

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (this "Agreement") is made as of the date set forth below on the signature page by and between the following parties (each a "Party" and collectively the "Parties"):

_____ with principal offices located at _____, New Jersey _____
 ("Covered Entity")

and

Atlantic Medical Imaging _____, with principal offices located at 72 West Jimmie Leeds Road, Galloway, NJ 08205 ("Business Associate").

WITNESSETH:

WHEREAS, Business Associate has entered into an agreement with Covered Entity pursuant to which Covered Entity may disclose to Business Associate certain Protected Health Information (as defined below) concerning patients of Covered Entity (the "Services"); and

WHEREAS, Covered Entity and Business Associate intend to meet their obligations regarding the use and disclosure of Protected Health Information under the Health Insurance Portability and Accountability Act of 1996, Section 13400 et seq. of the Health Information Technology for Economic and Clinical Health Act and Section 105 of Title I of the Genetic Information Non-Discrimination Act of 2008, and the implementing regulations codified at 45 CFR Parts 160 and 164 (the foregoing statutes and regulations are referred to herein generally as "HIPAA").

NOW, THEREFORE, intending to be legally bound, the Parties hereto agree as follows:

1. **Entire Agreement.** This Agreement represents the entire agreement and understanding of the Parties with respect to the subject matter hereof, and it supersedes any prior or current oral or written business associate agreement between the Parties.

2. **Definitions.**

(a) **Interpretation.** The terms defined below are included for ease of reference and are intended to have the same meaning as provided under HIPAA. Other terms used but not otherwise defined in this Agreement are also intended to be defined and interpreted in accordance with HIPAA.

(b) **"Breach."** The term "Breach" means, as defined in 45 CFR § 164.402, the unauthorized acquisition, access, use or disclosure of PHI that compromises the security or privacy of such information.

(c) “Designated Record Set.” The term “Designated Record Set” means, as defined in 45 CFR § 164.501, 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 Covered Entity to make decisions about individuals. For purposes of this paragraph, the term “record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for Covered Entity.

(d) “Electronic Protected Health Information.” The term “Electronic Protected Health Information” (also “E-PHI”) means, as defined in 45 CFR § 160.103, individually identifiable health information that is transmitted by or maintained in electronic media.

(e) “Protected Health Information.” The term “Protected Health Information” (also “PHI”) means, as defined in 45 CFR § 160.103, information that, (i) is created or received by Covered Entity, (ii) relates to the past, present, or future physical or mental condition of an individual, the provision of health care to an individual, or the payment for the provision of health care to an individual, and (iii) either identifies an individual or there is a reasonable basis to believe that it could be used to identify an individual.

(f) “Required by Law.” The phrase “Required by Law” means, as defined in 45 CFR § 164.103, a mandate contained in law that compels an entity to make a use or disclosure of Protected Health Information and that is enforceable in a court of law. Required by Law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, a grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; civil or authorized investigative demands; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

(g) “Secretary.” The term “Secretary” means, as defined in 45 CFR § 160.103, the Secretary of the Department of Health and Human Services or any other officer or employee of the department to whom the authority involved has been delegated.

(h) “Security Incident.” The term “Security Incident” means, as defined in 45 CFR § 164.304, the attempted or successful unauthorized access, use, disclosure, modification or destruction of information, or interference with system operations in an information system.

(i) “Subcontractor.” The term “Subcontractor” means, as defined in 45 CFR § 160.103, a person to whom Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of Business Associate.

(j) “Unsecured PHI.” The term “Unsecured PHI” means, as defined in 45 CFR § 164.402, PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary.

3. **Permitted Uses and Disclosures of PHI.**

(a) **Performance of Services.** Except as otherwise prohibited or limited by any applicable law, rule or regulation, Business Associate may use or disclose PHI to perform the Services for or on behalf of Covered Entity, provided that (i) such use or disclosure involves only the minimum amount of PHI as is necessary for such performance, and (ii) the use or disclosure would not violate HIPAA if done by Covered Entity.

(b) **Subcontractors.** Business Associate may disclose PHI to a business associate (as defined in 45 CFR § 160.103) that is a Subcontractor and may permit such Subcontractor to create, receive, maintain or transmit PHI, including E-PHI, on its behalf, but only if Business Associate enters into a written business associate agreement with the Subcontractor that satisfies the requirements of 45 CFR § 164.314(a) and § 164.504(e).

