



Exhibit A to Physician Affiliate Agreement

**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is made and entered into as of this \_\_\_ day of \_\_\_\_\_ 2017, by and between, \_\_\_\_\_ and all affiliated companies (the "Covered Entity") **BLUEPRINT HEALTH** (the "Business Associate") (Business Associate and Covered Entity may be referred to hereinafter individually, as a "party" or collectively, as "parties").

**Recitals:**

**WHEREAS**, Covered Entity has engaged Business Associate to utilize Business Associate's intellectual property, including its proprietary technology, systems and programs, regarding the implementation of a men's and women's health clinic, as set forth in the Physician Affiliation Agreement ("Engagement"), which may require the use or disclosure of Protected Health Information ("PHI"), as defined below. PHI as defined below, is information that is subject to protection under the privacy regulations ("Privacy Regulations") and security regulations ("Security Regulations") of the Health Insurance Portability and Accountability Act of 1996, and regulations promulgated thereunder ("HIPAA");

**WHEREAS**, Covered Entity requires that Business Associate protect the privacy and provide for the security of PHI in compliance with the Privacy Regulations and Security Regulations;

**WHEREAS**, the Privacy Regulations and Security Regulations require Business Associate to enter into an agreement containing specific requirements for use or disclosure of PHI; and

**WHEREAS**, the Business Associate acknowledges and agrees that Business Associate is also subject to the Health Information Technology for Economic and Clinical Health Act of 2009, and regulations promulgated thereunder ("HITECH Act").

**NOW, THEREFORE**, in consideration of the foregoing and of the covenants and agreements set forth herein, the parties, intending to be legally bound, agree as follows:

1. **Recitals**. The parties agree that the foregoing recitals are true and correct and are hereby incorporated herein by this reference.

2. **Definitions**. The terms used, but otherwise not defined, in this Agreement shall have the same meaning as those terms in the Privacy Regulations and Security Regulations at 45 CFR 160.103.

(a) "Electronic Media" shall mean storage media including memory devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; or transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the internet (wide-open), extranet (using internet technology to link a business with information accessible only to collaborating parties), leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media.

(b) "Electronic Protected Health Information" or "ePHI" shall mean PHI transmitted or maintained in Electronic Media.

(c) “Individual” shall have the meaning set forth in 45 C.F.R. § 160.103, including a person who is the subject of the Protected Health Information, and shall include an individual or entity who qualifies as a personal, legal representative of the person, as the context requires.

(d) “Privacy Regulations” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended, modified or superseded, from time to time.

(e) “Protected Health Information” or “PHI” shall have the meaning set forth in 45 C.F.R. § 160.103, including any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; or (ii) the provision of health care to an Individual; or (iii) the past, present or future payment for the provision of health care to an Individual; and (iv) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

(f) “Regulatory References” shall refer to the section as in effect or as amended.

(g) “Required By Law” shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

(h) “Secretary” shall mean the Secretary of the U.S. Department of Health and Human Services or his/her designee.

(i) “Security Measures” shall have the meaning set forth at 45 C.F.R. § 164.304.

(j) “Security Regulations” shall mean the Standards for Security of Individually Identifiable Electronic Health Information at 45 C.F.R. Parts 160 and 164, Subparts A, C and E, as may be amended, modified or superseded, from time to time.

(k) “Subcontractor” shall mean a person or entity to which Business Associate delegates a function, activity or service in a capacity other than as a member of the workforce of Business Associate.

(l) “Unsecured PHI” means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized persons or entities through the use of a technology or methodology specified by the Secretary in the guidance given under Section 13402(h)(2) of the HITECH Act, and available at [www.hhs.gov](http://www.hhs.gov), which may be amended from time to time.

### 3. **Obligations of Business Associate.**

(a) Permitted Uses; Obligations. Business Associate shall not use PHI except for the purpose of performing Business Associate’s obligations solely in accordance with the Engagement or as Required by Law, and shall not use PHI in any manner that would constitute a violation of 45 C.F.R. Parts 160 and 164 if so used by Covered Entity. To the extent that Business Associate takes on certain of the Covered Entity’s obligations under the Privacy Rule, Business Associate shall perform such obligations in the same manner that Business Associate would if Business Associate was a covered entity subject to the Privacy Rule. Business Associate shall have no right whatsoever to use health information made available to Business Associate by Covered Entity, including PHI which has been de-identified as set forth in 45 C.F.R. § 164.514, for any purpose other than to accomplish the specific objectives of the Engagement among the parties.

