

AMENDMENT AND CONSENT TO ASSIGNMENT

This Amendment and Consent to Assignment (“Amendment and Assignment”) is entered into as on the date of the last signatory below (the “Effective Date”), by and between the City of Columbia, Missouri, a municipal corporation (“City”), The Curators of the University of Missouri on behalf of University of Missouri Health Care (“University”), and Columbia Family Medical Services, Inc., a Missouri non-profit corporation (“CFMS”).

WITNESSETH:

WHEREAS, the City and the University entered into that certain Agreement for Physician Services (the “Original Agreement”), wherein the University provides a physician to provide services on a part time basis at the Columbia/Boone County Department of Public Health and Human Services. A copy of the Original Agreement, as amended, is attached hereto as Exhibit A; and

WHEREAS, the physicians services and role of Medical Director were primarily provided by Dr. Debra Howenstein; and

WHEREAS, Dr. Howenstein is reducing her workload in preparation for retirement with an expected retirement date of December 31, 2019, and wishes to continue to serve as Medical Director for ten (10) hours each week beginning on August 1, 2019, and continuing through December 31, 2019; and

WHEREAS, CFMS is a Missouri general business corporation, whose sole member is University; and

WHEREAS, CFMS was established to provide physician services for the benefit of the residents of Columbia, Missouri and the surrounding University primary and secondary service areas; and

WHEREAS, upon Dr. Howenstein’s retirement, University desires to assign all of its rights under the Original Agreement to the CFMS; and

WHEREAS, CFMS employs Ashley Millham, M.D (“Physician”) and Dr. Millham is willing to serve as the designated Medical Director eight hours each week from August 1, 2019, through December 31, 2019, and then serve as Medical Director for sixteen hours each week beginning on January 1, 2020; and

WHEREAS, CFMS desires to assign Physician to perform services under the Original Agreement;

NOW, THEREFORE, in consideration of the premises and the mutual covenants and benefits herein set forth and conferred and other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties agree as follows:

1. Assignment and Consent to Assignment. University hereby assigns the Original Agreement to CFMS, and CFMS hereby assumes the Original Agreement from University,

effective as of January 1, 2020. City hereby consents to the assignment by University to CFMS, effective as of January 1, 2020, all of University's right, title and interest in, to and under the Original Agreement.

- a. The undersigned agree that, upon the assignment by University to CFMS of the Original Agreement, (i) CFMS shall be entitled, in the place and stead of University, to exercise and all rights of University under the Original Agreement in accordance with the terms of the Original Agreement as amended, and (ii) the undersigned shall accept performance by CFMS under the Original Agreement as amended, in each case from and after the date and time such assignment is effective.
 - b. City's consent to such assignment and assumption of Original Agreement shall not be deemed to be consent by the City to any subsequent assignment, Original Agreement, license or other transfer of the Original Agreement or any rights, responsibilities, obligations, interests or benefits thereunder. In no event shall anything contained in this Amendment and Assignment be deemed a waiver of any of the City's rights under the Original Agreement.
2. Amendments. The Original Agreement as previously amended is hereby amended, effective as of Effective Date, as follows:

As of August 1, 2019 through December 31, 2019, University shall designate Dr. Howenstein to serve as Medical Director for ten hours per week. CFMS shall designate Dr. Millham to serve as the Medical Director designee for eight hours per week. City shall pay University four thousand forty-one dollars (\$4,841.00) per month for Dr. Howenstein's services and shall pay CFMS four thousand forty-one dollars (\$4,841.00) per month for Dr. Millham's services.

As of January 1, 2020, CFMS shall assign Physician Dr. Millham to perform the services of the Medical Director described in the Original Agreement as amended on behalf of CFMS for sixteen hours per week. City shall pay CFMS nine thousand six hundred eighty-two dollars (\$9,682.00) per month.

3. Miscellaneous.

- a. Except as and to the extent modified by this Amendment and Assignment, all provisions of the Original Agreement as previously amended shall remain in full force and effect in accordance with its terms.
- b. This Amendment and Assignment shall be governed by the internal laws of the State of Missouri without regard to conflict of law principles.
- c. The Original Agreement, as previously amended and as amended by this Amendment and Assignment, constitutes the entire agreement of the Parties with respect to the premises, any prior agreements, written or oral, notwithstanding.

[Signature Page Follows]

IN WITNESS WHEREOF, this Amendment and Assignment has been duly signed and delivered by each Party effective as of the date of the last signatory below.

