

## **TRANSITION SERVICES AGREEMENT**

**THIS TRANSITION SERVICES AGREEMENT** (this “Agreement”) is entered into as of this 1st day of April, 2016 (the “Effective Date”), by and between **SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**, a Florida not-for-profit corporation (“SEVHC”), **SOUTHEAST VOLUSIA HOSPITAL DISTRICT**, an independent special tax district of the State of Florida (“District”), **BERT FISH MEDICAL CENTER, INC.**, a Florida not-for-profit corporation (“BFMC”), and **SOUTHEAST VOLUSIA MEDICAL SERVICES, INC.**, a Florida not-for-profit corporation (“SEVMS”). SEVHC, District, BFMC, and SEVMS are each called a “Party,” and together are called the “Parties.” District, BFMC, and SEVMS together may be called the “BFMC Parties.” BFMC and SEVMS together may be called the “Billing Parties.”

### **RECITALS**

A. District is an independent special tax district of the State of Florida encompassing the southeast portion of Volusia County, Florida.

B. District owns the land, buildings, and other facilities of Bert Fish Medical Center, located at 401 Palmetto Street, New Smyrna Beach, Florida (the “Hospital”), which were leased to BFMC immediately prior to the Effective Date.

C. Prior to the Effective Date, BFMC billed and collected fees for Hospital services.

D. Prior to the Effective Date, pursuant to a Professional Services Agreement between BFMC and SEVMS, SEVMS billed and collected fees for professional services performed by various physicians employed by BFMC, four physicians not employed by BFMC who provided services at the Hospital pursuant to contracts with BFMC, and various locums tenens physicians who provided on-call coverage at the Hospital pursuant to contracts with BFMC (the “Hospital Physicians”).

E. SEVMS’s Medicaid provider agreement has lapsed, and SEVMS is working to obtain an active Medicaid provider agreement.

F. The BFMC Parties all have identical governing boards.

G. Effective as of the Effective Date, District has leased the Hospital to SEVHC pursuant to a Lease and Transfer Agreement (the “Lease Agreement”).

H. The BFMC Parties desire that SEVHC provide them with certain services, which are limited to supporting the wind-up of the operations of BFMC with respect to the Hospital (and of BFMC and SEVMS with respect to the Hospital Physicians) prior to the Effective Date, which services are set forth in this Agreement (the “Transition Services”).

I. SEVHC is not offering the BFMC Parties any Transition Services except as expressly set forth in this Agreement; and

J. SEVHC is willing to provide the Transition Services, and the BFMC Parties are willing to compensate SEVHC for them, as set forth in this Agreement.

## **OPERATIVE TERMS**

**NOW, THEREFORE**, in consideration of the promises set forth and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Parties agree as follows:

### **ARTICLE I** **TRANSITION SERVICES GENERALLY**

1.1 **Performance of Transition Services.** SEVHC shall perform the Transition Services faithfully, in a workmanlike manner, and in accordance with the terms and conditions of this Agreement. SEVHC shall consult with the BFMC Parties as reasonably is necessary or appropriate to perform, and be accountable for, the Transition Services.

1.2 **Books and Records.** SEVHC shall maintain any books and records made or received in connection with the Transition Services at the principal office of SEVHC, or at any other reasonable location, for the duration of the Term; provided, however, that the BFMC Parties shall have reasonable access to such books and records.

1.3 **Use of Hospital Real Property.** Upon reasonable request by any of the BFMC Parties to review (a) records made or received by any or all of the BFMC Parties prior to the Effective Date that are in the possession of SEVHC (and that are not otherwise in the possession of the BFMC Parties in an accessible form); or (b) records directly relating to the performance by SEVHC of the Transition Services, SEVHC shall afford to the BFMC Parties access to such records through the means identified in Section 2.5 or by other reasonable means (such as by providing physical copies to the BFMC Parties, or affording the BFMC Parties reasonable, temporary access to the Hospital Real Property, as defined in the Lease Agreement, to review such records). Arrangements for such access, other than as is customarily provided to members of the public, must be approved in advance by the contact person designated by SEVHC in Section 1.4. As to records covered by Subsection (a), to the extent there is any conflict between this Section 1.3 and Section 9.6.2 of the Asset Purchase Agreement by and among the Parties, dated as of the Effective Date (the "Asset Purchase Agreement"), the latter shall control.

1.4 **Contact Persons.** Whenever the BFMC Parties have a question, or desire to provide direction to SEVHC regarding the Transition Services, the BFMC Parties shall contact Debbie Thomas, CEO Florida Division East Florida Region, by mail at 1055 Saxon Boulevard, Orange City, Florida, by telephone at (386) 917-5983, or by electronic mail at [Debbie.Thomas@ahss.org](mailto:Debbie.Thomas@ahss.org). Whenever SEVHC has a question or desires to provide a report regarding the Transition Services offered to the BFMC Parties, it shall contact Chris Ilardi, who is authorized to act on behalf of any or all of the BFMC Parties, by mail at Post Office Box 909, New Smyrna Beach, Florida 32170, by telephone at (386) 423-0001, or by electronic mail at [chris.ilardi@sevhc.com](mailto:chris.ilardi@sevhc.com). Any Party may change its contact person, or the contact information as to such contact person, by giving notice of such change to the other Parties.

1.5 **Scope of Transition Services.** SEVHC shall not be required to provide any Transition Services, or file any documents with governmental agencies, except as expressly provided in this Agreement. The Transition Services shall not include services relating to any pension or employer welfare benefit plans, including defined benefit pension plans, 403(b) plans, or retiree health benefit plans, nor shall the Transition Services include the provision of any information in response to any audit relating to any such plans. The Transition Services are to support the wind-up of the operations of BFMC with respect to the Hospital (and of BFMC and SEVMS with respect to the Hospital Physicians) prior to the Effective Date, and do not include any services that relate solely to the activities of District prior to the Effective Date.

1.6 **BFMC Parties and Billing Parties.** Where the term “BFMC Parties” is used, any obligation to be performed by the BFMC Parties may be performed by any or all of them, and any obligation owed to the BFMC Parties shall be owed to all of them. Where the term “Billing Parties” is used, any obligation to be performed by the Billing Parties may be performed by either or both of them, and any obligation owed to the Billing Parties shall be owed to both of them.