(b) Permitted Disclosures. Business Associate shall not disclose PHI except for the purpose of performing Business Associate's obligations solely in accordance with the Engagement between the parties and shall not disclose PHI in any manner that would constitute a violation of 45 C.F.R. Parts 160 and 164 if so disclosed by Covered Entity. To the extent that Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure: (i) reasonable assurance from the third party that such PHI will be held in a confidential manner; (ii) reasonable assurance from the third party that such PHI will be used or further disclosed only as required by law or for the purpose for which it was disclosed to such third party; and (iii) an agreement from the third party to immediately notify Business Associate of any breaches of confidentiality of such PHI, to the extent the third party has obtained knowledge of such breach.

(c) Appropriate Safeguards. Business Associate shall implement appropriate administrative, technical and physical Safety Measures in compliance with the Privacy Regulations as are necessary to prevent the use or disclosure of PHI and/or ePHI, other than as permitted by this Agreement. Business Associate further acknowledges and agrees that, pursuant to 42 U.S.C. § 17931(a), Business Associate will implement and document Business Associate's Security Measures in accordance with 45 C.F.R. §§ 164.308, 164.310, 164.312, and 164.316 in the same manner Business Associate would if Business Associate was a covered entity subject to the aforementioned regulations.

(d) Business Associate's Agents and Subcontractors. To the extent Business Associate uses one or more subcontractors or agents to provide services to Covered Entity pursuant to the Engagement between the parties, and such subcontractors or agents receive or have access to PHI, Business Associate shall require that any subcontractor or agent that creates, receives, maintains, or transmits PHI and/or ePHI on behalf of Business Associate, enter into and adhere to HIPAA compliant agreements, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2). Business Associate shall implement and maintain sanctions against subcontractors and agents that violate such restrictions and conditions and shall mitigate the effects of any such violation.

(e) Access to PHI. Within five (5) days of receipt of a request from Covered Entity, Business Associate shall make PHI available to Covered Entity for inspection and copying to enable Covered Entity to fulfill Covered Entity's obligations under 45 C.F.R. § 164.524. Further, Business Associate shall provide access to PHI as directed by Covered Entity, to an Individual in order to satisfy requirements under 45 C.F.R. § 164.524.

(f) Amendment of PHI. Within five (5) days of receipt of a request from Covered Entity, Business Associate shall amend PHI as directed by Covered Entity to enable Covered Entity to fulfill Covered Entity's obligations under 45 C.F.R. § 164.526. If a request for amendment of PHI is delivered directly to Business Associate, Business Associate shall, as soon as possible, but no later than five (5) days after receipt of the request, forward the request to Covered Entity.

(g) Accounting of Disclosures. Business Associate agrees to document disclosures of PHI 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 disclosures of PHI in accordance with 45 C.F.R. § 164.528. Within five (5) days of receipt of a request from Covered Entity, Business Associate shall make available to Covered Entity the information required to provide an accounting of such disclosures. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and his/her/its agents or subcontractors for at least six (6) years prior to the request (except for disclosures occurring prior to the Effective Date). At a minimum, such accounting information shall include the information described in 45 C.F.R. § 164.528(b), including, without limitation: (i) the date of disclosure of PHI; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a



brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the written request for disclosure. If a request for an accounting is delivered directly to Business Associate, Business Associate shall as soon as possible, but no later than five (5) days after receipt of the request, forward the request to Covered Entity.

(h) Governmental Access to Records. Business Associate shall make his/her/its internal practices, books and records relating to the use and disclosure of PHI, available to the Secretary in a time and manner designated by Covered Entity or the Secretary, for purpose of the Secretary determining Covered Entity's compliance with the Privacy Regulations. Business Associate shall provide Covered Entity access to or a copy of any PHI or other information that Business Associate makes available to the Secretary.

