**BUSINESS ASSOCIATE AGREEMENT**

**THIS BUSINESS ASSOCIATE AGREEMENT** (the “Agreement”) is effective as of \_\_\_\_\_\_\_\_\_\_\_\_\_(the “Agreement Effective Date”) by and between PARTNERS FOR HEALING, INC., as the covered entity(“PFH”) and\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_, Inc as the business associate (“BA”).

**W I T N E S S E T H**

**WHEREAS**, PFH has engaged BA to perform services or provide goods, or both, and

**WHEREAS**, PFH possesses Individually Identifiable Health Information that would be protected under HIPAA (as hereinafter defined) and the HIPAA Regulations (as hereinafter defined) if PFH were covered by HIPAA, and if covered, would be permitted to use or disclose such information only in accordance with HIPAA and the HIPAA Regulations, and

**WHEREAS**, BA may receive such information from PFH, or create and receive such information on behalf of PFH, in order to perform certain of the services or provide certain of the goods, or both, and

**WHEREAS**, PFH wishes to ensure that BA will appropriately safeguard Individually Identifiable Health Information.

**NOW**, **THEREFORE**, PFH and BA hereby agree as follows:

1. **Definitions**. The parties agree that the following terms, when used in this Agreement, shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA and the HIPAA Regulations.

(a) “Business Associate” means, with respect to a Covered Entity, any person or entity who has the status of a business associate as defined in the HIPAA Regulations (45 CFR 160.103).

(b) “Contract” means that certain Memorandum or Understanding agreement among PFH and BA dated as of September 22, 2020, or, if there shall be no written agreement, then the business relationship or oral agreement which may result in PFH receiving any PHI.

(c) “Covered Entity” means any person or entity who has the status of a covered entity, as defined in the HIPAA Regulations (45 CFR 160.103) who transmits any health information. For purposes of this Agreement, “Covered Entity” shall also refer to PFH even if it technically not a “Covered Entity.

(d) “Data Aggregation” means the combining, by the Business Associate, of the Covered Entity’s PHI with PHI that the Business Associate received from another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

(e) “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

(f) “HIPAA Regulations” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.

(g) “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and;

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and

(A) that identifies the individual; or

(B) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

(h) “PHI” means Protected Health Information that: (i) Business Associate receives from PFH; (ii) Business Associate creates for its own purposes from Protected Health Information that Business Associate receives from PFH; or (iii) is created, received, transmitted or maintained by Business Associate on behalf of PFH.

(i) “Protected Health Information” means Individually Identifiable Health Information that is transmitted by electronic media; maintained in any medium described in the definition of the term electronic media in the HIPAA Regulations; or transmitted or maintained in any other form or medium.

(j) “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

2. **Status of Parties**. BA hereby acknowledges and agrees that it will treat PFH as a Covered Entity and that BA is a Business Associate of PFH.

3. **Permitted Uses and Disclosures**.

(a) **Performance of Services**. BA may use and disclose PHI in connection with the performance of services related to the Contract, if such use or disclosure of PHI would not violate HIPAA or the HIPAA Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 3(b) or 3(c) of this Agreement.

(b) **Proper Management and Administration**. BA may use PHI for the proper management and administration of BA in connection with the performance of services related to the Contract and as permitted by this Agreement. BA may disclose PFH’s PHI for such proper management and administration of BA only with the prior consent of PFH. Any such disclosure of PHI shall only be made if BA obtains reasonable assurances from the person to whom the PHI is disclosed that: (1) the PHI 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 person; and (2) BA will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

(c) **Data Aggregation**. This section is only applicable if BA will be doing data aggregation for PFH. Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation services to PFH as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). Data Aggregation services involve the combining by BA of PHI with Protected Health Information received by BA in its capacity as a business associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

4. **Nondisclosure**.

(a) **As Provided in Agreement**. BA shall not use or further disclose PFH’s PHI except as permitted or required by this Agreement.

(b) **Disclosures Required By Law**. BA shall not, without the prior written consent of PFH, disclose any PHI on the basis that such disclosure is required by law without notifying PFH so that PFH shall have an opportunity to object to the disclosure and to seek appropriate relief. If PFH objects to such disclosure, BA shall refrain from disclosing the PHI until PFH has exhausted all alternatives for relief. BA shall require reasonable assurances from persons receiving PHI in accordance with Section 3(b) hereof that such persons will provide PFH with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law.

