

Business Associate Agreement

¹⁴ THIS BUSINESS ASSOCIATE AGREEMENT (the "Agreement") is entered into this th day of Sept., 20 20 by and between The School Board of Lake County, Florida ("Business Associate"), Leesburg Regional Medical Center, Inc. d/b/a UF Health Leesburg Hospital and The Villages® Regional Hospital d/b/a UF Health The Villages® Hospital, both Florida not-for-profit corporations and its corporate affiliates, ("Covered Entity"), (collectively referred to as "Parties").

WHEREAS, the Parties have and/or intend to enter into an agreement under which the Business Associate provides or shall provide services to the Covered Entity ("Service Agreement") and under which the Business Associate may regularly use, have access to, and/or disclose Protected Health Information ("PHI") in its performance of the Services described below;

WHEREAS, HIPAA, the Health and Insurance Portability Accountability Act of 1996 ("HIPAA"), and the federal HIPAA privacy regulations at 45 CFR parts 160 and 164, and rules promulgated there under may require certain entities covered by the rules to place certain provisions in their agreements with third parties who come into contact with certain Protected Health Information;

WHEREAS, the U.S. Department of Health and Human Services ("HHS") has issued final regulations, pursuant to the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), governing the security of electronic protected health information ("E PHI") obtained, created or maintained by covered entities, including health care providers such as Covered Entity (the "HIPAA Security Rule"); and

WHEREAS, both Parties are committed to complying with the requirements and restrictions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the HIPAA regulations codified at 45 C.F.R. Parts 160, 162 and 164 (commonly known as the Privacy and Security Rules, as amended by applicable provisions set forth in § 13400 of the 2013 HIPAA Final Rule ["Omnibus Rule"] collectively referred to herein as the "HIPAA Regulations").

NOW, THEREFORE, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the Parties agree to abide by the terms hereto regarding the handling of PHI during the term of their Agreement and after its termination, as follows:

1. DEFINITIONS:

Terms used, but not otherwise defined in this agreement shall have the same meaning as those terms in the Privacy Rule

- A. **Breach**: The term "Breach" shall include the unauthorized acquisition, access, use or disclosure of Protected Health Information which compromises the security or privacy of such information including the meaning given such term under 45 CFR 164.402 and as such regulation is revised from time to time.
- B. **Business Associate**: For purposes of this Business Associate Agreement "Business Associate" shall mean The School Board of Lake County, Florida.
- C. **Covered Entity**: For purposes of this Business Associate Agreement "Covered Entity" shall mean Leesburg Regional Medical Center, Inc. d/b/a UF Health Leesburg Hospital and The Villages® Regional Hospital d/b/a UF Health The Villages® Hospital and corporate affiliates.

- D. **Individual:** For purposes of this Business Associate Agreement “Individual” shall have the same meaning as the term “individual” in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502 (g).
- E. **Privacy Rule:** For purposes of this Business Associate Agreement “Privacy Rule” shall mean the standards for privacy of individually identifiable health information at 45 CFR Part 160 and Part 164, Subparts A and E.
- F. **Protected Health Information:** For purposes of this Business Associate Agreement “Protected Health Information” shall have the same meaning as the term “Protected Health Information” in 45 CFR 160.103 and 45 CFR 160.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity. Also for the purposes of this Agreement, Electronic Health Information (EHI) shall be included, as set forth in 45 C.F.R. Parts 160 and 164, subparts A and C.
- G. **Required by Law:** For purposes of this Business Associate Agreement “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR 164.103.
- H. **Secretary:** For purposes of this Business Associate Agreement “Secretary” shall mean the Secretary of the Department of Health and Human Services or his designee.
- I. **Services.** “Services” shall mean the services provided by Business Associate to Covered Entity under the Agreement, to the extent they involve the creation, use or disclosure of PHI, including those set forth in this Agreement.
- J. **Unsecured Protected Health Information:** The term “Unsecured PHI” means PHI that is not rendered unusable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified in the guidance issued under Section 13402(h)(2) of HITECH on the HHS Website.

