

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2016	2017	2018	2019	2020
Capital Expenditures	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Operating Costs	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
External Revenues	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
Program Income (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
In-Kind Match (County)	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
NET FISCAL IMPACT	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>	<u>-0-</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u> </u>	<u> </u>	<u> </u>	<u> </u>

Is Item included in Current Budget? Yes No

Budget Account No.: Fund Depart Unit Object Program

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

C. Departmental Fiscal Review: _____

III. REVIEW COMMENTS:

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

 OFMB *AK*
 4/28/16

 Arif Jacobson 5/31/16
 Contract Development & Control
 5/2/16

B. Legal Sufficiency:

 5/4/16
 Assistant County Attorney

C. Other Departmental Review:

 Department Director

THIS SUMMARY IS NOT TO BE USED AS A BASIS FOR PAYMENT

RESOLUTION NO. R-2016-

RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, AUTHORIZING THE COUNTY ADMINISTRATOR OR HER DESIGNEE (COUNTY HIPAA PRIVACY OFFICER OR OTHER DESIGNEE) TO EXECUTE HIPAA BUSINESS ASSOCIATE AGREEMENTS; REPLACING RESOLUTION NO. R-2003-0554; PROVIDING FOR EFFECTIVENESS.

WHEREAS, the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder (collectively "HIPAA"), all as amended, require that, in order to protect health information, Business Associate Agreements be entered into between a HIPAA covered entity and its HIPAA business associates which create, receive, maintain or transmit Protected Health Information on the HIPAA covered entity's behalf; and

WHEREAS, as a HIPAA covered entity, from time to time the County is required to enter into Business Associate Agreements with its outside HIPAA business associates regarding Protected Health Information of the County's HIPAA covered health care components (Fire Rescue Department, Risk Management Department and Senior Services Division); and

WHEREAS, from time to time the County acts as a HIPAA business associate of outside HIPAA covered entities and is required to enter into Business Associate Agreements with such entities regarding their Protected Health Information; and

WHEREAS, it is imperative that Business Associate Agreements be executed with great dispatch; and

WHEREAS, the Board hereby determines that the execution of Business Associate Agreements may be implemented more effectively and expeditiously by delegating to the County Administrator or her designee (County HIPAA Privacy Officer or other designee) the authority to execute Business Associate Agreements on behalf of the Board; and

WHEREAS, this Resolution updates the prior authorization of the County Administrator or designee in Resolution No. R-2003-0554 to execute standard HIPAA Business Associate Agreements; and

WHEREAS, the execution of Business Associate Agreements with standard terms and conditions is a ministerial function which the Board wishes to delegate and does not constitute policy level decision making.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF PALM BEACH COUNTY, FLORIDA, that:

1. On behalf of the Board of County Commissioners, the County Administrator or her

designee (County HIPAA Privacy Officer or other designee) is hereby expressly authorized to execute, as a HIPAA covered entity or a HIPAA business associate as applicable, Business Associate Agreements that are substantially similar to that attached hereto as "Exhibit A" or "Exhibit B," and other Business Associate Agreements that are consistent with the requirements of HIPAA; provided, however, that no Business Associate Agreement shall require the County to defend, reimburse, indemnify and/or hold harmless the other party contrary to Florida law.

2. All agreements executed under the authority of this Resolution must be approved by the County Attorney's Office prior to execution.
3. Resolution No. R-2003-0554 is hereby replaced by this Resolution; provided, however, that nothing contained herein shall negate the validity of any agreement executed pursuant to the authority of Resolution No. R-2003-0554.
4. This Resolution shall take effect upon its adoption.

The foregoing Resolution was offered by Commissioner _____, who moved its adoption. The motion was seconded by Commissioner _____, and upon being put to a vote, the vote was as follows:

Commissioner Mary Lou Berger, Mayor	-
Commissioner Hal R. Valeche, Vice Mayor	-
Commissioner Paulette Burdick	-
Commissioner Shelley Vana	-
Commissioner Steven L. Abrams	-
Commissioner Melissa McKinlay	-
Commissioner Priscilla A. Taylor	-

The Mayor thereupon declared the Resolution duly passed and adopted this _____ day of _____, 2016.

PALM BEACH COUNTY, FLORIDA, BY ITS
BOARD OF COUNTY COMMISSIONERS

SHARON R. BOCK, CLERK & COMPTROLLER

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

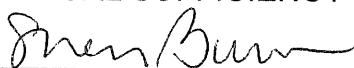
By: 
County Attorney

EXHIBIT A

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) between _____, hereinafter referred to as “Covered Entity,” and _____, 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 Covered Entity 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 for Economic 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 Covered Entity 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 Covered Entity. The Covered Entity 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 Covered Entity 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 Covered Entity 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 Covered Entity;

