

**BUSINESS ASSOCIATE AGREEMENT**  
**Baptist Health South Florida**  
**and**

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This Business Associate Agreement (“B.A. Agreement”), dated as of the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_ (the “Effective Date”) in entered into by and between \_\_\_\_\_ (“Business Associate”), located at \_\_\_\_\_ and Baptist Health South Florida, Inc. (“BHSF”), located at 6855 Red Road, Coral Gables, FL 33143 on behalf of the Affiliated Covered Entity defined below (each a “Party” and collectively the “Parties”).

**1. BACKGROUND AND PURPOSE**

1.1. BHSF is the parent organization of the Covered Entities identified at <http://www.baptisthealth.net/en/privacy-information/> who have designated as a single Affiliated Covered Entity in accordance with the administrative simplification subtitle of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as amended by the Health Information Technology for Economic and Clinical Health Act contained in Public Law 111-005 (the "HITECH Act") and otherwise, and its implementing regulations (collectively, “HIPAA”).

1.2. Business Associate has entered into one or more contracts or agreements, written or oral, (“Existing Contracts”) with one of more of the members of the Affiliated Covered Entity. Performance of Existing Contracts may involve Business Associate creating, receiving, maintaining, or transmitting PHI on behalf of the Affiliated Covered Entity.

1.3. The purpose of this B.A. Agreement is to amend Existing Contracts to allow for Affiliated Covered Entity’s compliance with the Privacy Rule and Security Rule.

1.4. Each member of the Affiliated Covered Entity has authorized BHSF to enter into contracts, including Business Associate contracts, on member’s behalf. Accordingly, BHSF is authorized to enter into this B.A. Agreement on behalf of all members of the Affiliated Covered Entity.

**2. DEFINITIONS**

2.1. All capitalized terms used herein that are not otherwise defined have the meanings ascribed in the HIPAA regulations.

2.2. “Affiliated Covered Entity” shall mean the Affiliated Covered Entity(ies) designated at <http://www.baptisthealth.net/en/privacy-information/>.

2.3. “Individual” shall have the same meaning as the term “individual” in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

2.4. “PHI” shall have the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, except limited to protected health information that Business Associate creates, receives, maintains, or transmits on behalf of Affiliated Covered Entity.

2.5. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 164 Subpart E.

2.6. “Security Rule” shall mean the Security Standards for Protection of Protected Health Information, 45 C.F.R. Part 164 Subpart C.

**3. BUSINESS ASSOCIATE RESPONSIBILITIES REGARDING PHI**

3.1. Business Associate shall not Use or Disclose PHI other than as permitted or required by this B.A. Agreement or as Required By Law.

3.2. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI not permitted or required by this B.A. Agreement.

3.3. Business Associate shall report to Affiliated Covered Entity any Use or Disclosure of PHI or Security Incident of which Business Associate becomes aware that is not permitted or required by this B.A. Agreement, including a Breach of Unsecured PHI as required by 45 C.F.R. § 164.410. Business Associate will provide a written report, citing all unauthorized Uses or Disclosures, Security Incidents, and/or Breaches of Unsecured PHI to Affiliated Covered Entity's Privacy Officer within three (3) business days of the discovery of such unauthorized Uses or Disclosures, Security Incidents, and/or Breaches, or by some later date as mutually agreed upon by the Parties. The written report shall, to the extent possible:

- 3.3.1. Identify the PHI Used or Disclosed and the nature of the unauthorized Use or Disclosure, Security Incident, and/or Breach, including but not limited to: dates of occurrence, dates of discovery, number of individuals affected, types of PHI Used, Disclosed, or Breached (i.e. names, SS#, D.O.B., account numbers, etc.);
- 3.3.2. Describe the circumstances of the unauthorized Use, Disclosure, and/or Breach; and
- 3.3.3. Identify the steps that Business Associate intends to take to mitigate any harm resulting from the unauthorized Use or Disclosure, Security Incident, and/or the Breach, and what Business Associate will do to prevent future unauthorized Uses or Disclosures, Security Incidents, and/or Breaches.
- 3.3.4. In the case of a Breach, the written notice shall also: (i) Identify the individuals whose PHI has been, or is reasonably believed to have been the subject of the Breach, and (ii) Provide contact information for the individual designated by Business Associate to address and resolve such Breach; and,
- 3.3.5. Be sent to Affiliated Covered Entity at:

Name: Baptist Health South Florida  
 Address: 6855 Red Road, Suite 200  
 Coral Gables, FL 33143  
 Attn: Chief Privacy Officer

Business Associate shall supplement such report if more information becomes available.

