

COLLABORATIVE SERVICES AGREEMENT

THIS AGREEMENT is effective the 1st day of July, 2020 (the "Effective Date"), by and between **UOFL HEALTH, INC.**, a Kentucky not-for-profit corporation d/b/a Peace Hospital ("PEACE HOSPITAL"); and **JEFFERSON COUNTY PUBLIC SCHOOLS ("JCPS")** (each a "Party" and sometimes collectively referred to as the "Parties").

WHEREAS, PEACE HOSPITAL is a private, not-for-profit psychiatric hospital providing inpatient and outpatient mental health and substance abuse treatment services to children and adolescents at a facility located at 2020 Newburg Road, Louisville, Kentucky 40205 (the "Peace Center"); and

WHEREAS, JCPS operates a fully accredited Jefferson County Public School (the "Peace Academy") on-site at the Peace Center to provide educational services to children and adolescents aged 5 – 18 who are enrolled in elementary, middle or high school and who are patients in an PEACE HOSPITAL outpatient or inpatient treatment program; and

WHEREAS, certain children receiving treatment at PEACE HOSPITAL and educational services at the Peace Academy are in the custody or supervision of the Commonwealth of Kentucky, and are being served in programs funded and/or operated by the Department of Juvenile Justice; the Department for Community Based Services; or the Department for Behavioral Health, Developmental and Intellectual Disabilities (each individually "a State Agency Child" and collectively, the "State Agency Children"); and

WHEREAS, the Parties wish to enter into this Agreement to foster the provision of coordinated and high quality treatment and educational services to the State Agency Children at PEACE HOSPITAL and the Peace Academy.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Obligations of PEACE HOSPITAL. As treatment services provider, PEACE HOSPITAL agrees to the following:

1.1 Medical Treatment; Medication. PEACE HOSPITAL shall have sole responsibility for all treatment services provided under this Agreement and shall administer all medications required by any State Agency Child. PEACE HOSPITAL shall make its best efforts to ensure that each student's health, hygiene and dress are appropriate for school attendance. All treatment teams for State Agency Children shall include attendance or input of a Peace Academy staff member when school is in session.

1.2 Student Records. PEACE HOSPITAL shall provide JCPS with pertinent educational records of each State Agency Child, and shall notify JCPS of disciplinary actions taken by other Jefferson County Schools against a State Agency Child within a three (3) year period prior to each State Agency Child's enrollment in the Peace Academy, to the extent PEACE HOSPITAL has access to such records or information. Any information provided to JCPS by PEACE HOSPITAL under this Section shall be

maintained as confidential by JCPS and shall be used only for the purpose of arranging for educational services, and not as a basis for denial of educational services.

1.3 Communication. To the extent permitted by law and its own policies related to the disclosure of confidential patient information, PEACE HOSPITAL shall communicate with Peace Academy in a timely fashion regarding matters pertinent to the services provided under this Agreement. Such communications shall include, but are not limited to: (a) notice of placement and/or discharge of any State Agency Child with PEACE HOSPITAL; (b) notice of regularly scheduled or specially scheduled meetings for case review; (c) notice and opportunity for Peace Academy staff participation in relation to educational issues, placement planning conferences and aftercare planning; (d) information pertaining to clinical situations that have occurred at PEACE HOSPITAL, to the extent such information has safety implications for Peace Academy staff or other students or may affect a child's behavior in school; (e) notice of staff development sessions, including staff orientation, Joint Commission mandatory in-service training, safe physical management training, and other mandated trainings; and (f) notice of any group or individual behavior interventions or management systems that have implications for the school setting.

1.4 Availability of PEACE HOSPITAL Staff. PEACE HOSPITAL shall ensure that a Peace Center staff member is either assigned to the Peace Academy school and/or classroom areas or available as needed at all times when the Peace Academy is in session. At least two staff members will be assigned to the 4Lourdes school area.

2. Obligations of JCPS. As educational services provider, JCPS agrees as follows:

2.1 Educational Services. JCPS shall provide educational services for all school-aged State Agency Children receiving in-patient treatment services at PEACE HOSPITAL, consistent with each child's individual educational needs.

2.2 Communication. JCPS shall communicate with PEACE HOSPITAL in a timely fashion regarding matters pertinent to the services provided under this Agreement. Such communications shall include, but are not limited to: (a) notice of staff development activities and opportunities for attendance at such activities by PEACE HOSPITAL staff; (b) notice of school meetings and opportunities for attendance at school meetings regarding the design or review of educational services for individual students; (c) notice of any incident occurring in school of a disciplinary nature or otherwise likely to affect student behavior; and (d) notice of any identified medical, mental health, or hygiene condition manifested by any student.

