-identified in compliance with the Privacy and Security Laws and Regulations and the other applicable provisions of this Agreement.

C. Use and disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Business Associate Agreement or in a Master Services Agreement, provided that such use or disclosure would not violate the privacy and Security Laws and Regulations if done by Covered Entity or under any applicable Covered Entity minimum necessary policies and procedures.

D. Use PHI to report violations of law to appropriate Federal and State authorities in accordance with the Privacy and Security Laws and Regulations.

b. AFMC acknowledges and agrees that Covered Entity owns all right, title, and interest in and to all PHI that is the subject of this business associate agreement, and that such right, title, and interest is vested in Covered Entity. Neither AFMC nor any of its employees, agents, consultants or assigns has any rights in any of the PHI, except as expressly set forth above. AFMC represents, warrants, and covenants that it will not compile or distribute analyses to third parties using any PHI that is the subject of this business associate agreement without Covered Entity's express written consent.

c. If AFMC violates any Privacy and Security Law or Regulation, sections 1176 and 1177 of the Social Security Act (42 U.S.C. 1320d-5, 1320d-6) apply to AFMC with respect to such violation in the same manner that such sections apply to Covered Entity if it violates such provisions.

VI. TERM AND TERMINATION.

a. This Agreement is effective as of the Effective Date and is terminated when all PHI provided to AFMC by Covered Entity, or created or received by AFMC on behalf of Covered Entity, is destroyed or returned to Covered Entity.

b. Upon Covered Entity's knowledge of a material breach by AFMC, Covered Entity will either:

(1) Provide an opportunity for AFMC to cure the breach or end the violation and terminate this Agreement, whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement, if AFMC does not cure the breach or end the violation within the time specified by Covered Entity; or

(2) Immediately terminate this Agreement whether it is in the form of a stand-alone agreement or an addendum to a Master Services Agreement if AFMC has breached a material term of this Agreement and cure is not possible.

c. Upon termination of this Agreement for any reason, AFMC agrees to return or destroy all PHI received from Covered Entity, or created or received by AFMC on behalf of Covered Entity, maintained by AFMC in any form. If the PHI is destroyed, AFMC will, within 10 days of destruction, furnish Covered Entity with a certification of the date and manner of destruction. If AFMC determines that the return or destruction of PHI is not feasible under the Privacy and Security Laws and Regulations, AFMC will provide Covered Entity with a written, detailed explanation for its determination. Transmission of the explanation extends the protections of this Agreement to such PHI. If Covered Entity agrees with AFMC's determination, further uses and disclosures of the PHI are limited to those purposes that make the return or destruction of the PHI not feasible for so long as AFMC retains the PHI. If Covered Entity does not agree with AFMC's explanation, AFMC will immediately return or destroy the PHI.

VII. MISCELLANEOUS.

a. Indemnification.

(1) To the extent permitted by law, AFMC agrees to indemnify and hold harmless Covered Entity from and against all claims, demands, liabilities, judgments or causes of action of any nature for any relief, elements of recovery or damages recognized by law (including, without limitation, reasonable attorney's fees, defense costs, and equitable relief), for any harm, damage, or loss incurred by Covered Entity proximately caused by any acts or omissions or other conduct of AFMC or its agents in connection with the performance of AFMC's or its agents' duties under this Agreement.

(2) Covered Entity has the option, at its sole discretion, to select and employ attorneys to defend any such action, the reasonable costs and expenses of which are AFMC's responsibility. Covered Entity will provide AFMC with timely notice of the existence of such proceedings and such information, documents and other cooperation as reasonably necessary to assist AFMC in establishing a defense to such action.

(3) These indemnities survive the termination of this Agreement.

b. Mitigation. If AFMC violates this Agreement or any Privacy and Security Law or Regulation, AFMC agrees to mitigate any damage caused by such breach.

c. Proprietary Information. Covered Entity retains any and all rights to the proprietary information, confidential information, and PHI it releases to AFMC.

d. Survival. The respective rights and obligations under Section V. b of this Agreement survive the termination of this Agreement.

e. Notices. Any notices under or in connection with this Agreement must be given in writing and will be deemed duly given when personally delivered to a Party or a Party's authorized representative as listed below or sent by means of a reputable overnight carrier, or sent by means of certified mail, return receipt requested, postage prepaid. A notice sent by certified mail is be deemed given on the date of receipt, failure to claim, or refusal of receipt. All notices will be addressed to the appropriate Party as follows:

If to AFMC:

Arkansas Foundation for Medical Care

1020 West 4th Street, Suite 300

Little Rock, AR 72201

Attn: Privacy Officer

Phone Number: 501-212-8600

If to Covered Entity:

_____

_____

_____

Attn: _____

Phone Number: _____

f. Amendments. This Agreement may not be changed or modified in any manner except by an instrument in writing signed by a duly authorized officer of each of the Parties. The Parties, however, agree to amend this Agreement from time to time as necessary to allow either Party or both Parties to comply with the Privacy and security Laws and Regulations.

g. Choice of Law. This Agreement and the Parties' rights and obligations are governed by and construed under the laws Arkansas without regard to applicable conflict of laws principles.

h. Choice of Forum and Venue: Any action at law, suit in equity, or other judicial proceeding in connection with this Agreement shall take place in a state or federal court of competent jurisdiction in Pulaski County, Arkansas. Covered Entity hereby consents to the personal jurisdiction of such state and federal courts in any dispute arising from or related to this Agreement.

i. Assignment of Rights and Delegation of Duties. This Agreement is binding upon and inures to the benefit of the Parties hereto and their respective successors and permitted assigns. However, neither Party may assign any of its rights or delegate any of its obligations under this Agreement without the prior written consent of the other Party, which consent will not be unreasonably withheld or delayed. Notwithstanding any provisions to the contrary, however, Covered Entity retains the right to assign or delegate any of its rights or obligations hereunder to any of its wholly owned subsidiaries, affiliates or successor companies. Assignments made in violation of this provision are null and void.

j. Nature of Agreement. Nothing in this Agreement may be construed to create:

(1) A partnership, joint venture or other joint business relationship between the Parties or any of their affiliates;

(2) Any constructive or implied fiduciary duty owed by one Party to another Party or any of its affiliates; or

(3) A relationship of employer and employee between the Parties.

k. No Waiver. Failure or delay on the part of either Party to exercise any right, power, privilege or remedy under this Agreement does not constitute a waiver. Neither party may waive any provision of this Agreement except by a writing signed by an authorized representative of the Party making the waiver.

l. Severability. The provisions of this Agreement are severable, and if a court of competent jurisdiction determines that any provision of this Agreement is illegal, invalid or unenforceable, the remainder of this Agreement will continue in full force and effect as though the illegal, invalid or unenforceable provision did not exist.

m. No Third Party Beneficiaries. Nothing in this Agreement may be considered or construed as conferring any right or benefit on a person not party to this Agreement nor imposing any obligations on either Party to any person or entity who is not a Party to this Agreement.

n. Headings. The descriptive headings of the articles, sections, subsections, exhibits and schedules of this Agreement are inserted for convenience only, do not constitute a part of this Agreement and do not affect the meaning or interpretation of this Agreement.

o. Entire Agreement. This Agreement, together with all Exhibits, Riders and amendments, if applicable, which are fully completed and signed by authorized persons on behalf of both Parties from time to time while this Agreement is in effect, constitutes the entire Agreement between the Parties with respect to the subject matter of this Agreement and supersedes all previous related written or oral understandings, agreements, negotiations, commitments, and any other writing and communication by or between the Parties. If there are any inconsistencies between any provisions of this Agreement and the provisions of any Exhibits, Riders, or amendments to this Agreement, the provisions of this Agreement control.

p. Interpretation. Any ambiguity in this Agreement will be resolved in favor of a meaning that permits Covered Entity and AFMC to comply with the Privacy and Security Laws and Regulations and any applicable state confidentiality laws. The provisions of this Agreement prevail over the provisions of any

other agreement that exists between the Parties that may conflict with, or appear inconsistent with, any provision of this Agreement or the Privacy and Security Laws and Regulations.

q. Regulatory References. A citation in this Agreement to the Code of Federal Regulations means that section as amended from time to time.

Agreed to:

AFMC	**Covered Entity**
By:_____	By:_____
(Authorized Signature)	(Authorized Signature)
Name:_____	Name:_____
(Type or Print)	(Type or Print)
Title:_____	Title:_____
Date:_____	Date:_____