CITY OF COLUMBIA, MISSOURI

By: _____
John Glascock, Interim City Manager

Date: _____

ATTEST:

Sheela Amin, City Clerk

Approved as to form:

Nancy Thompson, City Counselor/rw *rw*

COLUMBIA FAMILY MEDICAL SERVICES, INC.

By: *Jonathan W. Curtright*
Jonathan Curtright, President

Date: *7/3/2019*

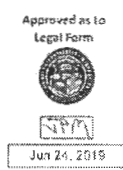
THE CURATORS OF THE UNIVERSITY OF MISSOURI

J. Vince Cooper

By: _____
T VINCE COOPER
EXECUTIVE DIRECTOR, PAYER STRATEGY

Title: _____

Date: *7/3/19*



**AGREEMENT FOR PHYSICIAN SERVICES
BETWEEN
THE CURATORS OF THE UNIVERSITY OF MISSOURI
AND
CITY OF COLUMBIA, MISSOURI**

THIS AGREEMENT (the "Agreement") for physicians services is entered into on the date of the last signatory noted below (the "Effective Date"), between The Curators of the University of Missouri on behalf of the School of Medicine Department of Family and Community Medicine (hereinafter "University") and the City of Columbia, Missouri, a municipal corporation (hereinafter "City"). City and University are each individually referred to herein as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, City has need for a physician to provide the services set forth herein; and

WHEREAS, University is able and willing to provide a physician on a part-time basis to City;

NOW, THEREFORE, the Parties hereto, for good and sufficient consideration, the receipt of which is hereby acknowledged, intending to be legally bound, do hereby agree as follows.

1. Term

The "Initial Term" of this Agreement shall commence on the Effective Date, and shall continue until the date that is one (1) year following the Effective Date. Thereafter, the Agreement shall automatically be renewed for successive terms of one year (each such term a "Renewal Term"), unless the Agreement is terminated pursuant to the provisions of this Agreement.

2. Physician Services to be Provided

University shall provide properly licensed and trained physicians to provide the following services:

- a. Maintaining a collaborative practice agreement(s) with the Columbia/Boone County Department of Public Health and Human Services Advanced Practice Nurses.
- b. Medical consultation or referral for patients receiving services at the Columbia/Boone County Department of Public Health and Human Services.
- c. Medical consultation with Columbia/Boone County Department of Public Health and Human Services administration regarding health department issues, program development, etc.
- d. Review and authorization of medical protocols for Columbia/Boone County Department of Public Health and Human Services clinic services.

- e. Maintaining a collaborative practice agreement with the Columbia/Boone County Department of Public Health and Human Services registered nurses to allow delegation of medical acts required for provision of population based services.
- f. Representation on the Child Fatality Review Panel as the public health representative.
- g. Participation when appropriate in other health related community efforts, such as the Live Well Boone County Action Teams.

3. Obligations of the City
City shall:

- a. Provide facilities and equipment needed at the Columbia/Boone County Department of Public Health and Human Services Family Practice Clinic.
- b. Arrange for the scheduling of patients.
- c. Timely pay for the services as set forth in section 5.

4. Obligations of the University
University shall:

- a. Arrange for a member of the Faculty of the Department of Family and Community Medicine to provide twenty (20) hours per week of clinical and administrative services as described in Section 2. The primary physician assigned by the University shall be entitled to four (4) weeks of vacation and two (2) weeks of professional leave annually. During these periods, University shall provide back-up coverage in the form of on-call availability by properly trained and licensed physicians for additional fees set forth in Section 5. City shall receive at least 48 hours notice when the primary physician assigned by the University will not be available and back-up coverage will be used.
- b. Provide Professional Liability Coverage through its self-funded medical, professional and patient general liability plan for all physicians performing services pursuant to this Agreement.
- c. Provide monthly invoices to the City for these services.
- d. Maintain appropriate time records to document hours spent on this Agreement each month.

5. Payments

- a. During the Initial Term, City shall pay University for the Services set forth herein according to the following schedule:
 - i. For the primary physician's services, City shall pay University Nine Thousand Four Hundred Dollars (\$9,400.00) per month.