2.3 Evaluation and Referral for Educational Disability. JCPS shall ensure that any student suspected of having an educational disability will be referred, evaluated, and if appropriate, provided special educational services in accordance with state requirements, district procedures, and Individual Educational Programs ("IEPs").

2.4 Adherence with PEACE HOSPITAL Policies and Procedures. JCPS shall ensure that Peace Academy staff comply with all relevant PEACE HOSPITAL policies and procedures, including but not limited to policies regarding professional dress code. JCPS

employee required documentation will be made readily available to PEACE HOSPITAL personnel as requested. This may include background checks, abuse registry, TB tests and other employee documentation. JCPS will follow all PEACE HOSPITAL safety and emergency procedures and guidelines.

2.5 Treatment Team Meetings. Peace Academy shall provide a staff member to attend PEACE HOSPITAL meetings regarding educational services, and shall provide an educator to participate in treatment team meetings and/or Safety Huddle when school is in session.

2.5 Documentation. JCPS shall ensure that Peace Academy staff follow mutually agreed upon methods and schedules for documentation of student progress.

2.6 Removal of Staff. In the event of an allegation of abuse by a Peace Academy staff member, JCPS shall immediately remove that staff member from direct contact with students until an investigation by JCPS and PEACE HOSPITAL is complete.

3. Mutual Obligations. The Parties shall collaborate in the provision of the services hereunder as follows:

3.1 Communication. The Parties agree to regularly communicate about the individual needs of each student, in a manner and on a schedule that is mutually convenient and agreed by the Parties.

3.2 Behavioral and Crisis Interventions. The Parties agree to communicate and collaborate in designing any group or individual behavior interventions or management systems that have implications for the school setting, and shall confer and agree on when to exclude students from classes. The Parties will further determine a mutually agreeable method for dealing with crisis situations that may occur in the school setting.

4. Term and Termination.

4.1 Term. Unless terminated earlier as provided herein, the term of this Agreement shall be from the Effective Date, through June 30, 2020 (the "Initial Term"). The Agreement may be extended for additional twelve (12) month periods upon written agreement of the Parties (each a "**Renewal Term**"). The Initial Term and any Renewal Term are herein together referenced as the "**Term**" of this Agreement.

4.2 Termination. Either Party may terminate this Agreement without cause upon thirty (30) days written notice to the other Party. Either Party may terminate this Agreement for cause, in the event of a material breach by the other Party, upon five (5) business days written notice to the other Party. The notified Party shall have five (5) days to cure the cause specified in the notice of termination.

5. Business Associate Assurances. To the extent that JCPS and/or Peace Academy are granted access to any Protected Health Information of any State Agency Child receiving services at PEACE HOSPITAL, JCPS shall execute and adhere to the terms of the form

jurisdiction. In the event that disclosure is required, the Party to which the information belongs shall be notified at least ten (10) days prior to the date of disclosure.

4. Term and Termination.

4.1 Term. Unless terminated earlier as provided herein, the term of this Agreement shall be from the Effective Date, through June 30, 2021 (the “Initial Term”). The Agreement may be extended for additional twelve (12) month periods upon written agreement of the Parties (each a “**Renewal Term**”). The Initial Term and any Renewal Term are herein together referenced as the “**Term**” of this Agreement.

4.2 Termination. Either Party may terminate this Agreement without cause upon thirty (30) days written notice to the other Party. Either Party may terminate this Agreement for cause, in the event of a material breach by the other Party, upon five (5) business days written notice to the other Party. The notified Party shall have five (5) days to cure the cause specified in the notice of termination.

5. Business Associate Assurances. To the extent that JCPS and/or Peace Academy are granted access to any Protected Health Information of any State Agency Child receiving services at PEACE HOSPITAL, JCPS shall execute and adhere to the terms of the form business associate agreement attached to this Agreement as *Exhibit A*, “Business Associate Agreement.”

6. No Assignment. Neither party may assign any of its rights or obligations under this Agreement without the prior written consent of the other party. Any such attempted assignment or delegation of either Party’s rights, claims, privileges, duties or obligations under this Agreement shall be null and void.

7. Notices. All notices or other communications required or permitted to be given under this Agreement shall be in writing and shall be deemed to be effective: (a) upon actual delivery; (b) on the second business day following such delivery by facsimile transmission to the telephone number provided by the Party for such purposes; (c) on the fourth business day following deposit with the United States Postal Service, postage prepaid, to the address provided by the Party for such purposes.