## **ARTICLE II**

### **SPECIFIC TRANSITION SERVICES**

2.1 **Accounts Payable and General Accounting Services.** Provided that the BFMC Parties maintain sufficient cash in a bank account, upon which accounts payable remittances are to be drawn, SEVHC shall process on behalf of the BFMC Parties those accounts payable of BFMC as are approved for payment by the BFMC Parties during the Term, and shall provide monthly reports of such activities to RSM US Wealth Management LLC, which has been retained by the BFMC Parties to provide general accounting services, and the designation of which may be changed by the BFMC Parties upon the provision of written notice to SEVHC.

2.2 **AHCA Reporting.** SEVHC shall respond to any informational inquiries received from the Florida Agency for Health Care Administration (“AHCA”) regarding any reports filed by BFMC or SEVMS with AHCA prior to the Effective Date. SEVHC shall not, however, be responsible for filing new reports with AHCA on behalf of the BFMC Parties, or for representing any of the BFMC Parties in connection with any formal audits performed by AHCA.

2.3 **Billing and Collection Services.**

2.3.1 During the Term, SEVHC shall provide processing, billing, collection, and accounts receivable services (the “Billing and Collection Services”) in connection with the Billing Parties’ unpaid claims and accounts receivable due from commercial, governmental, or other third party payors for health care services rendered by the Billing Parties prior to the Effective Date, including services that have not yet been submitted for reimbursement or payment prior to the Effective Date (the “Accounts Receivable”); provided, however, that SEVHC shall not provide the Billing and Collection Services in connection with SEVMS’s Medicaid Accounts Receivable until SEVMS gives notice to SEVHC that it has obtained an active Medicaid provider agreement. Self-pay balances shall be referred to REP Medical LLC, which has been retained by the BFMC Parties to

collect such balances, and the designation of which may be changed by the BFMC Parties upon the provision of written notice to SEVHC.

2.3.2 In addition to the requirements of Section 1.1, SEVHC shall provide the Billing and Collection Services in a commercially reasonable manner and without harassing debtors; provided, however, that nothing herein shall be interpreted as requiring SEVHC to undertake any duties that would result in an obligation for it to register as a consumer collection agency under Part VI of Chapter 559, Florida Statutes.

2.3.3 The Billing Parties shall retain all rights in, and title to, the Accounts Receivable. All billings for the Accounts Receivable shall be made in the name of, and under the provider numbers of, the Billing Parties. All collections of the Accounts Receivable shall be payable to the Billing Parties, shall be the property of the Billing Parties, and are not hereby re-assigned to SEVHC.

2.3.4 The BFMC Parties shall designate a bank account (the "Bank Account"), which shall be the only Bank Account into which payments for collections of the Accounts Receivable may be deposited. The Bank Account shall be under the sole ownership and control of any or all of the BFMC Parties, and shall be subject only to instructions of the BFMC Parties.

2.3.5 SEVHC shall handle collections for Accounts Receivable as follows:

(a) If practicable, SEVHC and the BFMC Parties shall arrange for third party payors to directly deposit payments into the Bank Account.

(b) If SEVHC receives a payment from Medicare for Accounts Receivable, SEVHC promptly shall forward the payment to the BFMC Parties, and the BFMC Parties shall deposit the payment into the Bank Account.

(c) If SEVHC receives a payment for Accounts Receivable from any payor other than Medicare by any means other than direct deposit, SEVHC promptly shall deposit the payment into the Bank Account. SEVHC shall not negotiate, endorse, or sign any checks or other forms of payment for the Accounts Receivable, except for the purposes of complying with this Section 2.3.5(c).

2.3.6 The BFMC Parties reasonably shall cooperate with, and assist, SEVHC in its provision of the Billing and Collection Services, including by coordinating with SEVHC to review rejected claims to identify errors and reduce future claims rejections. To the extent that it is commercially reasonable, SEVHC shall provide the Billing and Collection Services using former billing and collection employees of BFMC.

2.3.7 SEVHC shall provide the BFMC Parties with full access to books and records relating to the Accounts Receivable and the Billing and Collection Services, upon receipt of reasonable notice of a request for such access.

2.3.8 The BFMC Parties hereby acknowledge that the Billing Parties are solely responsible for ensuring the correctness of all coding and clinical documentation relating

to the Accounts Receivable. SEVHC will not assign diagnosis or procedure codes under any circumstances. SEVHC assumes no responsibility for, and is not liable for, any coding errors or false claims relating to coding or clinical documentation by the Billing Parties. To the extent allowed by law, the BFMC Parties shall indemnify and hold harmless SEVHC, and its officers, directors, employees, agents, and representatives, and its successors and permitted assigns, from and against any and all third party claims, demands, actions, charges, liabilities, or damages, including reasonable attorneys' fees, arising from or relating to coding errors or false claims relating to coding or clinical documentation by the Billing Parties.

2.3.9 As of the Effective Date, SEVHC is authorized to refer delinquent Accounts Receivable to REP Medical LLC, which has been retained by the BFMC Parties to collect such balances, the designation of which may be changed by the BFMC Parties upon the provision of written notice to SEVHC, and the cost of which shall be borne by the BFMC Parties. For purposes of this Agreement, an Account Receivable shall be deemed delinquent if it remains unpaid 180 days after the date of the last service identified therein.

2.3.10 If SEVHC is notified or determines that the BFMC Parties may have received an overpayment, SEVHC promptly shall give notice to the BFMC parties of the potential overpayment to the BFMC Parties. If the BFMC Parties do not give notice to SEVHC of an objection to repayment of the potential overpayment within ten (10) days after such notice has been given, then SEVHC shall make repayment within twenty (20) days after such notice has been given. If, however, the BFMC Parties give notice to SEVHC of an objection to repayment of the potential overpayment, SEVHC shall not make repayment until instructed to do so by the BFMC Parties; provided, however, that, to the extent allowed by law, the BFMC Parties shall indemnify and hold harmless SEVHC, and its officers, directors, employees, agents, and representatives, and its successors and permitted assigns, from and against any and all third party claims, demands, actions, charges, liabilities, or damages, including reasonable attorneys' fees, arising from or relating to the potential overpayment. The Parties shall cooperate to ensure that repayment is made in compliance with the legal and contractual obligations of the BFMC Parties.

2.3.11 During the Term, and provided that the BFMC Parties maintain adequate information technology systems to do so, SEVHC shall assist the BFMC Parties in responding to inquiries from Recovery Audit Contractors and other third party payors conducting audits of billing and collection issues that arose with respect to the Billing Parties prior to the Effective Date.

