This Business Associate Agreement is made and entered into by and between \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ (hereinafter referred to as “Business Associate”) and the University of South Carolina Student Health Services with an address at 1409 Devine St., Columbia, SC 29208.

WHEREAS, Business Associate and Covered Entity acknowledge their understanding of the provisions contained in the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) and regulations promulgated there under by the United States Department of Health and Human Services (“HIPAA”), including, but not limited to, Title 45, Part 164 of the Code of Federal Regulations (“CFR”) as may be amended from time to time.

WHEREAS, Business Associate and Covered Entity acknowledge their understanding of the provisions contained in the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, part of the American Recovery and Reinvestment Act (“ARRA”) of 2009, Public Law 111-005 and regulations promulgated there under by the United States Department of Health and Human Services, including, but not limited to, 42 U.S.C. Sections 17921 - 17951 as may be amended from time to time.

WHEREAS, Business Associate and Covered Entity agree to comply in all respects with the HIPAA and HITECH Act Regulations as they apply to both directly. The parties agree to govern and safeguard Protected Health Information that is created, received, maintained or transmitted, which may be exchanged between the parties or accessible by the Business Associate in connection with the performance of the terms of this Agreement. The parties currently attest that they are substantially compliant with the regulations and have initiated and will maintain appropriate programs to ensure compliance.

WHEREAS, the services, which are performed by the Business Associate, involve the use and disclosure of Protected Health Information.

WHEREAS, the Business Associate is acting as an independent contractor and not as the agent of the Covered Entity.

WHEREAS, the Business Associate and Covered Entity have entered into, and may in the future enter into, one or more agreements (Agreement), written or oral, that require Business Associate to be provided with, to have access to, and/or create Protected Health Information (Services). This Agreement shall supplement and/or amend each of the underlying Agreements.

NOW, THEREFORE, in consideration of the foregoing, of the mutual promises contained herein, and the continued relationship of the parties hereto, on behalf of themselves, their officers, directors, parents, subsidiaries, agents, successors and assigns intending to be legally bound, do hereby agree as follows:

1. **Definitions**
	1. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA or HITECH Rules:
		1. Breach
		2. Business Associate (BA)
		3. Covered Entity (CE)
		4. Data Aggregation
		5. Designated Record Set
		6. Disclosure
		7. Electronic Health Record
		8. Genetic Information
		9. Health Care Operations
		10. Individual
		11. Minimum Necessary
		12. Notice of Privacy Practices
		13. Protected Health Information (PHI)
		14. Required by Law
		15. Secretary
		16. Security Incident
		17. Subcontractor
		18. Unsecured Protected Health Information
		19. Use
	2. Specific Definitions:
2. HIPAA Rules: “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
3. **Permitted Uses and Disclosures of PHI**

Except as otherwise specified herein, the Business Associate may make any and all uses or disclosures of PHI necessary to perform functions, activities or services for, or on behalf of, Covered Entity as specified in the Agreement or as otherwise required by law, provided that such use or disclosure would not violate HIPAA or the HITECH Act if done by Covered Entity. All other uses or disclosures not required by law or authorized by this Agreement are prohibited. Pay special attention to the use and disclosure of certain categories of PHI, such as Genetic Information.