(c) **Management, Administration and Legal Responsibilities.** Business Associate may use PHI as is necessary for the proper management and administration of Business Associate or for Business Associate to perform its legal obligations. Business Associate may disclose PHI for such purposes, but only if (i) the disclosure is Required by Law, or (ii) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any breach of confidentiality concerning such information of which it is aware.

(d) **Data Aggregation Services.** Except as otherwise set forth herein, Business Associate may use PHI to provide data aggregation services to Covered Entity as permitted by 45 CFR § 164.504(e)(2)(i)(B).

(e) **Reporting.** Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

4. **Responsibilities of the Parties with Respect to PHI.**

(a) **Obligations and Activities of Business Associate.**

(i) Business Associate shall not use or disclose PHI other than as permitted or required under this Agreement, or as Required by Law.

(ii) Business Associate shall use appropriate safeguards and comply with the applicable requirements of Subpart C of 45 CFR § 164 with respect to E-PHI to prevent the use or disclosure of PHI other than as provided for herein.

(iii) Business Associate shall comply with the applicable requirements of Subpart E of 45 CFR § 164. To the extent that Business Associate, in providing the Services, is carrying out one or more of Covered Entity's obligations under Subpart E of 45 CFR § 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

(iv) Business Associate shall ensure that any Subcontractors that create, receive, maintain or transmit PHI, including any E-PHI, on behalf of Business Associate agree to comply with the applicable requirements of Subpart C and Subpart E of 45 CFR § 164, and that each Subcontractor enters into a business associate agreement with Business Associate under which each Subcontractor agrees to the same restrictions and conditions that apply to Business Associate with respect to PHI. In addition to other provisions required by HIPAA or this Agreement, such Subcontractor agreements shall contain provisions to ensure Business Associate will meet its reporting obligations under **Sections 4(a)(v) and 4(a)(vi)**, immediately below.

(v) Business Associate shall promptly report to Covered Entity, within thirty (30) days of discovery, any use or disclosure of PHI not permitted by this Agreement, as well as any Security Incident. In addition, Business Associate shall promptly and without unreasonable delay, notify Covered Entity following the discovery of a Breach of Unsecured PHI as required by 45 CFR § 164.410, except that Business Associate shall make such reports to Covered Entity no later than thirty (30) days after discovery of the same unless a law enforcement official determines that such a report would impede a criminal investigation or cause damage to national security, in which case Business Associate will comply with 45 CFR § 164.412. A Breach is deemed discovered as of the first day on which it is known to Business Associate or to any person, other than the person committing the Breach, who is an employee, officer or other agent of Business Associate, or, by exercising reasonable diligence, would have been known to Business Associate or such person.

(vi) Business Associate shall include in any report required under **Section 4(a)(v)** immediately above, to the extent possible, (A) a description of the impermissible use/disclosure, Security Incident or Breach of Unsecured PHI, (B) the identification of each individual whose PHI has been, or is reasonably believed to have been, the subject of the impermissible use/disclosure, Security Incident or Breach of Unsecured PHI, and (C) such other available information, as requested by Covered Entity, which Covered Entity may be required to include in any required notifications to the affected individuals.

(vii) Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of (A) a Security Incident, (B) a Breach of Unsecured PHI, and (C) a use or disclosure of PHI by Business Associate or its employees or agents, including any Subcontractors, in violation of the requirements of this Agreement. Further, Business Associate shall reasonably cooperate and coordinate with Covered Entity in the investigation of any violation of the requirements of this Agreement, including any impermissible use/disclosure, Security Incident or Breach of Unsecured PHI.

(viii) Business Associate, at the request of Covered Entity, shall provide access 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 45 CFR § 164.524.

(ix) Business Associate shall make any amendments to PHI in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR § 164.526.

(x) Business Associate shall make available to Covered Entity information required to provide an accounting of disclosures of PHI in accordance with 45 CFR § 164.528.

(xi) Business Associate shall make internal practices, books and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary for purposes of the Secretary's determination of Covered Entity's compliance with HIPAA.

(b) Obligations of Covered Entity.

(i) Covered Entity shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

(ii) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

(iii) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. **Term and Termination.**

(a) Term. This Agreement is effective as of the date first set forth below, and continues in effect until otherwise terminated in accordance with this **Section 5**.

(b) Termination.