If to PEACE HOSPITAL:

Privacy Officer
UofL Health, Inc.
250 E. Liberty, Suite 800
Compliance, Risk & Audit Services
Louisville, KY 40202

If to JCPS:

Jefferson County Public Schools
3332 Newburg Rd.

P.O. Box 34020
Louisville, Kentucky 40232-4020

8. Independent Contractors. In the performance of duties and obligations under this Agreement, it is understood and agreed that JCPS and Peace Academy and its or their respective employees, if any, are at all times performing as independent contractors. It is expressly agreed that no work, act, commission or omission of JCPS, Peace Academy, or its or their respective employees, if any, shall be construed to make or render JCPS, Peace Academy, or its or their respective employees, if any, the agent, employee or servant of PEACE HOSPITAL. JCPS shall be solely responsible for its employees' salary, compensation, benefits, payroll taxes, required insurance, workers' compensation insurance, and similar items, and shall indemnify and hold PEACE HOSPITAL harmless from and against all such items, liability, and costs (and attorneys' fees and other costs of defending against the same) arising from any claim by or on behalf of JCPS, any governmental agency, or any other person alleging that JCPS, Peace Academy, or its or their employees, if any, is an employee of PEACE HOSPITAL in connection with providing the services under this Agreement.
9. Miscellaneous.
 - 9.1 Headings. The headings of the sections of this Agreement are included for the purposes of convenience only and shall not affect the interpretation of any provision hereof.
 - 9.2 Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which shall together constitute the same agreement.
 - 9.3 Partial Invalidity. If any provision of this Agreement is found to be invalid or unenforceable by any court or other lawful forum, such provision shall be ineffective only to the extent that it is in contravention of applicable laws without invalidating the remaining provisions of this Agreement, unless such invalidity or unenforceability would defeat an essential business purpose of this Agreement.
 - 9.4 Authority. Each individual signing this Agreement on behalf of a Party hereby represents and warrants in his or her individual capacity that he or she has full authority to do so on behalf of that Party.
 - 9.5 Amendment. This Agreement may be amended at any time by mutual agreement of the Parties without additional consideration, provided that, before any amendment shall become effective, it shall be put in writing and signed by each of the Parties.
 - 9.6 Entire Agreement. This Agreement and the exhibit hereto constitute the entire agreement between the Parties with regard to the subject matter hereof and thereof. This Agreement supersedes all previous agreements between the Parties with regard to the subject matter described herein. There are no agreements, representations,

or warranties between the Parties other than those set forth in this Agreement or the documents and agreements referred to in this Agreement. No term or provision of this Agreement may be waived except in writing signed by the party making such waiver. Except as otherwise expressly provided in this Agreement, all covenants, agreements, representations and warranties, express and implied, shall survive the execution of this Agreement, and shall remain in effect and binding upon the Parties until they have fulfilled all of their obligations hereunder, and the statute of limitations shall not commence to run until the time such obligations have been fulfilled.

- 9.7 Liability Insurance. Each Party shall maintain general liability insurance coverage, in an amount of coverage of not less than \$1,000,000 for a single claim, and not less than \$3,000,000 for aggregate claims during a twelve (12) month period. Such insurance coverage shall be maintained for three (3) years after the termination or expiration of this Agreement or until the longest statute of limitations for liability for negligent acts or omissions committed by either Party expires, whichever is longest.

[Signature Page Follows]

IN WITNESS WHEREOF, the Parties have executed this Collaborative Services Agreement to be effective as of the Effective Date.

UoFL HEALTH, INC., d/b/a

PEACE HOSPITAL



Kenneth P. Marshall, Vice President

5/11/2020

Date

Shelly Denham

Digitally signed by Shelly Denham
DN: cn=Shelly Denham, o=UoFL Health, Inc., ou, email=sheldenh@ulh.org, c=US
Date: 2020.05.11 14:11:22 -04'00'

Shelly Denham, SVP, Compliance & Audit Services

Date

JEFFERSON COUNTY PUBLIC SCHOOLS

Martin Pollio, Superintendent

Date

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “**Agreement**”) is entered into effective as of the 1st day of July 2020 (the “**Effective Date**”) by and between **UOFL HEALTH, INC.**, a Kentucky nonprofit corporation on behalf of itself and each of its Affiliates (collectively with its Affiliates, “**Covered Entity**”), and **JEFFERSON COUNTY PUBLIC SCHOOLS (“JCPS”)**, (each a “**Party**,” and collectively, the “**Parties**”).