- ii. For the back-up coverage services, City shall pay University a rate of Two Hundred Dollars (\$200.00) per day of coverage.
 - b. For each Renewal Term, the University shall send the City written notice of any changes to the monthly fees for the primary physicians' services or for the back-up coverage services no later than April 1 prior to the end of the current term. Any change in pricing shall take effect on the first day of the next Renewal Term.
 - c. The remuneration set forth herein reflects the fair market value of the services to be rendered and is not based in whole or in part on the volume or value of any referrals or other business generated between these parties.
6. Insurance
- University shall maintain, on a primary basis and at its sole expense, at all times during the life of the Agreement the following insurance or self-funded coverages, limits, including endorsements described herein. The requirements contained herein, as well as the City's review or acceptance of insurance or self-funded coverage maintained by University is not intended to, and shall not in any manner limit or qualify the liabilities or obligations assumed by University under the Agreement.
- a. Workers' Compensation & Employers Liability. University shall maintain Workers' Compensation in accordance with Missouri Revised Statutes or provide evidence of monopolistic state coverage. Employers Liability with the following minimum limits: \$500,000 for each accident, \$500,000 for each disease for each employee, and \$500,000 disease policy limit.
 - b. Commercial General Liability. University shall maintain Commercial General Liability at a limit of not less than \$2,000,000 Each Occurrence, \$3,000,000 Annual Aggregate.
 - c. Business Auto Liability. University shall maintain Business Automobile Liability at a limit not less than \$2,000,000 Each Occurrence. Coverage shall include liability for Owned, Non-Owned & Hired automobiles. In the event University does not own automobiles, University agrees to maintain coverage for Hired & Non-Owned Auto Liability.
 - d. University may satisfy the minimum liability limits required for Commercial General Liability or Business Auto Liability under an Umbrella or Excess Liability policy. There is no minimum per occurrence limit of liability under the Umbrella or Excess Liability; however, the Annual Aggregate limit shall not be less than the highest "Each Occurrence" limit for either Commercial General Liability or Business Auto Liability.
 - e. A certificate of insurance or other evidence of self-funded coverage evidencing all coverage required is to be provided at least 10 days prior to the Effective Date of the Agreement between University and City. University is required to maintain coverages as stated and required to notify the City of cancellation within two (2) business days. City reserves the right to request a copy of the policy or plan.
 - f. The Parties hereto understand and agree that City is relying on, and neither party waives or intends to waive by any provision of this Agreement, any monetary

limitations or any other rights, immunities, and protections provided by the State of Missouri, as from time to time amended, or otherwise available to City, or its elected officials or employees, or to University and its employees.

- g. Failure to maintain the required insurance or self-funded coverage in force may be cause for termination of the Agreement. In the event University fails to maintain and keep in force the required insurance or to obtain coverage from its subcontractors, City shall have the right to cancel and terminate the Agreement without notice.
- h. The insurance or self-funded coverage required by the provisions of this article is required in the public interest and City does not assume any liability for acts of University and/or their employees and/or their subcontractors in the performance of this Agreement.

7. **HOLD HARMLESS AGREEMENT**

This provision does not, however, require University to indemnify, hold harmless, or defend the City of Columbia from its own negligence. To the extent permitted by Missouri law and without waiving sovereign immunity, each party shall protect, indemnify and hold the other party harmless from and defend against any and all claims, demands, actions, settlement, costs, damages, judgments, liability and expense of any kind, based upon or arising by reason of any act or failure to act, negligent or reckless, of that party in complying with its obligations under this agreement.

8. Professional Responsibility

University and its physicians shall exercise reasonable skill, care, and diligence in the performance of its services and shall carry out its responsibilities in accordance with customarily accepted good professional medical practices and standards.

9. Termination Provisions

- a. By Mutual Agreement. This Agreement may be terminated at any time during its Term upon mutual agreement by both Parties.
- b. By Convenience. With sixty (60) days written notice, either Party may terminate this Agreement for convenience.
- c. By Default. In the event of a default, either Party may terminate this Agreement in accordance with Section 11.

10. Termination by Default

Upon the occurrence of an event of Default, the non-Defaulting Party shall be entitled to immediately terminate this Agreement. A Party shall be considered in Default of this Agreement upon:

- a. The failure to perform or observe a material term or condition of this Agreement, including but not limited to any material Default of a representation, warranty or covenant made in this Agreement.