2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE:

- A. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this Agreement or as required by law.
- B. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- C. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- D. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

- E. Business Associate agrees to insure that any agent, including a subcontractor, to whom it provides Covered Entity's Protected Health Information on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- F. At the request of Covered Entity, Business Associate agrees to provide the Covered Entity access to Protected Health Information maintained by Business Associate in a Designated Record Set in order for Covered Entity to meet the requirements under 45 CFR 164.524 within 15 days of said request in a designated record set.
- G. If the Covered Entity makes any amendment(s) to Protected Health Information in a designated record set pursuant to 45 CFR 164.526, Business Associate agrees to make the same amendment(s) to Protected Health Information in a designated record set that is in the possession of the Business Associate within 60 days of being notified by the Covered Entity of amendment(s).
- H. Business Associate agrees to make internal practices, books, and records, including policies and procedures relating to the use and/or disclosure of Protected Health Information received from, or created by Business Associate on behalf of, Covered Entity available to the Covered Entity within 15 days of receiving request.
- I. Business Associate agrees to make internal practices, books, and records, including policies and procedures relating to the use and/or disclosure of Protected Health Information received from, or created or received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary within the timeframe designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- J. Business Associate agrees to document such disclosures of Protected Health Information 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 disclosure of Protected Health Information in accordance with 45 CFR 164.528.
- K. Business Associate agrees to provide information to Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of disclosures within 30 days of receiving a written request from the Covered Entity.
- L. Business Associate agrees to use or disclose PHI to its subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- M. Business Associate's employees, subcontractors and agents are required to sign the Information Systems and Health Information Confidentiality Agreement before gaining access to Covered Entity's information systems.
- N. Business Associate agrees to abide by Covered Entity's policies and procedures relating to the confidentiality, privacy and security of PHI as Business Associate is provided written copies of such policies and procedures.
- O. Business Associate has implemented administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required to comply with 45 C.F.R. Part 164 subpart C; and

- P. Without unreasonable delay and in no event more than fifteen (15) calendar days after Discovery, Business Associate shall report to Covered Entity any "security incident" of which it becomes aware; as such term is defined in the HIPAA Security Rule. At the reasonable request of Covered Entity, Business Associate shall identify: the date of the security incident, the scope of the security incident, the Business Associate's response to the security incident and the identification of the party responsible for causing the security incident, if known. Covered Entity acknowledges and agrees that this Section 2 P constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence or attempts of Unsuccessful Security Incidents for which no additional notice to Covered Entity shall be required. "Unsuccessful Security Incidents" shall include, but are not limited to, activities such as pings and other broadcast attacks on firewalls, port scans, unsuccessful log-on attempts, denials of service, and any combination of the foregoing so long as no such incident results in unauthorized access, use, disclosure, modification or destruction of Protected Health Information.
- Q. Business Associate shall ensure that any agent, including a subcontractor, to whom it provides EPHI agrees in writing to implement reasonable and appropriate safeguards to protect EPHI, including but not limited to administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI
- R. Business Associate shall request, use and/or disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure; provided, that Business Associate shall comply with 42 U.S.C. § 17935(b).
- S. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI as prohibited by 42 U.S.C. § 17935(d).
- T. Business Associate shall not make or cause to be made any communication about a product or service that is prohibited by 42 U.S.C. § 17936(a).
- U. Business Associate shall not make or cause to be made any written fundraising communication that is prohibited by 42 U.S.C. § 17936(b).
- V. Business Associate shall not disclose PHI to a health plan for payment or health care operations purpose if the patient has requested this restriction and has paid out of pocket in full for the health care item or service as noted in 42 U.S.C. § 17935(a).
- W. With respect to any use or disclosure of Unsecured PHI not permitted by the Privacy Rule that is caused by Business Associate's failure to comply with one or more of its obligations under this Agreement, Business Associate shall in the event of a Breach, without unreasonable delay, and in any event no later than fifteen (15) calendar days after Discovery, Business Associate shall provide Covered Entity with written notification that must include, to the extent possible, a description of the Breach, the name of each individual whose Unsecured PHI has been or is reasonably believed by Business Associate to have been, accessed, acquired, or disclosed during such Breach, (unless Covered Entity is a plan sponsor ineligible to receive PHI) and a copy of the template notification letter to be sent to each Individual including the details involving the Breach and the relationship between the Business Associate and Covered Entity. Notification to Individuals, HHS and/or the media shall be controlled by Covered Entity and not Business Associate unless otherwise instructed in writing.
- X. With respect to any use or disclosure of Unsecured PHI, Business Associate shall also provide, to the extent possible, Covered Entity with any other available

information that Covered Entity is required to include in its notification to Individuals under 45 CFR 164.404(c) at the time of Business Associate's notification to Covered Entity or promptly thereafter as such information becomes available.

- Y. A Breach of Unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate, (including any person, other than the Individual committing the Breach, that is an employee, officer, or other agent of Business Associate, as determined in accordance with the Federal Common Law of Agency) or should reasonably have been known to Business Associate to have occurred following the exercise of reasonable due diligence.
- Z. Business Associate agrees to abide by all applicable laws and regulations including but not limited to HIPAA Regulations, Joint Commission Accreditation standards as well as all applicable State and Federal legislation and regulations. Business Associate affirms that it has verified the competency of its employee(s), will provide Covered Entity evidence of competency upon request and shall only use qualified personnel to fulfill the requirements of all agreements between Business Associate and Covered Entity.

