

## BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (hereinafter, the "Agreement") is made and entered into as of the 20th day of August, 2019 ("Effective Date"), between Masison County BOS ("Covered Entity"), 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 BXS Insurance ("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.

1.1 **Catch-All Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, PHI, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured PHI, and Use.

1.2 **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR § 160.103.

1.3 **Covered Entity.** "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103.

1.4 **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. **Description of Business Relationship.** Business Associate will provide benefits consulting and brokerage services (the "Services") related to the Plan pursuant to the Consulting Agreement ("Services Agreement") entered into by Business Associate and Covered Entity. 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 Covered Entity. 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 Covered Entity in any way other than as permitted or required by this Agreement in providing the services contemplated in the Services 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 Covered Entity or another business associate of Covered Entity except as directed by Covered Entity in writing. Where Covered Entity directs Business Associate to disclose PHI to another business associate of Covered Entity, Business Associate reserves the right to disclose PHI directly to Covered Entity only.
  - iii. Business Associate will not disclose PHI to Covered Entity, 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 Services Agreement.
- c. Except as otherwise limited in this Agreement, Business Associate may only use or disclose PHI solely as necessary to perform the Services for or on behalf of Covered Entity, if such use or disclosure would not violate the HIPAA Rules if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity. The Covered Entity may, but shall not be obligated to, use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c). All other uses or disclosures by Business Associate not authorized by this Agreement or by specific instruction of Covered Entity are prohibited. Business Associate agrees to immediately report to Covered Entity any use or disclosure of the PHI not provided for this Agreement of which it becomes aware, including breaches of Unsecured PHI as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate arising from

an improper use or disclosure of PHI by the Business Associate or its officers, employees, agents, contractors or subcontractors.

- d. 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.
- e. Business Associate agrees to make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules. Business Associate will make available to Covered Entity 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 Covered Entity immediately. Business Associate will provide access to PHI as required by 45 C.F.R. §164.524 on Covered Entity'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 Covered Entity of any additional and independent obligations to provide access to PHI.
- f. Business Associate will provide or make available to Covered Entity any PHI that is subject to correction or amendment and to permit Covered Entity 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 Covered Entity immediately. Business Associate shall not respond to any such individual request or permit any such amendment or correction without the approval and direction of Covered Entity. Upon receipt of written or electronic notice from Covered Entity, 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 Covered Entity of any additional and independent obligations to amend or correct PHI.

Business Associate agrees to document such disclosures of PHI 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 PHI in accordance with 45 CFR § 164.528.

Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to the Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.

- g. Upon receipt of written notice from Covered Entity, 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.

- h. Upon request from Covered Entity, Business Associate will, within a reasonable time period and from time to time, return to Covered Entity all PHI received from Covered Entity that Business Associate maintains in any form and all copies of such PHI (or if Covered Entity so requests, shall destroy such PHI and all copies and shall certify to Covered Entity 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 Covered Entity.
- 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 Covered Entity 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 Covered Entity 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 Covered Entity’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 Covered Entity. If Business Associate conducts, in whole or in part, electronic Transactions on behalf of Covered Entity, 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. **Performance of Plan Administration Functions.** Business Associate will disclose PHI to the 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 Covered Entity.
- b. Business Associate is authorized to provide Summary Health Information regarding participants in the Plan to the Covered Entity, 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 Covered Entity, provided:
  - i. Covered Entity 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 Covered Entity for certain plan administration functions.

Business Associate may rely on Covered Entity'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 Covered Entity is complying the Plan document, as amended.

- d. Prior to furnishing Business Associate with the Covered Entity'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 Covered Entity will be permitted and required to make for purposes of plan administration, and (2) the Covered Entity 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 Covered Entity 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 Covered Entity 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.

Covered Entity 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 Covered Entity's gross negligence, recklessness, or willful or malicious conduct in connection with the business relationship between the parties as set forth in Section 2.

8. **Obligations of Covered Entity.** As of the Effective Date, Covered Entity agrees to provide Business Associate with the following information:

- a. A copy of Covered Entity's Notice of Privacy Practices, Privacy Policies and Procedures, and Security Policies and Procedures related to the Plan; 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 Covered Entity's disclosure of such information;
- c. Notice of any restriction on the use or disclosure of PHI or e-PHI agreed to by Covered Entity; and
- d. Notice of any request for confidential communications to which Covered Entity has agreed.

Covered Entity 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. Covered Entity is responsible for providing timely notice of the items described in this Section 7 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 Covered Entity fails to provide notice of the information described in this Section.

In addition, except as provided in Section 3(a), Covered Entity 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 Covered Entity.

9. **Term.** The term of this Agreement shall commence on the Effective Date, and shall terminate when either the Agreement is terminated, the Services Agreement is terminated, or on the date Covered Entity terminates this Agreement for cause as provided in this Article V, whichever is sooner.

a. **Termination for Cause.** Business Associates authorizes termination of this Agreement by Covered Entity if Covered Entity determines Business Associate has violated a material term of this Agreement or the Services Agreement.

b. **Obligations upon Termination.** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

ii. Continue to use appropriate safeguards and comply with Subpart C. of 45 CFR Part 164 with respect to electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;

iii. Not Use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set forth in Section 3.2(c), above; and

iv. Return to Covered Entity or destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

5.4 Survival. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

9. 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:       BXS Insurance  
  Attn: Andy Impastato  
  525 E. Capitol St., 2<sup>nd</sup> Floor  
  Jackson, Mississippi 39201

If to Covered Entity:           [Insert Name of Company]  
  Attn: [Insert Name]  
  [Insert Address]

(or at such other address 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, provided, 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.

1. **Independent Contractors**. The Parties are independent contractors. None of the provisions of this Agreement are intended to create, nor shall they be interpreted or construed to create, any relationship between Covered Entity and Business Associate other than that of independent contractors. Except as otherwise expressly set forth herein, neither Party hereto, nor any of its representatives, shall be deemed to be the agent, employee or representative of the other Party.

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

**Business Associate:**

**BXS Insurance**

**By:** Tim Holifield

**Title:** Senior Producer

**Date:** 08/20/2019

**Covered Entity and**

**Madison County Board of Supervisors**

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

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

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