WHEREAS, the Parties have entered into a service agreement for services dated July 1, 2020 (the “**Service Agreement**”) under which the Parties anticipate that Business Associate may be required to use and/or disclose PHI, as more specifically defined herein, as more particularly described in the Service Agreement.

WHEREAS, both Parties are committed to complying with the HIPAA Standards, as defined herein, promulgated under the Health Insurance Portability and Accountability Act of 1996, the Health Information Technology for Economic and Clinical Health (“**HITECH**”) provisions of the American Recovery and Reinvestment Act of 2009, and their implementing regulations, as the same may be amended or otherwise modified or replaced from time to time (collectively, “**HIPAA**”); and

WHEREAS, this Agreement sets forth the terms and conditions pursuant to which PHI that is provided by Covered Entity to Business Associate, or created or received by Business Associate from or on behalf of Covered Entity, will be handled between Business Associate (and third parties of the Business Associate) and Covered Entity during the term of the Service Agreement and after its termination.

NOW THEREFORE, the Parties, in consideration of the mutual agreements herein contained and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, do hereby agree as follows:

1. **DEFINITIONS.** As used herein, the following terms shall have the following definitions:

(a) “**Affiliate**” shall mean an individual or entity controlling, controlled by or under common control with, Covered Entity, including, without limitation, the following Kentucky nonprofit corporations: University of Louisville Physicians, Inc., University Medical Center, Inc., UofL Health – Louisville, Inc. and UofL Health – Shelbyville, Inc.

(b) “**Breach**” shall have the meaning given the term “breach” in 45 C.F.R. § 164.402.

(c) “**Breach Notification Rule**” shall mean the requirements set forth under the regulations entitled, “Notification in the Case of Breach of Unsecured Protected Health Information,” as found in subpart D of 45 C.F.R. Part 164.

(d) “**Covered Electronic Transactions**” shall have the meaning given the term “transaction” in 45 C.F.R. § 160.103.

(e) “**Designated Record Set**” shall have the meaning ascribed to it in the HIPAA Standards.

(f) “**Electronic Health Record**” shall have the same meaning as the term “electronic health record” under Section 13400(5) of HITECH.

(g) “**Electronic Media**” shall have the meaning ascribed to it in the HIPAA Standards.

(h) “**ePHI**” shall mean PHI that is transmitted or maintained in Electronic Media.

(i) “**HHS**” shall mean the U.S. Department of Health and Human Services.

(j) “**HIPAA Standards**” shall mean the standards for privacy and security of Individually Identifiable Health Information found at 45 C.F.R. Parts 160, 162, and 164.

(k) “**Individual**” shall have the same meaning as the term “individual” in the HIPAA Standards and shall include a person who qualifies as a personal representative in accordance with the HIPAA Standards.

(l) “**Individually Identifiable Health Information**” shall have the meaning ascribed to it in the HIPAA Standards.

(m) “**Privacy Officer**” shall mean the privacy official referred to in 45 C.F.R. § 164.530(a)(1).

(n) “**Privacy Standards**” shall mean the requirements set forth under the Privacy of Individually Identifiable Health Information, as found in 45 C.F.R. Part 160, and Subparts A and E of 45 C.F.R. Part 164.

(o) “**PHI**” shall have the meaning ascribed to it in the HIPAA Standards at 45 C.F.R. § 160.103 limited to information transmitted or maintained in any form or medium that Business Associate creates or receives from or on behalf of Covered Entity. PHI includes all ePHI.

(p) “**Required by Law**” shall have the same meaning as the term “required by law” in the HIPAA Standards.

(q) “**Secretary**” shall mean the Secretary of HHS or his or her designee.

(r) “**Security Incident**” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

(s) “**Security Standards**” shall be the Security Standards for the Protection of Electronic Protected Health Information, as found in 45 C.F.R. Part 160 and subpart C of 45 C.F.R. Part 164.

(t) “**Subcontractor**” shall mean a person to whom Business Associate delegates a function, activity, or service, other than in the capacity of a member of Business Associate’s workforce.

(u) “**Unsecured PHI**” shall mean PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals, through the use of a technology or methodology specified by the Secretary in guidance issued pursuant to HITECH.