3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE:

Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in their Agreement, provided that such use or disclosure would not violate the HIPAA Regulations if done by Covered Entity or the minimum necessary policies and procedure of the Covered Entity.

4. USE OF PHI FOR MANAGEMENT AND ADMINISTRATION OR LEGAL RESPONSIBILITIES OF BUSINESS ASSOCIATE:

- A. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- B. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances which are no less restrictive than those contained within this agreement from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- C. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).
- D. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j)(1).

5. PROVISIONS FOR COVERED ENTITY TO INFORM BUSINESS ASSOCIATE OF PRIVACY PRACTICES AND RESTRICTIONS:

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.
- C. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information 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 Protected Health Information.

6. PERMISSIBLE REQUESTS BY COVERED ENTITY:

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7. TERM AND TERMINATION:

- A. **Term:** The term of this Agreement shall be effective as of the effective date written above, and shall terminate upon the expiration or earlier termination of the Service Agreement.
- B. **Termination for Cause:** Upon either party's knowledge of a material breach by the other party, the non-breaching party shall either:
 - 1. Provide an opportunity for the breaching party to cure the breach or end the violation within 30 days of notification by the non-breaching party. If the breach has not been resolved and the violation ended within 30 days, the agreement will be terminated;
 - 2. Immediately terminate this Agreement if the breaching party has breached a material term of this Agreement and cure is not possible; or
 - 3. If neither termination nor cure is feasible, the non-breaching party shall report the violation to the Secretary.
- C. **Effect of Termination:**
 - 1. Except as provided in paragraph (2) of this section, 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 also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate who were doing business on behalf of the Business Associate for the Covered Entity. Business Associate shall retain no copies of the Protected Health Information, except as may be required by law or the professional accounting standards to which Business Associate is subject.

2. In the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, notwithstanding the termination of this Agreement Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction not feasible, for so long as Business Associate maintains such Protected Health Information.

8. INDEMNIFICATION:

Each party to this Agreement agrees to be fully responsible for its acts of negligence, or its agents' acts of negligence when acting within the scope of employment, agency or Institution, and agrees to be liable for any damage resulting from said negligence. Nothing herein is intended to serve as a waiver of sovereign immunity by Covered Entity or Business Associate as both are protected under Florida Statute sovereign immunity and/or the Florida Board of Governors. Nothing herein shall be construed as consent by a state agency, public body corporate, or political subdivision of the State of Florida to be sued except as permitted by Section 768.28 Florida Statute.

Notwithstanding the foregoing, both Parties intend to avail themselves of the benefits of Florida Statute §768.28 and of other statutes and common law governing sovereign immunity to the fullest extent possible. However, in no event will either party's liability under this provision exceed the sum of \$200,000 per person or \$300,000 per occurrence. Nothing in this Agreement is intended to inure to the benefit of any third party for the purpose of allowing any claim which would otherwise be barred under the doctrine of sovereign immunity or by operation of law.

9. MISCELLANEOUS:

- A. **Agreement Subject to All Applicable Laws:** The Parties recognize and agree that this Agreement and their activities are governed by federal, state, and local laws, including the Social Security Act; regulations, rules and policies of the U.S. Department of Health and Human Services; various state laws; among others, and including but not limited to, HIPAA and the accompanying regulations. The Parties further recognize and agree that a reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.
- B. **No Third Party Beneficiaries:** Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.
- C. **Survival:** The rights and obligations of the Parties in Article 4, Article 5, Article 6 and Article 8 shall survive termination of this Agreement indefinitely.
- D. **Interpretation:** The terms and conditions of this Agreement shall supersede the terms and conditions of the Agreement that are inconsistent with or in conflict with the terms and conditions of this Agreement. Any ambiguity in this Agreement shall be resolved in favor of the meaning that permits Covered Entity and Business Associate to comply with the Privacy Rule.

- E. **Amendment:** This Agreement may be revoked, amended, changed or modified only by a written amendment executed by both parties.
- F. **Assignment:** This Agreement, including each and every right and obligation referenced herein, shall not be assigned by either party without the express prior written consent of the other party.
- G. **Enforcement Costs:** If any legal action or other proceeding, including dispute resolution, is brought for the enforcement of this Agreement or because of any alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, court costs and expenses, even if not taxable as court costs, incurred in that action or proceeding, including all appeals, in addition to any other relief to which such Party or Parties may be entitled up to the limits pursuant to Florida § Section 1004.41 for purposes of Sovereign Immunity for UF Health Leesburg Hospital and UF Health The Villages® Hospital (see below). Such attorneys' fees and other enforcement costs shall not be dischargeable in bankruptcy.

