

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

Meeting Date:	May 3, 2022	<input checked="" type="checkbox"/> Consent	<input type="checkbox"/> Regular
		<input type="checkbox"/> Workshop	<input type="checkbox"/> Public Hearing
Department:	Fire-Rescue		

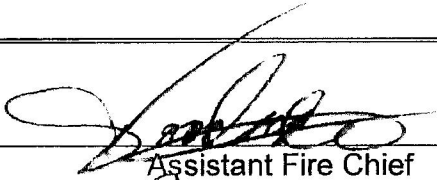
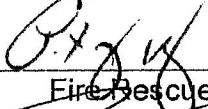

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Business Associate Agreement (BAA) between Palm Beach County and ESO Solutions, Inc., that will be incorporated into all past, present and future agreements between the parties.

SUMMARY: ESO Solutions, Inc., is the current provider of an electronic patient care reporting (ePCR) product that interface's with Fire Rescue's current fire data management system, for incident reporting, data collection, retention and management. In accordance with the requirements of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), the BAA provides for the appropriate safeguard of protected health information (PHI) that is created, received, maintained, or transmitted on behalf of Fire Rescue. Countywide (SB)

Background and Justification: Pursuant to federal law, as a HIPAA covered entity, the County is required to enter into BAA's with its outside HIPAA business associates regarding the PHI of the County's covered health care components, including Fire Rescue.

- Attachments
1. BAA

Recommended by:		4-7-2022
	Assistant Fire Chief	Date
Approved by:		4-7-2022
	Fire Rescue Administrator	Date
Approved by:		4/25/2022
	County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2022	2023	2024	2025	2026
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	_____	_____	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	* _____	_____	_____	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

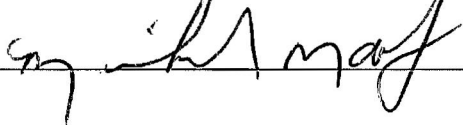
Is Item Included in Proposed Budget? Yes X No

Does this item include the use of federal funds? Yes No X

Budget Account No.: Fund Dept. Unit Object/Rev Source

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

*There is no fiscal impact associated with this item

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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


OFMB 9A 4/7/22 LM 4/8


Contract Development and Control 4-19-22 TW

B. Legal Sufficiency


Assistant County Attorney 4/20/22

C. Other Department Review:

Department Director

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

**Business Associate Agreement
Between Covered Entity and Business Associate**

This Business Associate Agreement ("Agreement") between Palm Beach County, hereinafter referred to as "Covered Entity," and ESO Solutions, Inc., 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.
4. **Conflict.** This Agreement is hereby incorporated into all past, present and future agreements and relationships between Covered Entity and Business Associate pursuant to which PHI is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity in any form or medium whatsoever. In the event of any conflict between the provisions of any such agreement or relationship and this Agreement, the provisions of this Business Associate Agreement shall prevail.

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 five (5) business days of Business Associate's discovery of the security incident or breach. With regard to a security incident, Business Associate and Covered Entity recognize and agree that the significant number of meaningless attempts to, without authorization, access, use, disclose, modify or destroy ePHI will make real-time reporting formidable. Therefore, Business Associate and Covered Entity agree to the following reporting procedures for security incidents that result in unauthorized access, use, disclosure, modification or destruction of information or interference with system operations ("Successful Security Incidents") and for Security Incidents that do not so result ("Unsuccessful Security Incidents"). For Unsuccessful Security Incidents, Business Associate and Covered Entity agree that this Agreement constitutes notice from Business Associate of such Unsuccessful Security Incidents. By way of example, Covered Entity and Business Associate consider the following to be illustrative of Unsuccessful Security Incidents when they do not result in unauthorized access, use, disclosure, modification or destruction of ePHI or interference with an information system:

1. Pings on Business Associate's firewall,
2. Port Scans,
3. Attempts to log on to a system or enter a database with an invalid password or username, and/or
4. Denial-of-service attacks that do not result in a server being taken off-line.

For Successful Security Incidents, Business Associate shall give notice promptly to Covered Entity in accordance with this Section 3.

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. Subject to the limitations of liability set forth in this Agreement, 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 a business associate agreement with Business Associate which meets HIPAA and HITECH requirements;

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 (as reasonably required and to the extent applicable based on the Business Associate's activities) 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 subject to the limitations of liability set forth in Section 13.2 of this Agreement, 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.

13. LIMITATION OF LIABILITY:

- 13.1 LIMITATION OF DAMAGES. TO THE EXTENT NOT PROHIBITED BY APPLICABLE LAW, AND EXCEPT AS SET FORTH IN SECTION 12 ABOVE, NEITHER BUSINESS ASSOCIATE NOR COVERED ENTITY SHALL BE LIABLE TO THE OTHER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES RELATING TO THIS AGREEMENT.
- 13.2 Specific Liability. Liability shall be limited as follows:
- a) Business Associate's obligations for indemnification under this Agreement shall be limited to \$500,000.
 - b) Damages arising from Business Associate's breach of confidentiality obligations under this Agreement (including a breach of obligations regarding protected health information), shall be limited to \$1,000,000.
 - c) Damages arising from Business Associate's willful misconduct or criminal conduct shall not be limited.
- 13.3 General Liability. Except as expressly provided "specific liability," and to the extent not prohibited by applicable law, Business Associates' maximum aggregate liability for all claims of liability arising out of or in connection with this Agreement shall not exceed the fees paid by (or on behalf of) Covered Entity within the preceding 12-month period under the applicable ordering document giving rise to the claim.

C. Permitted Uses and Disclosures by Business Associate

1. 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.
2. Business Associate may aggregate and/or de-identify data pursuant to HIPAA and its regulations and subject to all the terms of the applicable service agreement between the parties. Any de-identification of PHI will be done by removal of identifiers under 45 CFR 164.514(b)(2). "Data Aggregation" means, with respect to PHI created or received by Business Associate in its capacity as the "Business Associate" under HIPAA of Covered Entity, the combining of such PHI by Business Associate with the PHI received by Business Associate in its capacity as a business associate of one or more other "covered entities" under HIPAA, to permit data analyses that relate to health care operations of the respective covered entities. The meaning of "data aggregation" and "health care operations" in this BAA shall be consistent with the meaning given to said terms in the Privacy Rule. Business Associate may use only data that has been de-identified by removing all identifiers under 45 CFR 164.514(b)(2) to improve Business Associate's Services and for research purposes.

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, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures to those purposes that make the return of the PHI infeasible.

Agreed to this _____ day of _____, 2022.

COVERED ENTITY

WITNESS:

JOSEPH ABRUZZO,
Clerk of the Circuit
Court & Comptroller

PALM BEACH COUNTY, FLORIDA BY
ITS BOARD OF COUNTY
COMMISSIONERS

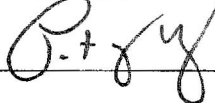
By: _____
Deputy Clerk

By: _____
Robert S. Weinroth, Mayor

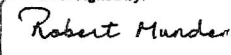
APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: _____

APPROVED AS TO TERMS
AND CONDITIONS

By: _____


BUSINESS ASSOCIATE
ESO Solutions, Inc. DocuSigned by:

By: _____

Signature

Robert Munden,
Chief Legal and Compliance Officer