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 Covered Entity and to an individual who has a right of access in a manner that satisfies the Covered Entity'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 Covered Entity, or take other measures necessary to satisfy the Covered Entity's obligations under 45 CFR §164.526;
7. Maintain and make available information required to provide an accounting of disclosures to the Covered Entity or an individual who has a right to an accounting within 60 days and as necessary to satisfy the Covered Entity's obligations under 45 CFR §164.528;
8. To the extent that Business Associate is to carry out any of the Covered Entity's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the Privacy Rule that apply to the Covered Entity 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 Covered Entity, available to the Secretary of the Department of Health and Human Services for purposes of determining Business Associate's and the Covered Entity's compliance with HIPAA and the HITECH Act;
10. Restrict the use or disclosure of PHI if the Covered Entity notifies Business Associate of any restriction on the use or disclosure of PHI that the Covered Entity has agreed to or is required to abide by under 45 CFR §164.522; and

11. If the Covered Entity is subject to the Red Flags Rule (found at 16 CFR §681.1 *et seq.*), Business Associate agrees to assist the Covered Entity 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 Covered Entity's Identity Theft Prevention Program(if the Covered Entity 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 Covered Entity agrees to implement reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft; and (d) alerting the Covered Entity 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 Covered Entity of any threat of identity theft as a result of the incident.
12. If Palm Beach County is the Covered Entity, then Business Associate shall protect, defend, reimburse, indemnify and hold harmless the Covered Entity, its agents, employees and elected officers 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 Covered Entity 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 Covered Entity.

D. Termination

1. The Covered Entity may terminate this Agreement if the Covered Entity 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 Covered Entity all PHI received from the Covered Entity, or created, maintained, or received by Business Associate on behalf of the Covered Entity that Business Associate still maintains in any form. To the extent permitted by law,

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 _____ day of _____, 20__.

WITNESS:

COVERED ENTITY

By: _____
Signature

Signature

Name

Name and Title

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____

By: _____

WITNESS:

BUSINESS ASSOCIATE

By: _____
Signature

Signature

Name

Name and Title

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

By: _____

By: _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”) is hereby made and entered into on _____, by and between Palm Beach County, a political subdivision of the State of Florida, as a HIPAA covered entity, (“COUNTY”) and _____, as a HIPAA business associate (“CONTRACTOR”).

A. As a business associate of the COUNTY, the CONTRACTOR, including its agents, servants, subcontractors and employees, shall carry out its obligations under this Contract 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 Contract (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 CONTRACTOR:

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

- a. Not use or further disclose PHI except as permitted under this Contract 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 Contract 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 Contract of which the CONTRACTOR becomes aware, and mitigate, to the extent possible, any harmful effect of such use or disclosure of PHI;
- d. CONTRACTOR shall take reasonable steps to ensure that its employees' actions or omissions do not cause CONTRACTOR to breach the terms of this Agreement;
- e. Document disclosures of PHI in accordance with 45 C.F.R. § 164.528, in order for COUNTY to respond to a request from an Individual for an accounting of disclosures of PHI or in order for the CONTRACTOR to respond to a request for an accounting to the extent required by the HITECH Act;
- f. CONTRACTOR shall promptly inform the COUNTY of a Breach of Unsecured PHI following the first day on which CONTRACTOR knows of such Breach or following the first day on which CONTRACTOR should have known of such Breach. In addition, CONTRACTOR 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 CONTRACTOR provides PHI, or who have access to PHI, agree to the same restrictions, terms and conditions that apply to the CONTRACTOR 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 CONTRACTOR on behalf of COUNTY, legally binding such subcontractors or agents to the same restrictions, terms and conditions that apply to CONTRACTOR 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 CONTRACTOR;
- i. Within five (5) calendar days of a request by COUNTY for access to PHI maintained by CONTRACTOR, CONTRACTOR shall make PHI available to COUNTY, or at the written direction of 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 CONTRACTOR, CONTRACTOR shall, within five (5) calendar days, forward such request to COUNTY. Any denials of access to the PHI requested shall be the responsibility of COUNTY;

- j. CONTRACTOR shall make PHI available to COUNTY and will amend PHI as instructed by COUNTY, in a manner consistent with the HIPAA Privacy Rule within ten (10) calendar days of receipt of a request from Covered Entity for the amendment of patient's PHI;
- k. Within thirty (30) calendar days of notice by COUNTY to CONTRACTOR that it has received a request for an accounting of disclosures of PHI, CONTRACTOR shall make available to COUNTY such information as is in CONTRACTOR's possession required for 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 CONTRACTOR, CONTRACTOR shall, within five (5) calendar days, forward the request to COUNTY. It shall be Covered Entity'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 CONTRACTOR's and the COUNTY's compliance with HIPAA. The CONTRACTOR 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 Contract;
- m. At the termination or expiration of this Contract, the CONTRACTOR shall return to the COUNTY all PHI received from, or created or received by the CONTRACTOR on behalf of, the COUNTY that the CONTRACTOR still maintains in any form and shall not retain copies of such information. If such return is not feasible, the CONTRACTOR shall continue to protect such PHI in accordance with this Contract and HIPAA, and must limit further uses and disclosures of such PHI to those purposes that made the return of such PHI not feasible;
- n. The CONTRACTOR may, if necessary, use and disclose PHI for the proper management and administration of the CONTRACTOR or to carry out the legal responsibilities of the CONTRACTOR. However, in order to disclose PHI:
 - a. The disclosure must be required by law; or
 - b.
 - (i). The CONTRACTOR 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 CONTRACTOR of any instances of which it is aware in which the confidentiality of the information has been breached.