2. **PERMITTED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION.**

(a) **Services.** Pursuant to this Agreement, Business Associate provides services (“**Services**”) for Covered Entity that involve the use and/or disclosure of PHI. Except as otherwise specified herein, Business Associate may make any and all uses of PHI necessary to perform its obligations under the Service Agreement, provided that such use would not violate the HIPAA Standards if done by Covered Entity. Business Associate shall use, disclose, or request for use or disclosure only the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request for use or disclosure, in accordance with the requirements of HIPAA. All other uses not authorized by this Agreement or otherwise Required by Law are prohibited. Moreover, Business Associate may disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, Subcontractors and agents, in accordance with Section 3(a)(iv), (ii) as directed by Covered Entity, or (iii) as otherwise permitted by the terms of this Agreement including, but not limited to, Section 2(b)(ii) below, provided that such disclosure would not violate the HIPAA Standards or the policies and procedures of Covered Entity including the obligation to limit use and disclosure of PHI to the minimum necessary to accomplish the intended purpose.

(b) **Business Activities of Business Associate.** Unless otherwise limited herein, Business Associate may:

(i) Use the PHI in its possession for its proper management and administration and to fulfill any present or future legal responsibilities of Business Associate provided that such uses are permitted under state and federal confidentiality laws.

(ii) Disclose the PHI in its possession to third parties for the purpose of its proper management and administration or to fulfill any present or future legal responsibilities of Business Associate, provided that: (i) the disclosures are Required by Law, or (ii) Business Associate has received from the third party written assurances regarding its confidential handling of such PHI as required under 45 C.F.R. § 164.504(e)(4), and the third party agrees in writing to notify Business Associate of any instances of which it becomes aware that the confidentiality of the information has been breached.

(c) **Data Aggregation.** If authorized under the Services Agreement, Business Associate may provide Data Aggregation services relating to Covered Entity's Health Care Operations consistent with HIPAA Standards.

3. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI.**

(a) **Responsibilities of Business Associate.** With regard to its use and/or disclosure of PHI, Business Associate hereby agrees to do the following:

(i) Business Associate shall use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law. Business Associate shall use PHI only in a manner that is consistent with the HIPAA Standards.

(ii) Business Associate shall use reasonable and appropriate safeguards to prevent uses and/or disclosures of such PHI other than as provided for in this Agreement and to prevent a Security Incident. Business Associate shall develop, implement, maintain, document, and use administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the ePHI that it creates, receives, maintains or transmits on behalf of the Covered Entity as required by the HIPAA Security Standards, and shall comply with the policies and procedures implementation and documentation requirements as set forth under 45 C.F.R. § 164.308, 164.310, 164.312 and 164.316.

(iii) Business Associate shall comply with any agreement Covered Entity makes that restricts use or disclosure of Covered Entity's PHI pursuant to 45 C.F.R. § 164.522(a), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communication. Covered Entity shall promptly notify Business Associate in writing of the termination of any such restriction agreement and, with respect to termination of any such restriction agreement, instruct Business Associate whether any of Covered Entity's PHI will remain subject to the terms of the restriction agreement.

(iv) In the event that Business Associate needs to use third parties (including Subcontractors) to perform Services for Covered Entity, which include creating, receiving, maintaining, or transmitting PHI, Business Associate shall require its Subcontractors to agree, in writing, to (a) be bound by the same restrictions and conditions that apply to Business Associate under this Agreement; and (b) implement reasonable and appropriate safeguards, including administrative, technical and physical safeguards to protect PHI and the confidentiality, integrity and availability of ePHI.

(v) Business Associate shall use and disclose 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.

(vi) If Business Associate becomes aware of any use or disclosure of PHI by Business Associate, or their respective employees, Subcontractors, or agents, that is not permitted by this Agreement, or if Business Associate becomes aware of a Security Incident involving ePHI, Business Associate shall, without unreasonable delay, report such information, in writing, to Covered Entity as soon as possible and in no event later than 5 business days following discovery of such a use, disclosure, or Security Incident. Such notice shall be made to the Privacy Officer of Covered Entity. Notwithstanding the foregoing, the parties agree that this Agreement constitutes constructive notice of certain ongoing “Unsuccessful” Security Incidents, for which no additional report to Covered Entity shall be required. For purposes of this Agreement, the term Unsuccessful Security Incidents include, by way of example and not by limitation, firewall pings, port scans, unsuccessful logon attempts, denial of service attacks where no server is taken offline, and any combination thereof, so long as no such event or incident results in any unauthorized use, access, acquisition, or disclosure of PHI or interference with an Information System.

(vii) Business Associate shall notify Covered Entity of any Breach of Unsecured PHI. Such notice shall be provided in writing, without unreasonable delay, and in no case later than 5 business days after discovery of the Breach to Covered Entity’s Privacy Officer (“**Initial Notice**”) at the contact information identified in Section 7(f) herein.

