

BUSINESS ASSOCIATE AGREEMENT

This BUSINESS ASSOCIATE AGREEMENT (this "**BAA**") is made as of the 27th day of March, 2013 (the "**Effective Date**"), by and between South Broward Hospital District d/b/a Memorial Healthcare System ("**Covered Entity**") and PNC Bank, National Association (together with its affiliates, "**Business Associate**"). Business Associate and Covered Entity are sometimes referred to in this BAA individually as a "**Party**" and collectively as the "**Parties**."

BACKGROUND

Covered Entity possesses Protected Health Information that is protected under the Health Insurance Portability and Accountability Act of 1996 (Public Law 104-191) and the regulations and guidance promulgated thereunder (as amended from time to time, collectively, "**HIPAA**") by the United States Department of Health and Human Services ("**HHS**"). Covered Entity is permitted to use or disclose such Protected Health Information only in accordance with HIPAA. The Health Information Technology for Economic and Clinical Health Act, Public Law §111-5 and the regulations and guidance promulgated thereunder by HHS (as amended from time to time, collectively, "**HITECH**") were adopted as part of the American Recovery and Reinvestment Act of 2009.

Covered Entity and Business Associate have entered into a Treasury Management Services Comprehensive Agreement (collectively with the Documentation, as defined therein, the "**Comprehensive Agreement**"). Pursuant to the Comprehensive Agreement, Business Associate performs certain services, functions, other activities that involve the use or disclosure of Protected Health Information on behalf of Covered Entity and the Parties intend that this BAA apply to all such services, functions, other activities. This BAA is an addendum to the Comprehensive Agreement; provided, however, that under no circumstances shall the terms of the Comprehensive Agreement modify the terms of this BAA in any manner whatsoever. In the event of any conflict or other inconsistency between the terms of this BAA and the terms of the Comprehensive Agreement, the terms of this BAA shall govern.

TERMS

In consideration of the premises and of the mutual representations, warranties, covenants and agreements contained herein, the mutuality, receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

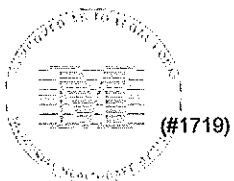
1. **Definitions.** All capitalized terms used but not otherwise defined in this BAA shall have the same meaning as those terms in HIPAA or HITECH, including, without limitation, the regulations thereunder. "**Business Associate**" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean Business Associate. "**Covered Entity**" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean Covered Entity. "**HIPAA Rules**" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

2. **Business Associate.**

(a) The Parties agree that Business Associate is a business associate to the full extent contemplated by HIPAA and HITECH.



- (b) Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by this BAA, the Comprehensive Agreement, or as Required By Law.
- (c) To the extent that Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- (d) Business Associate agrees to comply with applicable requirements of the HIPAA Rules.
- (e) Business Associate agrees to use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as permitted or required by this BAA, the Comprehensive Agreement, or as Required By Law.
- (f) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this BAA or the Comprehensive Agreement of which it becomes aware, including Breaches of Unsecured Protected Health Information as required at 45 CFR 164.410, and any Security Incident of which it becomes aware. Business Associate agrees to deliver each such report to Covered Entity promptly, and in no event later than thirty (30) days after it becomes aware of any such Breach, Security Incident, or other use or disclosure of the Protected Health Information not provided for by this BAA or the Comprehensive Agreement. Covered Entity acknowledges and agrees that Business Associate shall have no obligation to notify Covered Entity of Unsuccessful Security Incidents. "Unsuccessful Security Incidents" means any Security Incident with respect to which no acquisition, access, use or disclosure of Protected Health Information occurs that is not provided for by this BAA or the Comprehensive Agreement.
- (g) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any agents or subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same or similar restrictions, conditions and requirements that apply to Business Associate with respect to such information.
- (h) If Business Associate maintains Protected Health Information in a Designated Record Set for Covered Entity, Business Associate agrees to do the following:
 - (A) make available Protected Health Information in a Designated Record Set to Covered Entity as necessary for Covered Entity to satisfy its obligations under 45 CFR 164.524.
 - (B) make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526.
 - (C) cooperate with Covered Entity, to the extent reasonably necessary under the circumstances for Covered Entity to satisfy its obligations under 45 CFR 164.526



