

## AFFILIATION AGREEMENT

**THIS AFFILIATION AGREEMENT** (“Agreement”) is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by and between **THE SCHOOL BOARD OF BROWARD COUNTY, FLORIDA** (hereinafter referred to as “SBBC”), a body corporate and political subdivision of the State of Florida, whose principal place of business is 600 Southeast Third Avenue, Fort Lauderdale, Florida 33301 and **SOUTH BROWARD HOSPITAL DISTRICT d/b/a MEMORIAL HEALTHCARE SYSTEM** (hereinafter referred to as “MEMORIAL”), a special taxing district created by the Legislature of the State of Florida, whose executive offices are located at 3111 Stirling Road, Fort Lauderdale, FL 33312.

**WHEREAS**, MEMORIAL and SBBC recognize that student safety and welfare are the foremost considerations in the conduct of interscholastic athletic activities, and in particular athletic programs must be conducted with special attention for the prevention of physical injuries, minimization of severe injuries and prevention of reoccurrence of injuries, and

**WHEREAS**, central to an athletic injuries and treatment program is the utilization of licensed and nationally certified Athletic Trainers trained in the prevention and treatment of injuries that may occur during athletic activities, and

**WHEREAS**, the goal of the Florida Legislature (Section 1012.46) is to have an Athletic Trainer in each high school in the state, and

**WHEREAS**, this Agreement supports the SBBC’s goal, “Build strong partnerships with family, business, community and government at the classroom, school, area and district level.”

### ARTICLE 1 - RECITALS

1.01. Recitals. The Parties agree that the foregoing recitals are true and correct and that such recitals are incorporated herein by reference.

### ARTICLE 2 – SPECIAL CONDITIONS

2.01 Term. This Agreement shall be effective on August 2, 2016 and shall terminate on August 1, 2017, unless terminated earlier pursuant to Section 4.05 of this Agreement.

2.02 MEMORIAL Services. MEMORIAL shall:

A. Provide athletic training services at the following eight (8) high schools:

- |                |                  |
|----------------|------------------|
| 1) Cooper City | 5) McArthur      |
| 2) Everglades  | 6) Miramar       |
| 3) Flanagan    | 7) South Broward |
| 4) Hallandale  | 8) West Broward  |

B. Retain State of Florida Licensed Athletic Trainers, and or licensed graduate athletic training students. MEMORIAL may also utilize and supervise athletic training student interns from area Athletic Training Education Programs (i.e. Nova Southeastern University or Florida International University) at each of the program



sites. All members of the Sports Medicine Program will be supervised by a MEMORIAL Director, Sports Medicine. The Director of Sports Medicine shall cooperate with the SBBC's Director of Athletics and Student Activities to coordinate the activities, events and other arrangements for the Athletic Trainers contemplated for this service. The Director, Sports Medicine shall provide supervision for the Athletic Trainers and shall provide coordination for the volunteer team physician participation when the volunteer team physician is available.

- C. Assist the SBBC in educating principals, athletic directors, coaches and school system staff on sports medicine issues through:
- Presentations to athletic directors and coaches,
  - Printed materials and published guidelines on sports medicine issues such as hydration, concussion management, etc., and
  - Sports medicine recommendations to the Department of Athletics and Student Activities.
- D. Facilitate a limited number of sports physicals and electrocardiogram (EKG) screenings to student athletes. Student athletes will have the opportunity and shall be required to schedule a sports physical in advance of the date such physical is offered. The number of sports physicals may be limited at MEMORIAL's sole discretion. The charge for such physicals may be waived in cases of demonstrated need. MEMORIAL will attempt to educate the families of student athletes about options for applying for insurance via Memorial's HITS program. MEMORIAL will also educate student athletes about the Memorial Physician Referral Line for assistance in finding a medical home.
- E. Provide materials to the SBBC's Director of Athletics and Student Activities for the promotion of the sports medicine partnership through game announcements and banner displays (i.e. gym/stadium) at participating high schools at no additional cost to MEMORIAL.
- F. Background Screening - MEMORIAL agrees to comply with and shall ensure MEMORIAL'S contractors comply with all requirements of Sections 1012.32 and 1012.465, Florida Statutes, and MEMORIAL and all of its personnel and contractors who (1) are to be permitted access to school grounds when students are present, (2) will have direct contact with students, or (3) have access or control of school funds will successfully complete the background screening required by the referenced statutes and meet the standards established by the statutes. This background screening will be conducted by SBBC in advance of MEMORIAL or its personnel providing any services under the conditions described in the previous sentence. SBBC will bear the cost of acquiring the background screening required by Section 1012.32, Florida Statutes, and any fee imposed by the Florida Department of Law Enforcement to maintain the fingerprints provided with respect to MEMORIAL and its personnel and contractors. The Parties agree that the failure of MEMORIAL to perform any of the duties described in this section shall constitute a material breach of this Agreement entitling SBBC to terminate immediately with no further responsibilities or duties to perform under this



