



II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2014</u>	<u>2015</u>	<u>2016</u>	<u>2017</u>	<u>2018</u>
Capital Expenditures	<u>0</u>	<u>0</u>			
Operating Costs	<u>0</u>	<u>0</u>			
External Revenues	<u>0</u>	<u>0</u>			
Program Income (County)	<u>0</u>	<u>0</u>			
In-Kind Match (County)	<u>0</u>	<u>0</u>			
Net Fiscal Impact	<u><u>0</u></u>	<u><u>0</u></u>			
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Is Item Included In Current Budget?	Yes	No	0		
Budget Account	Exp No.: Fund	Dept	Unit	Obj	
	Rev No.: Fund	Dept	Unit	Obj	

B. Recommended Sources of Funds/Summary of Fiscal Impact:

C. Departmental Fiscal Review:\*NO FISCAL IMPACT

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:

8/25/14 8/25/14 8/25/14 8/25/14 8/25/14 8/25/14 8/25/14 8/25/14 8/25/14 8/25/14  
OFMB Contract Dev. and Control

B. Legal Sufficiency:

8/27/14  
Assistant County Attorney

C. Other Department Review:

\_\_\_\_\_  
Department Director

**Business Associate Agreement**  
**Between Palm Beach County and American Document Destruction Corp.**

This Business Associate Agreement ("Agreement") between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of Commissioners, hereinafter referred to as "the County," and American Document Destruction Corp., a Corporation authorized to do business in the State of Florida, hereinafter referred to as "Business Associate," is executed to ensure that Business Associate will appropriately safeguard protected health information ("PHI") that is created, received, maintained, or transmitted on behalf of the County in compliance with the applicable provisions of Public Law 104-191 of August 21, 1996, known as the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, Sections 261, *et seq.*, as amended and any related regulations ("HIPAA"), and with Public Law 111-5 of February 17, 2009, known as the American Recovery and Reinvestment Act of 2009, Title XII, Subtitle D – Privacy, Sections 13400, *et seq.*, the Health Information Technology and Clinical Health Act, as amended and any related regulations (the "HITECH Act").

**A. General Provisions**

1. **Meaning of Terms.** The terms used in this Agreement shall have the same meaning as those terms defined in HIPAA.
2. **Regulatory References.** Any reference in this Agreement to a regulatory section means the section currently in effect or as amended.
3. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA.

**B. Obligations of Business Associate**

Business Associate agrees that it will:

1. Not use or further disclose PHI other than as permitted or required by this Agreement or as required by law;
2. Use appropriate safeguards and comply, where applicable, with the HIPAA Security Rule with respect to electronic protected health information ("e-PHI") and implement appropriate physical, technical and administrative safeguards to prevent use or disclosure of PHI other than as provided for by this Agreement;
3. Report in writing to the County any use or disclosure of PHI not provided for by this Agreement of which Business Associate becomes aware,

including any security incident (as defined in the HIPAA Security Rule) and any breach of unsecured PHI (as defined in the HIPAA Breach Notification Rule) within three (3) business days of Business Associate's discovery of the security incident or breach. Business Associate will comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.* when making breach notification to the County. The County shall have sole control over the timing and method of breach notification to affected individual(s), the Department of Health and Human Services, and, if applicable, the media. Business Associate agrees that, if requested by the County to do so, it will provide breach notification to affected individuals of any breach of unsecured PHI discovered by Business Associate. If requested by the County to make breach notification to affected individuals, Business Associate shall comply with all applicable provisions of the HIPAA Breach Notification Regulations found at 45 CFR §164.400 *et seq.*, and any direction from the County;

4. In accordance with 45 CFR §164.502(e)(1)(ii) and §164.308(b)(2), ensure that any subcontractors that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information by requiring such subcontractors to sign an agreement with Business Associate that contains, at a minimum, the same provisions as this Agreement;
5. Make PHI in a designated record set available to the County and to an individual who has a right of access in a manner that satisfies the County's obligations to provide access to PHI in accordance with 45 CFR §164.524 within 30 days of a request;
6. Make any amendment(s) to PHI in a designated record set as directed by the County, or take other measures necessary to satisfy the County's obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to the County or an individual who has a right to an accounting within 60 days and as necessary to satisfy the County's obligations under 45 CFR §164.528;
8. To the extent that Business Associate is to carry out any of the County's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the County when it carries out that obligation;

