

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact

Fiscal Years	<u>2020</u>	<u>2021</u>	<u>2022</u>	<u>2023</u>	<u>2024</u>
Personal Services	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
Capital Expenditures	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
Net Fiscal Impact	*	_____	_____	_____	_____

ADDITIONAL FTE

POSITIONS (Cumulative)	0	0	0	0	0
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Is Item Included In Current Budget? Yes _____ No _____
 Does this item include the use of federal funds? Yes _____ No X
 Budget Account Exp No: Fund _____ Dept. _____ Unit _____ Obj. _____ Prog. _____
 Rev No: Fund _____ Dept. _____ Unit _____ Rev. _____ Prog. _____

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

Grant:
Fund:
Unit:

* The fiscal impact is indeterminable. This agreement is not intended to create financial obligations between the County and Department. In the event that cost 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 cost.

C. Departmental Fiscal Review: _____ *[Signature]* 10/4/19

III. REVIEW COMMENTS

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

[Signature] 10/24/19
 10/24 OFMB PC 10/23

[Signature]
 Contract Dev. And Control
 10/28/19

B. Legal Sufficiency:

 Assistant County Attorney

C. Other Department Review:

 Department Director

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

**AGREEMENT BETWEEN THE
STATE OF FLORIDA, DEPARTMENT OF HEALTH
PALM BEACH COUNTY HEALTH DEPARTMENT
AND
PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS**

The purpose of this affiliation agreement is to guide and direct a working relationship between the State of Florida, Department of Health, Palm Beach County Health Department, hereinafter referred to as the DEPARTMENT and the Palm Beach County Board of County Commissioners, hereinafter referred to as the COUNTY. This agreement delineates responsibility of the Department and the County, for activities related to achieving competency in performing medical forensic exams to the County's Victim Services and Certified Rape Crisis Center Sexual Assault Nurse Examiners (SANE).

RECITALS

The COUNTY agrees:

1. To provide competent SANE Nurses that are licensed registered nurses (RN) and employed by the County for learning opportunities and rotations at the C.L. Brumback Health Center located at 38754 State Road 80, Belle Glade, FL 33430.
2. To work in accordance with all DEPARTMENT procedures, policies, protocols, rules and regulations in carrying out the relationship described herein and in making plans for the observation of and/or practice in health care at DEPARTMENT facilities.
3. To ensure SANE Nurses observe four (4) medical forensic exams under the guidance of a Department preceptor and demonstrate competency by performing ten (10) medical forensic exams under the guidance Department preceptor.
4. To provide or assure that SANE Nurses have the necessary, required, and appropriate teaching materials and ensure SANE Nurses report to C.L. Brumback Health center for new employee orientation.
5. To submit to the DEPARTMENT a schedule indicating the number and names of SANE Nurses who will be participating in the learning opportunities under this agreement and the names of the faculty members who will be indirectly supervising SANE Nurses during the SANE Nurses' rotation at DEPARTMENT facilities.
6. To designate a contact person for evaluation and scheduling of SANE Nurse rotations and facilitation of communication between the parties.
7. To provide direct supervision of SANE Nurses whenever SANE Nurses are at DEPARTMENT facilities or provide indirect supervision of SANE Nurses engaged in a mutually agreeable practicum experience with a preceptor at the DEPARTMENT. Pursuant to this Agreement, SANE Nurses will only be assigned to mutually agreeable practicum experiences.
8. To initiate and/or participate in group conferences, as requested by DEPARTMENT at mutually agreed upon times, with a designee of the DEPARTMENT for the purpose of discussing objectives of the learning experiences and SANE Nurse performance in caring for patients.

9. To ensure that general and professional liability insurance insuring the COUNTY, its employees, and its SANE Nurses who will be in training under this agreement, with limits of liability coverage in the amount of not less than Two Hundred Thousand Dollars (\$200,000) per claimant and Three Hundred Thousand Dollars (\$300,000) per occurrence, is obtained and maintained throughout the term of this agreement and any renewal thereof. It is a material term of this agreement and necessary that the COUNTY, its employees, and its SANE Nurses who will be participating under this agreement are covered under a general and professional liability policy with the abovementioned limits. However, it is not necessary that the COUNTY, its employees, and its SANE Nurses who will be participating under this agreement are all covered under the same policy. As evidence of such coverage, the COUNTY shall furnish to the DEPARTMENT applicable certificates of insurance sufficient to demonstrate full satisfaction of the requirements of this paragraph prior to SANE Nurses beginning their internship under this agreement and annually thereafter. COUNTY shall immediately inform DEPARTMENT of any lapses or changes to coverages that would bring COUNTY out of compliance with this paragraph. Failure of the COUNTY to ensure that such coverage is obtained and maintained shall be grounds for immediate termination of this agreement. If the COUNTY is a public college or university in Florida, the COUNTY may be self-insured through the State Risk Management Trust Fund, established pursuant to section 284.30, Florida Statutes, and administered by the State of Florida, Department of Financial Services, or may be otherwise insured pursuant to the provisions of section 1004.24, Florida Statutes.

10. To be fully responsible for its acts of negligence, or its agents'/SANE Nurses' acts of negligence when acting within the scope of their employment, education or agency, and agrees to be liable for any damages resulting from said negligence.

11. Unless COUNTY is a state agency or subdivision under section 768.28, Florida Statutes, or otherwise protected by sovereign immunity under its respective state law, to be liable for and indemnify, defend, and hold harmless the DEPARTMENT and all of its officers, agents, and employees from all claims, suits, judgments, or damages, consequential or otherwise and including attorneys' fees and costs, arising out of any act, actions, neglect, or omissions by the COUNTY, its agents, SANE Nurses, or employees during the performance or operation of this Agreement or any subsequent modifications thereof, whether direct or indirect, and whether to any person or tangible or intangible property. Nothing herein is intended to serve as a waiver of sovereign immunity by any county to whom sovereign immunity may be applicable nor 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 any contract.

12. To assure that SANE Nurses maintain confidentiality of all data, files, and client records related to the services provided pursuant to this agreement and comply with state and federal laws, including, but not limited to, section 456.057, Florida Statutes, and 45 Code of Federal Regulations Parts 160, 162 and 164. The COUNTY will take steps to assure SANE Nurses' compliance with any applicable professional standards of practice with respect to patient confidentiality. Procedures will be implemented by the COUNTY to require SANE Nurses to comply with the protection and confidentiality requirements outlined in the Department of Health Information Security Policies, Protocols, and Procedures, as amended, and Privacy Rule of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), which are incorporated herein by reference. The COUNTY assures that SANE Nurses have been trained in all aspects of ethical standards pertaining to confidentiality issues and privacy rights including federal Privacy Rules and applicable state confidentiality laws. Solely for the purpose of defining SANE Nurses' roles in relation to the use and disclosure of the DEPARTMENT'S protected health information, the SANE Nurses are defined as members of the DEPARTMENT'S workforce, as that term is defined by 45 CFR 160.103, when engaged in activities pursuant to this agreement. **See Attachment I.** However,

SANE Nurses are not and shall not be considered employees of the DEPARTMENT. This paragraph is not applicable to any SANE Nurses who do not access any confidential information.

13. To keep and maintain public records in accordance with the provisions of Chapter 119, Florida Statutes, including all public records required by the DEPARTMENT to perform the services entailed in this agreement, and to provide the public with access to such public records on the same terms and conditions that the DEPARTMENT would provide the records and at a cost that does not exceed that provided in Chapter 119, Florida Statutes, or as otherwise provided by law; to ensure that public records that are exempt or that are confidential and exempt from public record requirements are not disclosed except as authorized by law for the duration of the term of the agreement, including all renewals, and following completion of the agreement if COUNTY does not transfer the records to DEPARTMENT; to meet all requirements for retaining public records as set forth in law and DEPARTMENT's retention schedules; and, upon completion of the contract, to transfer to the DEPARTMENT, at no cost to DEPARTMENT, all public records in possession of the COUNTY and to destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the DEPARTMENT in a format that is compatible with the information technology systems of the DEPARTMENT.

If the COUNTY has questions regarding the application of Chapter 119, Florida Statutes, to the COUNTY's duty to provide public records relating to this contract, contact the custodian of public records at (850)245-4005, PublicRecordsRequest@flhealth.gov or 4052 Bald Cypress Way, Bin A02, Tallahassee, FL 32399.

14. To assure that all SANE Nurses are background screened and meet the Level 2 screening requirements of section 435.04, Florida Statutes, prior to SANE Nurses beginning their rotation at the DEPARTMENT. The COUNTY agrees to take steps to assure that SANE Nurses, and any COUNTY personnel that accompany SANE Nurses or have access to DEPARTMENT's confidential records, inform the DEPARTMENT's designated contact person immediately if an arrest is made or a court disposition is entered for any disqualifying offense while participating in this internship. The DEPARTMENT will immediately remove the student from the program, or the personnel from further involvement in the program or access to records, if DEPARTMENT determines, in its sole discretion, that continued involvement of that SANE Nurse or personnel would violate the requirements of section 435.04, Florida Statutes, or would otherwise pose a risk to health or safety of any individual(s) or the public. The DEPARTMENT shall not be responsible for any costs associated with this paragraph.

The DEPARTMENT agrees:

1. To designate experienced Advanced Practice Registered Nurse (APRN), Medical Doctor (MD) or Physician Assistant (PA) to provide trainings for gynecological exams and speculum competency, to SANE Nurses.
2. To provide Advanced Practice Registered Nurse (APRN), Medical Doctor (MD) or Physician Assistant (PA) as program preceptor for SANE Nurses, but such preceptors will not substitute for or diminish the requirement that COUNTY provide faculty supervision as set forth above.

3. To ensure experienced Advanced Practice Registered Nurse (APRN), Medical Doctor (MD) or Physician Assistant (PA), determines competency of SANE Nurses in all areas of the gynecological exams.
4. To allow SANE Nurses to work autonomously, once competency has been determined.
5. To designate a contact person for evaluation and scheduling of student rotations and facilitation of communication between the parties.
6. To make available to the faculty and SANE Nurses of the COUNTY the DEPARTMENT facilities as agreed upon by both designated contact persons.
5. To retain overall responsibility for the quantity and quality of patient care in DEPARTMENT facilities.
6. To give COUNTY five days' notice prior to removing from the rotation program any SANE Nurses not comporting themselves in accordance with the procedures, protocols, regulations, rules, or statutes governing the DEPARTMENT unless DEPARTMENT deems immediate removal necessary, which such removal and determination of immediate necessity shall be at the sole discretion of the DEPARTMENT.
7. To provide as available the physical facilities, equipment, supplies, and patients to supplement an educational program in accordance with the objective of providing an educational experience SANE Nurses. Notwithstanding the foregoing, the DEPARTMENT may, at its discretion, temporarily remove access to facilities, equipment, supplies, and patients in the interest of the health or safety of patients, employees, SANE Nurses, or other faculty.
8. The DEPARTMENT, a state agency or subdivision, is self-insured through the State Risk Management Trust Fund established pursuant to section 284.30, Florida Statutes, and administered by the State of Florida, Department of Financial Services. The DEPARTMENT certifies that it maintains and agrees to continue to maintain during the term this agreement, general and professional liability protection coverage through the State Risk Management Trust Fund, and that this protection extends to the Department of Health, its officers, employees, and agents, and covers statutory liability exposure to the limitations described in section 768.28, Florida Statutes. Nothing herein is intended to serve as a waiver of sovereign immunity by any party to whom sovereign immunity may be applicable. Nothing herein shall be construed as consent by a state agency or subdivision of the State of Florida to be sued by third parties. The DEPARTMENT cannot insure or indemnify the COUNTY, its officers, employees, SANE Nurses, and agents, or any third parties.

General Terms.

1. Independent Contractor. No relationship of employer/employee, principal/agent, or other association shall be created by this agreement between the parties or their directors, officers, agents, SANE Nurses or employees. SANE Nurses shall, at all times, be considered "independent" and shall, under no circumstances, be considered employees of the DEPARTMENT. The parties agree that they will never act or represent that they are acting as an agent of the other or incur any obligations on the part of the other party.
2. Remedies; Limitations of Liability. Except for willful misconduct or gross negligence, neither

party shall be liable to the other for punitive, exemplary, special, indirect, or consequential damages, including without limitation, lost profits, each party's aggregate liability being limited to the other party's direct damages, and other costs set forth herein. This paragraph may only be interpreted as further limitation of the DEPARTMENT'S exposure; it shall not be interpreted as a waiver of sovereign immunity beyond that stated in section 768.28, Florida Statutes. In addition to the foregoing, the DEPARTMENT shall not be liable to SANE Nurses, faculty, or COUNTY in the event of exposure to an infectious, environmental, occupational, or other hazard not caused by the willful or negligent conduct of the DEPARTMENT.

3. Notice. When either party to this Agreement desires to give notice to the other, such notice must be in writing, and delivered by (i) United States certified or registered mail, postage prepaid and return receipt requested, (ii) a nationally recognized overnight delivery service, (iii) personal delivery with a written receipt obtained, or (iv) email transmission with confirmation of receipt provided by the recipient via returned email, at the addresses set forth below. Notices shall be effective upon receipt. Presently, the parties designate the following as the respective places for giving notice:

For DEPARTMENT

Name: Bostella Walker, APRN
Title: Health Center Administrator
Address: 38754 State Road 80 Belle Glade, FL 33430
Telephone: (561) 983-9232
Fax: (561) 983-9323
E-mail: Bostella.Walker@flhealth.gov

For COUNTY

Name: Carol Messam-Gordon, MPA
Title: Program Coordinator
County Name: Palm Beach County Victim Services & Certified Rape Crisis Center
Address: 4210 N. Australian Ave. West Palm Beach, FL 33407
Telephone: (561) 625-2568
(Fax): (561) 845-4424
E-mail: Cmessamg@pbcgov.org

4. Term and Renewal. Unless terminated earlier as provided herein, the term of this agreement shall be from November 1, 2019 or the latest date of signature by the parties, whichever is later, through October 31, 2020. This agreement may be renewed on a yearly basis for no more than three years or the term of the original contract, whichever period is longer. Any renewal shall be in writing upon mutual agreement and subject to the same terms and conditions as set forth in this initial agreement.

5. Termination. This agreement may be terminated by either party upon no less than 30 calendar days' notice in writing to the other party, with or without cause, unless a lesser time is mutually agreed upon in writing by both parties. Such notice shall be delivered by certified mail, return receipt requested, or in person with proof of delivery. The parties will thereafter work cooperatively to coordinate the termination of the services provided under this agreement.

6 Entire Agreement and Modification. This agreement represents the entire understanding of the parties with respect to the matters covered herein and supersedes all prior and contemporaneous agreements, representations, and discussion, whether oral or written. This agreement may only be altered, amended, or modified in a writing signed by both parties.

7. Jurisdiction and Venue. This agreement shall be governed by and construed in accordance with the laws of the State of Florida, without respect to its conflict of laws principles. With respect to any action arising out of this agreement, the parties accept the exclusive jurisdiction of the state courts in Florida and agree that venue shall lie exclusively in Palm Beach County, Florida.

8. Capacity: Each individual signing this agreement on behalf of either party individually warrants that he or she has the full legal power to execute this agreement on behalf of the party for whom he or she is signing and to bind and obligate such party with respect to all provisions contained in this agreement.

9. Counterparts: This agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same document.

10. Cooperation with the Inspector General: COUNTY acknowledges and understands that it has a duty to and will cooperate with the Inspector General in any investigation, audit, inspection, review, or hearing, pursuant to section 20.055(5), Florida Statutes.

END OF PAGE

IN WITNESS WHEREOF, the parties approve this 7- page agreement and Attachment I and have caused it to be executed by their undersigned officials who are duly authorized.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

ATTEST:
SHARON R. BOCK

PALM BEACH COUNTY, by and through its
Board of County Commissioners CLERK AND COMPTROLLER

By: _____
Deputy Clerk

By: _____
Mayor


APPROVED AS TO FORM
AND LEGAL SUFFICIENCY

Date: _____

By: _____
Shannon Fox
County Attorney

FLORIDA DEPARTMENT OF HEALTH IN PALM BEACH COUNTY

APPROVED AS TO TERMS AND CONDITIONS

By: 
Alina Alonso, MD, Director

By: 
Stephanie Sejnoha
Department Director

BUSINESS ASSOCIATES AGREEMENT

Attachment I

Combined HIPAA Privacy Business Associate Agreement and Confidentiality Agreement and HIPAA Security Rule Addendum and HI-TECH Act Compliance Agreement and the Florida Information Protection Act of 2014

This Agreement is entered into between the State of Florida, Florida Department of Health, Palm Beach County ("Covered Entity"), and Palm Beach County Board of County Commissioners ("Business Associate"). The parties have entered into this Agreement for the purpose of satisfying the Business Associate contract requirements in the regulations at 45 CFR 164.502(e) and 164.504(e), issued under the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Security Rule, codified at 45 Code of Federal Regulations ("C.F.R.") Part 164, Subparts A and C; Health Information Technology for Economic and Clinical Health (HITECH) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA), Pub. L. No. 111-5 (Feb. 17, 2009) and related regulations. This Agreement corresponds to the following contract #, purchase order, or **Memorandum of Agreement 50B34**.

1.0 Definitions

Terms used but not otherwise defined in this Agreement shall have the same meaning as those terms in 45 CFR 160.103 and 164.501. Notwithstanding the above, "Covered Entity" shall mean the State of Florida Department of Health. "Individual" shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g); "Secretary" shall mean the Secretary of the U.S. Department of Health and Human Services or his designee; and "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

Part I: Privacy Provisions

2.0 Obligations and Activities of Business Associate

- (a) Business Associate agrees to not use or further disclose Protected Health Information ("PHI") other than as permitted or required by Sections 3.0 and 5.0 of this Agreement, or as required by Law.
- (b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (c) Business Associate agrees to take reasonable measures to protect and secure data in electronic form containing personal information as defined by §501.171, Florida Statutes.
- (d) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- (e) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.
- (f) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

BUSINESS ASSOCIATES AGREEMENT

Attachment I

- (g) Business Associate agrees to provide access, at the request of Covered Entity or an Individual, and in a prompt and reasonable manner consistent with the HIPAA regulations, to Protected Health Information in a designated record set, to the Covered Entity or directly to an Individual in order to meet the requirements under 45 CFR 164.524.
- (h) Business Associate agrees to make any Amendment(s) to Protected Health Information in a designated record set that the Covered Entity or an Individual directs or agrees to pursuant to 45 CFR 164.526, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (i) Business Associate agrees to make its internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- (j) Business Associate agrees to document disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.
- (k) Business Associate agrees to provide to Covered Entity or an Individual an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528, in a prompt and reasonable manner consistent with the HIPAA regulations.
- (l) Business Associate agrees to satisfy all applicable provisions of HIPAA standards for electronic transactions and code sets, also known as the Electronic Data Interchange (EDI) Standards, at 45 CFR Part 162 no later than October 16, 2003. Business Associate further agrees to ensure that any agent, including a subcontractor, that conducts standard transactions on its behalf, will comply with the EDI Standards.
- (m) Business Associate agrees to determine the Minimum Necessary type and amount of PHI required to perform its services and will comply with 45 CFR 164.502(b) and 514(d).
- (n) Business Associate agrees to comply with all aspects of §501.171, Florida Statutes.

3.0 Permitted or Required Uses and Disclosures by Business Associate General Use and Disclosure.

- (a) Except as expressly permitted in writing by Department of Health, Business Associate may use Protected Health Information only to carry out the legal responsibilities of the Business Associate, but shall not disclose information to any third party without the expressed written consent of the Covered Entity.
- (b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 CFR 164.504(e)(2)(i)(B).
- (c) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR 164.502(j) (1).

4.0 Obligations of Covered Entity to Inform Business Associate of Covered Entity's Privacy Practices, and any Authorization or Restrictions.

BUSINESS ASSOCIATES AGREEMENT

Attachment I

- (a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR 164.520, as well as any changes to such notice.
- (b) Covered Entity shall provide Business Associate with any changes in, or revocation of, Authorization by Individual or his or her personal representative to use or disclose Protected Health Information, if such changes affect Business Associate's uses or disclosures of Protected Health Information.
- (c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, if such changes affect Business Associate's uses or disclosures of Protected Health Information.

5.0 Confidentiality under State Law.

- (a) In addition to the HIPAA privacy requirements and the data security requirements of §501.171, Florida Statutes, Business Associate agrees to observe the confidentiality requirements of Chapter 381, Florida Statutes and any other Florida Statute relating to the confidentiality of information provided under this agreement.
- (b) Receipt of a Subpoena. If Business Associate is served with subpoena requiring the production of Department of Health records or information, Business Associate shall immediately contact the Department of Health, Office of the General Counsel, (850) 245-4005. A subpoena is an official summons issued by a court or an administrative tribunal, which requires the recipient to do one or more of the following:
 - 1. Appear at a deposition to give sworn testimony, and may also require that certain records be brought to be examined as evidence.
 - 2. Appear at a hearing or trial to give evidence as a witness, and may also require that certain records be brought to be examined as evidence.
 - 3. Furnish certain records for examination, by mail or by hand-delivery.
- (c) Employees and Agents. Business Associate acknowledges that the confidentiality requirements herein apply to all its employees, agents and representatives. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, against Department of Health, including costs and attorneys' fees, resulting from the breach of the confidentiality requirements of this Agreement.

6.0 Permissible Requests by Covered Entity.

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

7.0 Term and Termination.

(a) Term.

The Term of this Agreement shall be coterminous with the underlying contract, purchase order, or memorandum of understanding giving rise to this agreement.

BUSINESS ASSOCIATES AGREEMENT

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(b) Termination for Cause.

Without limiting any other termination rights the parties may have, upon Covered Entity's knowledge of a material breach by Business Associate of a provision under this Agreement, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation. If the Agreement of Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, the Covered Entity shall have the right to immediately terminate the Agreement. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

1. Within sixty (60) days after termination of the Agreement for any reason, or within such other time period as mutually agreed upon in writing by the parties, Business Associate shall return to Covered Entity or destroy all Protected Health Information maintained by Business Associate in any form and shall retain no copies thereof. Business Associate also shall recover, and shall return or destroy with such time period, any Protected Health Information in the possession of its subcontractors or agents.
2. Within fifteen (15) days after termination of the Agreement for any reason, Business Associate shall notify Covered Entity in writing as to whether Business Associate elects to return or destroy such Protected Health Information. If Business Associate elects to destroy such Protected Health Information, it shall certify to Covered Entity in writing when and that such Protected Health Information has been destroyed. If any subcontractors or agents of the Business Associate elect to destroy the Protected Health Information, Business Associate will require such subcontractors or agents to certify to Business Associate and to Covered Entity in writing when such Protected Health Information has been destroyed. If it is not feasible for Business Associate to return or destroy any of said Protected Health Information, Business Associate shall notify Covered Entity in writing that Business Associate has determined that it is not feasible to return or destroy the Protected Health Information and the specific reasons for such determination. Business
3. Associate further agrees to extend any and all protections, limitations, and restrictions set forth in this Agreement to Business Associate's use or disclosure of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.
4. If it is not feasible for Business Associate to obtain, from a subcontractor or agent, any Protected Health Information in the possession of the subcontractor or agent, Business Associate shall provide a written explanation to Covered Entity and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions set forth in this Agreement to the subcontractors' or agents' uses or disclosures of any Protected Health Information retained after the termination of this Agreement, and to limit any further uses or disclosures to the purposes that make the return or destruction of the Protected Health Information not feasible.

Part II: Breaches and Security Incidents

8.0 Privacy or Security Breach.

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Business Associate will report to Covered Entity's Privacy Officer or other department contact within 2 business days after the discovery, any unauthorized access, use, disclosure of Covered Entity's protected health information not permitted by the Business Associates Agreement along with any breach of Covered Entity's unsecured protected health information. Business Associate will treat the breach as being discovered in accordance with 45 CFR §164.410. If a delay is requested by a law enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying the Covered Entity for the applicable time period. Business Associates report will at a minimum:

- (a) Identify the nature of the breach or other non-permitted use or disclosure, which will include a brief description of what happened, including the date of any breach and the date of discovery of the breach;
- (b) Identify Covered Entity's Protected Health Information that was subject to the non-permitted use or disclosure or breach (such as whether name, social security number, date of birth, home address, account number or other information was disclosed/accessed) on an individual basis;
- (c) Identify who made the non-permitted use or disclosure and who received it;
- (d) Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects and to protect against any further breaches;
- (e) Identify what steps the individuals who were subject to a breach should take to protect themselves;
- (f) Provide such other information, including a written report, as Covered Entity may reasonably request.

8.1 Security of Electronic Protected Health Information.

WHEREAS, Business Associate and Department of Health agree to also address herein the applicable requirements of the Security Rule, codified at 45 Code of Federal Regulations ("C.F.R.") Part 164, Subparts A and C, issued pursuant to the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA-AS"), and the Florida Information Protection Act (FIPA) §501.171, Florida Statutes, so that the Covered Entity may meet compliance obligations under HIPAA-AS and FIPA the parties agree:

- (a) Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information (as defined in 45 C.F.R. § 160.103) and Personal Information (as defined in §501.171, Florida Statutes) that Business Associate creates, receives, maintains, or transmits on behalf of the Plans consistent with the Security Rule.
- (b) Reporting Security Incidents. Business Associate will report to Covered Entity any successful (A) unauthorized access, use, disclosure, modification, or destruction of Covered Entity's Electronic Protected Health Information or unauthorized access of data in an electronic form containing Personal Information as defined in §501.171, Florida

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Statute, or (B) interference with Business Associate's system operations in Business Associate's information systems, of which Business Associate becomes aware.

8.2 Corrective Action:

- (a) Business Associate agrees to take prompt corrective action and follow all provisions required in state and federal law to notify all individuals reasonably believed to be potentially affected by the breach.
- (b) Cure: Business Associate agrees to take prompt corrective action to cure any security deficiencies.

Part III

9.0 Miscellaneous

- (a) Regulatory References. A reference in this Agreement to a section in the Privacy Rule or the Security Rule means the section as in effect or as amended, and for which compliance is required.
- (b) Amendment. Upon the enactment of any law or regulation affecting the use or disclosure of Protected Health Information, Personal Information, Standard Transactions, the security of Health Information, or other aspects of HIPAA-AS or FIPA applicable or the publication of any decision of a court of the United States or any state relating to any such law or the publication of any interpretive policy or opinion of any governmental agency charged with the enforcement of any such law or regulation, either party may, by written notice to the other party, amend this Agreement in such manner as such party determines necessary to comply with such law or regulation. If the other party disagrees with such Amendment, it shall so notify the first party in writing within thirty (30) days of the notice. If the parties are unable to agree on an Amendment within thirty (30) days thereafter, then either of the parties may terminate the Agreement on thirty (30) days written notice to the other party.
- (c) Survival. The respective rights and obligations of Business Associate under Section 7.0 of this Agreement shall survive the termination of this Agreement.
- (d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule and the confidentiality requirements of the State of Florida.
- (e) No third party beneficiary. Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assignees of the parties, any rights, remedies, obligations, or liabilities whatsoever.
- (f) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the state of Florida to the extent not preempted by the Privacy Rules or other applicable federal law.
- (g) The laws of the State of Florida shall apply to the interpretation of this Agreement or in case of any disagreement between the parties; the venue of any proceedings shall be the appropriate federal or state court in Leon County, Florida.

BUSINESS ASSOCIATES AGREEMENT

Attachment I

- (h) Indemnification and performance guarantees. Business Associate shall indemnify, defend, and save harmless the State of Florida and Individuals covered for any financial loss as a result of claims brought by third parties and which are caused by the failure of Business Associate, its officers, directors or agents to comply with the terms of this Agreement. Additionally, Business Associate shall indemnify the State of Florida for any time and expenses it may incur from breach notifications that are necessary under either §501.171, Florida Statute or the HIPAA Breach Notification Rule, 45 CFR §§ 164.400-414, which are caused by the failure of Business Associate, its officers, directors or agents to comply with the terms of this Agreement.
- (i) Assignment: Business Associate shall not assign either its obligations or benefits under this Agreement without the expressed written consent of the Covered Entity, which shall be at the sole discretion of the Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.

PALM BEACH COUNTY BOARD OF COUNTY COMMISSIONERS

**ATTEST:
SHARON R. BOCK**

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

By: _____
Deputy Clerk

By: _____
Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

Date: _____

By: _____
Shannon Fox
County Attorney

FLORIDA DEPARTMENT OF HEALTH IN PALM BEACH COUNTY

APPROVED AS TO TERMS AND CONDITIONS

By: 
Alina Alonso, MD, Director

By: 
Stephanie Sejnoha
Department Director