2.4 **Final Cost Report; Reimbursement Appeals.** SEVHC shall provide from records in its possession data requested by the BFMC Parties in order for the BFMC Parties (or their third party vendor) to prepare and file the Billing Parties' Medicare cost report for the partial fiscal year beginning on October 1, 2015 and ending on March 31, 2016. If the BFMC Parties request in writing, SEVHC also shall provide from records in its possession data reasonably requested to assist the BFMC Parties in preparing and filing any Medicare, Medicaid,

or other reimbursement appeals or audit requests relating to services rendered by the Billing Parties prior to the Effective Date.

## 2.5 **Information Technology.**

2.5.1 At the sole expense of the BFMC Parties, SEVHC shall deliver to the BFMC Parties: (a) on the Effective Date, a copy of all electronically-stored records made or received by the BFMC Parties on or before midnight on March 31, 2016, which are stored on the Email Server, as defined below, or on any other server that (i) stores records electronically on a computer network of the Hospital, and (ii) is located at one of the properties set forth in Exhibit 1-m of the Records Custodian Agreement by and among the Parties, as of the Effective Date (the "Master Copy"); and (b) within sixty (60) days of the Effective Date, a refreshed copy of the Master Copy. SEVHC also shall retain a copy of such records for its own use (the "Back-Up Copy").

2.5.2 If requested by the BFMC Parties, and at their sole expense, SEVHC shall consult with the BFMC Parties (or their third party vendor) in establishing an appropriate vehicle by which the BFMC Parties may retrieve and use records stored on the Master Copy; provided, however, that SEVHC shall not take on a primary role in that process.

2.5.3 SEVHC shall maintain the dedicated server for email located at the Hospital (the "Email Server"), and the emails stored on the Server (the "Server Emails"), at the sole expense of the BFMC Parties, until the expiration or termination of this Agreement, at which time SEVHC may dispose of the Email Server, and the Server Emails, as provided under Section 5.2.3(c).

2.5.4 If requested by the BFMC Parties during the term of this Agreement, and at the sole expense of the BFMC Parties, SEVHC shall permit the BFMC Parties to access, via one or more electronic portals established by SEVHC at the sole expense of the BFMC Parties, electronically-stored records made or received by the BFMC Parties prior to the Effective Date, which are in the possession or control of SEVHC.

2.5.5 For a period of sixty (60) days after the Effective Date, SEVHC shall provide reasonable technical support, Monday through Friday from 8:00 a.m. to 4:00 p.m., for desktop and connectivity issues relating to computer equipment and software used by the BFMC Parties as of the Effective Date.

2.6 **Human Resources.** Provided that the BFMC Parties maintain sufficient cash in a bank account, upon which payroll remittances are to be drawn, SEVHC shall process on behalf of BFMC: (a) the final payroll for BFMC, ending as of Midnight on March 31, 2016; and (b) severance payments that are owed by BFMC to its employees who have separated from their employment with BFMC at or before of midnight on the March 31, 2016; provided, however, that Section 9.9.1 of the Asset Purchase Agreement, and not this Section 2.6, shall apply to severance payments relating to C-Suite Employees, as that term is defined in Section 9.9.1 of the Asset Purchase Agreement. SEVHC also shall provide, on behalf of BFMC, any COBRA or other continuation of coverage notices that BFMC is required to provide under federal or state

law with respect to employees or former employees of BFMC who terminate employment with BFMC at or before of midnight on March 31, 2016, and who do not become eligible for SEVHC group health plan coverage because they do not become employed by SEVHC (or an affiliate).

2.7 **Regulatory Filings and Reports.** SEVHC shall be responsible for filing on behalf of BFMC the following:

2.7.1 Form DFS-UP-121, Annual Report of Property Presumed Abandoned for Cash Items, due on May 1, 2016;

2.7.2 Form RT-6, Florida Department of Revenue Employer's Quarterly Report for the quarter ending March 31, 2016; and

2.7.3 Form DR-15, Sales and Use Tax Return for the period ending March 31, 2016.

2.8 **Risk Management Services.** SEVHC shall cooperate with the BFMC Parties to transfer all claims files relating to any risk incidents that occurred prior to the Effective Date to the BFMC Parties or their designee. SEVHC shall have no responsibility to manage any pending cases against the BFMC Parties, or to investigate any claims that were made prior to the Effective Date. If the BFMC Parties request in writing, SEVHC shall request that the broker for the BFMC Parties cancel any insurance policy maintained by the BFMC Parties. If the BFMC Parties reasonably request, SEVHC shall make available its employees who are reasonably believed by the BFMC Parties to have knowledge regarding any risk incident that occurred prior to the Effective Date, to provide information regarding any such risk incident.

2.9 **Tax Filings.** SEVHC shall prepare and file or, with the consent of the BFMC Parties, cause to be prepared and filed by qualified professionals, for review and signature by the BFMC Parties, any IRS Forms W-2, W-3, 941, 1094, 1095, 1096, and 1099 for BFMC that are due for the tax year ending December 31, 2016.

### **ARTICLE III** **COMPENSATION**

3.1 **Transition Monthly Fee.** As consideration for all of the Transition Services, other than the Billing and Collection Services, performed by SEVHC during any calendar month, the BFMC Parties shall pay to SEVHC a fee in the amount of five thousand dollars (\$5,000) for such Transition Services, such payment to be made on or before the fifteenth (15th) day of the next calendar month.

3.2 **Billing and Collections Fee.** As consideration for the Billing and Collection Services performed by SEVHC during any calendar month, BFMC shall pay to SEVHC, the following fees, such fees to be paid on or before the fifteenth (15th) day of the next calendar month:

3.2.1 Five percent (5%) of payments collected by SEVHC pursuant to this Agreement during the calendar month in which the Billing and Collection Services are performed (less the same percentage of any amounts repaid by SEVHC pursuant to Section 2.3.10) during the previous month, excluding payments collected from the Florida Medicaid program (the “Program”) or a Florida Medicaid managed care plan (a “Plan”) for patients enrolled in the Program or a Plan; plus

3.2.2 Nine dollars (\$9) for each claim for payment submitted to the Program or a Plan for a patient enrolled in the Program or a Plan during the previous month; provided, however, that all services provided to a patient enrolled in the Program or a Plan at a single site on the same date of service must be included in a single claim.

3.3 **Reimbursement of Out-of-Pocket Expenses.** The BFMC Parties shall reimburse SEVHC for all reasonable out-of-pocket expenses incurred by SEVHC in the performance of the Transition Services; provided, however, that such out-of-pocket expenses shall not include labor costs for employees of SEVHC or its affiliates or successors, except that labor costs for such employees that are directly attributable to the provision of information technology services pursuant to Section 2.5 shall be reimbursed by the BFMC Parties.