(c) **Additional Restrictions**. If PFH notifies BA that PFH has agreed to be bound by additional restrictions on the uses or disclosures of PFH’s PHI pursuant to HIPAA or the HIPAA Regulations, BA shall be bound by such additional restrictions and shall not disclose PFH’s PHI in violation of such additional restrictions.

5. **Safeguards, Reporting, Mitigation and Enforcement**.

(a) **Safeguards**. BA shall use any and all appropriate administrative, physical and technical safeguards to (i) prevent use or disclosure of PFH’s PHI other than as provided by this Agreement, and (ii) protect the confidentiality, integrity and availability of any electronic PHI.

(b) **BA’s Agents**. BA shall not disclose PHI to any agent or subcontractor of BA except with the prior written consent of PFH. BA shall ensure that any agents, including subcontractors, to whom it provides PHI, agree in writing to be bound by the same restrictions and conditions that apply to BA with respect to such PHI.

(c) **Reporting**. BA shall report to PFH as soon as practicable, but not greater than Two (2) days after BA becomes aware of any use or disclosure of PFH’s PHI in violation of this Agreement or applicable law. BA shall also report to PFH within the same time-frame any Security Incident of which it becomes aware.

(d) **Mitigation**. BA shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PFH’s PHI in violation of this Agreement or applicable law.

(e) **Sanctions**. BA shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses PFH’s PHI in violation of this Agreement or applicable law.

(f) **PFH’s Rights of Access and Inspection**. From time to time upon reasonable notice, or upon a reasonable determination by PFH that BA has breached this Agreement, PFH may inspect the facilities, systems, books and records of BA to monitor compliance with this Agreement. The fact that PFH inspects, or fails to inspect, or has the right to inspect, BA’s facilities, systems and procedures does not relieve BA of its responsibility to comply with this Agreement, nor does PFH’s (1) failure to detect, or (2) detection of, but failure to notify BA or require BA’s remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of PFH’s enforcement or termination rights under this Agreement. The parties’ respective rights and obligations under this Section 5(f) shall survive termination of the Agreement.

6. **Obligation to Provide Access, Amendment and Accounting of PHI**.

(a) **Access to PHI**. BA shall make available to PFH such information as PFH may require to fulfill PFH’s obligations to provide access to, and copies of, PHI in accordance with HIPAA and the HIPAA Regulations.

(b) **Amendment of PHI**. BA shall make available to PFH such information as PFH may require to fulfill PFH’s obligations to amend PHI in accordance with HIPAA and the HIPAA Regulations. In addition, BA shall, as directed by PFH, incorporate any amendments to PFH’s PHI into copies of such information maintained by BA.

(c) **Accounting of Disclosures of PHI**. BA shall make available to PFH such information as PFH may require to fulfill PFH’s obligations to provide an accounting of disclosures with respect to PHI in accordance with HIPAA and the HIPAA Regulations. In addition, BA shall maintain a record of all disclosures of PHI, including the date of the disclosure, the name and, if known, the address of the recipient of the PHI, a brief description of the PHI disclosed, and the purpose of the disclosure which includes an explanation of the basis for such disclosure. BA shall make this record available to PFH upon PFH’s request.

(d) **Forwarding Requests From Individual**. In the event that any individual requests access to, amendment of, or accounting of PHI directly from BA, BA shall within Two (2) days forward such request to PFH. PFH shall have the responsibility of responding to forwarded requests. However, if forwarding the individual’s request to PFH would cause PFH or BA to violate HIPAA or the HIPAA Regulations, BA shall instead respond to the individual’s request as required by such law and notify PFH of such response as soon as practicable.

7. **Material Breach, Enforcement and Termination**.

(a) **Term**. This Agreement shall be effective as of the Agreement Effective Date, and shall continue until the Agreement is terminated in accordance with the provisions of Section 7(b), or the Contract between the parties terminates.

(b) **Termination**. PFH may terminate this Agreement:

(1) immediately if BA is named as a defendant in a criminal proceeding for a violation of HIPAA or the HIPAA Regulations;

(2) immediately if a finding or stipulation that BA has violated any standard or requirement of HIPAA or other security or privacy laws is made in any administrative or civil proceeding in which BA has been joined; or

(3) pursuant to Sections 7(c) or 8(b) of this Agreement.

