

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2017</u>	<u>2018</u>	<u>2019</u>	<u>2020</u>	<u>2021</u>
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	* =====	=====	=====	=====	=====

ADDITIONAL FTE POSITIONS (Cumulative) 0 0 0 0 0

Is Item Included In Current Budget? Yes _____ No _____

Budget Account Exp No: Fund _____ Department _____ Unit _____ Object _____
 Rev No: Fund _____ Department _____ Unit _____ RevSc _____

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

Fund:
Unit:
Grant:

*The fiscal impact is indeterminable. This agreement is not intended to create financial obligations between the County and DOC. In the event that costs are incurred as a result of either or both of the parties performing their duties or responsibilities under this Agreement, each party will be responsible for their own costs.

Departmental Fiscal Review: _____ *[Signature]* 11/28/16

III. REVIEW COMMENTS

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

[Signature] 12/15/16
 OFMB ET 12/14 *[Signature]* 12/14

[Signature] 12/27/16
 Contract Administration
 12/22/16 *[Signature]*

B. Legal Sufficiency:

[Signature] 12/28/16
 Assistant County Attorney

C. Other Department Review:

 Department Director

This summary is not to be used as a basis for payment.

**MEMORANDUM OF AGREEMENT
BETWEEN
THE FLORIDA DEPARTMENT OF CORRECTIONS
AND
PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

This Agreement is entered into on the date subscribed below, by, and between the Department of Corrections (“Department”) and the Palm Beach County Board of County Commissioners (“County”), which are the parties hereto.

WITNESSETH

WHEREAS, this Agreement establishes the general conditions and joint processes that will enable the Department and the County to collaborate as partners to provide advocacy services for incarcerated victims of sexual assault.

NOW THEREFORE, subject to controlling law, rules, regulations, or to other governing policies and/or procedures, and in consideration of the mutual interests and understandings expressed herein, the parties agree as follows:

I. TERM OF AGREEMENT

This Agreement shall begin on the date on which it is signed by both parties, and shall end at midnight three (3) years from the date of execution. In the event this Agreement is signed by the parties on different dates, the latter date shall control.

This Agreement may be renewed for an additional three (3) year period, in whole or in part, after the initial agreement term, upon the same terms and conditions contained herein, and upon agreement of both parties. Exercise of the renewal option is at each party’s sole discretion and Department renewal shall be conditioned, at a minimum, on the County’s performance of this Agreement. The Department, if it desires to exercise a renewal option, will provide written notice to the County no later than thirty (30) days prior to the Agreement expiration date. The renewal term shall be considered separate and shall require the execution of a renewal amendment that shall be signed by both parties.

II. SCOPE OF AGREEMENT

The Department and the County agree to carry out their respective duties and responsibilities outlined below, subject to controlling law, policy(ies) and/or procedures, and in consideration of the mutual interests and understandings expressed herein.

A. Overview

The Department and the County agree to provide services to incarcerated victims of sexual violence in Palm Beach County, in a manner that aligns with the Prison Rape Elimination Act (PREA) standards established by the U.S. Department of Justice, best practice standards in the field of sexual violence victim services, and commensurate with services available to sexual violence victims in the community at large.

B. Responsibilities of the Department

1. Any time that an incident or allegation of sexual abuse is discovered or reported that requires the activation of this Agreement, the Department will call (if requested by the inmate victim) the County to request a victim advocate respond to accompany the inmate during the sexual assault forensic exam and provide other advocacy services;
2. Assume all financial and programmatic responsibilities related to the sexual assault forensic exam that includes, but is not limited to, notification of the examiner, collection and processing of evidence, ensuring evidence chain of custody, storage of evidence, dispositions and testimony coordination with the examiner, and fees associated with the forensic exam;
3. Any time that an incident or allegation of sexual abuse is discovered or reported that does not require an immediate response, the Department will ensure that the victim receives the appropriate contact information, including the helpline number and mailing address for the County;
4. Provide the County with a directory listing the facility name, physical address, and phone number of each facility operated in Palm Beach County;
5. Provide orientation and training regarding facility operations to the County's staff working in the facility with inmates as needed or appropriate;
6. Ensure that the crisis helpline phone number and mailing address are available to inmates and information is placed in prominent areas;
7. Provide for logistical needs inmates have when attempting to make contact with the County;
8. Provide for logistical and security needs the County have when performing services under this agreement;
9. Respect the nature of privileged communication between rape crisis center staff and clients and abide by all state and federal laws governing confidentiality; and
10. Communicate any questions or concerns to the County.