(i) Minimum Necessary Use and Disclosure Requirement. Business Associate shall utilize the equivalent of a limited data set to the extent possible and/or feasible, and, if not possible and/or feasible, only request, use and disclose the minimum amount of PHI necessary to reasonably accomplish the purpose of the request, use or disclosure in accordance with 45 C.F.R. § 164.502(b). Further, Business Associate will restrict access to PHI to those employees of Business Associate or other workforce members under the control of Business Associate who are actively and directly participating in providing goods and/or services under the Agreement of the parties and who need to know such information in order to fulfill such responsibilities.

(j) Notification of Breach. During the term of this Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any actual or suspected use and/or disclosure of PHI in violation of the Privacy Regulations or this Agreement in accordance with 45 CFR 164.410. Business Associate shall take prompt corrective action to mitigate and cure any harmful effect that is known to Business Associate of an improper use and/or disclosure of PHI.

(k) Notification of Breach of Unsecured PHI. In addition to the notification set forth in Section 3(j), Business Associate agrees to report to Covered Entity any breach of Unsecured PHI as provided herein. Notification by Business Associate to Covered Entity must be made in writing, as soon as possible, but not more than thirty (30) calendar days from the discovery of a breach by Business Associate. For purposes hereof, the term "discovery of a breach" shall mean that Business Associate, or an employee, officer, director, or agent of Business Associate, has acquired actual knowledge of a breach, or through the exercise of reasonable diligence and inquiry, should have acquired knowledge of a breach. The notification to the Covered Entity shall include, to the extent possible, the following information:

(i) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

(ii) a description of the types of Unsecured PHI that were involved in the breach (*i.e.*, full name, social security number, date of birth, home address, account number, diagnosis, disability code, and other types of PHI);

(iii) any steps Individuals should take to protect themselves from potential harm resulting from the breach;

(iv) a brief description of what the Business Associate is doing to investigate the breach, to mitigate harm to Individuals, and to protect against any further breaches; and

(v) contact procedures for Individuals to ask questions or learn additional information, which will include a toll-free telephone number, an email address, website, or postal address.

Notwithstanding the foregoing, as between Covered Entity and Business Associate, the Covered Entity shall have final authority to determine whether a breach of Unsecured PHI has occurred, whether United States Health and Human Services notification requirements have been triggered, and the necessity for and content of any required notifications. Business Associate shall cooperate fully to assist Covered Entity in identifying individuals potentially affected by the breach, conducting the risk assessment required by the HITECH Act, and providing any required notifications. To the extent that the breach of Unsecured PHI resulted from acts or omissions of Business Associate and/or its subcontractors or agents, Business Associate shall be responsible for all costs reasonably incurred by Covered Entity and/or Business Associate as a result of such breach.

(l) HITECH Act. Business Associate and the Covered Entity each further agree that the provisions of HIPAA and HITECH Act that apply to Business Associates, and that are required to be incorporated by reference into a business associate agreement, are hereby incorporated into this Agreement between Business Associate and Covered Entity by this reference as if set forth herein in their entirety, and are effective as of the effective date of enforcement of any such requirements.

#### 4. Obligations of Covered Entity.

(a) Limitations in the Notice of Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.

(b) Changes in Permission. Covered Entity shall notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect Business Associate's use or disclosure of protected health information.

(c) Notice of Restrictions. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of protected health information that Covered Entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of protected health information.

(d) Permissible Requests. Covered Entity 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.

#### 5. Security of Electronic Protected Health Information.

(a) Security. Business Associate will establish and maintain appropriate administrative, physical and technical Safety Measures that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI, and prevent unauthorized use and disclosure. Business Associate will follow generally accepted system security principles and the requirements of the final HIPAA and HITECH Act rules pertaining to the security of health information.

(b) Agents and Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement appropriate administrative, physician and technical Safety Measures to protect such information.

(c) Security Incidents. Business Associate will within twenty-four (24) hours report any security incident of which it becomes aware to Covered Entity. This includes, but is not limited to attempted or successful unauthorized access, use, disclosure, modification or destruction of information or interference with system operations.

#### 6. Term and Termination.

(a) **Term.** This Agreement shall commence on the Effective Date and will remain effective for the entire term of the Engagement between the parties, unless earlier terminated in accordance with the terms herein; provided, however, that certain of Business Associate's obligations may survive the termination of this Agreement as set forth in Section 6(d).

(b) **Termination of Agreement.** This Agreement will immediately terminate without notice upon termination of the Engagement.