(A) As required by the Breach Notification Rule, Business Associate shall include in its Initial Notice to Covered Entity a brief description of what happened and the identity of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach. Business Associate’s Initial Notice shall also include the information that Covered Entity is required to include in a notice to an Individual as specified in 45 C.F.R. § 164.404(c). If any portion of the information required by 45 C.F.R. § 164.404(c) is not available at the time Business Associate makes its Initial Notice, Business Associate shall supplement such notice in writing as such information becomes available, without unreasonable delay, and in no event later than 30 calendar days after the discovery of the Breach. Business Associate shall cooperate in good faith with Covered Entity’s investigation of any Breach reported by Business Associate and shall provide additional information as reasonably requested by Covered Entity, including, to the extent known, the identity of the person or persons who committed the Breach and/or the identity of the person or persons who received or acquired the information in an unauthorized manner.

(B) Consistent with 45 C.F.R. § 164.410(a)(2), a Breach shall be treated as discovered by Business Associate as of the first day on which such Breach is known to Business Associate, or, by exercising reasonable diligence, would have been known to Business Associate. Knowledge of any employee, officer, or other agent of Business Associate (other than the

individual who committed the Breach) will be deemed knowledge of Business Associate.

(C) Business Associate shall fully cooperate in good faith with Covered Entity's investigation of any Breach, Security Incident, or other unauthorized use or disclosure of PHI reported by Business Associate, and in making any notifications to Individuals, the Secretary, and/or the media undertaken by Covered Entity in connection with a Breach of Unsecured PHI. Business Associate shall provide Covered Entity with the name of a contact within Business Associate so Covered Entity's Privacy Officer or other representative may contact Business Associate to ask questions or learn additional information regarding reports by Business Associate.

(D) The ultimate determination of whether any Breach reported by Business Associate compromises the security or privacy of PHI and requires notifications to Individuals shall be made by Covered Entity. Covered Entity shall bear full responsibility of making such notifications to individuals and/or the media (unless delegated to Business Associate in writing) and any and all notifications to the Secretary.

(viii) Business Associate shall mitigate, to the greatest extent practicable, any deleterious effects that are known to Business Associate of a use or disclosure of PHI by Business Associate or by Business Associate's agent or Subcontractor in violation of the requirements of this Agreement, including but not limited to any harmful effect caused as a result of a Breach.

(ix) Business Associate shall document any and all disclosures of PHI and make available within 10 business days of Covered Entity's written request, information on such disclosures to enable Covered Entity to provide an Individual with an accounting of disclosures as required by 45 C.F.R. § 164.528. Business Associate shall maintain a record of disclosures for at least 6 years following the date of the disclosures for which an accounting is required (or, beginning on the date specified by HHS, such other timeframe as may be required under implementing regulations for electronic disclosures).

(x) Business Associate shall make available to the Secretary for purposes of determining Covered Entity's compliance with the HIPAA Standards all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI. Business Associate shall also notify Covered Entity within 10 days of any request or demand by the Secretary for information relating to Covered Entity.

(xi) Upon prior written request, Business Associate shall make available during normal business hours at Business Associate's offices all records, books, agreements, policies and procedures relating to the use and/or disclosure of PHI to Covered Entity to determine Business Associate's compliance with the terms of this Agreement.

(xii) To the extent the Service Agreement requires Business Associate to carry out a privacy obligation of Covered Entity under 45 C.F.R. Part 164, Subpart E, Business Associate will comply with the requirements of the subpart that would otherwise apply to the Covered Entity in Business Associate's performance of such obligation.

(xiii) Business Associate agrees to comply with all provisions of HIPAA and HITECH, including any implementing regulations, which are applicable to it as a business associate as of the date by which business associates are required to comply. Such provisions are incorporated into this Agreement.

(xiv) As required by 45 C.F.R. §§ 164.316 and 164.414, Business Associate shall maintain: written policies and procedures implemented to comply with the Security Standards; any action, activity or assessment required to be documented pursuant to the Security Standards; and, any record or documentation created or used by Business Associate in accordance with the Breach Notification Rule, for a minimum of 6 years from the later of the date such policy, procedure, record or documentation was created, or the date such item was last in effect.

(xv) With respect to remuneration for the sale or transfer of PHI, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI of an Individual unless Covered Entity, in its sole discretion, has obtained from the Individual, a valid authorization in accordance with 45 C.F.R. § 164.508.

(xvi) Business Associate shall train the members of its workforce whose function involves contact with PHI to appropriately handle and safeguard PHI. Such training shall include, at a minimum, security awareness training and information on identifying and reporting a Breach or potential Breach.