C. Responsibilities of the County

1. Provide a 24/7 rape crisis helpline, staffed by certified rape crisis victim advocates;
2. Provide a mailing address for inmate victims to send correspondence;
3. Provide a certified rape crisis victim advocate to respond to requests for advocacy and accompaniment during sexual assault forensic exams and investigatory interviews;

4. Provide follow-up advocacy services and crisis intervention to inmate victims of sexual assault, as resources allow;
5. Provide the Department with the name of the advocate accompanying the inmate on the forensic exam, investigatory interview, or individual counseling/advocacy/follow-up session;
6. Maintain privileged communication with clients as required by state and federal law and the County's policies;
7. Terminate the helpline call or individual service session(s) if an inmate's need for services is not, or is no longer, primarily motivated by a desire to heal from sexual violence as reasonably determined by the County;
8. Provide inmates with referrals for treatment after release or upon transfer to another facility;
9. Provide inmates with information about how to report sexual abuse, including the correctional institution's responsibility to investigate each report and to protect inmates and staff who report from retaliation; and
10. Communicate any questions or concerns to the correctional institution staff.

III. FINANCIAL OBLIGATIONS

The parties acknowledge that this Agreement is not intended to create financial obligations between the parties. However, in the event that costs are incurred as a result of either or both of the parties performing their duties or responsibilities under this Agreement, each party agrees to be responsible for their own costs.

The obligations of the parties hereunder are subject to annual appropriations.

IV. AGREEMENT MANAGEMENT

Changes to a designated contact contained in this section shall be made via facsimile notification, or email, to the address set forth below.

A. Department's Agreement Administrator

The Agreement Administrator is responsible for maintaining the official Agreement file, processing any amendments or termination of the Agreement, and maintaining records of all formal correspondence between the parties regarding administration of this Agreement.

The address and telephone number of the Department's Agreement Administrator is:

Operations Manager, Contract Administration
Bureau of Contract Management and Monitoring
501 South Calhoun Street
Tallahassee, Florida 32399-2500
Telephone: (850) 717-3681
Fax: (850) 488-7189

B. Agreement Managers

The parties have identified the following individuals as Agreement Managers. These individuals are responsible for enforcing performance of the Agreement terms and conditions and shall serve as liaison regarding issues arising out of this Agreement.

FOR THE DEPARTMENT
Kendra Prisk, Operations Manager
Office of Institutions
501 S. Calhoun Street
Tallahassee, FL 32399-2500
Telephone: (850)717-3303
Fax: (850) 413-8184
E-mail: kendra.prisk@fdc.myflorida.com

FOR THE COUNTY
Carol Messam-Gordon
Program Coordinator
4210 North Australian Avenue
West Palm Beach, FL 33407
Telephone: (561) 625-2568
Fax: (561) 845-4424
E-mail: CMESSAMG@pbcgov.org

V. **REVIEW AND MODIFICATION**

On an annual basis upon request of either party, both parties will review this Agreement in order to determine whether its terms and conditions are still appropriate. If the parties mutually agree that the terms and conditions require update or revision, the parties may renegotiate terms and conditions hereof which shall be documented in an amendment to this Agreement executed by both parties. There is no obligation to agree to new or revised terms and conditions and both parties retain the right of termination as set forth in Section VI., TERMINATION, below.

After execution of this Agreement, modifications to the provisions contained herein, with the exception of Section IV., AGREEMENT MANAGEMENT, shall be valid only through execution of a formal written amendment to the Agreement. Any changes in the information contained in Section IV., AGREEMENT MANAGEMENT, will be provided to the other party in writing and a copy of the written notification shall be maintained in the official Agreement record.