(i) If either Party knows of a pattern of activity or practice of the other Party that constitutes a material breach or violation of this Agreement, then the Party shall provide written notice of the breach or violation to the other Party that specifies the nature of the breach or violation. The breaching Party must cure the breach or end the violation on or before thirty (30) days after receipt of the written notice. In the absence of a cure reasonably satisfactory to the non-breaching Party within the specified time frame, or in the event the breach is reasonably incapable of cure, then the non-breaching Party may do the following:

(A) if feasible, terminate this Agreement and any and all agreements for Services; or

(B) if termination of this Agreement or the agreements for Services is infeasible, report the issue to the Department of Health and Human Services.

(ii) Notwithstanding the foregoing, Covered Entity may immediately terminate this Agreement and any and all agreements for Services if Covered Entity determines that Business Associate has breached a material term of this Agreement and no cure is possible.

(c) Automatic Termination. This Agreement automatically terminates without any further action of the Parties, (i) if the Services are no longer provided by Business Associate to or on behalf of Covered Entity, or (ii) if HIPAA is no longer applicable to Covered Entity.

(d) Obligations of Business Associate upon Termination, Expiration or Non-Renewal.

(i) Return or Destruction. Upon the expiration, termination or non-renewal of this Agreement, for any reason, Business Associate shall return or destroy all PHI (including E-PHI) received from, or created or received by, Business Associate on behalf of Covered Entity that Business Associate still maintains in any form, and shall retain no copies of such PHI (including E-PHI), unless such return or destruction is not feasible.

(ii) Non-Return or Destruction. If it is not feasible for Business Associate to return or destroy the PHI (including E-PHI) upon the termination of this Agreement for any reason, as determined solely by Business Associate, Business Associate shall extend indefinitely any and all protections, limitations and restrictions contained in this Agreement to its use and disclosure of such PHI (including E-PHI).

6. Miscellaneous.

(a) Survival. The provisions of **Section 5(d)** survives the expiration or termination of this Agreement for any reason.

(b) Independent Contractor. Business Associate and Covered Entity are independent contractors. Nothing in this Agreement may be deemed or construed by the Parties hereto or by any third party as creating the relationship of employer and employee, principal and agent, partners, joint ventures, or any similar relationship, between the Parties.

(c) Amendments; Waiver. This Agreement may not be modified, nor may any provision hereof be waived or amended, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event may not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

(d) Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which is deemed an original. Facsimiles hereof are deemed to be originals.

(e) Further Assurances. Each Party shall do all acts, and make, execute and deliver such written instruments as may from time to time be reasonably required to carry out the terms, conditions and provisions of HIPAA, as promulgated from time to time.

(f) Severability. If any provision of this Agreement or the application thereof to any person, entity, or circumstance is found, for any reason or to any extent, to be invalid or unenforceable by a court of competent jurisdiction or government agency with the authority to make such a finding, the remainder of this Agreement and the application hereof to any person,

entity or circumstance will not be affected thereby, but rather the remainder of this Agreement will be enforced to the greatest extent permitted by law.

(g) Choice of Law; Jurisdiction. This Agreement is governed by, and should be construed in accordance with, the laws of the State of New Jersey. The Parties consent to the filing of an action in, and hereby personally submit to the jurisdiction of, the state or federal courts located in the State of New Jersey.

(h) Benefit. This Agreement is binding upon and inures to the benefit of the Parties hereto, their respective heirs, executors, administrators, successors and permitted assigns.

(i) Assignment. Except as otherwise provided herein, this Agreement and the obligations, rights and benefits hereunder may not be assigned by either Party without the prior written consent of the other Party.

(j) Headings. The paragraph headings in this Agreement are solely for convenience or reference and are not intended to affect its interpretation.

(k) Notice. Whenever, under the provisions of this Agreement, notice is required to be given, it will be in writing and will be deemed given when mailed, certified or registered mail, return receipt requested, or delivered via nationally recognized overnight courier, addressed to the Parties at the addresses set forth above, or when given by hand delivery.

(l) Regulatory References. A reference in this Agreement to a section in HIPAA means the section as in effect or as amended.

(m) Construction. It is specifically understood and agreed by and between the Parties that this Agreement is the result of negotiations between the Parties. Accordingly, it is understood and agreed that all Parties will be deemed to have drawn these documents and there will be no negative inference from the language of this Agreement by any fact finders as against any Party.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf on the date set forth below.

COVERED ENTITY

BUSINESS ASSOCIATE

By: _____

By:  _____

Printed Name: _____

Printed Name: David Levi, MD

Title: _____

Title: President / CEO

Date: _____

Date: April 23, 2018