#### **ARTICLE IV** **REPRESENTATIONS AND WARRANTIES**

Each of the Parties hereby represents and warrants that:

4.1 that Party has all necessary corporate power and authority to enter into this Agreement;

4.2 that Party has all necessary corporate power and authority to execute all documents and instruments referred to herein or contemplated hereby;

4.3 all necessary action has been taken by that Party to authorize the individual executing this Agreement on behalf of that Party to do so;

4.4 this Agreement has been duly and validly executed and delivered by that Party;

4.5 this Agreement is enforceable against that Party in accordance with its terms; and

4.6 there are no actions, suits, claims, governmental investigations, legal or administrative proceedings, orders, decrees, or judgments in progress, pending, in effect, or, to the knowledge of that Party, threatened against that Party, relating to the transactions contemplated hereby.



## **ARTICLE V**

### **TERM AND TERMINATION**

5.1 **Term.** The term of this Agreement (the “Term”) shall begin on the Effective Date, and shall continue for a period of twelve (12) months, unless this Agreement is terminated earlier pursuant to Section 5.2.

5.2 **Termination.**

5.2.1 **Termination for Breach.** In addition to any other remedy at law or in equity, any Party may terminate this Agreement, immediately upon giving notice of termination to the other Parties, if the other Party is (or the other Parties are) in breach of this Agreement, and such Party has (or such Parties have) failed to cure the breach within thirty (30) days after notice of the breach has been given to the breaching Party or Parties.

5.2.2 **Termination for Failure to Renegotiate.** Any Party may terminate this Agreement as provided under Section 6.13.

5.2.3 **Effect of Termination.** Upon the expiration or termination of this Agreement:

(a) the BFMC Parties shall pay to SEVHC all earned but unpaid fees for Transition Services provided through the date of expiration or termination;

(b) SEVHC shall return to the BFMC Parties any books, records, data, and information relating to the Transition Services;

(c) if the BFMC Parties have not already taken custody of the Email Server, the BFMC Parties shall request delivery of the Email Server at least ten (10) day prior to the expiration or termination of this Agreement;

(i) if the BFMC Parties timely make such a request, SEVHC promptly shall deliver the Email Server to the BFMC Parties, at the sole expense of the BFMC Parties, and SEVHC thereafter shall have no further responsibility towards the Email Server or the Server Emails;

(ii) if the BFMC Parties fail to timely make such a request, SEVHC may dispose of the Email Server and the Server Emails upon expiration or termination of this Agreement, and shall not be required to retain the Email Server or the Server Emails under any public records retention schedules or for any other reason; and

(d) SEVHC shall cease to provide any Transition Services.

Except as otherwise provided in this Agreement, upon the expiration or termination of this Agreement, SEVHC shall have no further duties under this Agreement.

## **ARTICLE VI**

### **GENERAL PROVISIONS**

6.1 **Compliance with Laws.** Each Party shall at all times comply, and use its best efforts to assist the other Parties in complying, with: (a) all applicable laws, rules, regulations and policies of governmental authorities; and (b) all applicable Medicare and third party payor rules, regulations, and policies concerning treatment, reimbursement, or billing procedures or practices.

6.2 **HIPAA and HITECH Act.** The Parties agree to comply with the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, including the Standards for Electronic Transactions and Code Sets (45 C.F.R. Parts 160 and 162), the Standards for Privacy of Individually Identifiable Health Information (45 C.F.R. Parts 160 and 164), the Security Standards for the Protection of Electronic Protected Health Information (45 C.F.R. Parts 160 and 164), and such other regulations that may, from time to time, be promulgated thereunder, and including the amendments thereto pursuant to the Health Information Technology for Economic and Clinical Health Act, part of the American Recovery and Reinvestment Act of 2009, and regulations promulgated thereunder (collectively, "**HIPAA**"). The Parties agree not to use or further disclose any Protected Health Information or Individually Identifiable Health Information, as defined at 45 C.F.R. § 160.103, other than as permitted by HIPAA. In furtherance hereof, the Parties have executed the Business Associate Agreement attached as **Exhibit 6.2**, with the BFMC Parties as the Covered Entity and SEVHC as the Business Associate.

6.3 **Medicare Access to Records.** Until the expiration of ten (10) years after the furnishing of Transition Services pursuant to this Agreement, the Parties shall make available, upon request, to the United States Department of Health and Human Services, the Comptroller General, or any other duly authorized representative of the federal government, this Agreement, and the books, documents, and records of any of the other Parties that are necessary to certify the nature and extent of the costs incurred for the Transition Services furnished hereunder. Further, if SEVHC carries out any duties hereunder through a related organization, SEVHC shall include this provision in any contract with the related organization, in accordance with Section 952 of the Omnibus Reconciliation Act of 1980 (P.L. 96-499).

6.4 **Indemnification.** To the extent allowed by law, SEVHC, on the one hand, and the BFMC Parties, on the other hand, agree to indemnify and hold harmless one another, including one another's officers, directors, employees, agents, and representatives, and one another's respective successors and permitted assigns, from and against any and all third party claims, demands, actions, charges, liabilities, and damages, including reasonable attorneys' fees and expenses, arising from or relating to the indemnifying Party's breach of this Agreement.

6.5 **Independent Contractor Relationship.** SEVHC, on the one hand, and the BFMC Parties, on the other hand, are independent contractors, and nothing in this Agreement shall be deemed to create any partnership, joint venture, or other relationship (other than as independent contractors) between them. Nothing in this Agreement shall impose any liability upon any or all of the BFMC Parties for the debts of SEVHC, or vice versa.

6.6 **Assignment.** SEVHC may assign any or all of its rights or delegate any or all of its duties under this Agreement to an affiliate or successor entity upon thirty (30) days' notice to the BFMC Parties; provided, however, that such assignment or delegation shall not release SEVHC of any of its obligations under this Agreement. Except as provided in the immediately preceding sentence, no Party may assign any of its rights or delegate any of its duties under this Agreement without the prior written consent of the other Party or Parties. This Agreement shall be binding upon, and inure to the benefit of each of, the Parties and their successors and permitted assigns.

6.7 **Rights Cumulative; No Waiver.** Any rights or remedies of any Party in the event of a breach by another Party are intended to be cumulative, rather than exclusive. Moreover, if any Party chooses not to insist upon strict performance of any provision of this Agreement, that choice shall not impair its rights to insist on strict performance in the event of subsequent acts of default. The waiver by a Party of any breach of any provision of this Agreement by another Party shall not operate or be construed as a waiver of any subsequent breach by that other Party.