VI. **TERMINATION**

This Agreement may be terminated at any time upon the mutual consent of both parties or unilaterally by either party upon no less than thirty (30) calendar days' notice. Notice shall be delivered by express mail or other method whereby a receipt of delivery may be obtained.

In addition, this Agreement may be terminated with 24 hours' notice by the Department for any failure of the County to comply with the terms of this Agreement or any applicable Florida law.

VII. **OTHER CONDITIONS**

A. Public Records Law

The County agrees to: (a) keep and maintain public records that would ordinarily and necessarily be required by the Department to perform the services; (b) allow public access to records in accordance with the provisions of Chapter 119 and 945.10, Florida Statutes; (c) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law; (d) meet all requirements for retaining public records and transfer copies of all public records to the Department, as requested at no cost. All records stored electronically must be provided to the Department, if requested, in a format that is compatible with the

Department's information technology systems or in paper format if County's format is not compatible with the Department's. The County's failure to comply with this provision shall constitute sufficient cause for termination of this Agreement.

B. Sovereign Immunity

The County and the Department are state agencies or political subdivisions as defined in Section 768.28, Florida Statutes, and agree to be fully responsible for acts and omissions of their own agents or employees to the extent permitted by law. Nothing herein is intended to serve as a waiver of sovereign immunity by either party to which sovereign immunity may be applicable. Further, nothing herein shall be construed as consent by a state agency or political subdivision of the State of Florida to be sued by third parties in any matter arising out of this Agreement.

C. Background Checks

The County's staff performing services pursuant to this Agreement shall be subject, at the Department's discretion and expense, to a Florida Department of Law Enforcement (FDLE) Florida Crime Information Center/National Crime Information Center (FCIC/NCIC) background/criminal records check. This background check will be conducted by the Department and may occur or re-occur at any time during the Agreement period. The Department has full discretion to require the County to disqualify, prevent, or remove any staff from any work under the Agreement. The use of criminal history records and information derived from such records checks are restricted pursuant to Section 943.054, Florida Statutes. The Department shall not disclose any information regarding the records check findings or criteria for disqualification or removal to the County. The Department shall not confirm to the County the existence or nonexistence of any criminal history record information. In order to carry out this records check, the County shall provide, to the institution(s) at which the program is offered, prior to the performance of any services under this Agreement, the following data for any County's staff assigned to the Agreement: Full Name, Race, Gender, Date of Birth, Social Security Number, Driver's License Number, and State of Issue.

D. Confidentiality

The County shall ensure all staff assigned to this Agreement maintains confidentiality with reference to individual participants receiving services in accordance with applicable local, state, and federal laws, rules, and regulations. The Department and the County agree that all information and records obtained in the course of providing services under this Agreement shall be subject to confidentiality and disclosure provisions of applicable federal and state statutes and regulations adopted pursuant thereto.

The County agrees to keep Department personnel information (i.e., DC staff addresses, telephone numbers, social security number, date of birth, and photograph) strictly confidential and shall not disclose said information to any person, unless the Department approves the release in writing.

E. Disputes

Any dispute concerning performance of the terms of this Agreement shall be resolved informally by the Agreement Managers. Any dispute that cannot be resolved informally shall be reduced to writing and delivered to the Department's Chief, Bureau of Security

Operations. The Chief, Bureau of Security Operations shall decide the dispute, reduce the decision to writing, and deliver a copy to the County, the Department's Agreement Managers, and the Department's Agreement Administrator. If the decision is not acceptable to the County, then the County may cancel the Agreement immediately.

