

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This **HIPAA BUSINESS ASSOCIATE AGREEMENT** (hereinafter, the “Agreement”) is made and entered into as of the 9th day of May, 2017 (“Effective Date”), among Madison County Board of Supervisors (“Plan Sponsor”), on its own behalf and on behalf of the group health plan that it sponsors for the benefit of its employees and their eligible dependents (the “Plan”) and BancorpSouth Insurance Services, Inc. (“Business Associate”). The parties are entering into this Agreement to comply with the national standards for the privacy and security of individually identifiable Protected Health Information and electronic transactions adopted by the Department of Health and Human Services (“DHHS”) pursuant to the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (45 C.F.R. parts 142, 160, 162, and 164) and Title XIII, Subtitle D of the American Recovery and Reinvestment Act of 2009, namely the Health Information Technology for Economic and Clinical Health Act (“the HITECH Act”) (collectively, the “HIPAA Privacy and Security Standards”).

1. **Definitions.** Except as otherwise provided in this Agreement, capitalized terms used herein shall have the meanings ascribed to them in the HIPAA Privacy and Security Standards.

2. **Description of Business Relationship.** Business Associate will provide benefits consulting related to the Plan. In performing its obligations, Business Associate will be provided with and have access to individually identifiable Protected Health Information (“PHI”). All such PHI will be used by Business Associate solely in the performance of its obligations under this Agreement in accordance with the terms hereof, and Business Associate shall limit and regulate all uses and disclosures of all such PHI in accordance with the terms of this Agreement.

3. **HIPAA Privacy Standards.** Business Associate warrants that it will comply in all material respects with the HIPAA Privacy and Security Standards when using or disclosing PHI received by Business Associate from or on behalf of the Plan. Compliant with the HIPAA Privacy and Security Standards, Business Associate agrees to the following:

- a. Business Associate will not use or disclose PHI received from the Plan in any way other than as permitted or required pursuant to the relationship described above in Section 2 of this Agreement.
  - i. Business Associate may use or disclose PHI:
    - a) As necessary for the proper management and administration of the Business Associate’s business activities;
    - b) As may be required or permitted by law;
    - c) To provide data aggregation services, as defined by the HIPAA Privacy and Security Standards, relating to the health care operations of the Plan.

- ii. Other than disclosures permitted by this Agreement or otherwise specifically identified in the Agreement, Business Associate will not disclose PHI to the Plan or another business associate of the Plan except as directed by the Plan in writing. Where the Plan directs Business Associate to disclose PHI to another business associate of the Plan, Business Associate reserves the right to disclose PHI directly to the Plan only.
  - iii. Business Associate will not disclose PHI to Plan Sponsor, except as permitted by and in accordance with Section 6 of this Agreement.
- b. Business Associate will exercise all appropriate safeguards to prevent the use or disclosure of PHI other than as necessary for Business Associate to perform its obligations pursuant to the relationship described above in Section 2 of this Agreement.
- c. Except as provided in this Section 3, the Business Associate shall not use or disclose PHI for any purposes, including any commercial purpose.
- d. Notwithstanding any provision of this Agreement to the contrary, Business Associate shall only request, use, and disclose PHI to the minimum extent necessary to accomplish the purpose of any such request, use, or disclosure. The parties acknowledge that the phrase “minimum necessary” shall be interpreted in accordance with the HITECH Act and the regulations and guidance promulgated thereunder.
- e. Business Associate will immediately report to the Plan any use or disclosure of PHI which is not within the parameters of the business relationship between the parties or that is not permitted or required by law.
- f. Business Associate shall comply with the requirements of the HITECH Act concerning notification in the event of breach, as such requirements apply to business associates. Business Associate shall immediately report any such uses or disclosures or notification of breach to [Insert Name of Contact for the Plan], or other individual who may be designated by written notice to Business Associate within 20 days of discovery of breach. For purposes of this section, the Plan ultimately determines whether a breach has occurred. To the extent Business Associate provides the requisite notice, it shall provide a copy to the Plan.
- g. Business Associate shall mitigate, to the extent practicable, any harmful effect arising from an improper use or disclosure of PHI by the Business Associate or its officers, employees, agents, contractors or subcontractors.
- h. Business Associate will require that any subcontractors or agents that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate in this Agreement.