3.4. Business Associate shall require all its Subcontractors that create, receive, maintain, or transmit PHI to agree, in writing, to the same or more stringent restrictions and conditions with respect to PHI that apply to Business Associate, including compliance with the applicable requirements of the Security Rule with respect to electronic PHI. Business Associate shall perform reasonable and appropriate due diligence of Subcontractors' information security prior to disclosing PHI to the Subcontractor under this section. Business Associate shall not disclose the PHI of 500 or more individuals to a Subcontractor under this section without Affiliated Covered Entity's prior written approval.

3.5. Business Associate shall make available its internal practices, books, and records relating to the Use and Disclosure of PHI to the Secretary of the Department of Health and Human Services for purposes of determining compliance with the Privacy Rule. Nothing in this section shall be construed as a waiver of any legal privilege or of any protections for trade secrets or confidential commercial information. Business Associate shall immediately notify Affiliated Covered Entity of such request from the Secretary pertaining to an investigation of Affiliated Covered Entity's compliance with HIPAA and shall provide a copy to Affiliated Covered Entity, upon Affiliated Covered Entity's request, of any information furnished to the Secretary under this section.

3.6. Business Associate shall document any Uses and Disclosures of PHI permitted by the B.A. Agreement or Required By Law and any information related to such Uses and Disclosures as would be required for Affiliated Covered Entity to respond to a request by an Individual for an accounting of Disclosures of PHI and/or access report in accordance with 45 C.F.R. §164.528 and/or such other regulations or guidance promulgated under the Privacy Rule. Business Associate shall, within thirty (30) days of receiving a written request from Covered Entity, make available information necessary to enable the Affiliated Covered Entity to make an accounting of Disclosures of PHI and/or access report about an Individual. In the event any Individual requests an accounting of disclosure of PHI and/or an access report directly from Business Associate, Business Associate shall forward such request to Affiliated Covered Entity within five (5) business days. Nothing in this section shall require Business Associate to maintain or provide an access report of PHI unless such action is required by amendments to 45 C.F.R. §164.528.

3.7. Business Associate shall, within ten (10) days of receiving a written request from Affiliated Covered Entity, make available PHI necessary for Affiliated Covered Entity to respond to Individuals' request for access to PHI about them in the event that the PHI in Business Associate's possession or control constitutes a Designated Record Set. In the event any Individual requests access to PHI directly from Business Associate, Business Associate shall forward such request to Affiliated Covered Entity within five (5) business days.

3.8. Business Associate shall, within thirty (30) days of receiving a written request from Affiliated Covered Entity, incorporate any amendments or corrections to the PHI in accordance with the requirements of the Privacy Rule in the event that the PHI in Business Associate's possession or control constitutes a Designated Record Set. In the event any Individual requests amendment to PHI directly from Business Associate, Business Associate shall forward such request to Affiliated Covered Entity within five (5) business days.

3.9. Business Associate, within sixty (60) days of the termination or expiration of this B.A. Agreement, shall return to Affiliated Covered Entity or destroy, with respect to an Existing Contract, all PHI in its possession as a result of the Existing Contract at issue, and retain no copies, if feasible. If return or destruction of PHI is not feasible, Business Associate shall extend all protections of this B.A. Agreement to retained PHI and limit Business Associate's Use and Disclosure of such retained PHI to those purposes which make return or destruction infeasible. Business Associate shall notify Affiliated Covered Entity in writing at least ten (10) days prior to taking any action pursuant to this subsection 3.9 including, without limitation, the return or destruction of the PHI, and upon Affiliated Covered Entity's direction and in Affiliated Covered Entity's sole discretion, Business Associate shall return all PHI to Affiliated Covered Entity or transfer such to a third party and shall not destroy such PHI. To the extent that Business Associate destroys PHI pursuant to this section, Business Associate shall provide Affiliated Covered Entity with a certificate of destruction upon Affiliated Covered Entity's request.