1. **Responsibilities of the Parties with Respect to PHI**
	1. Responsibilities of Business Associate- The Business Associate agrees to do the following:
2. Use and disclose any PHI only as set forth in Section 2 of this Agreement.
3. Keep all PHI confidential and take all necessary precautions, including the establishment of appropriate administrative, technical, and physical safeguards, to avoid all use and disclosure of PHI other than as provided by this Agreement.
4. Implement administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic protected health information that it creates, receives, maintains, transmits or has access to while conducting business on behalf of the Covered Entity as required by HIPAA.
5. Comply with the HIPAA Security Rule with respect to electronic PHI.
6. To the extent the Business Associate is to carry out the Covered Entity’s obligation under the HIPAA Privacy Rule, comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation.
7. Business Associate agrees i) to conduct background checks and ensure that individuals act appropriately ii) to inform all of its employees, agents or representative who receive the PHI of the confidential nature of such PHI and to direct all of such representatives to treat such PHI confidentially and to not use it other than for the purposes described above; iii) to be responsible in any event for any breach of this Agreement by the Business Associate’s employees, agent or representatives; iv) to make all reasonable, necessary and appropriate efforts to safeguard the PHI from disclosure to anyone other than is permitted hereby; and v) to keep a record of the PHI and of the location of such PHI.
8. Immediately report to the Covered Entity’s designated privacy officer any use or disclosure of PHI that is not allowable under this Agreement and all actual or suspected security incidents, including breaches of unsecured PHI, which the Business Associate discovers. The investigation does not have to be complete at the time of initial report. The completed investigation notice should include the identification of each individual whose unsecured protected health information has been or is reasonably believed by the business associate to have been accessed, acquired, or disclosed during such breach, as well as certain other information specified by regulations.  Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a security breach or use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.
9. Require all of its subcontractors and agents that receive or use or have access to PHI under this Agreement to agree, in writing, to adhere to the same restrictions and conditions such as with a commensurate Business Associate Agreement.
10. Make available all records, books, agreements, policies, procedures, internal practices, documents, books and records, relating to the use and disclosure of the PHI received from the Covered Entity to the Secretary of the Department of Health and Human Services, the comptroller General of the United States, or any of their duly authorized representatives.
11. Make available for amendment and incorporate any amendments to PHI in a Designated Record Set within 15 days of receiving a request from the Covered Entity or an individual in accordance with 45 C.F.R. §164.526.
12. Make available, within 15 days of receiving a written request from the Covered Entity or an individual, the information required to provide an accounting of disclosures of the individual’s PHI in accordance with 45 C.F.R. §164.528 and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c).
13. Make available, within 15 days of receiving a written request from the Covered Entity or an individual, PHI consistent with an individual’s right of access to PHI in accordance with 45 C.F.R. §164.524.
14. Request, use, and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use, or disclosure.
15. Disclose to its subcontractors, agents or other third parties, only the minimum PHI necessary to fulfill or perform a specific function required or permitted hereunder.
16. Not duplicate or make copies of any PHI furnished to it pursuant to this Agreement or any prior agreements except as necessary for the proper evaluation, investigation, acquisition and development of opinions related to the services it provides.
17. Do not use or disclose PHI for fundraising or marketing purposes.
18. Do not directly or indirectly receive remuneration in exchange for any PHI.
19. Indemnify and hold harmless the Covered Entity and all employees, directors, and agents of the Covered Entity from any and all losses, costs, claims, penalties, fines, demands, liabilities, legal actions, judgments, and expenses of any kind (including attorneys’ fees at trial and on appeal) arising out of the acts or omissions of Business Associate or any subcontractor or consultant of Business Associate or any employees, directors or agents of Business Associate regarding any obligations imposed by HIPAA or this BAA.
20. If Business Associate conducts any Standard Transaction for or on behalf of Covered Entity, Business Associate shall comply and shall require any subcontractor or agent conducting such Standard Transaction to comply, with the HIPAA Administrative Code Set Standards set forth in 45 C.F.R. Part 162.

* 1. Responsibilities of Covered Entity- The Covered Entity hereby agrees to do the following:
1. Inform the Business Associate of any changes in the form of notice of privacy practices that the Covered Entity provides to individuals pursuant to 45 C.F.R. §164.520 and provide the

 Business Associate a copy of the notice currently in use.

1. Inform the Business Associate of any changes in or withdrawal of any consent or authorization, including patient restrictions if agreed to, provided to the Covered Entity by individuals pursuant to 45 C.F.R. §164.506 or §164.508 if such changes affect Business Associate’s permitted or required uses and disclosures.
2. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522 to the extent such restriction may affect Business Associate’s use or disclosure of PHI.
3. Understand that Business Associate may make any use and/or disclosure of PHI permitted under 45 C.F.R. § 164.512 except uses or disclosures are not permitted without prior written approval by the Covered Entity.
4. **Additional Responsibilities Of The Parties With Respect To Protected Health Information**
	1. Responsibilities of the Business Associate with Respect to Handling Designated Record Set. In the event that Parties mutually agree in writing that the PHI constitutes a Designated Record Set or portion of a designated record set and in the event that the Business Associate maintains a Designated Record Set, the Business Associate hereby agrees to do the following:

a. At the request of and in a timely manner as designated by the Covered Entity, provide access to the PHI to the Covered Entity or the individual to whom such PHI relates or his or her authorized representatives in order to a request by such individual under 45 C.F.R. §164.524.

1. At the request of, and the time and manner designated by the Covered Entity, make any amendment(s) to the PHI that the Covered Entity directs pursuant to 45 C.F.R. §164.526. Provided, however, that the Covered Entity makes the determination that the amendment(s) are necessary because the PHI that is the subject of the amendment(s) has been, or could foreseeably be, relied upon by the Business Associate or others to the detriment of the individual who is the subject of the PHI to be amended.