6.8 **Attorneys' Fees and Expenses.** In the event of any dispute under this Agreement, the prevailing Party shall be entitled to recover from the other Party the prevailing Party's legal fees and expenses, including such fees and expenses incurred before or during trial, on appeal, or in bankruptcy proceedings.

6.9 **Notices.** Except as otherwise provided in Section 1.4, all notices or other communications required or permitted hereunder shall be in writing; and shall be delivered personally or by a recognized courier service, or sent by certified or registered mail, return receipt requested, postage prepaid, as follows:

<u>If to the BFMC Parties:</u>	Southeast Volusia Hospital District Post Office Box 909 New Smyrna Beach, Florida 32170-0909 Attention: Chairman of the Board
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With copy (which shall not constitute notice) to:	Carlton Fields Jorden Burt, P.A. 4221 West Boy Scout Boulevard Suite 1000 Tampa, Florida 33607 Attention: James J. Kennedy, III, Esq.
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<u>If to SEVHC:</u>	Southeast Volusia Healthcare Corporation 401 Palmetto Street New Smyrna Beach, Florida 32816 Attention: President
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With copy (which shall not constitute notice) to:	Adventist Health System Sunbelt Healthcare Corporation 900 Hope Way Altamonte Springs, Florida 32714 Attention: Chief Legal Officer
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-and-

Adventist Health System East Florida Region  
1055 Saxon Boulevard  
Orange City, Florida 32763  
Attention: CEO Florida Division East Florida Region

or to such other address, or to the attention of such other individual or officer, as a Party may designate by notice given in accordance with this Section 6.9. Notice shall be deemed to have been given and received when delivered personally or by recognized courier, or on the fifth day after such notice has been mailed in accordance with this Section 6.9. Notice to or from any of the BFMC Parties shall constitute notice to or from all of them, and notice to or from either of the Billing Parties shall constitute notice to or from both of them.

6.10 **No Third Party Beneficiaries.** Except as provided in Section 6.6, this Agreement: (a) is solely for the benefit of the Parties hereto, and will in no way be construed to entitle any third party to any compensation or benefit; (b) does not create any third-party beneficiaries; and (c) does not confer any rights or remedies upon any person or entity other than the Parties and their respective successors and permitted assigns.

6.11 **Headings; Construction.** Headings to Articles, Sections, and Subsections herein are for purposes of reference only, and shall in no way limit, define, or otherwise affect the provisions hereof. As used in this Agreement, unless the context clearly indicates otherwise, the terms “hereunder,” “herein,” “hereto,” “hereof,” “hereby,” or similar terms, shall refer to this Agreement as a whole, together with all Exhibits hereto, as it may be amended from time to time, and the word “including” shall mean “including, without limitation.” Inasmuch as this Agreement is the result of negotiations between sophisticated parties of equal bargaining power, all of whom are represented by counsel, there shall be no presumption created as a result of any Party having prepared any or all provisions of this Agreement.

6.12 **Complete Agreement; Amendment; Severability.** This Agreement contains the entire agreement among the Parties with respect to the subject matter hereof. All prior negotiations and understandings are merged herein. This Agreement may not be modified unless agreed to in a writing signed by all Parties. Should any part of this Agreement be declared invalid or unenforceable by a court or regulatory body of competent jurisdiction, such decision shall not affect the validity or enforceability of the remaining parts, which shall remain in full force and effect.

6.13 **Renegotiation.** In the event there is a change in law, whether by statute, regulation, or agency or judicial decision, that renders any provision of this Agreement invalid or illegal, any Party may give notice to the other Party or Parties of a request for renegotiation of the affected provision(s). Upon a request for renegotiation, each Party has a duty to renegotiate the affected provision(s) in good faith. If the Parties do not renegotiate the affected provision(s) so as to achieve compliance with the law within thirty (30) days after such notice of a request for renegotiation has been given, any Party may terminate this Agreement immediately upon giving notice of termination to the other Party or Parties.

6.14 **Force Majeure.** No Party will be liable, under this Agreement, for failure to perform any obligation under this Agreement if prevented from performing by strike, lockout, breakdown, accident, order or regulation of or by any governmental authority, or failure of supply, or inability by the exercise of reasonable diligence to obtain supplies, parts, or employees or others necessary to furnish such services, or because of war, act of terrorism, or other emergency, or for any other cause beyond its reasonable control; provided, however, that the lack of financial resources shall not be excused.

6.15 **Governing Law and Venue.** This Agreement shall be construed and enforced according to the laws of the State of Florida, without regard to its conflicts of law rules. ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR UPON THE TRANSACTIONS CONTEMPLATED HEREBY, SHALL BE BROUGHT SOLELY IN THE COURTS OF THE STATE OF FLORIDA LOCATED IN VOLUSIA COUNTY, FLORIDA. EACH PARTY IRREVOCABLY AND UNCONDITIONALLY: (a) SUBMITS TO THE EXCLUSIVE JURISDICTION OF ANY SUCH COURT FOR ANY SUCH SUIT, ACTION, OR PROCEEDING; (b) WAIVES ANY OBJECTION TO THE LAYING OF VENUE IN ANY SUCH COURT FOR ANY SUCH SUIT, ACTION, OR PROCEEDING; AND (c) AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT SUCH SUIT, ACTION, OR PROCEEDING HAS BEEN BROUGHT IN AN IMPROPER OR INCONVENIENT FORUM.

6.16 **Waiver of Jury Trial.** EACH OF THE PARTIES HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY LEGAL SUIT, ACTION, OR PROCEEDING ARISING OUT OF OR BASED UPON THIS AGREEMENT, OR UPON THE TRANSACTIONS CONTEMPLATED HEREBY, AND AGREES THAT ANY SUCH SUIT, ACTION, OR PROCEEDING SHALL BE TRIED BEFORE A JUDGE AND NOT BEFORE A JURY.

6.17 **Execution in Counterparts.** This Agreement may be executed in two or more counterparts, each of which shall be deemed an original agreement, but all of which together shall constitute one and the same instrument.

**[Signature Page Follows]**

The Parties hereto have caused this Agreement to be executed as of the Effective Date.