3.10. Business Associate shall mitigate, to the extent practicable, any harmful effect associated with Business Associate's Use or Disclosure of PHI or any Breach of Unsecured PHI.

3.11. Business Associate shall comply with the applicable requirements of the Security Rule, including but not limited to implementing Administrative, Physical and Technical Safeguards that reasonably and appropriately protect the Confidentiality, Integrity and Availability of the electronic PHI that it creates, receives, maintains or transmits on behalf of Affiliated Covered Entity;

3.12. Business Associate shall comply with the Transaction Code Set Rule. To the extent that Business Associate conducts, in whole or in part, Standard Transactions, as defined at 45 C.F.R. § 162.103, for or on behalf of Affiliated Covered Entity, Business Associate will comply, and will ensure compliance by any agent or subcontractor involved with the conduct of such Standard Transaction, with each applicable requirement of 45 C.F.R. Part 162. Business Associate shall not enter into, or allow its agents or subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of Affiliated Covered Entity that: (a) changes the definition, data condition, or use of a data element or segment in a Standard Transaction; (b) adds any data elements or segments to the maximum defined data set; (c) uses any code or data elements that are marked "not used" in the Standard Transaction's implementation specification(s) or are not in the Standard Transaction's implementation specification(s); or (d) changes the meaning or intent of the Standard Transaction's implementation specification(s).

3.13. Business Associate shall comply with the Privacy Rule in its Use or Disclosure of any PHI as the Privacy Rule and its obligations pertain to Business Associate.

3.14. Business Associate shall make reasonable efforts to request, Use, and Disclose only the minimum necessary PHI in accordance with 45 C.F.R. §§ 164.502(d) and 164.514(b).

3.15. To the extent that Business Associate is to carry out any of Affiliated Covered Entity's obligations under the Privacy Rule, including but not limited to distributing Affiliated Covered Entity's notice of privacy practices, Business Associate shall comply with the requirements of the Privacy Rule that apply to Affiliated Covered Entity in the performance of any such obligations.

#### **4. PERMITTED USES AND DISCLOSURES OF PHI**

4.1. Except as otherwise specified herein, Business Associate may make any and all Uses and Disclosures of PHI necessary to perform its obligations under the Existing Contracts to the extent that such Uses and Disclosures would not violate the Privacy Rule if done by Affiliated Covered Entity.

4.2. Except as otherwise specified herein, Business Associate may Use the PHI in its possession for its proper management and administration and to fulfill any legal responsibilities of Business Associate.

4.3. Except as otherwise specified herein, Business Associate may Disclose the PHI in its possession to a third party for the purpose of Business Associate's proper management and administration or to fulfill any legal responsibilities of Business Associate; provided, however, that the disclosures are required by law or Business Associate has received from the third party written assurances that: (i) the information will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information has been breached. Unless a disclosure is Required By Law, Business Associate shall perform reasonable and appropriate due diligence of the third party's information security prior to Disclosing PHI to the third party under this section and shall not disclose the PHI of 500 or more Individuals to a third party under this section without Affiliated Covered Entity's prior written approval.

4.4. Business Associate shall not Use PHI to create de-identified health information in accordance with 45 C.F.R. § 164.514(b) unless necessary to perform its obligations under the Existing Contracts.

## 5. MISCELLANEOUS

5.1. Existing Contracts. All Existing Contracts that involve PHI are hereby amended to incorporate the terms of this B.A. Agreement as of the Effective Date. The terms of this B.A. Agreement shall prevail in the case of any conflict with the terms of any Existing Contract to the extent and only to the extent necessary to allow Affiliated Covered Entity to comply with the Privacy Rule and the Security Rule.