- (i) Business Associate agrees to make its internal practices, books, and records relating to the use and disclosure of Protected Health Information available to the Secretary, at Covered Entity's reasonable expense, for purposes of determining compliance with the HIPAA Rules.
- (j) Business Associate agrees to maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 CFR 164.528.
- (k) Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- (l) Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that: (i) the disclosure is Required By Law; or (ii) (a) Business Associate obtains reasonable assurances from any person to whom the information is disclosed that such information 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 (b) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (m) Except as provided in Sections 2(k) and 2(l) above), Covered Entity agrees that it shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.
- (n) To the extent not specifically addressed in this BAA, the requirements of HIPAA and HITECH applicable to a business associate are incorporated herein by reference, including, without limitation, the HIPAA Rules (and the requirements thereof related to administrative, physical and technical safeguards and the maintenance of security policies and procedures and documentation of security activities).

3. Permitted and Required Uses and Disclosures by Business Associate. Business Associate may only use or disclose Protected Health Information to the fullest extent permitted or required to perform the services contemplated by the Comprehensive Agreement. Business Associate may use or disclose Protected Health Information as Required By Law. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with HIPAA's Minimum Necessary Standard within the meaning of 45 CFR § 164.502(b).

4. Obligations and Activities of Business Associate.

- (a) Business Associate agrees to comply with the requirements of HIPAA and HITECH (including, without limitation, the HIPAA Rules) that are applicable to Business Associate.



- (b) Business Associate agrees to perform all of the obligations, undertakings and other agreements required of a business associate under HIPAA and HITECH, including, without limitation, those set forth in 45 CFR 164.504(e).

5. Material Breach.

- (a) **Breach by Business Associate.** If both (i) Covered Entity determines that Business Associate has violated a material term of this BAA or any Agreement, and (ii) Business Associate has not cured the breach or ended the violation within the reasonable timeframe specified by Covered Entity, then Business Associate authorizes Covered Entity to terminate the provisions of the Comprehensive Agreement or one or more agreements that constitute Documentation that requires or permits Business Associate to continue to use or disclose Protected Health Information and to Report the breach to the Secretary if Required By Law to do so.
- (b) **Breach by Covered Entity.** If both (i) Business Associate determines that Covered Entity has violated a material term of this BAA or any Agreement, and (ii) Covered Entity has not cured the breach or ended the violation within the reasonable timeframe specified by Business Associate, then Covered Entity authorizes Business Associate to terminate the provisions of the Comprehensive Agreement or one or more agreements that constitute Documentation that requires or permits Business Associate to continue to use or disclose Protected Health Information.
- (c) **Effect of Termination of Comprehensive Agreement.** Because it is not feasible for a financial institution to return or destroy all Protected Health Information upon termination of the Comprehensive Agreement, Business Associate shall retain only that Protected Health Information that is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities for the period of time required under applicable law or in accordance with Business Associate's internal record retention schedule as in effect from time to time, whichever is longer. Business Associate shall return any remaining Protected Health Information to Covered Entity or, if agreed to by Covered Entity, destroy any remaining Protected Health Information in accordance with procedures accepted in the financial services industry for destruction of financial records. For so long as Business Associate retains Protected Health Information, Business Associate shall continue to comply with all the requirements of this BAA with respect thereto that applied prior to termination. When the retained Protected Health Information is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities, Business Associate shall return any remaining Protected Health Information to Covered Entity or, if agreed to by Covered Entity, destroy the retained Protected Health Information in accordance with procedures accepted in the financial services industry for destruction of financial records.



