

Business Associate Agreement

This Business Associate Agreement (the "Agreement") is made effective the ____ of _____, 2024 (the "Effective Date"), by and among **University Medical Center of Southern Nevada** (hereinafter referred to as "Covered Entity"), a county hospital duly organized pursuant to Chapter 450 of the Nevada Revised Statutes, with its principal place of business at 1800 West Charleston Boulevard, Las Vegas, Nevada, 89102, **ICU Medical Sales, Inc., on behalf of itself and its affiliates and Smiths Medical ASD, Inc.**, hereinafter referred to collectively as "Business Associate", (individually, a "Party" and collectively, the "Parties").

WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Rules"); and

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act, as well as the Genetic Information Nondiscrimination Act of 2008 ("GINA," Pub. L. 110-233), provide for modifications to the HIPAA Rules; and

WHEREAS, the Secretary, U.S. Department of Health and Human Services, published modifications to 45 CFR Parts 160 and 164 under HITECH and GINA, and other modifications on January 25, 2013, the "Final Rule," and

WHEREAS, on or about the date hereof, the Parties are entering into Transaction Documents (as defined in the Addendum dated on or about the date hereof) whereby Business Associate may provide certain services to Covered Entity (the "Services"), and, pursuant to one or more of such Transaction Documents, Business Associate may be considered a "Business Associate" of Covered Entity as defined in the HIPAA Rules (the Transaction Documents are referred to herein as the "Underlying Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under the Underlying Agreement;

THEREFORE, in consideration of the Parties' continuing obligations under the Underlying Agreement, compliance with the HIPAA Rules, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Rules and to protect the interests of both Parties.

I. DEFINITIONS

"HIPAA Rules" means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

“Protected Health Information” is as defined by HIPAA Rules.

“Electronic Protected Health Information” means Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Rules) or maintained in Electronic Media. “Protected Health Information” includes without limitation “Electronic Protected Health Information” as defined below.

The following terms used in this Agreement shall have the same meaning as defined in the HIPAA Rules: Administrative Safeguards, Breach, Business Associate, Business Associate Agreement, Covered Entity, Individually Identifiable Health Information, Minimum Necessary, Physical Safeguards, Protected Health Information, Security Incident, and Technical Safeguards.

Terms are defined by HIPAA rules.

II. ACKNOWLEDGMENTS

Business Associate and Covered Entity acknowledge and agree that in the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Rules, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control.

Business Associate acknowledges and agrees that Protected Health Information that is disclosed or made available in any form (including paper, oral, audio recording or electronic media) by Covered Entity to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.

Business Associate has read, acknowledges, and agrees that the Secretary, U.S. Department of Health and Human Services, published modifications to 45 CFR Parts 160 and 164 under HITECH and GINA, and other modifications on January 25, 2013, the “Final Rule,” and the Final Rule significantly impacted and expanded Business Associates’ requirements to adhere to the HIPAA Rules.

III. USE AND DISCLOSURE OF PROTECTED HEALTH INFORMATION

- (a) Business Associate agrees that all uses and disclosures of Protected Health information shall be subject to the limits set forth in 45 CFR 164.514 regarding Minimum Necessary requirements and limited data sets.
- (b) Business Associate agrees to use or disclose Protected Health Information solely:
 - (i) For meeting its business obligations as set forth in an Underlying Agreement between the Parties evidencing their business relationship;
 - (ii) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement or the Underlying Agreement (if consistent with this Agreement and the HIPAA Rules); or
 - (iii) for Business Associate’s proper management and administration; or
 - (iv) as otherwise expressly permitted in writing by Covered Entity.

(c) Where Business Associate is permitted to use Subcontractors that create, receive, maintain, or transmit Protected Health Information; Business Associate agrees to execute a "Business Associate Agreement" with Subcontractor as defined in the HIPAA Rules that includes the same covenants for using and disclosing, safeguarding, auditing, and otherwise administering Protected Health Information as outlined in 45 CFR 164.314).

(d) Business Associate will acquire written authorization in the form of an update or amendment to this Agreement and Underlying Agreement prior to:

(i) Directly or indirectly receiving any remuneration for the sale or exchange of any Protected Health Information; or

(ii) Utilizing Protected Health Information for any activity that might be deemed "Marketing" under the HIPAA rules.

IV. SAFEGUARDING PROTECTED HEALTH INFORMATION

(a) Business Associate agrees:

(i) To implement appropriate safeguards and internal controls to prevent the use or disclosure of Protected Health Information other than as permitted in this Agreement or by the HIPAA Rules.

(ii) To implement "Administrative Safeguards," "Physical Safeguards," and "Technical Safeguards" as defined in the HIPAA Rules to protect and secure the confidentiality, integrity, and availability of Electronic Protected Health Information (45 CFR 164.308, 164.310, 164.312). Business Associate shall document policies and procedures for safeguarding Electronic Protected Health Information in accordance with 45 CFR 164.316.

(iii) To notify Covered Entity of any attempted or successful Security Incident. No report shall be required for unsuccessful attempts at unauthorized Access, Use, Disclosure, modification, or destruction of PHI or unsuccessful attempts at interference with systems operations in an information system as allowed by the HIPAA rules, which may include, but not limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above with respect to Business Associate's information systems.