F. Data Sharing

The Department and the County acknowledge their separate obligations to store and disseminate data in compliance with the requirements of Public Records Law, Chapter 119, Florida Statutes, and with other applicable statutes that constitute express exceptions to the requirements of Section 119.07(1), Florida Statutes, by making certain categories of records confidential, exempt from disclosure, or accessible as prescribed by statute. The County acknowledges that the data exchanged between them has been provided for official purposes and that public access to such data is limited and prescribed by statute. The County therefore agrees, consistent with public records law, to refer third parties requesting delivery of information to the originating party. County further agrees to disseminate data only in compliance with confidentiality restrictions and in recognition of the exemptions from disclosure provided by law. Each party shall provide advance copies of documents involving the other party's data for review to provide opportunity for comment on confidential information as described herein prior to publication.

G. Notices

All notices required or permitted by this Agreement shall be given in writing and by hand-delivery or email to the respective addresses of the parties as set forth in Section IV above. All notices by hand-delivery shall be deemed received on the date of delivery and all notices by email shall be deemed received when they are transmitted and not returned as undelivered or undeliverable. Either party may change the names, addresses, or telephone numbers set forth in Section IV above by written notice given to the other party as provided above.

H. Health Insurance Portability and Accountability Act

The County shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) (42 U. S. C. 1320d-8), and all applicable regulations promulgated thereunder. Agreement to comply with HIPAA is evidenced by the execution of this Agreement, which includes and incorporates **Attachment B**, Business Associate Agreement, as part of this Agreement.

I. Prison Rape Elimination Act (PREA)

The County will comply with the national standards to prevent, detect, and respond to prison rape under the Prison Rape Elimination Act (PREA), Federal Rule 28 C.F.R. Part 115. The County will also comply with all Department policies and procedures that relate to PREA.

J. Institutional Security

In carrying out the provisions of this Agreement, the County must comply with all security procedures for vendors doing business in Department's facilities as contained in Department Procedure 602.016, "Entering and Exiting Department of Corrections Institutions", and the Security Requirements for Contractors, attached hereto and herein referred to as **Attachment A**.

K. Employee Status

This Agreement does not create an employee/employer relationship between the parties. It is the intent of the parties that the Department and County are independent contractors under this Agreement and neither is the employee of the other for all purposes, including, but not limited to, the application of the Fair Labor Standards Act minimum wage and overtime payments, Federal Insurance Contribution Act, the Social Security Act, the Federal Unemployment Tax Act, the provisions of the Internal Revenue Code, the State Workers Compensation Act, and the State unemployment insurance law. The parties shall each retain sole and absolute discretion in the judgment of the manner and means of carrying out their activities and responsibilities hereunder provided, further that administrative procedures applicable to services rendered under this Agreement shall be those of each individual party. Services provided by each party pursuant to this Agreement shall be subject to the supervision of such party. In providing such services, neither party nor its agents shall act as officers, employees, or agents of the other party. The parties agree that they are separate and independent enterprises, and that each has the ability to pursue other opportunities.

This Agreement shall not be construed as creating any joint employment relationship between the Parties and neither party will be liable for any obligation incurred by the other party, including, but not limited to, unpaid minimum wages and/or overtime premiums.

L. Force Majeure

Neither party shall be liable for loss or damage suffered as a result of any delay or failure in performance under this Agreement or interruption of performance resulting directly or indirectly from acts of God, fire, explosions, earthquakes, floods, water, wind, lightning, civil or military authority, acts of public enemy, war, riots, civil disturbances, insurrections, strikes, or labor disputes.

M. Cooperation with Inspector General

In accordance with Section 20.055(5), Florida Statutes, the County understands and will comply with its duty to cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing.

Palm Beach County has established the Office of the Inspector General in County Code, Section 2-421 - 2-440, as may be amended. The Department acknowledges its duty to cooperate with the County's Inspector General in any investigation, audit, inspection, review, or hearing.

N. Nondiscrimination

Pursuant to Palm Beach County Resolution R-2014-1421, as may be amended, it is the policy of the Board of County Commissioners of Palm Beach County that Palm Beach County shall not conduct business with nor appropriate any funds for any organization that practices discrimination on the basis of race, color, national origin, religion, ancestry, sex, age, familial status, marital status, sexual orientation, gender identity and expression, disability, or genetic information.