Agreement. To the extent permitted by law, MEMORIAL agrees to indemnify and hold harmless SBBC, its officers and employees from any liability in the form of physical or mental injury, death or property damage resulting in MEMORIAL's failure to comply with the requirements of this section or Sections 1012.32 and 1012.465, Florida Statutes. Nothing herein shall be construed as a waiver by MEMORIAL or SBBC of sovereign immunity or any rights conferred by Section 768.28, Florida Statutes.

- H. Notwithstanding any other provision of this Agreement, MEMORIAL shall not be required to provide any services hereunder for Broward County Athletic Association special events. MEMORIAL will provide any additional services not specified in this Agreement on terms and conditions agreed upon by the parties in writing.
- I. MEMORIAL is not responsible for providing any service for school or coach sponsored events as part of this Agreement. MEMORIAL will provide any additional services not specified in this Agreement on terms and conditions agreed upon by the parties in writing.

2.03 SCHOOL BOARD Services. SBBC shall:

- A. If employed as teachers, pay Athletic Trainers their teaching salaries, benefits and other expenses associated with their SBBC responsibilities.
- B. Provide MEMORIAL Athletic Trainers at each high school with an Automatic External Defibrillator (AED) for their exclusive and individual use while on duty as an athletic trainer.
- C. Provide MEMORIAL Athletic Trainers at each high school with a Weather Bug storm-warning device for their exclusive use while on duty as an athletic trainer.
- D. Every effort will be made to ensure that all sports medicine equipment used in connection with the athletic program (e.g. electric muscle stimulators, ultrasound machines, ice makers, whirlpools, hydro collators, etc.) at each high school is in good working condition, maintained and serviced annually as per manufacturers' recommendations.
- E. Provide each Athletic Trainer a locked file drawer for patient and/or hospital records.
- F. Provide each Athletic Trainer with the supplies needed to maintain patient and/or hospital records (file folders, paper, etc.)
- G. Provide a copy machine or access to a copy machine for patient and/or hospital records.
- H. Provide each Athletic Trainer with administrative and or secretarial support to maintain patient and/or hospital records.



- I. Provide each Athletic Trainer access to the school weight room for rehabilitation of athletic injuries.
- J. Provide each Athletic Trainer with a device (walkie-talkie or radio) for communication with school personnel while they are on duty.
- K. Provide a reasonably accessible storage area in each athletic training facility for athletic training supplies.
- L. Provide sports medicine supplies annually for each MEMORIAL athletic trainer assigned to a high school.
- M. Provide for the purchase of appropriate sports medicine equipment annually for each MEMORIAL athletic trainer assigned to a high school.
- N. Provide regular maintenance and janitorial service (trash removal, hazardous waste removal, normal cleaning and mopping) for the athletic training room located in each school building.
- O. Ensure that each high school specifically mentioned in Section 2.02 (A) of this Agreement have an updated emergency action plan signed by that high school's athletic director and/or principal. Each such emergency action plan shall be shared and reviewed with all school staff who have direct contact with a student athlete and is to be implemented in the event that an Athletic Trainer is not on school grounds or is otherwise unavailable.