(c) **Remedies**. If PFH determines that BA has breached or violated a material term of this Agreement, CE may, at its option, pursue any and all of the following remedies:

(1) exercise any of its rights of access and inspection under Section 5(f) of this Agreement;

(2) take any other reasonable steps that PFH, in its sole discretion, shall deem necessary to cure such breach or end such violation; and

(3) terminate this Agreement immediately.

(d) **Knowledge of Non-Compliance**. Any non-compliance by BA with this Agreement or with HIPAA or the HIPAA Regulations automatically will be considered a breach or violation of a material term of this Agreement.

(e) **Return or Destruction of Records**. Upon termination of this Agreement for any reason, BA shall return or destroy, as specified by PFH, all PHI that BA still maintains in any form, and shall retain no copies of such PHI. If PFH, in its sole discretion, requires that BA destroy any or all PHI, BA shall certify to PFH that the PHI has been destroyed. If return or destruction is not feasible, BA shall inform PFH of the reason it is not feasible and shall continue to extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible. The Parties respective rights and obligations under this Section 7(f) shall survive termination of this Agreement.

(f) **Injunctions**. PFH and BA agree that any violation of the provisions of this Agreement may cause irreparable harm to PFH. Accordingly, in addition to any other remedies available to PFH at law, in equity, or under this Agreement, in the event of any violation by BA of any of the provisions of this Agreement, or any explicit threat thereof, PFH shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties’ respective rights and obligations under this Section 7(f) shall survive termination of the Agreement.

(g) **Indemnification**. BA shall indemnify, hold harmless and defend PFH from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of BA in connection with the representations, duties and obligations of BA pursuant to the terms of this Agreement. The parties’ respective rights and obligations under this Section 7(g) shall survive termination of the Agreement.

8. **Miscellaneous Terms**.

(a) **State Law**. Nothing in this Agreement shall be construed to require BA to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

(b) **Amendment**. PFH and BA agree that amendment of this Agreement may be required to ensure that PFH and BA comply with changes in state and federal laws and regulations relating to the privacy, security, and confidentiality of PHI. PFH may terminate this Agreement upon Fourteen (14) days written notice in the event that BA does not promptly enter into an amendment that PFH, in its sole discretion, deems sufficient to ensure that PFH will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between the parties.

(c) **No Third Party Beneficiaries**. Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than PFH and BA, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

(d) **Ambiguities**. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, HIPAA and the HIPAA Regulations, even though PFH may not be covered by HIPPA since it is a non- profit charitable corporation which makes no charges for any of its services.

(e) **Primacy**. To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement.

(f) **Attorney’s Fees**. In the event any party to this Agreement should initiate litigation against any other party to obtain a judicial construction of this Agreement or to secure enforcement thereof, the attorney’s fees and expenses of the prevailing party in such proceeding shall be paid by the non-prevailing party.

(g) **Governing Law** . This Agreement shall be construed and enforced in accordance with the laws of the State of Tennessee, without regard to its principles of conflicts of laws. The parties agree that, should any suit be brought by any party to construe this Agreement, or to enforce any of that parties rights hereunder, that venue and jurisdiction shall be solely in the appropriate courts of Coffee County, Tennessee, or, if applicable, in the U.S. District Court for the Eastern District of Tennessee, Winchester Division. Furthermore, each party hereby irrevocably waives and agrees not to assert by way of motion, as a defense or otherwise in any such action or proceeding, any claim that such party is not personally subject to the jurisdiction of said courts, that such action or proceeding is brought in an inconvenient forum, that the venue of such action or proceeding is improper or that this Agreement may not be enforced in or by such courts.

**In Witness Whereof**, the parties hereto have duly executed this Agreement as of the Agreement Effective Date. This document may be executed in counterparts, all of which taken together shall constitute one and the same instrument and all parties may execute this document by signing such counterpart. Each party may transmit its signature by facsimile or e-mail (\*.pdf or similar) to the other party or parties, and any faxed or e-mail signature and/or faxed or e-mail counterpart of this Agreement shall have the same force and effect as an original.

**COVERED ENTITY BUSINESS ASSOCIATE**

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| **PARTNERS FOR HEALING, INC.**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (printed):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ | **\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_INC**  By:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Name (printed):\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_  Its:\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_\_ |