Both parties shall assure and hereby certify that they will comply with the Title VII of the Civil Rights Act of 1964, as amended, and Palm Beach County Resolution No. R2014-1421, and shall not discriminate against any individual on the basis of their race, color, national origin, religion, ancestry, sex, age, marital status, familial status, sexual orientation, gender identity or expression, disability or genetic information with respect to any activity occurring pursuant to this Agreement.

O. Appropriations

Each party's performance and obligations under this Agreement for subsequent fiscal years are contingent upon annual appropriations for its purpose.

REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK

IN WITNESS THEREOF, the parties hereto have caused this Agreement to be executed by their undersigned officials as duly authorized.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

**ATTEST:
SHARON R. BOCK
CLERK AND COMPTROLLER**

**PALM BEACH COUNTY, by and through its
Board of County Commissioners**

By: _____
Deputy Clerk

By: _____
Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Date: _____

By: _____
County Attorney

**APPROVED AS TO TERMS
AND CONDITIONS**

By: Stephanie Sepro
Department Director

FEID: 596000785

FOR THE DEPARTMENT OF CORRECTIONS

Approved as to form and legality,
subject to execution.

SIGNED BY: Kasey B. Faulk

SIGNED BY: TAF Kenneth S. Stealy

NAME: Kasey B. Faulk

NAME: Kenneth S. Stealy

TITLE: Chief, Bureau of Procurement

TITLE: General Counsel

DATE: 11/1/16

DATE: 10/25/16

Firm Representing: _____

Name of Employee/Vendor: _____

(Print)

**DEPARTMENT OF CORRECTIONS
SECURITY REQUIREMENTS FOR CONTRACTORS**

- (1) Per Section 944.47, Florida Statutes (F.S.) it is unlawful to introduce into or upon the grounds of any state correctional institution, or to take or attempt to take or send or attempt to send any of the following items, which are considered, unless authorized by the officer-in-charge of the correctional institution.
- Any written or recorded communication to any inmate of any state correctional institution.
 - Any currency or coin given or transmitted, or intended to be given or transmitted to any inmate of any state correctional institution.
 - Any article of food or clothing given or transmitted, or intended to be given or transmitted, to any inmate of any state correctional institution.
 - Any intoxicating beverage or beverage which causes, or may cause, an intoxicating effect.
 - Any controlled substance or any prescription or nonprescription drug having a hypnotic, stimulating, or depressing effect.
 - Any firearm or weapon of any kind or any explosive substance, including any weapons left in vehicles on the grounds of a state correctional institution).

A person, who violates any provision of Section 944.47, F.S., as it pertains to an article of contraband, is guilty of a felony.

- (2) Do not leave keys in the ignition of motor vehicles. All vehicles must be locked and windows rolled up when parked on state property. Wheel locking devices may also be required.
- (3) All keys must be kept in pockets at all times.
- (4) Confirm with the Institutional Warden where construction vehicles should be parked.
- (5) Obtain formal identification (driver's license or non-driver's license identification obtained from the Florida Department of Highway Safety and Motor Vehicles or equivalent agency in another state), that must be presented each time Contractor staff enter or depart the Institution and as requested by Department staff.
- (6) Absolutely no transactions between Contract personnel and inmates are permitted. This includes, but is not limited to, giving or receiving cigarettes, stamps, or letters.
- (7) No communication with inmates, verbal or otherwise, is permitted without the authorization of the Institution's Officer-in-Charge (OIC).
- (8) Strict tool control will be enforced at all times. Tools within the Correctional Institution are classified as AA, A, or B. Class AA tools are defined as any tool that can be utilized to cut chain link fence fiber or razor wire in a rapid and effective manner. Class A tools are defined as those

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Attachment A

tools which, in their present form, are most likely to be used in an escape or to do bodily harm to staff or inmates. Class B tools are defined as tools of a less hazardous nature. Every tool is to be geographically controlled and accounted for at all times. At the end of the workday, toolboxes will be removed from the compound or to a secure area as directed by the Department's security staff. The Contractor must maintain two copies of the correct inventory with each tool box, one copy will be used and retained by the Department's security staff, who will search and ensure a proper inventory of tools each time the tool box is brought into the Institution, the other copy will remain with the tool box at all times. Tools should be kept to a minimum (only those tools necessary to complete the job). All lost tools must be reported to the Institution's Chief of Security (Colonel or Major) **immediately**. No inmate will be allowed to leave the area until the lost tool is recovered.