(c) **For Cause Termination Due to Material Breach.** In the event of a material breach by Business Associate of any of his/her/its obligations hereunder, Covered Entity shall have the right, as specifically recognized by Business Associate, to terminate this Agreement and the Engagement between the parties, at any time by providing Business Associate written notice of termination setting forth a description of the breach and the effective date of termination.

(d) **Effect of Termination.** As of the effective date of termination of this Agreement, neither party shall have any further rights or obligations hereunder except: (a) as otherwise provided herein or in the Agreement between the parties; (b) for continuing rights and obligations accruing under the Privacy Regulations; or (c) arising as a result of any breach of this Agreement, including, but not limited to, any rights and remedies available at law or equity. Upon termination of this Agreement for any reason, Business Associate shall return or destroy all PHI (regardless of form or medium), including all copies thereof and any data compilations derived from PHI and allowing identification of any Individual who is the subject of PHI. The obligation to return or destroy all PHI shall also apply to PHI that is in the possession of agents or subcontractors of Business Associate. If the return or destruction of PHI is not feasible, Business Associate shall provide Covered Entity written notification of the conditions that make return or destruction not feasible. Upon mutual agreement of the parties that return or destruction of PHI is not feasible, Business Associate shall continue to extend the protections of this Agreement to such information, and limit further uses or disclosures of such PHI to those purposes that make the return or destruction of such PHI not feasible, for as long as Business Associate maintains such PHI. If Business Associate elects to destroy the PHI, Business Associate shall notify Covered Entity in writing that such PHI has been destroyed.

7. **Indemnification.** Business Associate shall indemnify and hold Covered Entity, and its employees, officers, directors, independent contractors, agents and representatives, harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorneys' fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach of this Agreement by Business Associate or any action or inaction of any of Business Associate's subcontractors or agents. The obligations set forth in this Section 7 shall survive termination of this Agreement, regardless of the reasons for termination.

8. **Assignment.** This Agreement and the rights and obligations hereunder shall not be assigned, delegated, or otherwise transferred by either party without the prior written consent of the other party except as set forth in the Physician Affiliation Agreement and any assignment or transfer without proper consent shall be null and void.

9. **Governing Law; Venue; Jurisdiction.** This Agreement shall be governed by and controlled by the laws of the State of Florida. The parties agree that exclusive venue shall be in the courts of Pinellas County, Florida for all disputes arising out of this Agreement. The parties each hereby consent to the



jurisdiction of such courts, agree to accept service of process by mail, and hereby waive any jurisdictional or venue defenses otherwise available to them.

10. **Amendment or Modification.** This Agreement may only be amended or modified by mutual written agreement of the parties; provided, however, that in the event provisions of this Agreement shall conflict with the requirements of the Privacy Regulations, Security Regulations, or the HITECH Act, this Agreement shall automatically be deemed amended as necessary to comply with such legal requirements.

11. **Waiver.** The failure of either party at any time to enforce any right or remedy available hereunder with respect to any breach or failure shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

12. **Severability.** In the event that any provision or part of this Agreement is found to be totally or partially invalid, illegal, or unenforceable, then the provision will be deemed to be modified or restricted to the extent and in the manner necessary to make it valid, legal, or enforceable, or it will be excised without affecting any other provision of this Agreement, with the parties agreeing that the remaining provisions are to be deemed to be in full force and effect as if they had been executed by both parties subsequent to the expungement of the invalid provision.

13. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to the matters contemplated herein and supersedes all previous and contemporaneous oral and written negotiations, commitments, and understandings relating thereto.

14. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

15. **Counterparts.** This Agreement may be executed in any number of counterparts, including facsimile or an e-mail of a PDF file containing a copy of the signature page of the person executing this document, each of which shall be an original, but all of which together shall constitute one in the same instrument.

**IN WITNESS WHEREOF,** Covered Entity and Business Associate have each caused this Agreement to be executed in their respective names by their duly authorized representatives, effective as of the Effective Date.

**COVERED ENTITY:**

\_\_\_\_\_

By: \_\_\_\_\_

Name: \_\_\_\_\_

Its: \_\_\_\_\_

**BUSINESS ASSOCIATE:  
BLUEPRINT HEALTH**

By: \_\_\_\_\_

Daniel Miller, CEO

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