9. Make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of the County, available to the Secretary of the Department of Health and Human Services for purposes of determining Business Associate's and the County's compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if the County notifies Business Associate of any restriction on the use or disclosure of PHI that the County has agreed to or is required to abide by under 45 CFR §164.522; and
11. If the County is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Business Associate agrees to assist the County in complying with its Red Flags Rule obligations by: (a) implementing policies and procedures to detect relevant Red Flags (as defined under 16 C.F.R. §681.2); (b) taking all steps necessary to comply with the policies and procedures of the County's Identity Theft Prevention Program (if the County is required to have a Program); (c) ensuring that any agent or third party who performs services on its behalf in connection with covered accounts of the County agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the County of any Red Flag incident (as defined by the Red Flag Rules) of which it becomes aware, the steps it has taken to mitigate any potential harm that may have occurred, and provide a report to the County of any threat of identity theft as a result of the incident.
12. Business Associate shall protect, defend, reimburse, indemnify and hold the County, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising as a result of a breach of unsecured PHI caused by any act or omission of Business Associate or arising from any other violation of HIPAA or the HITECH Act caused by any act or omission of Business Associate.

**C. Permitted Uses and Disclosures by Business Associate**

The specific uses and disclosures of PHI that may be made by Business Associate on behalf of the County include any uses or disclosures of PHI permitted by HIPAA that are necessary to perform the services that Business Associate has been engaged to perform on behalf of the County.

**D. Termination**

1. The County may terminate this Agreement if the County determines that Business Associate has violated a material term of the Agreement.
2. If either party knows of a pattern of activity or practice of the other party that constitutes a material breach or violation of the other party's obligations under this Agreement, that party shall take reasonable steps to cure the breach or end the violation, as applicable, and, if such steps are unsuccessful, terminate the Agreement if feasible.
3. Upon termination of this Agreement for any reason, Business Associate shall return to the County all PHI received from the County, or created, maintained, or received by Business Associate on behalf of the County that Business Associate still maintains in any form. Business Associate shall retain no copies of the PHI. If return is infeasible, the protections of this Agreement will extend to such PHI.

Agreed to this 7 day of January 2014

**Palm Beach County Privacy Officer**

Signature: [Signature]

Title: Asst. County Administrator

Date: 1/7/14

**American Document Destruction Corp.**

Signature: [Signature]

Title: President

Date: 12/30/13

**Approved for Legal Sufficiency**

Signature: [Signature]

Title: Chief Assistant County Attorney

Date: 1/7/14

**BUSINESS ASSOCIATE AGREEMENT BETWEEN PALM BEACH COUNTY  
BOARD OF COUNTY COMMISSIONERS AND THE CLERK AND  
COMPTROLLER, PALM BEACH COUNTY**

- A. As a business associate of the Palm Beach County Board of County Commissioners, hereinafter referred to as the "COUNTY," the Clerk and Comptroller, Palm Beach County, hereinafter referred to as the "CLERK," including its agents, servants, subcontractors and employees, shall carry out its obligations under this Agreement in compliance with the requirements of (i) the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the associated regulations, as may be amended; (ii) the HIPAA Privacy Rule codified at 45 C.F.R. Parts 160 and 164, Subparts A and E, as may be amended ("Privacy Rule"); (iii) the HIPAA Security Rule codified at 45 C.F.R. Part 160 and 164, Subpart C, as may be amended ("Security Rule"); (iv) the Breach Notification Rule, codified at 45 C.F.R. Part 164, Subpart D, as may be amended; (v) the Enforcement Rule codified at 45 C.F.R. Part 160, Subparts C and D, as may be amended; (vi) the Health Information Technology for Economic and Clinical Health Act, Title XIII of the American Recovery and Reinvestment Act of 2009 (the "HITECH Act"); and (vii) the HIPAA Omnibus Final Rule published in the Federal Register at 78 Fed. Reg. 5,566 (Jan. 25, 2013), and effective on March 26, 2013, as well as all other applicable laws. (hereinafter collectively referred to as "Business Associate Requirements"); and, in order to protect the privacy, confidentiality, integrity, and availability of all individually identifiable protected health information that is created, received, collected, processed, learned, maintained or transmitted on behalf of the COUNTY or as a result of the services provided under this Agreement (hereinafter "PHI"), which shall include electronic protected health information (hereinafter "E-PHI"). The definition of PHI and E-PHI as used herein shall be in accordance with definition of these terms in HIPAA and/or the regulations promulgated thereunder.