- o. In conformity with HIPAA and the Business Associate Requirements, the CONTRACTOR, 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.
- p. CONTRACTOR 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;
- q. CONTRACTOR 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;
- r. CONTRACTOR agrees to report to the COUNTY any Security Incident (as defined 45 C.F.R. Part 164.304) of which it becomes aware. CONTRACTOR 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 CONTRACTOR becomes aware of the incident;
- s. 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 CONTRACTOR;
- t. The COUNTY and its representatives shall be entitled to audit the CONTRACTOR from time to time to verify compliance with the terms of this Contract. The COUNTY shall be entitled and enabled to inspect the records and other information relevant to the CONTRACTOR's compliance with the terms of this Contract during normal business hours and at the CONTRACTOR's place of business. If CONTRACTOR receives a request, made by or on behalf of the Secretary of Health and Human Services, requiring CONTRACTOR to make available its internal practices, books and records relating to the use and disclosure of PHI or E-PHI, then CONTRACTOR shall promptly notify COUNTY of such request;

- u. The CONTRACTOR 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, penalties, 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 any disclosure of PHI or E-PHI due to the actions, inactions or omissions of the CONTRACTOR and/or any of its agents, servants, subcontractors and employees; and
- v. The parties agree to take any action necessary to amend this Contract 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 Contract from time to time in any other respect that they deem appropriate. This Contract shall not be amended except by written instrument executed by the parties.

C. Permitted Disclosures by CONTRACTOR:

- a. CONTRACTOR 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 CONTRACTOR could reasonably be expected to perform in the ordinary course of its functions on behalf of the COUNTY. CONTRACTOR 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. Notwithstanding any other provisions of this Contract, this Contract may be terminated by the COUNTY, in its sole discretion and without penalty to or recourse against the COUNTY, if it determines that the CONTRACTOR has violated a term or provision of this Contract pertaining to the CONTRACTOR's HIPAA obligations, or if the CONTRACTOR engages in conduct which would, if committed by the COUNTY, result in a violation of HIPAA and/or the regulations promulgated thereunder by the COUNTY;
- b. CONTRACTOR 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) CONTRACTOR 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 CONTRACTOR 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 COUNTY, as provided in 45 C.F.R. § 164.501; and
 - e. If requested by 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 CONTRACTOR maintains the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from CONTRACTOR. 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 CONTRACTOR maintains any PHI that could be construed to be part of a Designated Record Set of COUNTY, CONTRACTOR shall (i) provide access to, and permit inspection and copying of, PHI by COUNTY, or if directed by 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. CONTRACTOR shall respond to any request from COUNTY for access by an individual within five (5) calendar days of such request and shall make any amendment requested by 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. CONTRACTOR may charge a reasonable fee based upon CONTRACTOR's labor cost in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). COUNTY shall determine whether a denial is appropriate or an exception applies. CONTRACTOR shall notify COUNTY within five (5) calendar days of receipt of any request for access or amendment by an individual. COUNTY shall determine whether to grant or deny access or amendment requested by the individual. CONTRACTOR shall have a process in place for receiving requests for amendments and for appending such requests to the Designated Record Set, as requested by COUNTY.
- E. Production of Electronic Health Records (EHR). If CONTRACTOR maintains EHR as that term is defined in Section 13400 of the HITECH Act and an Individual requests a copy of such records, transmit the electronic records directly to an entity or person designated by the Individual, provided that any such choice is clear, conspicuous, and specific. Any fee charged for such electronic records shall not exceed CONTRACTOR's labor costs.
- F. Data Ownership. COUNTY, and not CONTRACTOR, maintains ownership of all PHI created or received by CONTRACTOR in connection with this.
- G. Additional HITECH Act Compliance.
- a. CONTRACTOR shall refrain from marketing practices prohibited by Section 13046 of the HITECH Act or the Privacy Rule.

- b. CONTRACTOR shall refrain from receiving or providing direct or indirect remuneration in exchange for any PHI in a manner that would violate Section 13405(d) of the HITECH Act or 45 C.F.R. § 164.502(a)(5)(ii).
 - c. CONTRACTOR 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.
- H. Offshoring. CONTRACTOR shall not transfer PHI outside the United States without the prior written consent of COUNTY. In this context, a “transfer outside the United States” occurs if CONTRACTOR's workforce members, agents or subcontractors physically located outside the United States are able to access, use, or disclose PHI.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Agreement on the date first above written.

PALM BEACH COUNTY, BY ITS BOARD
OF COUNTY COMMISSIONERS

WITNESS:

By: _____

Nancy Bolton, County HIPAA Privacy
Officer/Assistant County Administrator,
Through Verdenia Baker, County Administrator

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

APPROVED AS TO TERMS
AND CONDITIONS

County Attorney

WITNESSES:

CONTRACTOR

Signature

Name of Contractor

Name

By: _____
Signature

Signature

Name and Title

Name