(b) When a Breach occurs, Business Associate agrees:

(i) To notify Covered Entity's Chief Privacy Officer within 15 business days upon discovery of the Breach, and

(ii) Within 15 business days of the discovery of the Breach, notify Covered Entity's Chief Privacy Officer and provide Covered Entity with all required content of notification in accordance with 45 CFR 164.410 and 45 CFR 164.404, and

(ii) To reasonably cooperate with Covered Entity's analysis and determination on whether notification to affected individuals, media, or Secretary of the U.S. Department of Health and Human Services is legally required, and

- V. (iii) To pay all costs associated with the notification of affected individuals and costs associated with mitigating potential harmful effects to affected individuals; provided, however, that the parties shall meet and confer prior to costs being incurred to determine which party is in best position to provide notification to affected individuals. RIGHT TO AUDIT

(a) Business Associate agrees:

(i) To provide Covered Entity with timely and appropriate access to records, electronic records, HIPAA assessment questionnaires provided by Covered Entity, personnel, or facilities sufficient for Covered Entity to gain reasonable assurance that Business Associate is in compliance with the HIPAA Rules and the provisions of this Agreement solely to the extent required under an applicable HIPAA Rule or pursuant to a valid court order.

(ii) That in accordance with the HIPAA Rules, the Secretary of the U.S. Department of Health and Human Services has the right to review, audit, or investigate Business Associate's records, electronic records, facilities, systems, and practices related to safeguarding, use, and disclosure of Protected Health Information to ensure Covered Entity's or Business Associate's compliance with the HIPAA Rules.

VI. COVERED ENTITY REQUESTS AND ACCOUNTING FOR DISCLOSURES

(a) At the Covered Entity's written request, Business Associate agrees:

(i) To comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to Section 164.522 of the HIPAA Rules to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity.

(ii) To make available Protected Health Information in a Designated Record Set to the extent and in the manner required by Section 164.524 of the HIPAA Rules. If Business Associate maintains Protected Health Information in a Designated Record Set electronically, it agrees to make such Protected Health Information electronically available to the Covered Entity.

(iii) To make Protected Health Information in a Designated Record Set available for amendment and incorporate any amendments to such Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Rules.

(iv) To account for such Disclosures of Protected Health Information and make an accounting of such Disclosures available to Covered Entity as required by Section 164.528 of the HIPAA Rules. Business Associate shall provide any accounting required within 30 business days of request from Covered Entity.

VII. TERM AND TERMINATION

This Agreement shall be effective as of the Effective Date and shall continue for the duration of the of the last Underlying Agreement. Notwithstanding anything in this Agreement to the contrary, a Party shall have the right to terminate this Agreement and the Underlying Agreement immediately upon written notice if it determines that the other Party has violated the HIPAA Rules and such violation is not cured within thirty days of written notice of the violation provided that if the violation is not capable of cure, termination shall be immediate. A Party will notify the other Party of a violation within thirty days

of becoming aware of the violation. The Parties agree to work together in good faith to address any such alleged violations. At termination of this Agreement, the Underlying Agreement, or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form, provide a written certification to Covered Entity that such Protected Health Information has been returned or destroyed, and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of the Protected Health Information not feasible.

VIII. NOTICES

Any notice required or permitted to be given hereunder shall be in writing and shall either be delivered personally to the party to whom such notice is given, or sent via United States Postal Service registered or certified mail, postage prepaid and return receipt requested, addressed or delivered to such party at the address or addresses designated below (or such other address or addresses as may hereafter be designated by a party) by written notice to the other party:

To Covered Entity:

Attn: Legal Department
University Medical Center of Southern Nevada
1800 West Charleston Boulevard
Las Vegas, NV 89102
With a copy to the Privacy Officer

To Business Associates:

ICU Medical Sales, Inc. / Smiths Medical ASD, Inc.
951 Calle Amanecer
San Clemente, CA 92673
Attn: General Counsel
With a copy by email to: notice@icumed.com

IX. MISCELLANEOUS

Except as expressly stated herein or the HIPAA Rules, the Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Underlying Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein, but only to the extent Business Associates maintains any Protected Health Information on behalf of Covered Entity.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of Nevada. No change, waiver or discharge of any liability or

obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Agreement fails to comply with the HIPAA Rules, such Party shall notify the other Party in writing. For a period of up to 30 days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such 30-day period, the Agreement fails to comply with the HIPAA Rules, then either Party has the right to terminate upon written notice to the other Party.

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

COVERED ENTITY:

BUSINESS ASSOCIATE (ICU Medical Sales, Inc.):

By: _____

By: Richard Nevin
Richard Nevin (Feb 20, 2024 05:57 CST)

Mason Van Houweling
Title: Chief Operating Officer

Richard Nevin
Title: VP- Contracting

Date: _____

Date: Feb 20, 2024

BUSINESS ASSOCIATE (Smiths Medical ASD, Inc.):

Richard Nevin
By: Richard Nevin (Feb 20, 2024 05:57 CST)

Richard Nevin
Title: VP – Contracting

Date: Feb 20, 2024