**SOUTHEAST VOLUSIA HOSPITAL  
DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman of the Board

**BERT FISH MEDICAL CENTER, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman of the Board

**SOUTHEAST VOLUSIA MEDICAL  
SERVICES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: Chairman of the Board

**SOUTHEAST VOLUSIA HEALTHCARE  
CORPORATION**

By: Debra H. Thomas  
Name: Debra H. Thomas  
Title: Treasurer

## EXHIBIT 6.2

### BUSINESS ASSOCIATE AGREEMENT

This **BUSINESS ASSOCIATE AGREEMENT** (this "Agreement") is entered into as of this 1st day of April, 2016 (the "Effective Date"), by and between **SOUTHEAST VOLUSIA HEALTHCARE CORPORATION**, a Florida not-for-profit corporation ("Business Associate"), on the one hand, and **SOUTHEAST VOLUSIA HOSPITAL DISTRICT**, an independent special tax district of the State of Florida, **BERT FISH MEDICAL CENTER, INC.**, a Florida not-for-profit corporation, and **SOUTHEAST VOLUSIA MEDICAL SERVICES, INC.**, a Florida not-for-profit corporation (collectively, "Covered Entity"), on the other hand. Business Associate and Covered Entity are each called a "Party," and together are called the "Parties."

### WITNESSETH

**WHEREAS**, the Parties have a Transition Services Agreement and a Records Custodian Agreement, both dated as of the Effective Date ("Services Agreements") under which the Business Associate regularly Uses and/or Discloses Protected Health Information ("PHI") in its performance of the Services described below;

**WHEREAS**, the Parties are committed to complying with the privacy and security rules and regulations of the Health Insurance Portability & Accountability Act of 1996 ("HIPAA").

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the Parties agree and covenant to abide by the terms hereto regarding the handling of PHI during the term of their Services Agreements and after their termination, as follows:

#### **I. DEFINITIONS**

- 1.1 **Regulations.** The term "Regulations" used in this Agreement shall include the following: (i) The Health Insurance Portability and Accountability Act of 1996 privacy standards adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E, and the security standards, adopted by the U.S. Department of Health and Human Services as they may be amended from time to time, 45 C.F.R. parts 160, 162, and 164 subpart C ("HIPAA"); (ii) the breach notification requirements under Subtitle D of the Health Information Technology for Economic and Clinical Health Act of the American Recovery and Reinvestment Act of 2009, 42 U.S.C. §§ 17921-17954, and its attendant regulations published in the Federal Register (Fed. Reg. 42,740 (Aug. 8, 2009)) ("HITECH Act"); (iii) the Final Rule for the Modifications to the HIPAA Privacy, Security, Enforcement and Breach Notification Rules under the HITECH Act and the Genetic Information Nondiscrimination Act ("GINA"), and other modifications to the HIPAA Rules, all of which were published January 25, 2013, effective March 26, 2013; and (iv) any additional regulations promulgated pursuant to HIPAA, the HITECH Act or

GINA.

- 1.2 **Defined Terms.** The following terms used in this Agreement shall have the same meaning as those in the Regulations: Health Care Operations, Designated Record Set, Disclose, Disclosure, Individual, Minimum Necessary, Notice of Privacy Practices, Unsecured Protected Health Information, Protected Health Information (“PHI”), Required By Law, Secretary, Security Incident, Subcontractor and Use. Other terms shall have the definition set forth in this Agreement.

## **II. SERVICES**

Pursuant to the Services Agreements, Business Associate provides Transition Services and Records Custodian Services, as those terms are defined in the Services Agreements (“Services”) for the Covered Entity that involve the Use and Disclosure of PHI. Business Associate agrees to only use and Disclose PHI as authorized by this Agreement.

## **III. PRIVACY OF PROTECTED HEALTH INFORMATION**

- 3.1 **Permitted Uses and Disclosures of PHI by Business Associate.** Business Associate may Use or Disclose PHI received from Covered Entity: (1) to its officers, employees, Subcontractors and agents for the purpose of providing Services to Covered Entity; (2) as directed by Covered Entity; and (3) as otherwise permitted by this Agreement. All other Uses or Disclosures not authorized by this Agreement are prohibited.
- 3.2 **Responsibilities of Business Associate.** Regarding the Use or Disclosure of PHI, Business Associate hereby agrees to perform the following:
- 3.2.1 Only Use or further Disclose the PHI as allowed under this Agreement or Required By Law.
  - 3.2.2 Only Use or further Disclose PHI in a manner that would not violate the Regulations if done so by the Covered Entity.
  - 3.2.3 Establish and implement safeguards to prevent improper Uses or Disclosures of PHI and procedures for mitigating, to the greatest extent possible under the circumstances, any deleterious effects from any improper Use or Disclosure of PHI that Business Associate reports to Covered Entity.
  - 3.2.4 Use appropriate safeguards to prevent Use or Disclosure of PHI other than as provided for by this Agreement and the Regulations, and to comply with Subpart C of 45 C.F.R. part 164 of HIPAA with respect to electronic PHI.
  - 3.2.5 Notify Covered Entity within two (2) days of any Security Incident or unauthorized Use or Disclosure of PHI in violation of the Regulations or any other applicable federal or state laws, rules and regulations, including breaches of Unsecured Protected Health Information as required by 45 C.F.R. § 164.410. For incidents that do not rise to the level of a Breach, the report



shall identify the date of the Security Incident or impermissible Use or Disclosure (collectively "Occurrence"), the scope of the Occurrence, Business Associate's response to the Occurrence, and identification of the party responsible for causing the Occurrence, if known.

For incidents constituting a Breach, the notification shall include, to the extent possible and subsequently as the information becomes available, the identification of all Individuals affected by the Breach and any other relevant/available information. Business Associate shall take: (a) prompt corrective action to cure any such deficiencies and (b) any action pertaining to such unauthorized Disclosure required by the Regulations and any applicable federal or state laws, rules and regulations. Business Associate shall be financially responsible for all costs and expenses for any Breach to the extent caused by Business Associate, including without limitation, costs and expenses related to: (i) drafting, printing and mailing any required notice to Individuals impacted by the Breach, (ii) setting up and manning a hotline, (iii) mitigating potential harm to such Individuals by providing credit monitoring and identity theft restoration services, (iv) Business Associate's attorney's fees, and (v) penalties or fines assessed against Covered Entity on account of the Breach caused by Business Associate, by any administrative entity authorized to enforce the Regulations. The Parties agree that Covered Entity shall be involved with the Breach investigation, and that Covered Entity shall have final approval rights to all press releases, frequently asked questions for the hotline, reports or notifications to the Secretary, and letters sent to Individuals in the event of a Breach. The term "Breach" shall be defined as set forth under the Regulations and applicable federal or state laws, rules and regulations.