- i. Business Associate will make its policies, procedures, books and records relating to uses and disclosures of PHI received from the Plan or created or received by the Business Associate on behalf of the Plan, available to the Plan, at such times as the Plan may reasonably request or to the Secretary of DHHS for purposes of determining Business Associate's and the Plan's compliance with the HIPAA Privacy and Security Standards.
- j. Business Associate will make available to the Plan any relevant PHI in its possession, subject to any limitation permitted under the HIPAA Privacy and Security Standards. If Business Associate receives a request from an individual (or his or her personal representative) concerning access to his or her PHI, Business Associate shall provide a copy of such request to the Plan immediately. Business Associate will provide access to PHI as required by 45 C.F.R. §164.524 on the Plan's behalf. (All fees related to this access shall be borne by the individual seeking access to PHI.) The provision of access by Business Associate will not relieve the Plan of any additional and independent obligations to provide access to PHI.
- k. Business Associate will provide or make available to the Plan any PHI that is subject to correction or amendment and to permit the Plan to amend such PHI as may be permitted or required under 45 C.F.R. §164.526. If Business Associate receives a request from an individual (or his or her personal representative) concerning the amendment or correction of his or her PHI, Business Associate shall provide a copy of such request to the Plan immediately. Business Associate shall not respond to any such individual request or permit any such amendment or correction without the approval and direction of the Plan. Upon receipt of written or electronic notice from the Plan, Business Associate shall incorporate any such correction or amendment into any and all PHI maintained by Business Associate. Any such amendment or correction shall be completed within the time period mutually agreed to by the parties and will not relieve the Plan of any additional and independent obligations to amend or correct PHI.
- l. Business Associate shall maintain a log of the disclosure of PHI in accordance with the requirements of 45 C.F.R. §164.528. Business Associate shall make available to the Plan, a copy of the relevant portions of such log, as required under 45 C.F.R. §164.528 to comply with a request for an accounting. Such log shall include (a) the date of each disclosure; (b) the name and address of the organization or person who received the protected health information; (c) a brief description of the information disclosed; and (d) for disclosures other than those made at the request of the individual, the purpose for which the information was disclosed or a copy of the request or authorization for disclosure. Business Associate shall furnish such information within 45 days after receipt of a written request from the Plan. If the Business Associate receives a request from an individual (or his or her personal representative) concerning an accounting of the disclosure of his or her PHI, Business Associate shall provide a copy of such request to the Plan immediately. To the extent disclosures have been made by Business Associate, Business Associate will provide an accounting that complies

with the requirements of 45 C.F.R. §164.528. Such provision of an accounting will not relieve the Plan of any additional and independent obligations to provide an accounting of disclosures.

- m. Upon receipt of written notice from the Plan, Business Associate shall promptly implement any restriction on the use or disclosure of PHI and any request for confidential communications, provided such restriction or request complies with the requirements of 45 C.F.R. §164.522.
- n. Upon request from the Plan, Business Associate will, within a reasonable time period and from time to time, return to the Plan all PHI received from the Plan that Business Associate maintains in any form and all copies of such PHI (or if the Plan so requests, shall destroy such PHI and all copies and shall certify to the Plan that it has done so). If such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the PHI retained and will limit further uses and disclosures to those purposes that make return or destruction infeasible.

4. **HIPAA Security Standards.** Any PHI that is transmitted via Electronic Media or maintained in Electronic Media (“Electronic Protected Health Information” or “e-PHI”) by Business Associate will be protected under standards and specifications no less stringent than those described in the HIPAA Security Standards (“Security Rule”), at 45 C.F.R. Parts 160 and 164 and with such security requirements of the HITECH Act as are applicable to business associates. In accordance with the Security Rule, the Business Associate will:

- a. Implement administrative, physical, and technical safeguards that protect the confidentiality, integrity, and availability of e-PHI that it creates, receives, maintains, or transmits on behalf of the Plan.
- b. Ensure that any agent (including a subcontractor) to whom it provides such e-PHI agrees to implement reasonable and appropriate safeguards to protect it.
- c. Report to the Plan any Security Incident of which it becomes aware, and take appropriate action to prevent the recurrence of such incident, including but not limited to, training members of its workforce, imposing sanctions, and/or adopting policies and procedures.
- d. Authorize termination of this Agreement by the Plan if it determines that Business Associate violated a material term of this Agreement.
- e. Make its policies and procedures related to the implementation of security safeguards available to the Secretary of DHHS for purposes of determining the Plan’s compliance with the Security Rule.

5. **HIPAA Standard Transactions.** The provisions of this Section 5 will apply if Business Associate conducts electronic Transactions for or on behalf of the Plan. If Business Associate conducts, in whole or in part, electronic Transactions on behalf of the Plan, Business

Associate will comply, and will require any subcontractor or agent involved with the conduct of such electronic Transactions to comply, with the applicable requirements of 45 C.F.R. Part 162.

6. **Plan Sponsor's Performance of Plan Administration Functions.** Business Associate will disclose PHI to the Plan Sponsor in accordance with the provisions of this Section 6.