Pursuant to Section 1004.41, for purposes of sovereign immunity, (UF Health The Villages® Hospital and UF Health Leesburg Hospital) directly delivers health care services as a not-for-profit subsidiary corporation of Shands Teaching Hospital and Clinics, Inc. Shands Teaching Hospital and Clinics, Inc., and any not-for-profit subsidiary of such (collectively referred to as "UF Health"), are corporations primarily acting as instrumentalities of the State of Florida and thus subject to the waiver of sovereign immunity set forth in s. 768.28, Florida Statutes. Accordingly, UF Health is protected for a claim or judgment by any one person in a sum not exceeding Two Hundred Thousand Dollars (\$200,000.00) and for total claims or judgments arising out of the same incident or occurrence in a total amount not exceeding Three Hundred Thousand Dollars (\$300,000.00), such protection being provided by the UF Health of Florida J. Hillis Miller Health Center Self Insurance Program, a self-insurance program created pursuant to the authority of Section 1004.24, Florida Statutes. Personnel and agents of UF Health are not individually subject to actions arising from their official functions. Any damages allocated against UF Health as prescribed by Section 766.112, Florida Statutes, are not subject to reallocation under the doctrine of joint and several liability to codefendants of UF Health in professional liability actions. The sole remedy available to a claimant to collect damages allocated to UF Health is as prescribed by Section 768.28, Florida Statutes. All liability protection described in this Section is on an "occurrence" basis. The UF Health of Florida J. Hillis Miller Health Center Self Insurance Program provides ongoing protection with no expiration.

- H. **Execution/Authority:** Each signature to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he is signing.
- I. **Governing Law:** To the extent not superseded by HIPAA, this Agreement shall be construed and all of the rights, powers and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of Florida; provided,

however, that the conflicts of law principles of the State of Florida shall not apply to the extent that they would operate to apply the laws of another state.

- J. **Notice:** All notices and other communications under this Agreement shall be in writing and shall be deemed received when delivered personally or when deposited in the U.S. Mail, postage prepaid, sent registered or certified mail, return receipt requested or sent via a nationally recognized and receipted overnight courier service, to the Parties at their respective principal office of record as set forth below or designated in writing from time to time. No notice of a change of address shall be effective until received by the other Party(ies).

Business Associate:

Superintendent, Lake County Schools
201 West Burleigh Boulevard
Tavares, Florida 32778

Covered Entity:

With a copy (which shall not constitute notice) to:

CEO
UF Health Central Florida
600 East Dixie Avenue
Leesburg, FL 34748

VP/General Counsel
UF Health Central Florida
600 East Dixie Avenue
Leesburg, FL 34748.

- K. **Severability:** If any provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the Parties that if any provisions of this Agreement are capable of two constructions, one of which would render the provision void and the other one which would render the provision valid, then the provision shall have the meaning which renders it valid.
- L. **Successors and Assigns:** This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto, their respective successors and permitted assigns.
- M. **Venue:** Any action or proceeding seeking to enforce any provision, or based on any right arising out of, this Agreement shall be brought against any of the Parties in the federal or state courts of the State of Florida of competent jurisdiction and each of the Parties consents to the jurisdiction of such courts (an of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere.
- N. **Waiver of Breach:** No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition within this Agreement, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. Any Party may waive compliance by the other Party with any of the provisions of this Agreement if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.

- O. **Entire Agreement:** The Agreement, this Agreement and any other addendums, amendments or attachments thereto, shall constitute the entire understanding between the Parties as to the rights, obligations, duties and services to be performed there under.

- P. **Damages:** Any limitation or exclusion of damages contained in the Agreement shall not apply to the enforcement of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date first written above.

LEESBURG REGIONAL MEDICAL CENTER, INC.
d/b/a UF HEALTH LEESBURG HOSPITAL
THE VILLAGES® REGIONAL HOSPITAL
d/b/a UF HEALTH THE VILLAGES® HOSPITAL
(Florida not-for-profit Corporations):

OCT 15 2020

By: 
Donald G. Henderson, FACHE
CEO

Date: _____

BUSINESS ASSOCIATE: THE SCHOOL BOARD OF LAKE COUNTY, FLORIDA

By: Chairman

Date: 9-14-2020

Print Name: Kristi L. Burns

Title: Kristi L Burns, Ph.D.

UF Health Central Florida Legal Content Approved:



Compliance and Legal Department



Date