- 3.2.6 Ensure that Business Associate's Subcontractors or agents to whom Business Associate provides PHI, received from or created or received by the Business Associate on behalf of the Covered Entity, agree to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI.
- 3.2.7 Make Business Associate's records, books, agreements and policies, and procedures relating to the Safeguards and the Use and Disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the Regulations. Unless otherwise Required By Law or by the Secretary, Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request, and shall provide Covered Entity with copies of all materials provided to Secretary.
- 3.2.8 Make Uses and Disclosures of and requests for PHI in a manner that is consistent with Exhibit 3.2.8, which is attached hereto and incorporated by

reference, and the Covered Entity's Minimum Necessary policies and procedures and the Covered Entity's Notice of Privacy Practices which has been provided to Business Associate.

- 3.2.9 Maintain and make available to Covered Entity information required under 45 C.F.R. § 164.528 to permit Covered Entity to respond to a request by an Individual for an accounting of Disclosures, within 5 days of receiving a written request from Covered Entity.
  - 3.2.10 Make available PHI maintained by Business Associate to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. § 164.524, if Business Associate maintains a Designated Record Set on behalf of Covered Entity.
  - 3.2.11 Make any amendment(s) to the PHI when directed by Covered Entity pursuant to 45 C.F.R. § 164.526, if Business Associate maintains a Designated Record Set on behalf of Covered Entity.
  - 3.2.12 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164 or other provisions of HIPAA, Business Associate agrees to comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- 3.3 **Use of PHI for Management and Administration or Legal Responsibilities of Business Associate.** The Business Associate may Use and Disclose PHI received by the Covered Entity pursuant to this Agreement for: (1) the proper management and administration of the Business Associate; or (2) to carry out the legal responsibilities of the Business Associate. However, the Business Associate will only be allowed to Disclose PHI for the aforementioned Uses if: (1) the Disclosure is Required By Law; or (2) the Business Associate obtains reasonable assurances from the person to whom the PHI is Disclosed that it 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 the person notifies the Business Associate of any instances in which the person is aware of a Security Incident or Breach of PHI.
- 3.4 **Data Aggregation Services.** With respect to PHI created or received by the Business Associate in its capacity as the Business Associate of the Covered Entity, Business Associate may combine such PHI it has received from the Covered Entity with the PHI received by the Business Associate 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, if data analyses is part of the Services that Business Associate is to provide under the Services Agreements.
- 3.5 **Remuneration Statement.** Except as otherwise allowed in this Agreement and the Regulations, Business Associate shall not directly or indirectly receive remuneration in

exchange for any PHI of an Individual unless the Individual has provided a valid authorization compliant with the Regulations and state law.

- 3.6 **PHI Ownership Statement.** Business Associate acknowledges and agrees that it acquires no title or ownership rights to the PHI, including any de-identified information, as a result of this Agreement.
- 3.7 **Encryption Requirement.** Unless Covered Entity agrees, in writing, that this requirement is infeasible with respect to particular data, Business Associate shall secure all PHI by a technology standard that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals and is developed in accordance with Department of Health and Human Services' applicable guidance and other applicable laws and regulations, when Business Associate: (i) stores PHI on Business Associate's system, (ii) transmits PHI, or (iii) controls the Use, Disclosure and access to PHI.
- 3.8 **Audit Procedure.** Within ten (10) days of Covered Entity's written request, Business Associate and its agents and Subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the Use or Disclosure of PHI pursuant to this Agreement for the purpose of determining whether Business Associate has complied with the Agreement; provided, however that Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of responsibility to comply with this Agreement, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practice, constitute acceptance of such practice or waiver of Covered Entity's enforcement rights under this Agreement.
- 3.9 **Business Associate Tracking Obligation.** Business Associate agrees to track and monitor compliance with the provisions of this Agreement, and provide evidence of such monitoring to Covered Entity upon request.
- 3.10 **USA Storage of PHI Only.** Business Associate must host or store PHI maintained on behalf of Covered Entity on servers and other hardware or in physical storage areas located only within the United States, and all Services by Business Associate described in this Agreement will be provided on, in and from the United States only.

#### IV. TERMINATION

- 4.1 **Covered Entity's Right to Terminate.** Covered Entity is authorized to terminate the Services Agreements and this Agreement immediately if Covered Entity determines that Business Associate has violated a material term of this Agreement that pertains to PHI and has failed to cure the breach or end the violation to the satisfaction of Covered Entity within thirty (30) days.

- 4.2 **Effect of Termination.** Termination of the Services Agreements and this Agreement shall not affect any claims or rights that arise based on the acts or omissions of the Parties prior to the effective date of termination.
- 4.3 **Automatic Termination.** This Agreement will automatically terminate without any further action of the Parties upon the termination or expiration of the Services Agreements.
- 4.4 **Duties of Business Associate Upon Termination.** Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:
- 4.4.1 Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, or is infeasible to return;
  - 4.4.2 Return to Covered Entity or, if agreed to in writing by Covered Entity, destroy the remaining PHI that Business Associate still maintains in any form;
  - 4.4.3 Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
  - 4.4.4 Not Use or Disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions in this Agreement, which applied prior to termination; and
  - 4.4.5 Return to Covered Entity or, if agreed to in writing by Covered Entity, destroy the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

## V. INDEMNIFICATION

Business Associate shall indemnify, hold harmless and, at Covered Entity's request, defend Covered Entity from and against any and all costs, fines, penalties, liabilities, losses, and expenses (including, but not limited to, reasonable attorneys' fees and court costs) (collectively, "Losses") resulting from any claim, suit, action, or proceeding ("Claim"), regardless of the theory or cause of action upon which the Claim is based, brought by any regulatory agency or third party against Covered Entity arising from Business Associate or Business Associate's employees, officers, agents or Subcontractors; (i) negligence or gross negligence, bad faith or intentional misconduct; (ii) non-compliance with the Regulations; (iii) breach of any of its obligations under this Agreement; or (iv) Security Incident or Breach under Section 3.2.5 herein. For any

claim for which Covered Entity is entitled to indemnification hereunder, Covered Entity shall: (a) provide Business Associate prompt written notice of the existence of any such Claim upon Covered Entity's receipt or knowledge of it and; (b) defend such claim or permit Business Associate to control the defense of the Claim. If Covered Entity requests Business Associate to defend such claim, Business Associate shall not enter into any settlement or other Agreement with respect to any Claim that imposes any duty or obligation on Covered Entity, or provides for an admission of fault on the part of Covered Entity, without Covered Entity's prior written consent. Business Associate's obligation to indemnify shall survive the expiration or termination of this Agreement regarding any claim brought under this Agreement.