(b) **Responsibilities of Covered Entity.** If and to the extent any of the following would impact Business Associate's use and/or disclosure of PHI, Covered Entity hereby agrees:

(i) To inform Business Associate of any changes in the form of notice of privacy practices (the "**Notice**") that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, and provide, upon request, Business Associate a copy of the Notice currently in use.

(ii) To inform Business Associate of any changes in, or revocation of, the authorization provided to Covered Entity by Individuals pursuant to 45 C.F.R. § 164.508.

(iii) To inform Business Associate of any opt-outs exercised by any individual from fundraising activities of Covered Entity pursuant to 45 C.F.R. § 164.514(f).

(iv) To notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity.

(c) **Responsibilities of Business Associate with Respect to Handling of Designated Record Set.** In the event that Business Associate maintains PHI in a Designated Record Set, Business Associate hereby agrees to do the following:

(i) Within 10 days of a written request by Covered Entity, provide access to the requested PHI to Covered Entity or the individual to whom such PHI relates or his or her authorized representative in order for Covered Entity to meet a request by such individual under 45 C.F.R. § 164.524.

(ii) Within 10 days of a written request by Covered Entity, make any amendment(s) to the PHI in order for Covered Entity to comply with 45 C.F.R. § 164.526.

4. **REPRESENTATIONS AND WARRANTIES.** Each Party represents and warrants to the other party that it has the full power to enter into this Agreement and to perform its obligations hereunder.

5. **TERM AND TERMINATION.**

(a) **Term.** This Agreement shall become effective on the Effective Date and shall terminate upon the termination or expiration of the Service Agreement between the Parties, unless sooner terminated as provided in this Section 5. Certain provisions and requirements of this Agreement shall survive its expiration or other termination in accordance with Section 7(c) herein.

(b) **Termination by Covered Entity.** As provided for under 45 C.F.R. § 164.504(e)(2)(iii), Covered Entity may immediately terminate this Agreement and any related agreements if Covered Entity makes the determination that Business Associate has breached a material term of this Agreement. Alternatively, Covered Entity may choose to: (i) provide Business Associate with 30 days written notice of the existence of an alleged material breach; and (ii) afford Business Associate an opportunity to cure said alleged material breach to the satisfaction of Covered Entity. In the event that Business Associate fails to cure said breach to the satisfaction of Covered Entity within the 30 day notice period, Covered Entity may then immediately terminate this Agreement.

(c) **Termination by Business Associate.** If Business Associate makes the determination that Covered Entity has breached a material term of this Agreement, Business Associate may terminate this Agreement by providing 30 days' prior notice of its intention to terminate this Agreement. Business Associate agrees, however, to cooperate with Covered Entity to find a mutually satisfactory resolution to the matter prior to terminating and further agrees that, notwithstanding this provision, it shall not terminate this Agreement so long as the Service Agreement is in effect.

(d) **Obligations Upon Termination.** Upon termination of this Agreement for any reason, Business Associate agrees to return or destroy all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(I), if it is feasible to do so. Prior to doing so, Business Associate further agrees to recover any PHI in the possession of its Subcontractors or agents. If Business Associate determines that it is not feasible to return or destroy said PHI, Business Associate will notify Covered Entity in writing. Upon mutual agreement of the Parties that the return or destruction is not feasible, Business Associate further agrees to extend any and all protections, limitations and restrictions contained in this Agreement to Business Associate's use and/or disclosure of any PHI retained after the termination of this Agreement for so long as it maintains such PHI, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible. If it is infeasible for Business Associate to obtain, from a Subcontractor or agent any PHI in the possession of the Subcontractor or agent, Business Associate must provide a written explanation to Covered Entity and require the Subcontractors and agents to agree to extend any and all protections, limitations and restrictions contained in this Agreement to the Subcontractors' and/or agents' use and/or disclosure of any PHI retained after the termination of this Agreement, and to limit any further uses and/or disclosures to the purposes that make the return or destruction of the PHI infeasible.

6. **INDEMNIFICATION AND BREACH COSTS.** Anything in this Agreement, the Service Agreement, or any other underlying agreement to the contrary notwithstanding, Business Associate will indemnify, defend and hold Covered Entity, its directors, officers, and employees, harmless from and against any and all claims, losses, fines, penalties, liabilities, costs, and expenses (including reasonable attorney's fees) which, either directly or indirectly, result from, or are incurred in connection with, any conduct of Business Associate, its agents or Subcontractors, in violation of this Agreement or HIPAA. In addition to the foregoing, in the event that Business Associate's actions or inactions were a substantial factor in causing a Breach of Unsecured PHI, Business Associate agrees to reimburse Covered Entity for the following costs associated with its notification obligations: (i) actual costs associated with providing written individual notice to all individuals affected by the Breach; (ii) actual costs associated with any media advertising; and (iii) actual costs associated with providing credit monitoring to all individuals affected by the Breach, if in Covered Entity's discretion it is determined that the Breach of PHI involves such information (e.g., social security numbers, financial account information, etc.) that may pose a risk of financial harm to individuals affected by the Breach. This Section 6 will survive the termination or expiration of this Agreement and shall not be subject to any limitation in the Service Agreement or any other contract between the Parties.