B. Responsibilities of the CLERK:

In conformity with HIPAA and the Business Associate Requirements, outlined above, the CLERK agrees that it and its agents, subcontractors, servants, and employees shall:

- a. Not use or further disclose PHI except as permitted under this Agreement or required by law;
- b. Use appropriate safeguards to prevent use or disclosure of PHI to the limited dataset as defined in the Business Associate Requirements, except as permitted by this Agreement and shall not use or further disclose PHI in a manner that would violate HIPAA's requirements if done by the COUNTY;
- c. As soon as reasonably practical, report to the COUNTY any use or disclosure of PHI not provided for by this Agreement of which the CLERK becomes

aware, and mitigate, to the extent possible, any harmful effect of such use or disclosure of PHI;

- d. The CLERK shall take reasonable steps to ensure that its employees' actions or omissions do not cause the CLERK to breach the terms of this Agreement;
- e. Document disclosures of PHI in accordance with 45 C.F.R. § 164.528, in order for the COUNTY to respond to a request from an Individual for an accounting of disclosures of PHI or in order for the CLERK to respond to a request for an accounting to the extent required by the HITECH Act;
- f. The CLERK shall promptly inform the COUNTY of a Breach of Unsecured PHI following the first day on which the CLERK knows of such Breach or following the first day on which the CLERK should have known of such Breach. In addition, the CLERK shall provide written notification to the COUNTY hereunder which notification shall:
  - a. Be made no later than three (3) calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security;
  - b. Include the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach;
- g. Ensure that any business associates, agents or subcontractors to whom the CLERK provides PHI, or who have access to PHI, agree to the same restrictions, terms and conditions that apply to the CLERK with respect to such PHI;
- h. Enter into a written agreement with any subcontractors or agents that receives, creates, maintains, or transmits PHI received from the CLERK on behalf of the COUNTY, legally binding such subcontractors or agents to the same restrictions, terms and conditions that apply to the CLERK pursuant to this Agreement with respect to such PHI, including the requirement that the subcontractor or agent, as applicable, implement reasonable and appropriate safeguards to protect any electronic PHI that is disclosed to it by the CLERK;
- i. Within five (5) calendar days of a request by the COUNTY for access to PHI maintained by the CLERK, the CLERK shall make PHI available to COUNTY, or at the written direction of the COUNTY, to an Individual to whom such PHI relates or his or her authorized representative. In the event any Individual requests access to PHI directly from the CLERK, the CLERK shall, within five (5) calendar days, forward such request to the COUNTY. Any denials of access to the PHI requested shall be the responsibility of the COUNTY;
- j. The CLERK shall make PHI available to the COUNTY and will amend PHI as instructed by the COUNTY, in a manner consistent with the HIPAA Privacy



Rule within ten (10) calendar days of receipt of a request from the COUNTY for the amendment of PHI;

- k. Within thirty (30) calendar days of notice by the COUNTY to the CLERK that it has received a request for an accounting of disclosures of PHI, the CLERK shall make available to the COUNTY such information as is in the CLERK's possession required for the COUNTY to satisfy the accounting of disclosures requirement set forth in the Privacy Rule. In the event the request for an accounting is delivered directly to the CLERK, the CLERK shall, within five (5) calendar days, forward the request to the COUNTY. It shall be the COUNTY's responsibility to prepare and deliver any such accounting requested;
- l. Make their internal practices, books and records relating to the use and disclosure of PHI available to the Secretary of the Department of Health and Human Services for purposes of determining the CLERK's and the COUNTY's compliance with HIPAA. The CLERK shall immediately notify the COUNTY upon receipt or notice of any request by the Secretary of the Department of Health and Human Services to conduct an investigation with respect to PHI relating to services under this Agreement;
- m. The CLERK may, if necessary, use and disclose PHI for the proper management and administration of the CLERK or to carry out the legal responsibilities of the CLERK. However, in order to disclose PHI:
  - a. The disclosure must be required by law; or
  - b.
    - (i). The CLERK must obtain reasonable assurances from the person to whom the information 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
    - (ii). The person must notify the CLERK of any instances of which it is aware in which the confidentiality of the information has been breached.
- n. In conformity with HIPAA and the Business Associate Requirements, the CLERK, including its agents, servants, subcontractors and employees, shall:
  - a. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all E-PHI; and
  - b. Ensure that any agent, including a subcontractor, to whom it provides E-PHI agrees to implement reasonable and appropriate safeguards to protect such information; and