## **VI. MISCELLANEOUS**

- 6.1 **Agreement Subject to All Applicable Laws.** The Parties recognize and agree that this Agreement and their activities are governed by federal, state, and local laws, including the Social Security Act; regulations, rules, and policies of the U.S. Department of Health and Human Services; various state laws; among others, and including but not limited to the Regulations. The Parties further recognize and agree that this Agreement is subject to new legislation, as well as amendments to government regulations, rules, and policies and agree that this Agreement will be automatically amended to incorporate by reference any additional promulgated Regulations, which amendment shall be effective on the applicable compliance date specified in such additional Regulations.
- 6.2 **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.
- 6.3 **Survival.** The rights and obligations of the Parties in Article IV, Section 4.4 and Article V shall survive termination of this Agreement indefinitely.
- 6.4 **Interpretation.** The terms and conditions of this Agreement shall supersede the terms and conditions of the Services Agreements that are inconsistent with or in conflict with the terms and conditions of this Agreement.
- 6.5 **Amendment.** Unless otherwise set forth herein, this Agreement may be revoked, amended, changed or modified only by a written amendment executed by the Parties.
- 6.6 **Assignment.** This Agreement, including each and every right and obligation referenced herein, shall not be assigned by the Business Associate without the express prior written consent of the Covered Entity.
- 6.7 **Enforcement Costs.** If any legal action or other proceeding, including arbitration, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable attorneys' fees, court costs and all expenses, if not taxable as court costs, incurred in that action or

proceeding, including all appeals, in addition to any other relief to which such Party or Parties may be entitled. Such attorneys' fees and other enforcement costs shall not be dischargeable in bankruptcy.

- 6.8 **Execution/Authority.** Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he is signing.
- 6.9 **Governing Law.** This Agreement shall be construed and all of the rights, powers and liabilities of the Parties hereunder shall be determined in accordance with the laws of the State of Florida; provided, however, that the conflicts of law principles of the State of Florida shall not apply to the extent that they would operate to apply the laws of another state.
- 6.10 **Notice.** All notices or other communications required or permitted hereunder shall be in writing; and shall be delivered personally or by a recognized courier service, or sent by certified or registered mail, return receipt requested, postage prepaid, as follows:

If to Covered Entity: Southeast Volusia Hospital District  
Post Office Box 909  
New Smyrna Beach, Florida 32170-0909  
Attention: Chairman of the Board

With copy (which shall not constitute notice) to: Carlton Fields Jorden Burt, P.A.  
4221 West Boy Scout Boulevard  
Suite 1000  
Tampa, Florida 33607  
Attention: James J. Kennedy, III, Esq.

If to Business Associate: Southeast Volusia Healthcare Corporation  
401 Palmetto Street  
New Smyrna Beach, Florida 32816  
Attention: President

With copy (which shall not constitute notice) to: Adventist Health System Sunbelt Healthcare Corporation  
900 Hope Way  
Altamonte Springs, Florida 32714  
Attention: Chief Legal Officer

-and-

Adventist Health System East Florida Region  
1055 Saxon Boulevard  
Orange City, Florida 32763  
Attention: CEO Florida Division East Florida Region

or to such other address, or to the attention of such other individual or officer, as a Party may designate by notice given in accordance with this Section 6.10. Notice shall be deemed to have been given and received when delivered personally or by recognized courier, or on the fifth day after such notice has been mailed in accordance with this Section 6.10.

- 6.11 **Severability.** If any provision of this Agreement, or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the Parties that if any provisions of this Agreement are capable of two constructions, one of which would render the provision void and the other one which would render the provision valid, then the provision shall have the meaning which renders it valid.
- 6.12 **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of the Parties hereto, their respective successors and permitted assigns.
- 6.13 **Venue.** Any action or proceeding seeking to enforce any provision, or based on any right arising out of, this Agreement, shall be brought against any of the Parties in the courts of the State of Florida, County of Volusia, and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Process in any action or proceeding referred to in the preceding sentence may be served on any Party anywhere.
- 6.14 **Waiver of Breach.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term or condition of this Agreement, shall constitute a waiver of any such breach of such covenant, agreement, term or condition. Any Party may waive compliance by the other Party with any of the provisions of this Agreement if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.
- 6.15 **Entire Agreement.** The Services Agreements, this Agreement and any addendums or attachments thereto shall constitute the entire understanding between the Parties as to the rights, obligations, duties and services to be performed thereunder.
- 6.16 **Damages.** Any limitation or exclusion of damages contained in the Services Agreements shall not apply to the enforcement of this Agreement.
- 6.17 **Transactions and Code Sets.** To the extent that Business Associate submits standard transactions on behalf of Covered Entity, or assists Covered Entity with submission of standard transactions, Business Associate will comply with the HIPAA Transaction and Code Set Rule (codified at Part 162 of Title 45 of the Code of Federal Regulations), as such may be amended, extended or replaced from time to time.

**[Signature Page Follows]**

IN WITNESS WHEREOF, the Parties hereto have caused these presents to be executed on the date first written above.

**SOUTHEAST VOLUSIA HOSPITAL  
DISTRICT**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BERT FISH MEDICAL CENTER, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHEAST VOLUSIA MEDICAL  
SERVICES, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**SOUTHEAST VOLUSIA HEALTHCARE  
CORPORATION**

By: Debra H Thomas  
Name: Debra H. Thomas  
Title: Treasurer



## EXHIBIT 3.2.8

### MINIMUM NECESSARY DETERMINATION DOCUMENTATION

Please check the categories of Protected Health Information that the Business Associate needs access to for performing the Services set forth in the Agreement.

Categories of Protected Health Information	General Description of Protected Health Information	Access Necessary? (Yes/No)
<b>Demographic Data</b>	<b>Name, Address, Contact Information, Dates of Service, Admission/Discharge/Transfer Information</b>	
<b>Payor/Billing Data</b>	<b>Payor Name, Payor Contact Information, Payor and Provider Account Information, Diagnoses, Coding Information, Dates of Service, Costs of Service, Pre-Certification and Certification Information</b>	
<b>Clinical Diagnostic Procedures and Test Reports</b>	<b>Pre-Admission Testing, Lab Reports, Radiology Reports, Cardiology Reports, Pathology Reports, Invasive Diagnostic Reports, Operative Reports, Bedside Procedures</b>	
<b>Clinical Provider Documentation</b>	<b>Physician Dictation, Nursing Notes, Mid-level Provider Documentation</b>	
<b>Clinical Pharmacy Data</b>	<b>Prescriptions, Physician Orders for Medications, Medication Administration Records, Home or Self Medication Profiles, Clinical Pharmacist Consultations</b>	
<b>Other:</b>	<b>Description:</b>	