7. **MISCELLANEOUS.**

(a) **Covered Entity.** For purposes of this Agreement, Covered Entity shall include all entities covered by the notice of privacy practices (or privacy notice).

(b) **Business Associate.** For purposes of this Agreement, Business Associate shall include the named Business Associate herein. However, in the event that Business Associate is otherwise a hybrid entity under the HIPAA Standards, that entity may appropriately designate a health care component of the entity, pursuant to 45 C.F.R. § 164.504(a), as the business associate for purposes of this Agreement.

(c) **Survival.** The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 3(a), 5(d) and 6 shall survive termination of this Agreement.

(d) **Amendments; Waiver.** This Agreement may not be modified, nor shall 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 shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

(e) **No Third Party Beneficiaries.** Nothing express 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.

(f) **Notices.** Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or (other than for the delivery of fees) via the electronic mail address listed below.

(i) If to Business Associate, to:

Jefferson County Public Schools
3332 Newburg Rd
P.O. Box 34920
Louisville, KY 40232-4020

(ii) If to Covered Entity, to:

Privacy Officer
UofL Health, Inc.
250 E. Liberty, Suite 800
Compliance, Risk & Audit Services
Louisville, KY 40202
502.588.3349
compliance@ulp.org

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided.

(g) **Counterparts; Facsimiles.** This Agreement may be executed in any number of counterparts, including by facsimile or other electronic means, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

(h) **Prior Business Associate Agreements.** This Agreement shall supersede any prior business associate agreements between the Parties.

(i) **Interpretation.** Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with HIPAA, and any applicable state or local laws more stringent than HIPAA.

(j) **Regulatory References.** A reference in this Agreement to a section in HIPAA means the section as in effect or as amended. In the event that a regulatory citation contained within this Agreement should change prior to this Agreement being amended, the regulatory citation in this Agreement shall be deemed to have been changed to the new citation.

(k) **Construction with Service Agreement.** In the event of any conflict between the Service Agreement and this Agreement, the provisions of this Agreement shall prevail.

(l) **Capitalized Terms.** Unless otherwise defined or the context clearly suggests a different interpretation, capitalized terms and phrases used within this Agreement shall have the same meaning as those terms used or defined in the HIPAA Standards.

(m) **Independent Contractor Status.** The Parties acknowledges that the services Business Associate performs pursuant to the Service Agreement are performed in the capacity of an independent contractor and nothing within the Service Agreement or this Agreement is intended, nor shall it be construed in any manner, to create an agency relationship between Covered Entity and Business Associate.

(n) **Governing Law and Venue.** This Agreement shall be interpreted, construed, and enforced in accordance with the provisions on governing law and venue in the Services Agreement. In the absence of such provisions, the Parties agree that the laws of the Commonwealth of Kentucky shall apply to this Agreement, without regard to its conflicts of law provisions, and venue shall be proper in Jefferson County, Kentucky.

(o) **Disputes.** If any controversy, dispute or claim arises between the Parties with respect to this Agreement, the Parties shall make good faith efforts to resolve such matters informally.

(p) **Ownership of PHI.** Business Associate acknowledges that Covered Entity is the exclusive owner of PHI and ePHI generated or used under the terms of the Service Agreement or this Agreement.


(q) **Creation of De-identified Data.** Except as expressly authorized by Covered Entity, under no circumstances shall Business Associate convert any PHI or ePHI to De-identified information.

[END OF TEXT; 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 effective as of the Effective Date.

Covered Entity:

UOFL HEALTH, INC.

By: 
Kenneth P. Marshall
Vice President

By: **Shelly Denham** Digitally signed by Shelly Denham
DN: cn=Shelly Denham, o=UofL Health, Inc., ou,
email=sheldenh@uflh.org, c=US
Date: 2020.05.11 12:37:24 -0400
Shelly Denham
SVP, Compliance & Audit Services

Covered Entity:

JEFFERSON COUNTY PUBLIC SCHOOLS

By: _____
Martin Pollio
Superintendent