- (9) Approval must be obtained from the Institution's Chief of Security prior to bringing any powder-activated tools into the Institution. Strict accountability of all powder loads and spent cartridges must be maintained at all times.
- (10) All persons and deliveries to be on Department property will enter and exit by only one designated route, to be determined by the Department, and subject to security checks at any time. As the security check of vehicles is an intensive and time consuming (10-15 minutes) process, the Contractor should minimize the number of deliveries.
- (11) Establish materials storage and working areas with the Institution's Warden and/or Chief of Security.
- (12) Control end-of-day construction materials and debris. Construction materials and debris can be used by inmates as weapons or as a means of escape. Construction material will be stored in locations agreed to by Department security staff and debris will be removed or moved to a designated location. Contractor should arrange for the Department's security staff to inspect the project area before construction personnel leave. This will aid the Contractor in assuring that necessary security measures are taken.
- (13) Coordinate with the Institution's Warden and Chief of Security regarding any shutdown of existing systems (gas, water, electricity, electronics, sewage, etc.). Institutional approval is required **prior** to shutting down any existing utility system. The Contractor should arrange for alternative service, if required, and expeditious re-establishment of the shutdown system.
- (14) All Contractor staff and equipment will maintain a minimum distance of 100 feet from all perimeter fencing, unless expressly authorized by the Institution's Warden.
- (15) For security purposes, a background check will be made upon all Contractor staff that provide services on the project. **The Department, represented by the Institution's Warden, reserves the right to reject any person whom it determines may be a threat to the security of the institution.**

Signature of Employee/Vendor

Date

Signature of Staff Witness

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "BA Agreement") supplements and is made a part of this Agreement between the Florida Department of Corrections ("Department") and Palm Beach County by and through its Board of County Commissioners ("Contractor"), (each individually, a "Party" and collectively referred to as "Parties").

Whereas, the Department creates or maintains, or has authorized the Contractor to receive, create, or maintain certain Protected Health Information ("PHI,"") as that term is defined in 45 C.F.R. §164.501 and that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended. ("HIPAA");

Whereas, the Department is a "Covered Entity" as that term is defined in the HIPAA implementing regulations, 45 C.F.R. Part 160 and Part 164, Subparts A, C, and E, the Standards for Privacy of Individually Identifiable Health Information ("Privacy Rule") and the Security Standards for the Protection of Electronic Protected Health Information ("Security Rule");

Whereas, the Contractor may have access to Protected Health Information in fulfilling its responsibilities under its contract with the Department;

Whereas, the Contractor is considered to be a "Business Associate" of a Covered Entity as defined in the Privacy Rule;

Whereas, pursuant to the Privacy Rule, all Business Associates of Covered Entities must agree in writing to certain mandatory provisions regarding the use and disclosure of PHI; and

Whereas, the purpose of this Agreement is to comply with the requirements of the Privacy Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.504(e).

Whereas, in regards to Electronic Protected Health Information as defined in 45 C.F.R. § 160.103, the purpose of this Agreement is to comply with the requirements of the Security Rule, including, but not limited to, the Business Associate contract requirements of 45 C.F.R. §164.314(a).

Now, therefore, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions**

Unless otherwise provided in this Agreement, any and all capitalized terms have the same meanings as set forth in the HIPAA Privacy Rule, HIPAA Security Rule or the HITECH Act. Contractor acknowledges and agrees that all Protected Health Information that is created or received by the Department and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by the Department or its operating units to Contractor or is created or received by Contractor on the Department's behalf shall be subject to this Agreement.

2. **Confidentiality Requirements**

- A. Contractor agrees to use and disclose Protected Health Information that is disclosed to it by the Department solely for meeting its obligations under its agreements with the Department, in accordance with the terms of this agreement, the Department's established policies rules, procedures and requirements, or as required by law, rule or regulation.
- B. In addition to any other uses and/or disclosures permitted or authorized by this Agreement or required by law, Contractor may use and disclose Protected Health Information as follows:
 - (1) if necessary for the proper management and administration of the Contractor and to carry out the legal responsibilities of the Contractor, provided that any such disclosure is required by law or that Contractor obtains 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 the person notifies Contractor of any instances of which it is aware in which the confidentiality of the information has been breached;

- (2) for data aggregation services, only if to be provided by Contractor for the health care operations of the Department pursuant to any and all agreements between the Parties. For purposes of this Agreement, data aggregation services means the combining of protected health information by Contractor with the protected health information received by Contractor in its capacity as a Contractor of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.
- (3) Contractor may use and disclose protected health information that Contractor obtains or creates only if such disclosure is in compliance with every applicable requirement of Section 164.504(e) of the Privacy relating to Contractor contracts. The additional requirements of Subtitle D of the HITECH Act that relate to privacy and that are made applicable to the Department as a covered entity shall also be applicable to Contractor and are incorporated herein by reference.

C. Contractor will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Further, Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of the Department. The Secretary of Health and Human Services and the Department shall have the right to audit Contractor's records and practices related to use and disclosure of Protected Health Information to ensure the Department's compliance with the terms of the HIPAA Privacy Rule and/or the HIPAA Security Rule.

Further, Sections 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), and 164.316 (policies and procedures and documentation requirements) of the Security Rule shall apply to the Contractor in the same manner that such sections apply to the Department as a covered entity. The additional requirements of the HITECH Act that relate to security and that are made applicable to covered entities shall be applicable to Contractor and are hereby incorporated by reference into this BA Agreement.

D. Contractor shall report to Department any use or disclosure of Protected Health Information, which is not in compliance with the terms of this Agreement as well as any Security incident of which it becomes aware. Contractor agrees to notify the Department, and include a copy of any complaint related to use, disclosure, or requests of Protected Health Information that the Contractor receives directly and use best efforts to assist the Department in investigating and resolving such complaints. In addition, Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.

Such report shall notify the Department of:

- 1) any Use or Disclosure of protected health information (including Security Incidents) not permitted by this Agreement or in writing by the Department;
- 2) any Security Incident;
- 3) any Breach, as defined by the HITECH Act; or
- 4) any other breach of a security system, or like system, as may be defined under applicable State law (Collectively a "Breach").

Contractor will without unreasonable delay, but no later than seventy-two (72) hours after discovery of a Breach, send the above report to the Department.

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Such report shall identify each individual whose protected health information has been, or is reasonably believed to have been, accessed, acquired, or disclosed during any Breach pursuant to 42 U.S.C.A. § 17932(b). Such report will:

- 1) Identify the nature of the non-permitted or prohibited access, use, or disclosure, including the nature of the Breach and the date of discovery of the Breach.
 - 2) Identify the protected health information accessed, used or disclosed, and provide an exact copy or replication of that protected health information.
 - 3) Identify who or what caused the Breach and who accessed, used, or received the protected health information.
 - 4) Identify what has been or will be done to mitigate the effects of the Breach; and
 - 5) Provide any other information, including further written reports, as the Department may request.
- E. In accordance with Section 164.504(e)(1)(ii) of the Privacy Rule, each party agrees that if it knows of a pattern of activity or practice of the other party that constitutes a material breach of or violation of the other party's obligations under the BA Agreement, the non-breaching party will take reasonable steps to cure the breach or end the violation, and if such steps are unsuccessful, terminate the contract or arrangement if feasible. If termination is not feasible, the party will report the problem to the Secretary of Health and Human Services (federal government).
- F. Contractor will ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from, or created by Contractor on behalf of the Department, agree to the same restrictions and conditions that apply to Contractor, and apply reasonable and appropriate safeguards to protect such information. Contractor agrees to designate an appropriate individual (by title or name) to ensure the obligations of this agreement are met and to respond to issues and requests related to Protected Health Information. In addition, Contractor agrees to take other reasonable steps to ensure that its employees' actions or omissions do not cause Contractor to breach the terms of this Agreement.
- G. Contractor shall secure all protected health information by a technology standard that renders protected health information unusable, unreadable, or indecipherable to unauthorized individuals and is developed or endorsed by a standards developing organization that is accredited by the American National Standards Institute and is consistent with guidance issued by the Secretary of Health and Human Services specifying the technologies and methodologies that render protected health information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, pursuant to the HITECH Act, 42 U.S.C.A. § 300jj-11, unless the Department agrees in writing that this requirement is infeasible with respect to particular data. These security and protection standards shall also apply to any of Contractor's agents and subcontractors.
- H. Contractor agrees to make available Protected Health Information so that the Department may comply with individual rights to access in accordance with Section 164.524 of the HIPAA Privacy Rule. Contractor agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Contractor agrees to record disclosures and such other information necessary, and make such information available, for purposes of the Department providing an accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.
- I. The Contractor agrees, when requesting Protected Health Information to fulfill its contractual obligations or on the Department's behalf, and when using and disclosing Protected Health Information as permitted in this contract, that the Contractor will request, use, or disclose only the minimum necessary in order to accomplish the intended purpose.

3. **Obligations of Department**

- A. The Department will make available to the Business Associate the notice of privacy practices (applicable to offenders under supervision, not to inmates) that the Department produces in accordance with 45 CFR 164.520, as well as any material changes to such notice.
- B. The Department shall provide Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- C. The Department shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that impacts the business associate's use or disclosure and that the Department has agreed to in accordance with 45 CFR 164.522 and the HITECH Act.

4. **Termination**

- A. **Termination for Breach** - The Department may terminate this Agreement if the Department determines that Contractor has breached a material term of this Agreement. Alternatively, the Department may choose to provide Contractor with notice of the existence of an alleged material breach and afford Contractor an opportunity to cure the alleged material breach. In the event Contractor fails to cure the breach to the satisfaction of the Department, the Department may immediately thereafter terminate this Agreement.
- B. **Automatic Termination** - This Agreement will automatically terminate upon the termination or expiration of the original contract between the Department and the Contractor.
- C. **Effect of Termination**
 - (1) Termination of this agreement will result in termination of the associated contract between the Department and the Contractor.
 - (2) Upon termination of this Agreement or the contract, Contractor will return or destroy all PHI received from the Department or created or received by Contractor on behalf of the Department that Contractor still maintains and retain no copies of such PHI; provided that if such return or destruction is not feasible, Contractor will extend the protections of this Agreement to the PHI and limit further uses and disclosure to those purposes that make the return or destruction of the information infeasible.

5. **Amendment** - Both parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary to comply with the requirements of the Privacy Rule, the HIPAA Security Rule, and the HITECH Act.

6. **Interpretation** - Any ambiguity in this Agreement shall be resolved to permit the Department to comply with the HIPAA Privacy Rule and/or the HIPAA Security Rule.

7. **Indemnification** - The Contractor shall be liable for its own actions and negligence and to the extent permitted by law, Contractor shall indemnify, defend, and hold harmless the Department, its employees, agents, and officers, from any and all actions, claims, or damages including court costs and attorneys' fees arising out of, or in connection with Contractor's non-permitted or prohibited Use or Disclosure of PHI, whether intentional, negligent or by omission of Contractor. Notwithstanding the foregoing, this indemnification SHALL NOT constitute a waiver of sovereign immunity beyond the limits set forth in Florida Statute §768.28, nor is it to be construed as consent to be sued by third parties, nor is it to be construed as consent agreement to indemnify the Department for the Department's negligence, willful or intentional acts or omissions.

8. **Miscellaneous** - Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Contractor under this Section shall survive the expiration, termination, or cancellation of this Agreement, or any and all other contracts between the parties, and shall continue to bind Contractor and its employees as set forth herein for any PHI that is not returned to the Department or destroyed.