- a. All disclosures of PHI from Business Associate pursuant to this Agreement shall be made to the Plan, except for disclosures related to enrollment or disenrollment in the Plan, which may be disclosed to the Plan Sponsor.
- b. Business Associate is authorized to provide Summary Health Information regarding participants in the Plan to the Plan Sponsor, upon request, for the purpose of (1) obtaining premium bids for providing health insurance coverage for the Plan, or (2) modifying, amending, or terminating the Plan.
- c. Business Associate will disclose PHI to Plan Sponsor, provided:
  - i. Plan Sponsor provides written certification that the Plan has been amended to incorporate the provisions of 45 C.F.R. §164.504(f)(2) and agrees to comply with these requirements; and
  - ii. the Plan authorizes Business Associate, in writing, to disclose PHI to Plan Sponsor for certain plan administration functions.

Business Associate may rely on Plan Sponsor's certification and the Plan's written authorization and will have no obligation to verify (1) that the Plan document has been amended to comply with the requirements of 45 C.F.R. §164.504(f)(2) or this Agreement or (2) that the Plan Sponsor is complying the Plan document, as amended.

- d. Prior to furnishing Business Associate with the Plan Sponsor's certification (described in (c) above), the Plan will ensure that (1) the Plan document has been amended to establish the uses and disclosures of PHI consistent with the requirements of 45 C.F.R. Part 164 that Plan Sponsor will be permitted and required to make for purposes of plan administration, and (2) the Plan Sponsor agrees to comply with the requirements of 45 C.F.R. §164.504(f)(2).

7. **Indemnification.** Business Associate will indemnify, defend and hold harmless the Plan from and against any and all claims, demands, damages, liabilities, losses and expenses (including reasonable attorney's fees) arising from any allegation, suit or claim made or threatened by any third party against the Plan arising from Business Associate's gross negligence, recklessness, or willful or malicious conduct in connection with the performance of services for the Plan as set forth in Section 2.

The Plan will indemnify, defend and hold harmless Business Associate from and against any and all claims, demands, damages, liabilities, losses and expenses (including reasonable

attorney's fees) arising from any allegation, suit or claim made or threatened by any third party against Business Associate arising from the Plan's gross negligence, recklessness, or willful or malicious conduct in connection with the business relationship between the parties set forth in Section 2.

8. **Remedies Upon Breach.** Upon a breach by Business Associate of any requirement of this Agreement, the Plan, at its option, may require Business Associate to:

- a. Furnish to the Plan copies of its practices and procedures and books and records to facilitate the Plan's mitigation of damages arising from an improper use or disclosure or breach of security by Business Associate;
- b. Exercise all reasonable efforts to retrieve improperly used or disclosed PHI and to mitigate damages to the Plan and/or an individual arising from any privacy or security breach by Business Associate or its employees, agents or subcontractors;
- c. Establish and adopt new practices, policies and procedures to assure that PHI is not used or disclosed in the future in violation of the HIPAA Privacy and Security Standards;
- d. Comply with all auditing or reporting requests by the Plan to demonstrate Business Associate's compliance with the HIPAA Privacy and Security Standards; and
- e. Take such other actions as the Plan may reasonably require.

9. **Obligations of the Plan.** As of the Effective Date, the Plan agrees to provide Business Associate with the following information:

- a. A copy of the Plan's Notice of Privacy Practices, Privacy Policies and Procedures, and Security Policies and Procedures; and
- b. Any changes in, or revocation of, permission by any individual (or his or her personal representative) to use or disclose PHI or e-PHI if such changes or revocation affect Business Associate's use or disclosure of such information;
- c. Notice of any restriction on the use or disclosure of PHI or e-PHI agreed to by the Plan; and
- d. Notice of any request for confidential communications to which the Plan has agreed.

The Plan shall provide Business Associate with copies of any amendments, revisions, or changes to this information not later than 30 days of such amendment, revision, or change. The Plan is responsible for providing timely notice of the items described in this Section 8 to Business Associate, and Business Associate shall be required to comply with such amendments, revisions, or changes upon receipt. Business Associate shall not be liable if the Plan fails to provide notice of the information described in this Section.

In addition, except as provided in Section 3(a), the Plan shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy and Security Standards if such action were taken by the Plan.

10. **Termination.** This Agreement shall terminate upon the earlier of:
- a. 60 days after receipt of written notice of termination, provided by either party;
  - b. The termination of the underlying business relationship described in Section 2 of this Agreement; or
  - c. Upon the occurrence of a material breach of this Agreement by either party (including said party's agents and subcontractors) after the non-breaching party provides written notice of the breach to the breaching party and the breaching party fails to cure the breach within 30 days after receipt of the notice.