6. **Miscellaneous.**

- (a) **Changes to Regulations.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- (b) **Survival.** The respective rights and obligations of the Parties shall survive any termination of this BAA.
- (c) **Interpretation.** Any ambiguity in this BAA shall be resolved to permit compliance with HIPAA, including the HIPAA Rules, and HITECH.
- (d) **Notices.** Notwithstanding the notice requirements of the Comprehensive Agreement, all notices and other communications required or permitted under this BAA shall be deemed to have been duly given and made if in writing and if served, all delivery charges prepaid, (i) by personal delivery to the party for whom intended, (ii) by overnight delivery by a reputable national carrier, or (iii) by being deposited, certified or registered mail, return receipt requested, in the United States mail and bearing the address shown in this Agreement below for, or such other address as may be designated in writing hereafter by, such Party:

If to Business Associate: PNC Bank, National Association
Attn: TM Compliance Manager
Mailstop: P7-PFSC-02-K
500 First Avenue
Pittsburgh, PA 15219
Email address: tmhealthcarecompliance@pnc.com
Telephone number: 1-877-597-5491 Option 1

If to Covered Entity: South Broward Hospital District
3329 Johnson Street
Hollywood, FL 33012
Attention: General Counsel
Email Address: kstratos@mhs.net
Telephone number: 954-265-5933

To the extent a Party notifies the other Party using the email address and/or telephone numbers listed above, that notification would be in addition to the requirement to provide the notice as described in (i) through (iii) above.

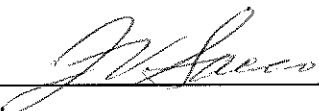
- (e) **Conflict.** In the event of any inconsistency between the terms of this BAA and the Comprehensive Agreement, the terms of this BAA shall prevail.
- (f) **Independent Contractor.** Business Associate and Covered Entity are "independent contractors" and nothing in this BAA is intended nor shall be construed to create an employer/employee or agent relationship.



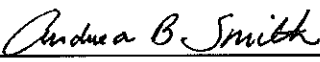
(g) **Limitation of Liability.** In no event shall Business Associate or any of its affiliates or any of its subcontractors (or any other party with whom Business Associate may be claimed to be jointly liable) be liable to Covered Entity for any claim or cause of action, whether based on contract, tort, strict liability or any other legal theory, for an amount in excess of five million dollars (\$5,000,000.00) in the aggregate. The parties agree that only reasonable breach mitigation costs and expenses incurred by Covered Entity and caused primarily by Business Associate's material breach of this BAA shall be considered direct damages (not indirect or consequential) and Business Associate's liability for such costs and expenses shall be subject to the five million dollar (\$5,000,000.00) limitation of liability stated immediately above. The Limitation of Liability stated in this subsection 6(g) will not apply to penalties assessed against Covered Entity under either (i) Section 13410(d) of the HITECH Act; or (ii) 45 C.F.R. Part 160 Subpart D, or both, that are caused primarily by Business Associate's material breach of this BAA. Except as noted above in the second sentence of this subsection 6(g), in no event shall Business Associate, any affiliate or any of its subcontractors (or any other party with whom Business Associate may be claimed to be jointly liable) be liable for any loss of profits, data or goodwill or for any indirect, consequential, incidental, punitive, exemplary or special losses or damages, or expenses (including without limitation attorneys' fees), which Covered Entity may incur or suffer, whether or not the possibility of such damage was known, foreseeable or contemplated by Business Associate or Covered Entity. The Parties hereby confirm that no limitations on Business Associate's liability in the Comprehensive Agreement (including, without limitation, Section 11 of the Comprehensive Agreement) shall apply to this BAA.

IN WITNESS WHEREOF, the parties have caused this BAA to be executed by their duly authorized representatives as of the Effective Date.

**South Broward Hospital District
d/b/a Memorial Healthcare System**

By: 
FRANK V. SALCO, PRESIDENT/CEO
Name and Title
3/27/13
Date

PNC Bank, National Association

BY: 
ANDREA B. SMITH, CTP VP, PNC HEALTHCARE
Name and Title
MARCH 29, 2013
Date