- b. The Party (i) becoming insolvent; (ii) filing a voluntary petition in bankruptcy under any provision of any federal or state bankruptcy law or consenting to the filing of any bankruptcy or reorganization petition against it under any similar law; (iii) making a general assignment for the benefit of its creditors; or (iv) consenting to the appointment of a receiver, trustee or liquidator.
- c. The purported assignment of this Agreement in a manner inconsistent with the terms of this Agreement.
- d. The failure of the Party to provide information or data to the other Party as required under this Agreement, provided that the Party entitled to the information or data under this Agreement requires such information or data to satisfy its obligations under this Agreement.

11. **No Assignment**

This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and permitted assigns. Neither Party shall assign this Agreement or any of its rights or obligations hereunder without the prior written consent of the other Party.

12. **Notices**

Any notice, demand, request, or communication required or authorized by the Agreement shall be delivered either by hand, facsimile, overnight courier or mailed by certified mail, return receipt requested, with postage prepaid, to:

If to City:

City of Columbia, Missouri
 Department of Public Health & Human Services
 P.O. Box 6015
 Columbia, MO 65205-6015
 ATTN: Director

If to University:

University of Missouri Health System
 Managed Care & System Contracting Office
 Director of Payer Strategy & Health System
 Contracting
 One Hospital Drive, DC057.10
 Columbia, MO 65212

The designation and titles of the person to be notified or the address of such person may be changed at any time by written notice. Any such notice, demand, request, or communication shall be deemed delivered on receipt if delivered by hand or facsimile and on deposit by the sending Party if delivered by courier or U.S. mail.

13. **No Third-Party Beneficiary**

No provision of the Agreement is intended to nor shall it in any way inure to the benefit of any customer, property owner or any other third party, so as to constitute any such Person a third-party beneficiary under the Agreement.

14. **Amendment**

No amendment, addition to, or modification of any provision hereof shall be binding upon the Parties, and neither Party shall be deemed to have waived any provision or any remedy available to it unless such amendment, addition, modification or waiver is in

writing and signed by a duly authorized officer or representative of the applicable Party or Parties.

15. **Governing Law and Venue**

This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Missouri and/or the laws of the United States, as applicable. The venue for all litigation arising out of, or relating to this contract document, shall be in Boone County, Missouri. The Parties hereto irrevocably agree to submit to the exclusive jurisdiction of such courts in the State of Missouri. The Parties agree to waive any defense of forum non conveniens.

16. **General Laws**

The Parties shall comply with all applicable federal, state, and local laws, rules, regulations, and ordinances.

17. **Employment of Unauthorized Aliens Prohibited**

University agrees to comply with Missouri State Statute Section 285.530 in that University shall not knowingly employ, hire for employment, or continue to employ an unauthorized alien to perform work within the State of Missouri. As a condition for the award of this Agreement, University shall, by sworn affidavit and provision of documentation, affirm its enrollment and participation in a federal work authorization program with respect to the employees working in connection with the contracted services. University shall also sign an affidavit affirming that it does not knowingly employ any person who is an unauthorized alien in connection with the contracted services. University shall require each subcontractor to affirmatively state in its contract with University that the subcontractor shall not knowingly employ, hire for employment or continue to employ an unauthorized alien to perform work within the State of Missouri. University shall also require each subcontractor to provide University with a sworn affidavit under the penalty of perjury attesting to the fact that the subcontractor's employees are lawfully present in the United States.

18. **Nature of Licensee's Obligations**

All obligations of the City under this Agreement, which require the expenditure of funds, are conditional upon the availability of funds budgeted and appropriated for that purpose.

19. **No Waiver of Immunities**

In no event shall the language of this Agreement constitute or be construed as a waiver or limitation for either Party's rights or defenses with regard to each Party's applicable sovereign, governmental, or official immunities and protections as provided by federal and state constitutions or laws.

20. **University's Representations and Warranties**

University represents and warrants as follows:

- a. University is a public corporation of the State of Missouri;
- b. University has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;

- c. University has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;
- d. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by University with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of University or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which University is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;
- e. University has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;
- f. To University's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect University's ability to perform its obligations under this Agreement; and
- g. This Agreement is a legal, valid and binding obligation of University enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

21. City's Representations and Warranties
City represents and warrants as follows:

- a. City is a municipality, duly organized, validly existing, and in good standing under the laws of the State of Missouri;
- b. City has the power and authority to enter into and perform this Agreement and is not prohibited from entering into this Agreement or discharging and performing all covenants and obligations on its part to be performed under and pursuant to this Agreement;
- c. City has taken all action required by Applicable Law in order to approve, execute and deliver this Agreement;
- d. The execution and delivery of this Agreement, the consummation of the transactions contemplated herein and the fulfillment of and compliance by City with the provisions of this Agreement will not conflict with or constitute a breach of or a default under or require any consent, license or approval that has not

been obtained pursuant to any of the terms, conditions or provisions of any law, rule or regulation, any order, judgment, writ, injunction, decree, determination, award or other instrument or legal requirement of any court or other agency of government, the documents of formation of City or any contractual limitation, restriction or outstanding trust indenture, deed of trust, mortgage, loan agreement, lease, other evidence of indebtedness or any other agreement or instrument to which City is a party or by which it or any of its property is bound and will not result in a breach of or a default under any of the foregoing;

- e. City has taken all such action as may be necessary or advisable and proper to authorize this Agreement, the execution and delivery hereof, and the consummation of transactions contemplated hereby;
- f. There are no bankruptcy, insolvency, reorganization or receiverships pending or being contemplated by City, or to its knowledge threatened against City;
- g. To the City's knowledge, there are no actions, proceedings, judgments, rulings or orders issued by, or pending before any court or other governmental body that would materially adversely affect City's ability to perform its obligations under this Agreement; and
- h. This Agreement is a legal, valid and binding obligation of City enforceable in accordance with its terms, except as limited by laws of general applicability limiting the enforcement of creditor's rights or by the exercise of judicial discretion in accordance with general principles of equity.

22. **Contract Documents**

This Agreement includes the following exhibits, which are incorporated herein by reference:

<u>Exhibit</u>	<u>Description</u>
A	Business Associate Agreement

In the event of a conflict between the terms of an exhibit and the terms of this Agreement, the terms of the Business Associate Agreement control.


23. **Entire Agreement**

This Agreement represents the entire and integrated Agreement between University and City relative to the Scope of Services herein. All previous or contemporaneous agreements, representations, promises and conditions relating to University's services described herein are superseded.

[SIGNATURES ON FOLLOWING PAGES]

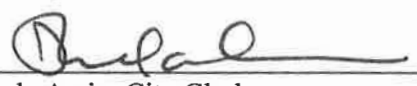
Original to
City Clerks Office
4-12-16

CITY OF COLUMBIA, MISSOURI

By: 
Mike Matthes, City Manager


Date: 12-23-15

ATTEST:

By: 
Sheela Amin, City Clerk

Date: 12-23-15

APPROVED AS TO FORM:

By: 
Nancy Thompson, City Counselor

Date: 12-23-15

THE CURATORS OF THE UNIVERSITY OF MISSOURI

By: 

Date: 3/22/16

LEGAL
KSB

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “BAA”), is made as of the date this BAA is executed by both parties (the “Effective Date”), by and between **The Curators of the University of Missouri** and on behalf of its Department of Family and Community Medicine and its affiliates (“Business Associate”) and the City of Columbia, Missouri, a municipal corporation and hybrid covered entity (“Covered Entity”) (collectively the “Parties”) in order to comply with the Federal Health Insurance Portability and Accountability Act of 1996 and its related regulations (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 and related regulations promulgated by the Secretary (the “HITECH”).

RECITALS:

WHEREAS, Business Associate has been engaged to provide physician services as set forth in the Services Agreement for or on behalf of Covered Entity; and

WHEREAS, in connection with these services, Business Associate uses or discloses individually identifiable health information, including Protected Health Information (“PHI”), as part of performing said services, or otherwise performs a function that is subject to protection under HIPAA and the HITECH Act; and

WHEREAS, HIPAA requires that Covered Entity receive adequate assurances that Business Associate will appropriately safeguard PHI that has been used or disclosed in the course of providing services to or on behalf of Covered Entity; and

WHEREAS, the Parties have entered into a Services Agreement (“Agreement”) related to the functions or services it will perform on behalf of Covered Entity or which sets forth the purchase and/or maintenance of equipment in which the exchange of PHI is necessary or likely to occur; and

WHEREAS, the purpose of this BAA is to comply with the requirements of HIPAA.

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:

a) **Definitions.**

As may be amended from time to time, the following HIPAA and HITECH Act definitions shall apply to this BAA. Any terms not specifically described in this BAA or the Agreement shall have the meanings ascribed to such in HIPAA and HITECH Act.

1. **ARRA.** “ARRA” refers to the American Recovery and Reinvestment Act of 2009.
2. **Breach.** “Breach” shall have the same meaning as the term “breach” in HIPAA, 45C.F.R. 164.402, and shall *generally* mean the unauthorized acquisition, access, use or disclosure of PHI which compromises the security or privacy of such information.
3. **Breach Rule:** “Breach Rule” shall mean the Notification in the Case of Breach of Unsecured PHI Standards at 45 C.F.R. § 164, subpart D.

4. **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 as it creates, receives, maintains or transmits PHI for a function, activity or service regulated by HIPAA, and which includes a Subcontractor that creates, receives, maintains or transmits PHI on behalf of a Business Associate. In reference to the party to this agreement, “Business Associate” shall mean The Curators of the University of Missouri.
5. **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, “Covered Entity” shall mean the City of Columbia, Missouri.
6. **Designated Record Set:** “Designated Record Set” (“DRS”) shall have the same meaning as the term “Designated Record Set” at 45 CFR 164.501 and shall generally mean a group of records maintained by or for a covered entity that is (i) the medical records and billing records about Individuals maintained by or for a covered health care provider; or (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (iii) used, in whole or in part, by or for a covered entity to make decisions about Individuals.
7. **Electronic Health Record.** “Electronic Health Record” shall have the same meaning as the term “electronic health record” in the HITECH Act, Section 13400(5).
8. **Electronic Protected Health Information.** “Electronic Protected Health Information” (“EPHI”) shall have the same meaning as the term “electronic protected health information” in 45 CFR § 160.103, limited to the information that Business Associate creates, receives, maintains, or transmits from or on behalf of Covered Entity.
9. **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
10. **Individual:** “Individual” shall mean the person who is subject of the protected health information and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
11. **Privacy Rule:** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. §160 and §164, subparts A and E.
12. **Protected Health Information or “PHI”:** “PHI” Shall mean any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; provision of health care to an individual; or past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe that the information can be used to identify the individual, and shall have the meaning given to such term under HIPAA and the HIPAA regulations, including, but not limited to 45 CFR § 164.501.
13. **Required By Law.** “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 160.103.
14. **Secretary.** “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.

15. **Security Incident.** "Security Incident" shall have the same meaning as the term "security incident" at 45 CFR §164.304 and shall generally mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system.
16. **Security Rule.** "Security Rule" shall mean the Security Standards at 45 Part 160 and Part 164.
17. **Services Agreement.** "Services Agreement" (or "Agreement") shall mean any present or future agreements, either written or oral, between Covered Entity and Business Associate under which Business Associate provides services to Covered Entity which involve the use or disclosure of Protected Health Information. The Services Agreement is amended by and incorporates the terms of this BAA.
18. **Subcontractor.** "Subcontractor" shall have the same meaning as the term "subcontractor" at 45 CFR 164.103 and shall generally mean a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such Business Associate.
19. **Unsecured Protected Health Information.** "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" in the HITECH Act, Section 13402(h)(1).

b) Obligations of Covered Entity:

(i) Upon request, provide Business Associate with a copy of its Notice of Privacy Practices produced by Covered Entity in accordance with 45 C.F.R. §164.520. Covered Entity will notify Business Associate of any changes to such Notice, and notify Business Associate of any limitation(s) in the Notice of Privacy Practices to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.

(ii) Provide Business Associate with any changes in, or revocation of, authorizations by Individuals relating to the use and/or disclosure of PHI, if such changes affect Business Associate's permitted or required uses and/or disclosures.

(iii) Notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

c) Obligations and Activities of Business Associate:

Business Associate agrees to comply with applicable federal and state confidentiality and security laws, including the provisions of HIPAA and the HITECH Act applicable to Business Associates, including but not limited to:

(i) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(ii) Business Associate agrees to limit its use, disclosure and requests for PHI to the minimum necessary PHI to accomplish the intended purpose of such use, disclosure or request.

(iii) Business Associate agrees to comply with all applicable federal and state laws, including the Privacy Rule and Security Rule, and to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by the Agreement. In particular, Business Associate shall comply with 45 C.F.R. §§164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards) and 164.316 (policies and procedures and documentation requirements).

(iv) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate involving a use or disclosure of PHI in violation of the requirements of this BAA (including, without limitation, any Security Incident or Breach of Unsecured PHI). Business Associate agrees to reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this BAA and/or any Security Incident or Breach.

(v) Business Associate may not use or disclose PHI for marketing purposes without the prior written consent of the Covered Entity. Marketing includes any communication which would encourage the recipient to use or purchase a product or service. Business Associate shall not sell PHI without the prior written consent of the Covered Entity.

(vi) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), Business Associate shall require that any Subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate enter into a written Business Associate Agreement with the Business Associate which has the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information. Business Associate shall disclose to such Subcontractors only the minimum PHI necessary to perform or fulfill a specific function or service under the underlying Agreement and as permitted by this BAA.

(vii) If Business Associate knows of a pattern of activity or practice of a Subcontractor that constitutes a breach of the Subcontractor's obligations under the agreement referenced in Section (vi) above, Business Associate shall take reasonable steps to require the Subcontractor to cure the breach or terminate the agreement with the Subcontractor.

(viii) Business Associate agrees to notify Covered Entity within five (5) business days of any request by, or on behalf of, an individual to access Protected Health Information, and provide access, at the request of Covered Entity and in a reasonable time and manner designated by Covered Entity, to Protected Health Information to an Individual in order to meet the requirements of 45 CFR §164.524.

(ix) Business Associate agrees to notify Covered Entity within five (5) business days of any request by an individual to amend Protected Health Information. Business Associate further agrees to make any amendment to Protected Health Information that the Covered Entity directs in a reasonable time and manner designated by Covered Entity.

(x) Upon reasonable prior written notice and during normal business hours, Business Associate agrees to make its facilities, internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity, or to the Secretary, in a time and manner

designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with HIPAA and its accompanying regulations. To the extent permitted by law, the Business Associate shall provide Covered Entity with a copy of all information provided to the Secretary.

(xi) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR § 164.528.

(xii) Business Associate agrees to notify Covered Entity within five (5) business days of a request by an individual for an accounting of disclosures of Protected Health Information. Business Associate further agrees to provide to Covered Entity, in a reasonable time and manner designated by Covered Entity, information regarding disclosures of Protected Health Information by Business Associate and/or its subcontractors, if applicable, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

d) Permitted Uses and Disclosures by Business Associate:

(i) Except as otherwise limited in this Business Associate Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity for the purpose of providing services under the Agreement, if such use or disclosure of Protected Health Information would not violate applicable Federal and/or State laws and regulations, if done by Covered Entity.

(ii) Except as otherwise limited in this Business Associate Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that such disclosures are required by law.

(iii) Covered Entity shall notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

(iv) Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under applicable Federal and/or State laws and regulations, if done by Covered Entity.

(v) To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under HIPAA Regulations, including but not limited to electronic copies of PHI where such is maintained in an electronic Designated Record Set. If an Individual makes a request for access to Protected Health Information directly to Business Associate, Business Associate shall notify Covered Entity of the request within five (5) business days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

(vi) To the extent that Business Associate possesses or maintains PHI in a Designated Record Set, Business Associate agrees to make any amendment(s) to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526, or take other measures as

necessary to satisfy Covered Entity's obligations under 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity. If an Individual makes a request for an amendment to PHI directly to Business Associate, Business Associate shall notify Covered Entity of the request within five business (5) days of such request and will cooperate with Covered Entity and allow Covered Entity to send the response to the Individual.

(vii) As may be applicable, Business Associate is permitted to use and disclose PHI for data aggregation purposes for or on behalf of Covered Entity, however, only in order to analyze data for permitted health care operations related to the Services set forth in the Agreement, and only to the extent that such use is permitted under HIPAA and the underlying Agreement.

e) Obligations Upon Discovery of Actual or Suspected Breach of PHI :

(i) Business Associate agrees to notify Covered Entity upon discovery of any actual or suspected use or disclosure of the Protected Health Information not provided for by the Agreement. With the exception of law enforcement delays pursuant to 45 CFR § 164.412, Business Associate shall notify Covered Entity in writing without unreasonable delay and in no case later than ten (10) calendar days after discovery of a suspected or actual Breach of Unsecured PHI.

(ii) Notice to the Covered Entity must include the following information, to the extent possible:

- The name of each individual whose PHI has been or is believed to have been improperly used, disclosed, accessed or acquired;
- The name(s) of all individuals or entities who improperly used, disclosed, accessed or acquired the PHI;
- A description of the types of PHI that were involved;
- The details of the suspected or actual Breach, including but not limited to the date of the suspected or actual Breach, the date of discovery of the suspected or actual Breach, and how it occurred and was discovered;
- All steps and measures being taken by Business Associate to mitigate harm resulting from such suspected or actual Breach; and
- All actions taken or proposed by Business Associate to prevent future similar Breaches.