* 1. Responsibilities of the Covered Entity with Respect to the Handling of the Designated Record Set. In the event that the Parties mutually agree in writing that the PHI constitutes a Designated Record Set or portion of a designated record set and in the event that the Business Associate maintains a Designated Record Set , the Covered Entity hereby agrees to do the following:
1. Notify the Business Associate, in writing of any PHI that Covered Entity seeks to make available to an individual pursuant to 45 C.F.R. § 164.524 and the time, manner and form in which the Business Associate shall provide such access.
2. Notify the Business Associate, in writing, of any amendments(s) to the PHI in the possession of the Business Associate that the Business Associate shall make and inform the Business Associate of the time, form and manner in which such amendment shall be made.

**5. Term and Termination**

5.1 Term. This Agreement shall become effective on the date both parties sign this Agreement and shall continue in effect for the term of the Agreement or until terminated as provided in this Section 5.

5.2 Termination. Either party may immediately terminate this Agreement and any related agreements if such party makes the determination that the other party has breached a material term of this Agreement. However, the non-breaching party may choose to provide the breaching party with an opportunity to cure the alleged material breach upon mutually agreeable terms. The breaching party has 15 days to request the opportunity to cure the breach. If the steps to cure the breach are unsuccessful, the non-breaching party shall terminate this Agreement and any prior or underlying service agreements related to the Services.

5.3 Automatic Termination. This Agreement will automatically terminate without further action of the parties upon the termination or expiration of the Agreement between the parties (if any), or when the Business Associate no longer provides the Services set forth hereunder.

5.4 Effect of Termination. Upon termination of this 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 apply to PHI that is in the possession of subcontractors or agents of Business Associate. If destruction is determined, Business Associate agrees to notify Covered Entity as soon as practical. Business Associate shall retain no PHI in any format or medium.

 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. Said notification shall include: (i) a statement that the Business Associate has determined that it is infeasible to return or destroy the PHI in its possession, and (ii) the specific reasons for such determination. Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures to those purposes that make the return or destruction infeasible for as long as Business Associate retains the PHI. This provision shall apply to PHI that remains in the possession of subcontractors or agents of the Business Associate.

**6. Miscellaneous**

6.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of §§ 5.2 and 7 shall survive termination of this Agreement indefinitely.

6.2 Amendments. The parties recognize that this Agreement may need to be modified from time to time to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to HIPAA. The parties agree to execute any additional amendments to this Agreement reasonably necessary for each party to comply with HIPAA. This Agreement shall not be waived, amended, or altered, in whole or in part, except in a writing signed by the authorized representatives of the parties.

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

6.4 Conflicting Language & Interpretation. In the event of conflicting language in this agreement and any and all agreements between the contracting parties, the language in this agreement will supersede. Any ambiguity in this agreement shall be resolved to permit Covered Entity and Business Associate to comply with the provisions of HIPAA and the HITECH Act.

6.5 Entire Agreement. This Business Associate Agreement constitutes the entire agreement between the parties on this subject matter and replaces or supersedes all prior Business Associate Agreements.

6.6 Choice of Law. This Agreement shall be governed and construed by the law of South Carolina and any disputes shall be resolved or adjudicated in the State of South Carolina.

6.7 Transferability. Business Associate’s interests, duties and obligations pursuant to this Agreement may not be transferred or assigned or assumed by any other person, in whole or in part, without the prior written consent of Covered Entity.

6.8 Relationship of Parties. Business Associate is an independent contractor of the Covered Entity, not a partner, agent or joint venture of the Covered Entity. As such, neither party shall hold itself out contrary to these terms by advertising or otherwise, nor shall either party be bound by any representation, act or omission whatsoever of the other party.

6.9 Documentation. Both parties shall retain all documentation required by HIPAA for six years from the date of its creation or the date when the document was last in effect, whichever is later.

NOTIFICATIONS:

Any notice or other communication required or given pursuant to this Agreement shall be in writing via 1) hand delivery, 2) delivery by US first class registered mail, with return receipt requested, or 3) by facsimile, with a copy sent by registered first class US mail. In each case, the notice shall be given to the appropriate address as set forth below:

Business Associate:

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Attention: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Fax: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Covered Entity:

University of South Carolina

Student Health Services

1409 Devine St.
Columbia, SC 29208

Breach Notices:

shspo@mailbox.sc.edu

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its

name and on its behalf effective as of the date signed by both parties.

COVERED ENTITY SIGNATURE

By: University of South Carolina

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

BUSINESS ASSOCIATE SIGNATURE

By: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Name: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Print Title: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

Date: \_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_

*Disclaimer: All Business Associate Agreements must be approved by USC’s Legal Department.*