2.04 Family Educational Rights and Privacy Act (FERPA) Compliance.

In addition to the requirements under section 3.01 G, Student Records, MEMORIAL will comply with the requirements of **Attachment "A,"** Safeguarding the Confidentiality of Student Records and Information.

2.05 Health Insurance Portability and Accountability Act (HIPAA) Compliance.

MEMORIAL and SBBC each further acknowledges that the federal Health Insurance Portability and Accountability Act of 1996 and the Health Information Technology for Economic and Clinical Health Act of 2009 (collectively referred to herein as "HIPAA") protect the privacy of students' personal health information, as defined in HIPAA ("PHI") and may be applicable to student records in certain circumstances. PHI may be used and disclosed only in compliance with HIPAA, where required by law. The Parties acknowledge that MEMORIAL is a health care provider and the services that MEMORIAL is to provide under this Agreement constitute treatment activities, all within the meaning of 45 CFR 164.506(c)(2). Accordingly, (1) disclosure of PHI by SBBC to MEMORIAL in connection with its delivery of such services under this Agreement constitutes a permitted use and disclosure of that PHI as contemplated by 45 CFR 164.506(a); and (2) it is not necessary for the Parties to enter into a business associate agreement as contemplated by 45 CFR 164.502(e)(2).



### ARTICLE 3 -COMPENSATION/METHOD OF PAYMENT

#### 3.01. MEMORIAL SHALL:

- A. Pay Athletic Trainers under this Agreement.
- B. Provide the salary, benefits and other expenses associated with the administrative direction of this program.
- C. Athletic Trainer per diem employees are not entitled to any of the SBBC's employee benefits programs including, but not limited to, social security, health insurance, unemployment compensation, pension or other employee benefits.
- D. Athletic Trainers shall make an initial assessment of athletes requiring services under this Agreement. Each student will be diagnosed and treated for their specific condition if the services are available at the school. If not available, the athletic trainers may refer the student to a MEMORIAL physician, clinic, primary care facility or hospital to assure the best continuity of care and to assure and encourage uniform standards for the coordination, education and athletic training services provided under this Agreement.
- E. In the event an athlete is referred to a physician, a specialist or a hospital for treatment, that entity shall retain the sole and exclusive right to bill and collect from Medicare, Medicaid, Third Party payors and any other party for reimbursement, including the athlete or his/her family, for services provided to the athlete. The entity shall have the responsibility for billing and collections. All funds collected shall remain the sole and exclusive property of that entity and SBBC shall not have a claim or right to any of said funds.
- F. The hours of operation, activities, events and other arrangements contemplated under this Agreement will be determined mutually by the program coordinators but within officially sanctioned time periods for covered practices and athletic events.
- G. Student Records: MEMORIAL and SBCC shall fully comply with the applicable requirements of Section 1002.22, Florida Statutes, or any other applicable state or federal law or regulation regarding the confidentiality of student information and records. Each such party agrees to fully indemnify, defend and hold the other party and its officers, agents and employees harmless from and against all claims, damage, cost and expenses, including attorney fees, whatsoever arising in connection with their own violation of any of the requirements outlined in the foregoing sentence in this section, including, without limitation, any negligent violation by the party or an officer, employee, agent, representative, contractor, or subcontractor of the party of the requirements in first sentence of this section or of Section 1002.22, Florida Statutes. Nothing in this Section is intended to alter or waive MEMORIAL's or SBBC's entitlement to sovereign immunity, or to extend MEMORIAL'S or SBBC's liability beyond the limits established in Section 768.28, Florida Statutes, as amended.



3.02 SCHOOL BOARD SHALL:

- A. Effective August 2, 2016 through August 1, 2017 SBBC shall pay to MEMORIAL \$202,346 for athletic trainer services for schools listed in Section 2.02(A) of the Agreement. For the 2016-17 school year, the estimated maximum count on the number of hours to be performed by each athletic trainer at their designated school shall be 1,250.
- B. Pay MEMORIAL in two equal payments as invoiced by MEMORIAL to SBBC's Director of Athletics and Student Activities. Payment shall be reduced on a per diem basis for schools listed in Section 2.02(A), that are temporarily without services of an athletic trainer.
- C. All orthopedic, athletic training and sports medicine services offered to the high schools specifically mentioned in Section 2.02(A) of the Agreement are to be exclusively offered by MEMORIAL. Any other providers of such services must first be approved solely in writing by MEMORIAL before any such provider works a BCAA sanctioned event. If any such services are to be provided by a volunteer service provider, such service provider must first become an approved volunteer of MEMORIAL in accordance with MEMORIAL's standard practices, policies and procedures. MEMORIAL shall have no liability whatsoever or otherwise be responsible in any way pursuant to this Agreement for any such services that a service provider other than MEMORIAL (or MEMORIAL'S contractors) provides to SBBC or any of the high schools specifically mentioned in Section 2.02(A) of the Agreement, including, without limitation, if SBBC or any such high school approves the provision of any such services in a manner that does not comply with this Section 3.02(C).

**ARTICLE 4 – GENERAL CONDITIONS**

- 4.01 No Waiver of Sovereign Immunity. Nothing contained in this Agreement is intended to serve as a waiver of sovereign immunity by any agency to which sovereign immunity may be applicable. MEMORIAL shall self-insure, pursuant to Section 768.28, Fla. Stat., for its liability for tort claims associated with the acts or omissions of its agents and employees. Nothing in this Agreement shall be deemed to require indemnification by MEMORIAL of any party for an amount greater than the limitation of liability for tort claims under Section 768.28, Fla. Stat., or otherwise operate to increase MEMORIAL's limitations of liability for tort claims under Section 768.28, Fla. Stat., or waive any immunity under applicable law, or to create liability or responsibility on the part of MEMORIAL for the acts or omissions of any party other than itself, its agents, and its employees.
- 4.02 No Third Party Beneficiaries. The parties expressly acknowledge that it is not their intent to create or confer any rights or obligations in or upon any third person or entity under this Agreement. None of the parties intend to directly or substantially benefit a third party by this Agreement. The parties agree that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a claim against any of the parties based upon this Agreement. Nothing herein shall be construed as consent by an



agency or political subdivision of the State of Florida to be sued by third parties in any manner arising out of any contract.

- 4.03 Non-Discrimination. The parties shall not discriminate against any employee or participant in the performance of the duties, responsibilities and obligations under this Agreement because of race, age, religion, color, gender, national origin, marital status, disability or sexual orientation.
- 4.04 Records. Each party shall maintain its own respective records and documents associated with this Agreement in accordance with the records retention requirements applicable to public records. Each party shall be responsible for compliance with any public documents request served upon it pursuant to Section 119.07, Florida Statutes, and any resultant award of attorney's fees for non-compliance with that law.
- 4.05 Termination. This Agreement may be cancelled with or without cause by SBBC or MEMORIAL during the term hereby upon thirty (30) days written notice to the other parties of its desire to terminate this Agreement.
- 4.06 Entire Agreement. This document incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in this document. Accordingly, the parties agree that no deviation from the terms hereof shall be predicated upon any prior representations or agreements, whether oral or written.
- 4.07 Amendments. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by each party hereto.
- 4.08 Preparation of Agreement. The parties acknowledge that they have sought and obtained whatever competent advice and counsel as was necessary for them to form a full and complete understanding of all rights and obligations herein and that the preparation of this Agreement has been their joint effort. The language agreed to herein expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the parties than the other.
- 4.09 Waiver. The parties agree that each requirement, duty and obligation set forth herein is substantial and important to the formation of this Agreement and, therefore, is a material term hereof. Any party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.
- 4.10 Compliance with Laws. Each party shall comply with all applicable federal and state laws, codes, rules and regulations in performing its duties, responsibilities and obligations pursuant to this Agreement.
- 4.11 Governing Law. This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. Any controversies or legal problems



arising out of this Agreement and any action involving the enforcement or interpretation of any rights hereunder shall be submitted to the jurisdiction of the State courts of the Seventeenth Judicial Circuit of Broward County, Florida.

- 4.12 Binding Effect. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
- 4.13 Assignment. Neither this Agreement nor any interest herein may be assigned, transferred or encumbered by any party without the prior written consent of the other party. There shall be no partial assignments of this Agreement including, without limitation, the partial assignment of any right to receive payments from SBBC.
- 4.14 Force Majeure. Neither party shall be obligated to perform any duty, requirement or obligation under this Agreement if such performance is prevented by fire, hurricane, earthquake, explosion, wars, sabotage, accident, flood, acts of God, strikes, or other labor disputes, riot or civil commotion, or by reason of any other matter or condition beyond the control of either party, and which cannot be overcome by reasonable diligence and without unusual expense ("Force Majeure"). In no event shall a lack of funds on the part of either party be deemed Force Majeure.
- 4.15 Place of Performance. All obligations of SBBC under the terms of this Agreement are reasonably susceptible of being performed in Broward County, Florida and shall be payable and performable in Broward County, Florida.
- 4.16 Severability. In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, unlawful, unenforceable or void in any respect, the invalidity, illegality, unenforceability or unlawful or void nature of that provision shall not affect any other provision and this Agreement shall be considered as if such invalid, illegal, unlawful, unenforceable or void provision had never been included herein.
- 4.17 Notice. When any of the parties desire to give notice to the other, such notice must be in writing, sent by U.S. Mail, postage prepaid, addressed to the party for whom it is intended at the place last specified; the place for giving notice shall remain such until it is changed by written notice in compliance with the provisions of this paragraph. For the present, the Parties designate the following as the respective places for giving notice:

To SBBC: Superintendent of Schools  
The School Board of Broward County, Florida  
600 Southeast Third Avenue  
Fort Lauderdale, Florida 33301  
Fax: (754) 321-2701

With a Copy to: Director, Athletics & Student Activities  
The School Board of Broward County, Florida  
600 Southeast Third Avenue, Third Floor  
Fort Lauderdale, Florida 33301  
Fax: (754) 321-2552

To MEMORIAL: Aurelio M. Fernandez, III





President and Chief Executive Officer  
Memorial Healthcare System  
3111 Stirling Road  
Fort Lauderdale, FL 33312

With a Copy to: Memorial Healthcare System  
3111 Stirling Road  
Fort Lauderdale, FL 33312  
Attention: General Counsel

4.18 Liability/Indemnification.

- A. School Board. SBBC agrees to indemnify and hold the District, its agents, servants, and employees harmless from and against all claims, damage, cost and expenses, including attorney fees, whatsoever arising in connection with any negligent acts or omissions by SBBC in the performance of its obligation under this Agreement. Nothing in this section is intended to alter or waive SBBC's entitlement to sovereign immunity, or to extend SBBC's liability beyond the limits established in Section 768.28, Florida Statutes, as amended. Except as otherwise set forth herein, SBBC further agrees to indemnify and hold the District harmless against all liability and loss in connection with, and shall assume full responsibility for, payment of all federal, state and local taxes or contributions imposed or required under unemployment insurance, Social Security and income tax laws, with respect to any of its faculty and students.
- B. Memorial. MEMORIAL agrees to indemnify, defend and hold SBBC, its agents, servants and employees harmless from any and all claims, judgment, cost, liabilities, damages and expenses, including reasonable attorney's fees, whatsoever arising in connection with any negligent acts or omissions by MEMORIAL in the performance of its obligations under this Agreement. Nothing in this section is intended to alter or waive MEMORIAL'S entitlement to sovereign immunity, or to extend MEMORIAL'S liability beyond the limits established in Section 768.28, Florida Statutes, as amended.

4.19 Captions. The captions, section numbers, article numbers, title and headings appearing in this Agreement are inserted only as a matter of convenience and in no way define, limit, construe or describe the scope or intent of such articles or sections of this Agreement, nor in any way effect this Agreement and shall not be construed to create a conflict with the provisions of this Agreement.

4.20 Authority. Each person signing this Agreement on behalf of either party individually warrants that he or she has full legal power to execute this Agreement on behalf of the party for whom he or she is signing, and to bind and obligate such party with respect to all provisions contained in this Agreement.



IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement on the date first above written.

**FOR SBBC**

(Corporate Seal)

THE SCHOOL BOARD OF BROWARD  
COUNTY, FLORIDA

By \_\_\_\_\_  
Dr. Rosalind Osgood, Chair

ATTEST:

\_\_\_\_\_  
Robert W. Runcie  
Superintendent of Schools

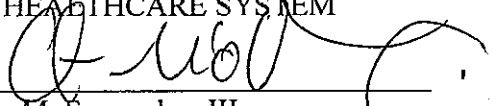
Approved as to Form and Legal Content:

\_\_\_\_\_  
Office of the General Counsel

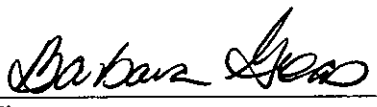



FOR MEMORIAL

SOUTH BROWARD HOSPITAL DISTRICT d/b/a  
MEMORIAL HEALTHCARE SYSTEM

By   
Aurelio M. Fernandez, III,  
President and Chief Executive Officer

Date: 6/20/2016

  
Witness

  
Witness



## ATTACHMENT "A"

### Safeguarding the Confidentiality of Student Records and Information

The parties acknowledge that Sections 1002.22, 1002.221 and 1002.222, Fla. Stat. and the Family Educational Rights and Privacy Act (FERPA, 20 U.S.C. § 1232g) and its implementing regulations (34 C.F.R. Part 99), protect the privacy rights of students and their parents with respect to education records, including personally identifiable information (each as defined in FERPA) created and/or maintained by public schools. A student's personally identifiable information (PII) may be disclosed only in compliance with FERPA. Pursuant to FERPA, the information provided by SBBC shall be limited to that which is necessary to effectively serve the student.

Each party participating in this Agreement further agrees to:

(1) Hold each applicable student's education records (including personally identifiable information) in confidence and not use or disclose such education records except in accordance with this Agreement or as required or permitted by law or legal or administrative process (contingent, to the extent permitted by law or legal or administrative process, upon the parents and eligible students being provided advance notice and the opportunity to object pursuant to relevant SBBC Policies including, but not limited to SBBC Policy 5100.1), or unless the parent of the student provides prior written consent for the release of such education records. All such shared student education records will be disclosed only to those who have a need to access the education records in order to perform their assigned duties in the performance of this Agreement.

(2) Safeguard the student's education records to the extent required by FERPA.

(3) Monitor its operations and take actions in compliance with FERPA to safeguard the student's education records in accordance with the terms of this Agreement, and

(4) Each party to this Agreement will also cause employees, appointees or agents who are granted access to student education records (including personally identifiable information) to complete FERPA training.

Each party to this Agreement agrees to promptly notify the other party upon discovery of a breach of the confidentiality requirements set forth in this Attachment "A" and to take all notification steps as may be required by applicable federal and Florida law. A breach of the confidentiality requirements set forth in this Attachment "A" shall constitute grounds for immediate termination of this Agreement without advance notice. Any provisions within this Agreement concerning the resolution of disputes shall not be applicable to a breach of the requirements of this Attachment "A."



The confidentiality requirements of Attachment "A" shall survive the termination of all performance or obligations under this Agreement and shall be fully binding until all student education records (including personally identifiable information) are returned to the other party or disposed of by that party in compliance with the Florida Retention Schedules applicable to that party and that party's internal record keeping standards (provided that such internal standard does not require a shorter retention period than, or otherwise violate, such Florida Retention Schedules) and a written acknowledgment of said disposition is provided to SBBC.