(iii) Covered Entity shall be responsible for determining whether there is a low probability that the PHI has been compromised, and for determining the need for and directing the implementation of any notifications of the Breach.

(iv) Business Associate shall, at Covered Entity's reasonable direction, cooperate with or perform any additional investigation or assessment related to the suspected or actual Breach.

f. Term and Termination:

(i) The Term of this Business Associate Agreement shall be effective as of the effective date of the Agreement(s), and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is not feasible to return or destroy Protected

Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(ii) A breach by Business Associate of any provision of this Business Associate Agreement as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement by Covered Entity.

(iii) If Covered Entity knows of a pattern of activity or practice of Business Associate that constitutes a material breach or violation of the Business Associate's obligations under the provisions of this Business Associate Agreement, and does not terminate the Agreement pursuant to paragraph f(ii) above, then Covered Entity shall take reasonable steps to cure the breach or end such violation, as applicable. If Covered Entity's efforts to cure the Business Associate's breach or end such violation are unsuccessful, Covered Entity shall either (1) terminate the Agreement, if feasible or (2) if termination of the Agreement is not feasible, Covered Entity shall report the Business Associate's breach or violation to the Secretary.

(iv) Covered Entity may provide Business Associate with thirty (30) days written notice of the existence of said breach and afford Business Associate an opportunity to cure said breach to Covered Entity reasonable satisfaction within the stated time period. Failure to cure said breach within the stated time period is grounds for immediate termination of this BAA and the underlying Agreement. If Business Associate breaches any provision in this BAA, Covered Entity may access and audit the records of Business Associate related to its use and disclosure of PHI, require Business Associate to submit to monitoring and reporting, and such other conditions as Covered Entity may determine is necessary to ensure compliance with this BAA.

(v) Covered Entity may immediately terminate this Business Associate Agreement and Business Associate's access to PHI if Business Associate is convicted in a criminal proceeding arising from an alleged violation of HIPAA or other security or privacy laws, or a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or judicial proceeding in which the Business Associate is a party.

g. Effect of Termination:

(i) Except as provided in paragraph (ii) of this section, upon termination of the Agreement for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate.

(ii) In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction not feasible and extend the protections of this Business Associate Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such Protected Health Information.

(iii) Upon termination of the Agreement, Business Associate shall certify to Covered Entity that it has destroyed all PHI received from Covered Entity in accordance with this provision or, if

Business Associate determines that such destruction is not feasible, Business Associate shall provide to Covered Entity a complete written description of all PHI that Business Associate has determined that it is not feasible to destroy.

h. Miscellaneous:

(i) Regulatory References. A reference in this Business Associate Agreement to any Federal or State law, rule or regulation means that law, rule or regulation currently in effect or as amended, and for which compliance is required.

(ii) Amendment. The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(iii) Survival. The respective rights and obligations of Business Associate under Section g of this Business Associate Agreement shall survive the termination of the Agreement.

(iv) Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the all applicable state and federal laws and regulations.

(v) Miscellaneous: The terms of this BAA are incorporated by reference in the Agreement. In the event of a conflict between the terms of this BAA and the terms of the Agreement, the terms of this BAA shall prevail. The terms of the Agreement which are not modified by this BAA shall remain in full force and effect in accordance with the terms thereof. This BAA shall be governed by, and construed in accordance with, the laws of the State of Missouri, exclusive of conflict of law rules. Each party to this BAA hereby agrees and consents that any legal action or proceeding with respect to this BAA shall only be brought in the state courts in Boone County, Missouri. The Agreement together with this BAA constitutes the entire agreement between the parties with respect to the subject matter contained herein, and this BAA supersedes and replaces any former business associate agreement or addendum entered into by the Parties. No amendments or modifications to the BAA shall be effected unless executed by both Parties in writing.

[SIGNATURES ON FOLLOWING PAGE]

CITY OF COLUMBIA, MISSOURI

By: _____
Mike Matthes, City Manager

Date: _____

ATTEST:

By: _____
Sheela Amin, City Clerk

Date: _____

APPROVED AS TO FORM:

By: _____
Nancy Thompson, City Counselor

Date: _____

THE CURATORS OF THE UNIVERSITY OF MISSOURI

By: _____

Date: _____