- c. Promptly report to COUNTY any security incident of which it becomes aware.
  - o. The CLERK has implemented policies and procedures to ensure that its receipt, maintenance, or transmission of “electronic protected health information” (as defined in 45 C.F.R. §160.103) (“E-PHI”) on behalf of the COUNTY complies with the applicable administrative, physical, and technical safeguards required for protecting the confidentiality and integrity of E-PHI under the Security Standards 45 C.F.R. Part 160 and 164 subpart;
  - p. The CLERK agrees that it will ensure that agents or subcontractors agree to implement the applicable administrative, physical, and technical safeguards required to protect the confidentiality and integrity of E-PHI under the Security Standards 45 C.F.R. Part 164;
  - q. The CLERK agrees to report to the COUNTY any Security Incident (as defined 45 C.F.R. Part 164.304) of which it becomes aware. The CLERK agrees to report the Security Incident to the COUNTY as soon as reasonably practicable, but not later than five (5) calendar days from the date the CLERK becomes aware of the incident;
  - r. The COUNTY agrees and understands that it is independently responsible for the security of E-PHI in its possession or for E-PHI that it receives from outside sources including CLERK;
  - s. If the CLERK receives a request, made by or on behalf of the Secretary of Health and Human Services, requiring CLERK to make available its internal practices, books and records relating to the use and disclosure of PHI or E-PHI related to its functions for the COUNTY, then the CLERK shall promptly notify the COUNTY of such request; and
  - t. The parties agree to take any action necessary to amend this Agreement from time to time so that the COUNTY is in compliance with the Privacy Rule, the Security Rule, the HITECH Act and HIPAA in general. The parties may agree to amend this Agreement from time to time in any other respect that they deem appropriate. This Agreement shall not be amended except by written instrument executed by the parties.
- C. Permitted Disclosures by the CLERK:
- a. The CLERK agrees that, on behalf of the COUNTY, it will perform any transaction for which a standard has been developed under the Electronic Data Interchange (EDI) Rule that the CLERK could reasonably be expected to perform in the ordinary course of its functions on behalf of the COUNTY. The CLERK agrees that it will comply with all applicable EDI standards. The COUNTY further agrees that it will use its best efforts to comply with all

applicable regulatory provisions in addition to the EDI Rule and the Privacy Rule that are promulgated pursuant to the Administrative Simplification Subtitle of HIPAA;

- b. The CLERK may use PHI and E-PHI in its possession for proper management and administration of its duties or to fulfill any of its legal responsibilities;
  - c. Disclose PHI in its possession to third-parties for proper management and administration, or to fulfill any of its legal responsibilities; provided that (i) the disclosures are required by law, as provided for in 45 C.F.R. § 164.103, or (ii) the CLERK has received written assurances from the third party that the PHI will be held confidentially, and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party, and that the third party will notify CLERK of any instances of which it is aware in which the confidentiality of the PHI has been breached, as required under 45 C.F.R. § 164.504(e)(4);
  - d. Use PHI in its possession to provide data aggregation services relating to the health care operations of the COUNTY, as provided in 45 C.F.R. § 164.501; and
  - e. If requested by the COUNTY, de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and further provided that CLERK maintains the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from CLERK. Pursuant to 45 C.F.R. § 164.502(d), de-identified information does not constitute PHI and is not subject to the terms of the Agreement.
- D. Individual Rights Regarding Designated Record Sets. If the CLERK maintains any PHI that could be construed to be part of a Designated Record Set of the COUNTY, the CLERK shall (i) provide access to, and permit inspection and copying of, PHI by the COUNTY, or if directed by the COUNTY, an Individual who is the subject of the PHI under conditions and limitations required under 45 C.F.R. § 164.524, as it may be amended from time-to-time, and (ii) amend PHI maintained by Business Associate as requested by COUNTY. The CLERK shall respond to any request from the COUNTY for access by an individual within five (5) calendar days of such request and shall make any amendment requested by the COUNTY within ten (10) calendar days of such request. Any information requested under this Article 5.D shall be provided in the form or format requested, if it is readily producible in such form or format. The CLERK may charge a reasonable fee based upon the CLERK's labor cost in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). The COUNTY shall determine whether a denial is appropriate or an exception applies. The CLERK shall notify COUNTY within five (5) calendar days of receipt of any request for access or amendment by an individual. The COUNTY shall determine whether to grant or deny access or amendment requested by the individual. The CLERK shall have a process in place for

receiving requests for amendments and for appending such requests to the Designated Record Set, as requested by the COUNTY.

- E. Additional HITECH Act Compliance.
  - a. The CLERK shall be subject to the application of civil and criminal penalties for violation of Sections 13401 and 13404(a) and (b) of Part 1 of the HITECH Act.
- F. Rescission of Prior Business Associate Agreement. Any prior Business Associate Agreement entered into by the parties is hereby rescinded in its entirety.

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Contract No. 14-25

APPROVED  
By TSA - Procurement Dept.

Agreed to this 6<sup>th</sup> day of Feb, 2014.

APPROVED  
By HCP at 2:24 pm, Feb 06, 2014

Palm Beach County Privacy Officer

Clerk and Comptroller, Palm Beach County

Signature: [Signature]Signature: [Signature]Title: Assistant Co. AdminTitle: Clerk & ComptrollerDate: 2/20/14Date: 2/6/14

Approved for Legal Sufficiency

Signature: [Signature]Title: Chief Assistant County AttorneyDate: 2/19/14

RECEIVED  
FEB 07 2014

LEGAL SERVICES  
CLERK & COMPTROLLER