Upon termination of this Agreement, Business Associate shall return to the Plan or destroy all PHI received from or on behalf of the Plan or created for on behalf of the Plan that Business Associate maintains in any form and all copies of such PHI. Business Associate shall safeguard such information and limit its further use or disclosure of PHI to those purposes that make the return or destruction of such information infeasible. Business Associate shall retain no copies of PHI. The obligations of Business Associate under this Section shall survive termination of this Agreement.

11. **General Provisions.**

a. **Notices.** Any and all notices or other communications required or permitted to be given under any of the provisions of this Agreement shall be in writing and shall be deemed to have been delivered when given in the manner set forth below to the following addresses or facsimile numbers:

If to Business Associate: BancorpSouth Insurance Services, Inc.  
Attn: Tim Holifield  
2616 Lakeward Drive, Jackson, MS 39216  
Fax: (601) 362-4820

If to Plan or Plan Sponsor: Madison County Board of Supervisors  
Attn: Loretta D. Phillips  
P. O. Box 608, Canton, MS 39046  
Fax: (601) 855-5510

(or at such other address or facsimile numbers as any party may specify by notice to all other parties given as aforesaid). Unless otherwise specifically provided in this Agreement, such communications shall be deemed to have been given (a) three days after mailing, when mailed by registered or certified postage-paid mail, (b) on the next business day, when delivered to a same-day or overnight national courier service or the U.S. Post Office Express Mail or (c) upon the date of receipt by the addressees when delivered personally or by telecopier, provided,

however, that any notice of change of address shall be effective only upon receipt. Notice may be given on behalf of a party by its counsel.

b. **Entire Agreement; Amendment.** This writing constitutes the entire and only agreement of the parties with respect to the subject matter hereof and supersedes and cancels any and all prior negotiations, understandings and agreements concerning the subject matter hereof. This Agreement may be amended, modified, superseded, canceled, renewed or extended only by a written instrument executed by the parties herein.

c. **Waiver.** The failure by any party at any time to require performance or compliance by another of any of its obligations or agreements shall in no way affect the right to require such performance or compliance at any time thereafter. The waiver by any party of a breach of any provision hereof shall not be taken or held to be a waiver of any preceding or succeeding breach of such provision or as a waiver of the provision itself. No waiver of any kind shall be effective or binding, unless it is in writing and is signed by the party against which such waiver is sought to be enforced.

d. **Binding Nature.** This Agreement shall be binding upon and inure to the benefit of each party hereto, its successors and permitted assigns.

e. **Assignment.** Neither party may assign or otherwise transfer its rights or obligations under this Agreement, by operation of law or otherwise, without the prior written consent of the other party to this Agreement.

f. **Headings; Language.** The section headings contained in this Agreement are for the purposes of convenience only and shall not affect the construction of provisions of this Agreement. In this Agreement, unless the context requires otherwise, the singular includes the plural, the plural the singular, and the word “or” is used in the inclusive sense.

g. **Change of Law; Severability.** In the event any state or federal laws or regulations, now existing or enacted or promulgated after the effective date of this Agreement, are interpreted by judicial decision, a regulatory agency or legal counsel to a party hereto in such a manner as to indicate that any provision of this Agreement may be in violation of such laws or regulations, the parties shall amend this Agreement as necessary. To the maximum extent possible, any such amendment shall preserve the underlying rights, duties, and obligations established in this Agreement.

If any provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the HIPAA Privacy and Security Standards, the parties shall exercise their best efforts to determine whether such provision shall be retained, replaced, or modified.

h. **Counterparts.** This Agreement may be executed in one or more counterparts, all of which taken together shall be deemed to evidence one and the same agreement.

i. **Applicable Law.** This Agreement and its validity, construction, and performance shall be governed in all respects by the laws of the State of Mississippi and by the HIPAA Privacy and Security Standards.



j. **HIPAA Compliance.** The parties agree that this Agreement shall be interpreted and construed in a manner consistent with the national standards for the privacy and security of individually identifiable Protected Health Information adopted by the Department of Health and Human Services (“DHHS”) pursuant to HIPAA, the HITECH Act, and the regulations promulgated thereunder. Any ambiguity in the Agreement shall be resolved to permit the parties to comply with the applicable requirements under HIPAA and the HITECH Act.

k. **No Third Party Beneficiaries.** Nothing expressed or implied in this Business Associate Agreement or in the underlying agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the day and year first above written.

**Business Associate:**

**Plan Sponsor and Plan:**

**BancorpSouth Insurance Services, Inc.**

**Madison County Board of Supervisors**

**By:** Tim Holifield

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

**Title:** Employee Benefits Consultant

**Title:** \_\_\_\_\_

**Date:** 5/9/2017

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