5.2. Termination by Affiliated Covered Entity. Affiliated Covered Entity may terminate this B.A. Agreement if it determines that Business Associate has breached a material term of this B.A. Agreement. In such event, Affiliated Covered Entity, in its sole discretion, shall also have the right to terminate any Existing Contracts which require the creation, receipt, maintenance, or transmission of PHI by Business Associate. Alternatively, Affiliated Covered Entity may choose to provide Business Associate with written notice of the existence of an alleged material breach and afford Business Associate an opportunity to cure the alleged breach. Failure to cure the material breach within thirty (30) days of the written notice constitutes grounds for immediate termination of this B.A. Agreement and the Existing Contracts that require creation, receipt, maintenance, or transmission of PHI by Business Associate.

5.3. Survival. Articles I, II, III, and V shall survive expiration or termination of this B.A. Agreement for any reason.

5.4. Remedies In Event of Breach / Injunctive Relief. Business Associate acknowledges that its Use or Disclosure of PHI in violation of the terms of this B.A. Agreement would cause continuing, substantial and irreparable injury to Affiliated Covered Entity and that Affiliated Covered Entity's remedies at law for such Use or Disclosure will not be adequate. Accordingly, the parties agree that Affiliated Covered Entity shall be entitled to immediate injunctive relief against the breach or threatened breach of the foregoing undertakings by Business Associate, and that such rights shall be in addition to, and not in limitation of, any other rights or remedies to which Affiliated Covered Entity may be entitled at law or equity. In the event of (i) breach of any of the obligations, covenants and assurances required of or provided by Business Associate under the B.A. Agreement or as Required by Law, or (ii) of a Breach of Unsecured PHI, Affiliated Covered Entity shall be entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and any claims, expenses, and costs that were reasonably incurred as a result of (x) Business Associate's breach, and/or (y) any Breach of Unsecured PHI by Business Associate and Affiliated Covered Entity's resolution or mitigation of any such Breach of Unsecured PHI. The remedies contained in this Section 5.4 shall be in addition to (and not supersede) any action for damages and/or any other remedy Affiliated Covered Entity may have for breach of any part of the B.A. Agreement or the Existing Contract(s), and shall be excluded from any limitation of liability included in the Existing Contract(s).

5.5. Counterparts; Facsimiles. This B.A. Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6. Notice. Whenever any notice, demand or request is required or permitted under this B.A. Agreement, that notice, demand or request shall be either hand-delivered in person or sent by United States mail, registered or certified, postage prepaid, or delivered via overnight courier to the addresses below or to any other address that either party may specify by notice to the other party. Neither party shall be obligated to send more than one notice to the other party and no notice of a change of address shall be effective until received by the other party. A notice shall be deemed received upon hand delivery, three (3) days after posting in United States mail or one day after dispatch by overnight courier.

To Affiliated Covered Entity:

Baptist Health South Florida  
6855 Red Road, Suite 200  
Coral Gables, FL 33143  
Attn: Chief Privacy Officer

with a copy to:

Baptist Health South Florida, Inc.  
6855 Red Road, Suite 500  
Coral Gables, Florida 33143  
Attn: General Counsel

To Business Associate:

Name:  
Address:  
  
Attn:

5.7. No Third Party Beneficiaries. Nothing in this B.A. Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.

5.8. Change in Law. In the event that any relevant portion of the Privacy Rule or Security Rule is materially altered in a manner that changes the obligations of the parties to this B.A. Agreement, the parties agree to negotiate in good faith mutually acceptable and appropriate amendments.

**6. RED FLAG RULES.**

6.1. To the extent Business Associate performs any activities on behalf of Affiliated Covered Entity in connection with one or more "covered accounts" (as the term is defined at 16 C.F.R. 681.2(b)(3)) and such covered accounts are subject to 16 C.F.R. Part 681, as may be amended from time to time (the "Red Flag Rules"), Business Associate shall conduct any such activities and perform any related services in accordance with reasonable policies and procedures designated to detect, prevent, and mitigate risk of identity theft as required under the "Red Flag Rules.

**IN WITNESS WHEREOF**, each of the undersigned has caused this B.A. Agreement to be duly executed in its name on its behalf.

**BHSF:**

**COVERED ENTITY:**

**Baptist Health South Florida, Inc.  
on behalf of each member of the Affiliated Entity:**

**BUSINESS ASSOCIATE:**

\_\_\_\_\_  
Signature

By:  
[Insert Name and Title]

Title:

\_\_\_\_\_  
Signature

By:  
[Insert Name]

Title: