

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	2012	2013	2014	2015	2016
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>198,683</u>	<u>198,683</u>	<u>204,545</u>	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
NET FISCAL IMPACT	<u>198,683</u>	<u>198,683</u>	<u>204,545</u>	_____	_____
# ADDITIONAL FTE POSITIONS (Cumulative)	_____	_____	_____	_____	_____

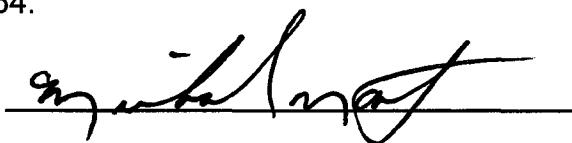
Is Item Included in Proposed Budget? Yes X No _____

Budget Account No.: Fund 1300 Dept 440 Unit 4215 Rev. Source 3401

Reporting Category _____

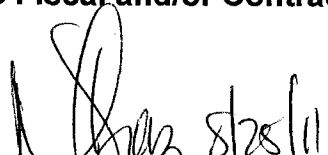
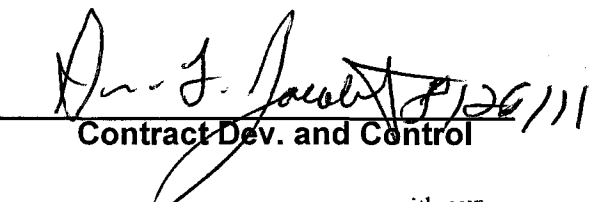
B. Recommended Sources of Funds/Summary of Fiscal Impact:

Source of funds is the Fire Rescue Main MSTU. The financial impact will be the annual expenditure of up to \$195,383.04 for professional services years 1 and 2 of the agreement increasing by 3% to \$201,244.56 for year 3 of the agreement; \$2,500 for travel-related expenses each year of the agreement; and \$800 for subscription/membership-related expenses each year of the agreement, for a total contract cost of \$601,910.64.

C. Departmental Fiscal Review: 

III. REVIEW COMMENTS

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

<p><u></u> 8/28/11 OFMB</p>	<p><u></u> 8/26/11 Contract Dev. and Control</p>
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B. Legal Sufficiency:

 8/29/11
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

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

**PROFESSIONAL SERVICE AGREEMENT BETWEEN PALM BEACH COUNTY
AND DR. THOMAS H. MATESE, JR. FOR MEDICAL DIRECTOR SERVICES**

This Agreement is made as of the _____ day of _____, 2011, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as the COUNTY, and Dr. Thomas H. Matese, JR., 106 Victorian Lane, Jupiter, Florida 33458, hereinafter referred to as the MEDICAL DIRECTOR.

In consideration of the mutual promises contained herein, the COUNTY and the MEDICAL DIRECTOR agree as follows:

ARTICLE 1 - SERVICES

The MEDICAL DIRECTOR'S responsibility under this Agreement is to provide professional services as Medical Director for Palm Beach County Fire Rescue in accordance with Chapter 401, Florida Statutes and Chapter 64J-1, Florida Administrative Code, Rules of the Department of Health, as more specifically set forth in the Scope of Work and specifications detailed in Article 3.

ARTICLE 2 - SCHEDULE

The MEDICAL DIRECTOR shall commence services on October 1, 2011, and complete all services by September 30, 2014.

ARTICLE 3 - SCOPE OF WORK

The following shall outline responsibilities of the Fire Rescue MEDICAL DIRECTOR. This does not limit duties to the following requirements, which may be subject to revision/addition/deletion upon written agreement by both parties.

- A. Attend at least once quarterly a scheduled emergency medical service meeting where discussions will involve patient care, quality, mandated Paramedic and EMT training, Paramedic requirements, addition or deletion of equipment available to Paramedics and EMT's. Ample notice for all such meetings will be supplied by the Operations Division.
- B. The MEDICAL DIRECTOR, will be available via radio or telephone communication on a 24 hour a day, 7 days per week basis for on line medical control. Notwithstanding anything to the contrary contained herein, the MEDICAL DIRECTOR may use reasonable discretion in determining the appropriateness of his response to calls.
- C. The MEDICAL DIRECTOR shall ride with District Captains and/or rescue units a minimum of eight (8) hours per month to evaluate the skills and maintain a working relationship with EMT's, assigned Paramedics and probationary Paramedics. This ride time will be scheduled on a rotational basis, within the Battalions.
- D. The MEDICAL DIRECTOR shall actively participate in the Department's Continuous Quality Improvement Program, including peer review committee meetings.

- E. As part of the Continuous Quality Improvement Program, the MEDICAL DIRECTOR shall assist the Department in obtaining patient outcome information from local hospitals.
- F. The MEDICAL DIRECTOR shall spend a minimum of one (1) hour per month in Dispatch/Medcom as observation time for Continuous Quality Improvement purposes.
- G. The MEDICAL DIRECTOR shall have a working knowledge of the Incident Command System and be part of the Dispatch Protocols followed by Palm Beach County Fire Rescue.
- H. At the discretion of the Deputy Chief of Operations, the MEDICAL DIRECTOR shall assist in the development of protocols, policies and procedures as they relate to emergency service personnel and the delivery of Emergency Medical Services.
- I. At the discretion of the Deputy Chief of Operations, the MEDICAL DIRECTOR shall participate in and direct Department Advanced Cardiac Life Support (ACLS), International Trauma Life Support (ITLS) and Pre-Hospital Trauma Life Support (PHTLS) classes. The MEDICAL DIRECTOR shall, upon request of the Training Division, evaluate Palm Beach County Fire Rescue Emergency Medical Technicians and Paramedical personnel during training exercises. The MEDICAL DIRECTOR shall review and approve the content of EMS training for medical correctness at the request of the Deputy Chief of Operations.
- J. The MEDICAL DIRECTOR shall be physically present in the Palm Beach County Fire Rescue Administrative offices on an as needed basis, in order to confer with the Deputy Chief of Operations and other designated staff. All official meetings attended by the MEDICAL DIRECTOR which have been approved by the Deputy Chief of Operations, will be recognized as part of the normal job duties of the MEDICAL DIRECTOR.
- K. As required under Chapter 401, Florida Statutes, and Chapter 64J-1, F.A.C., the MEDICAL DIRECTOR shall develop, review and authorize use of ALS and BLS protocols which allow personnel to properly manage medical emergencies. Such protocols shall be specific in nature and shall provide for managing immediately life-threatening medical emergencies. As required by Section 401.265 Florida Statutes and Rule 64J-1.004, F.A.C., the MEDICAL DIRECTOR shall supervise and assume direct responsibility for the medical performance of all EMT's and paramedics operating for Palm Beach County Fire Rescue, including both ground and aeromedical personnel. The MEDICAL DIRECTOR shall develop any other protocols as required by Chapter 401, Florida Statutes, or Chapter 64J-1, F.A.C., as they may be amended from time to time.
- L. The MEDICAL DIRECTOR shall supervise the implementation and maintenance of a Continuous Quality Improvement Program as required by section 401.265 Florida Statutes and Rule 64J-1.004 F.A.C., to include spot-checking medical reports for completion and correctness. The Continuous Quality Improvement Program must cover dispatch, field paramedics, Emergency Medical Technician's (EMT's) and Flight Medics.
- M. The MEDICAL DIRECTOR shall review and provide written affirmation of recertification training of Palm Beach County Fire-Rescue EMT and Paramedic personnel in accordance with Section 401.2715(3), Florida Statutes.

- N. It shall be the obligation of the MEDICAL DIRECTOR to contract for the professional services of an Associate Medical Director for the duration of this agreement and at no additional cost to the COUNTY, to assist the Fire Rescue MEDICAL DIRECTOR in providing Medical control for the Fire Rescue Department. The Associate Medical Director shall meet all the qualifications for a medical director as set forth in Rule 64J-1.004 F.A.C. and Section 401.265, Florida Statutes, and shall be approved by the COUNTY'S Deputy Chief of Operations prior to being appointed by the MEDICAL DIRECTOR and commencing services. Any change in the Associate Medical Director must likewise be approved by the COUNTY'S Deputy Chief of Operations prior to being appointed by the MEDICAL DIRECTOR.

The duties of the Associate Medical Director shall be the same as those duties identified in paragraphs A-J of this Article. These services shall be in addition to those performed by the MEDICAL DIRECTOR under paragraphs A-J of this Article and shall not relieve the MEDICAL DIRECTOR of his responsibilities to also perform those duties identified in paragraphs A-J of this Article, as well as all other duties established by this Agreement and any applicable laws and regulations. The MEDICAL DIRECTOR shall be fully responsible to the COUNTY for the performance of the Associate Medical Director. The COUNTY shall look to the MEDICAL DIRECTOR to promptly remedy any deficiency of performance by the Associate Medical Director. It is further understood and agreed between the parties to this Agreement that all of the legal duties and responsibilities of a medical director as set forth in Chapter 401, Florida Statutes, Rule 64J-1.004 F.A.C., and any other applicable laws and regulations, shall remain with the MEDICAL DIRECTOR for Palm Beach County Fire Rescue, who shall remain fully and solely responsible to the COUNTY for all such duties and responsibilities. The Associate Medical Director's performance is intended to supplement the MEDICAL DIRECTOR in providing medical control for the Fire Rescue Department and does not in anyway relieve the MEDICAL DIRECTOR of his responsibilities and duties as the Medical Director for Palm Beach County Fire Rescue.

Prior to contracting with the Associate Medical Director, the MEDICAL DIRECTOR shall obtain the Deputy Chief of Operation's approval of the contract and any amendments thereto, between the MEDICAL DIRECTOR and the Associate Medical Director. All payments to the Associate Medical Director shall be the sole responsibility of the MEDICAL DIRECTOR.

- O. The MEDICAL DIRECTOR shall provide Fire Rescue with a monthly report detailing all activities performed, including those of the Associate Medical Director, with reference to the requirements of the Agreement. COUNTY shall provide administrative support in order for the MEDICAL DIRECTOR to meet the obligations of this paragraph. Back-up physicians may be used in lieu of the MEDICAL DIRECTOR and/or Associate Medical Director for on-line medical control upon prior approval by the Deputy Chief of Operations. Back-up physicians, when used, shall meet all the qualifications for a medical director as set forth in Rule 64J-1.004 F.A.C. and Section 401.265, Florida Statutes, and shall be at no additional cost to the COUNTY.
- P. The MEDICAL DIRECTOR will be allowed up to four (4) weeks vacation, annually, during the term of this Agreement, during which time the Associate Medical Director or an approved back-up physician shall be available.
- Q. Active participation by the MEDICAL DIRECTOR in Local, State, and National EMS organizations is encouraged and expected by the Department. Upon prior approval by the Deputy

Chief of Operations, the MEDICAL DIRECTOR shall be reimbursed for all reasonable travel expenses when attending such organizations outside of Palm Beach County. Such reimbursements shall not exceed \$2,500.00 annually. Upon prior approval by the Deputy Chief of Operations, the MEDICAL DIRECTOR shall be reimbursed for Subscription and Membership expenses for subscriptions and memberships related to medical direction, as approved by the Deputy Chief of Operations, up to an amount not to exceed \$800.00 annually.

- R. The MEDICAL DIRECTOR shall perform all other services required of a medical director, and assume all legal duties and responsibilities of a medical director, as provided for by Section 401.265, Florida Statutes, Chapter 64J-1 F.A.C., and any other applicable laws and regulations, all as may be amended from time to time.

ARTICLE 4 - PAYMENTS TO MEDICAL DIRECTOR

- A. The total amount to be paid by the COUNTY under this Agreement for all services and materials, including "out of pocket" expenses for travel, subscriptions and memberships (as indicated in paragraphs B and C of this Article), shall not exceed a total Agreement amount of Six Hundred and One Thousand, Nine Hundred and Ten Dollars, and Sixty Four Cents (\$601,910.64) for Agreement period October 1, 2011 through September 30, 2014.

The MEDICAL DIRECTOR will bill the COUNTY on a monthly basis for services rendered toward the completion of the Scope of Work, Article 3. Invoices shall be paid based on Sixteen Thousand, Two Hundred and Eighty-one Dollars, and Ninety-two Cents (\$16,281.92) monthly fee for years 1 and 2 of the Agreement, and based on Sixteen Thousand, Seven Hundred and Seventy Dollars, and Thirty Eight Cents (\$16,770.38) monthly fee for year 3 of the Agreement for services satisfactorily performed, which fees shall include the professional services of the MEDICAL DIRECTOR and the Associate Medical Director and all other services performed under this Agreement.

- B. Out-of-pocket travel expenses authorized for reimbursement under Article 3 paragraph Q above, shall not exceed Two Thousand Five Hundred Dollars (\$2,500.00) annually, for a total Agreement amount of Seven Thousand Five Hundred Dollars (\$7,500.00). All requests for payment of "out-of-pocket" travel expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid receipts, invoices or other documentation acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and necessary in the performance of the scope of work described in this Agreement. Any travel, per diem, mileage, meals or lodging expenses, which may be reimbursable under the terms of this Agreement, will be paid in accordance with the rates and conditions set forth in Section 112.061, Florida Statutes.
- C. Subscription and membership expenses authorized for payment by the Deputy Chief of Operations shall not exceed Eight Hundred Dollars (\$800.00) annually, for a total Agreement amount of Two Thousand Four Hundred Dollars (\$2,400.00). All requests for "out-of-pocket" subscription and membership expenses eligible for reimbursement under the terms of this Agreement shall include copies of paid invoices or other documents acceptable to the Palm Beach County Finance Department. Such documentation shall be sufficient to establish that the expense was actually incurred and approved by the Fire-Rescue Administrator, or designee, for reimbursement.

- D. Invoices received from the MEDICAL DIRECTOR pursuant to this Agreement will be reviewed and approved by the Deputy Chief of Operations, indicating that services have been rendered in conformity with the Agreement and then will be sent to the Finance Department for payment. Invoices shall be paid within thirty (30) days following the COUNTY representative's approval.
- E. Final Invoice: In order for both parties herein to close their books and records, the MEDICAL DIRECTOR will clearly state "final invoice" on the MEDICAL DIRECTOR'S final/last billing to the COUNTY. This certifies that all services have been properly performed and all charges and costs have been invoiced to Palm Beach County.
- F. Truth-In-Negotiation Certificate: Signature of this Agreement by the MEDICAL DIRECTOR shall also act as the execution of a truth-in-negotiation certificate certifying that the wage rates, over-head charges, and other costs used to determine the compensation provided for in this Agreement are accurate, complete and current as of the date of the Agreement and no higher than those charged the MEDICAL DIRECTOR'S most favored customer for the same or substantially similar service.
The said rates and costs shall be adjusted to exclude any significant sums should the COUNTY determine that the rates and costs were increased due to inaccurate, incomplete or noncurrent wage rates or due to inaccurate representations of fees paid to outside consultants. The COUNTY shall exercise its rights under this paragraph F within three (3) years following final payment.

ARTICLE 5 - DUTIES AND RESPONSIBILITIES OF THE COUNTY

- A. Meet or exceed all applicable standards and requirements of the State of Florida for certification as an Advanced Life Support Provider and shall become and remain so certified by the State.
- B. The COUNTY shall verify that its Emergency Medical Technicians and Paramedics become and remain certified as appropriate under the laws of the State of Florida.
- C. The COUNTY shall provide an administrative liaison to the MEDICAL DIRECTOR through the Fire-Rescue Administrator, and will cooperate to the greatest possible extent in the delivery of competent emergency medical care.
- D. The COUNTY shall provide facilities and maintain an appropriate environment to evaluate and enhance the medical skills and knowledge of the Paramedics and EMT's working with the MEDICAL DIRECTOR'S authorization.
- E. The COUNTY shall maintain at its cost and expense all radio and communications equipment used by the MEDICAL DIRECTOR and the Associate Medical Director in the performance of their duties.
- F. The COUNTY shall provide, at Fire-Rescue Headquarters, office space, furnishings, office supplies, clerical assistance and access to the department computer to obtain EMS data.

- G. The COUNTY shall provide the appropriate equipment and personnel necessary to institute a Continuous Quality Improvement program meeting all requirements of the State and County.
- H. The COUNTY shall provide, for both the MEDICAL DIRECTOR and Associate Medical Director's use, a laptop computer and remote access to Fire-Rescue's CAD/RMS, in order for the MEDICAL DIRECTOR to fulfill his obligations under this Agreement. All equipment shall remain the property of the COUNTY.

ARTICLE 6 - BUSINESS ASSOCIATE AGREEMENT

As a business associate of the COUNTY, the MEDICAL DIRECTOR, including his agents, servants, subcontractors, Associate Medical Director, back-up physicians and employees, shall carry out its obligations under this Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("HITECH"), and regulations promulgated thereunder ("HIPAA Regulations"), all as may be amended from time to time.

The MEDICAL DIRECTOR and the COUNTY shall enter into the Business Associate Agreement ("BAA") attached hereto as Exhibit A, which is hereby incorporated herein as a part of this Agreement. Any reference in the BAA to an underlying service agreement shall mean this Agreement between the parties for Medical Director Services. The MEDICAL DIRECTOR shall require and ensure that any business associates, agents and/or subcontractors, including the Associate Medical Director and back-up physicians, to whom the MEDICAL DIRECTOR provides protected health information, or who otherwise have access to protected health information, agree in writing to be bound by the same restrictions and conditions that apply to the MEDICAL DIRECTOR with respect to such protected health information.

The MEDICAL DIRECTOR shall protect, defend, reimburse, indemnify, and hold the COUNTY, its agents, employees and elected officers, harmless from and against all claims, liability, expense, loss, cost, penalties, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising as a result of the acts or omissions of the MEDICAL DIRECTOR, the Associate Medical Director, and/or any back-up physicians, including their respective agents, employees, servants and subcontractors, relating to the duties and obligations imposed by HIPAA, HITECH, HIPAA Regulations, the BAA, and/or any other business associate agreements relating to the services provided hereunder.

ARTICLE 7 - TERMINATION

This Agreement may be terminated by the MEDICAL DIRECTOR upon sixty (60) days prior written notice to the COUNTY'S representative in the event of substantial failure by the COUNTY to perform in accordance with the terms of this Agreement through no fault of the MEDICAL DIRECTOR. It may also be terminated by mutual agreement of both parties upon (30) days prior written notice and, in whole or in part, by the COUNTY, with or without cause upon thirty (30) days prior written notice to the MEDICAL DIRECTOR. Unless the MEDICAL DIRECTOR is in breach of this Agreement, the MEDICAL DIRECTOR shall be paid for services rendered to the COUNTY'S satisfaction through the date of termination. After receipt of a Termination Notice and except as otherwise directed by the COUNTY, the MEDICAL DIRECTOR shall:

- A. Stop work on the date and to the extent specified.
- B. Terminate and settle all orders and subcontracts relating to the performance of the terminated work.
- C. Transfer all work in process, completed work, and other materials related to the terminated work to the COUNTY.
- D. Continue and complete all parts of the work that have not been terminated.

ARTICLE 8 - FEDERAL AND STATE TAX

The COUNTY is exempt from payment of Florida State Sales and Use Taxes. The COUNTY will sign an exemption certificate submitted by the MEDICAL DIRECTOR. The MEDICAL DIRECTOR shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the COUNTY, nor is the MEDICAL DIRECTOR authorized to use the COUNTY'S Tax Exemption Number in securing such materials.

The MEDICAL DIRECTOR shall be responsible for payment of its own and its share of its employees payroll, payroll taxes, and benefits with respect to this Agreement.

ARTICLE 9 - AVAILABILITY OF FUNDS

The COUNTY'S performance and obligation to pay under this Agreement is contingent upon an annual appropriation for its purpose by the Board of County Commissioners.

ARTICLE 10 - INSURANCE

- A. Without waiving the right to sovereign immunity as provided by Florida Statute 768.28, the COUNTY shall agree to provide liability insurance coverage for the MEDICAL DIRECTOR'S negligent acts, errors, or omissions, but only with respect to his duties as MEDICAL DIRECTOR on behalf of the COUNTY. Such coverage shall also be extended to the Associate Medical Director and back-up physicians, with respect to their medical direction duties to the COUNTY, provided said physicians have been approved by the COUNTY'S Deputy Chief of Operations.

Coverage is afforded under the COUNTY'S SELF-INSURED RETENTION PLAN and SPECIFIC EXCESS INSURANCE POLICY as follows:

SELF-INSURED RETENTION PLAN
 \$500,000 Each Occurrence Self-Insured Retention

SPECIFIC EXCESS INSURANCE POLICY
 \$500,000 Each Occurrence Combined Single Limit

- B. The COUNTY reserves the right, but not the obligation, to purchase separate liability insurance on behalf of the MEDICAL DIRECTOR, the Associate Medical Director and back-up physicians in lieu of providing the coverage as mentioned above.

- C. The requirements contained herein are not intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by the MEDICAL DIRECTOR under this Agreement.

ARTICLE 11 - INDEMNIFICATION

The MEDICAL DIRECTOR shall protect, defend, reimburse, indemnify and hold COUNTY, its agents, employees and elected officers harmless from and against all claims, liability, expense, loss, cost, damages or causes of action of every kind or character, including attorney's fees and costs, whether at trial or appellate levels or otherwise, arising during and as a result of the performance of the terms of this Agreement or due to the acts or omissions of the MEDICAL DIRECTOR, the Associate Medical Director, and/or any back-up physicians, including their respective agents, servants employees and subcontractors.

ARTICLE 12 - SUCCESSORS AND ASSIGNS

The COUNTY and the MEDICAL DIRECTOR each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement; however neither the COUNTY nor the MEDICAL DIRECTOR shall assign, sublet, convey or transfer its interest in this Agreement without the prior written consent of the other, except that MEDICAL DIRECTOR may assign its right to receive payment. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer, employee or agent of the COUNTY. Nothing in this Agreement shall be construed as giving any rights or benefits hereunder to anyone other than the COUNTY and the MEDICAL DIRECTOR.

ARTICLE 13 - REMEDIES

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce the Agreement shall be held in Palm Beach County. No remedy herein conferred upon any party is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party of any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

ARTICLE 14 - CONFLICT OF INTEREST

The MEDICAL DIRECTOR represents that it presently has no known interest and shall acquire no interest, either direct or indirect, which would conflict in any manner with the performance of services required hereunder, as provided for in Chapter 112, Part III, Florida Statutes, and the Palm Beach County Code of Ethics. The MEDICAL DIRECTOR further represents that no person having any such conflict of interest shall be employed, contracted or appointed for said performance of services. The MEDICAL DIRECTOR shall promptly notify the COUNTY'S representative, in writing, by certified mail, of all potential conflicts of interest of any prospective business association, interest or other circumstance which may influence or appear to influence the MEDICAL DIRECTOR'S judgement or quality of services being provided hereunder. Such written notification shall identify the prospective business association, interest or circumstance, the nature of work that the MEDICAL DIRECTOR may undertake and request an opinion of the COUNTY as to whether the association, interest or

circumstance would, in the opinion of the COUNTY, constitute a conflict of interest if entered into by the MEDICAL DIRECTOR. The COUNTY agrees to notify the MEDICAL DIRECTOR of its opinion by certified mail within thirty (30) days of receipt of notification by the MEDICAL DIRECTOR. If, in the opinion of the COUNTY, the prospective business association, interest or circumstance would not constitute a conflict of interest by the MEDICAL DIRECTOR, the COUNTY shall so state in the notification and the MEDICAL DIRECTOR shall, at its option, enter into said association, interest or circumstance and it shall be deemed not in conflict of interest with respect to services provided to the COUNTY by the MEDICAL DIRECTOR under the terms of this Agreement.

ARTICLE 15 - ARREARS

The MEDICAL DIRECTOR shall not pledge the COUNTY'S credit or make it a guarantor of payment or surety for any contract, debt, obligation, judgement, lien, or any form of indebtedness. The MEDICAL DIRECTOR further warrants and represents that it has no obligation or indebtedness that would impair its ability to fulfill the terms of this Agreement.

ARTICLE 16 - DISCLOSURE AND OWNERSHIP OF DOCUMENTS

The MEDICAL DIRECTOR shall deliver to the COUNTY'S representative for approval and acceptance, and before being eligible for final payment of any amounts due, all documents and materials prepared by and for the COUNTY under this Agreement.

To the extent permitted by law, all written and oral information not in the public domain or not previously known, and all information and data obtained, developed, or supplied by the COUNTY or at its expense, will be kept confidential by the MEDICAL DIRECTOR and will not be disclosed to any other party, directly or indirectly, without the COUNTY'S prior written consent unless required by a lawful order or otherwise required by law. All drawings, maps, sketches, programs, data base, reports and other data developed, or purchased, under this Agreement for or at the COUNTY'S expense shall be and remain the COUNTY'S property and may be reproduced and reused at the discretion of the COUNTY.

The COUNTY and the MEDICAL DIRECTOR shall comply with the provisions of Chapter 119, Florida Statute (Public Records Law), HIPAA, HITECH, HIPAA Regulations, and any other applicable laws relating to records and/or confidentiality of records.

All covenants, agreements, representations and warranties made herein, or otherwise made in writing by any party pursuant hereto, including but not limited to any representations made herein relating to disclosure or ownership of documents, shall survive the execution and delivery of this Agreement and the consummation of the transactions contemplated hereby.

Notwithstanding any other provision in this Agreement, all documents, records, reports and any other materials produced hereunder shall, to the extent permitted by law, be subject to disclosure, inspection and audit, pursuant to the Office of Inspector General, Palm Beach County, Florida Ordinance, Palm Beach County Code, Sections 2-421 – 2-440, as may be amended from time to time.

ARTICLE 17 – PERSONNEL

The MEDICAL DIRECTOR represents that it has, or will secure at its own expense, all necessary

personnel required to perform the services under this Agreement. Such personnel shall not be employees of or have any contractual relationship with the COUNTY.

All of the services required hereunder shall be performed by the MEDICAL DIRECTOR or under its supervision, and all personnel engaged in performing the services shall be fully qualified and, if required, authorized or permitted under state and local law to perform such services. No subcontractors shall be used to perform any services under this Agreement unless specifically authorized herein and with the prior approval of the COUNTY.

The MEDICAL DIRECTOR warrants that all services shall be performed by skilled and competent personnel to the highest professional standards in the field. All of the MEDICAL DIRECTOR'S personnel (and all subcontractors), while on County premises, will comply with all COUNTY requirements governing conduct, safety and security.

ARTICLE 18 - INDEPENDENT CONTRACTOR RELATIONSHIP

The MEDICAL DIRECTOR is, and shall be, in the performance of all work services and activities under this Agreement, an Independent Contractor, and not an employee, or servant of the COUNTY. All persons engaged in any of the work or services performed pursuant to this Agreement shall at all times, and in all places, be subject to the MEDICAL DIRECTOR'S sole direction, supervision, and control. The MEDICAL DIRECTOR shall exercise control over the means and manner in which it and its employees, agents, subcontractors, Associate Medical Director and back-up physicians perform the work, and in all respects the MEDICAL DIRECTOR'S relationship, and the relationship of its employees, agents, subcontractors, Associate Medical Director and back-up physicians, to the COUNTY shall be that of an Independent Contractor and not as employees or agents of the COUNTY. The MEDICAL DIRECTOR, the Associate Medical Director and all back-up physicians shall comply with all COUNTY policies concerning conduct and security when performing services hereunder. The MEDICAL DIRECTOR does not have the power or authority to bind the COUNTY in any promise, agreement or representation other than specifically provided for in this Agreement.

ARTICLE 19 - ACCESS AND AUDITS

The MEDICAL DIRECTOR shall maintain adequate records to justify all charges, expenses, and costs incurred in estimating and performing the work for at least three (3) years after completion or termination of this Agreement. The COUNTY shall have access to such books, records, and documents as required in this section for the purpose of inspection or audit during normal business hours, at the MEDICAL DIRECTOR'S place of business.

Palm Beach County has established the Office of the Inspector General in Palm Beach County Code, Section 2-421 - 2-440, as may be amended. To the extent permitted by law, the Inspector General's authority includes but is not limited to the power to review past, present and proposed County contracts, transactions, accounts and records, to require the production of records, and to audit, investigate, monitor, and inspect the activities of the MEDICAL DIRECTOR, its officers, agents, employees, and lobbyists in order to ensure compliance with contract requirements and detect corruption and fraud.

Failure to cooperate with the Inspector General or interfering with or impeding any investigation shall be in violation of Palm Beach County Code, Section 2-421 - 2-440, and punished pursuant to Section 125.69, Florida Statutes, in the same manner as a second degree misdemeanor.

ARTICLE 20 - NONDISCRIMINATION

The MEDICAL DIRECTOR warrants and represents that all of its employees are treated equally during employment without regard to race, sex, sexual orientation, gender identity or expression, color, religion, disability, age, marital status, familial status, national origin, or ancestry; and that no person shall, based on any of these grounds, be excluded from the benefits of, or be subjected to any form of discrimination under, any activity carried out by the performance of this Agreement.

ARTICLE 21 - ENFORCEMENT COSTS

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provisions of this Agreement, each party shall bear its own attorney's fees and costs.

ARTICLE 22 - AUTHORITY TO PRACTICE

The MEDICAL DIRECTOR hereby represents and warrants that he and the Associate Medical Director have and will continue to maintain all licenses and approvals required to conduct their business, and that they will at all times conduct their business activities in a reputable manner. Proof of such licenses and approvals shall be submitted to the COUNTY'S representative upon request. The MEDICAL DIRECTOR further represents and warrants that he, the Associate Medical Director and any back-up physicians possess and will continue to maintain the requisite qualifications, knowledge and experience required of a medical director by Section 401.265, Florida Statutes and Rule 64J-1.004, F.A.C., and any other applicable laws and regulations.

ARTICLE 23 - SEVERABILITY

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such terms or provisions to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected, and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

ARTICLE 24 - ENTIRETY OF CONTRACTUAL AGREEMENT

The COUNTY and the MEDICAL DIRECTOR agree that this Agreement sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein. None of the provisions, terms and conditions contained in this Agreement may be added to, modified, superseded or otherwise altered, except by written instrument executed by the parties hereto in accordance with Article 26 - Modifications of Work, or otherwise by a duly authorized amendment to this Agreement.

ARTICLE 25 - PUBLIC ENTITY CRIMES

As provided in Florida Statute 287.132-133, by entering into this Agreement or performing any work in furtherance hereof, the MEDICAL DIRECTOR certifies that it, its affiliates, suppliers, subcontractors and consultants who will perform hereunder, have not been placed on the convicted vendor list maintained by the State of Florida Department of Management Services within the 36 months

immediately preceding the date hereof. This notice is required by Florida Statute 287.133(3)(a).

ARTICLE 26 - MODIFICATIONS OF WORK

The COUNTY reserves the right to make changes in Scope of Work, including alterations, reductions therein or additions thereto. Upon receipt by the MEDICAL DIRECTOR of the COUNTY'S notification of a contemplated change, the MEDICAL DIRECTOR shall, in writing: (1) provide a detailed estimate for the increase or decrease in cost due to the contemplated change, (2) notify the COUNTY of any estimated change in the completion date, and (3) advise the COUNTY if the contemplated change shall affect the MEDICAL DIRECTOR'S ability to meet the completion dates or schedules of this Agreement.

If the COUNTY so instructs in writing, the MEDICAL DIRECTOR shall suspend work on that portion of the Scope of Work affected by a contemplated change, pending the COUNTY'S decision to proceed with the change.

If the COUNTY elects to make the change, the COUNTY shall initiate an Agreement Amendment and the MEDICAL DIRECTOR shall not commence work on any such change until such written amendment is signed by the MEDICAL DIRECTOR and approved and executed by the Board of County Commissioners for Palm Beach County.

ARTICLE 27 - NOTICE

All notices required in this Agreement shall be sent by certified mail, return receipt requested, and if sent to the COUNTY'S representative shall be mailed to:

Fire Rescue Administrator
Palm Beach County Fire Rescue
405 Pike Road
West Palm Beach, Florida 33411

and if sent to the MEDICAL DIRECTOR shall be mailed to:

Dr. Thomas H. Matese Jr.
106 Victorian Lane
Jupiter, Florida 33458

ARTICLE 28 - CONTINGENT FEES

The MEDICAL DIRECTOR warrants that it has not employed or retained any company or person, other than a bona fide employee working solely for the MEDICAL DIRECTOR to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm, other than a bona fide employee working solely for the MEDICAL DIRECTOR, any fee, commission, percentage, gift, or any other consideration contingent upon or resulting from the award or making of this Agreement.

ARTICLE 29 - CRIMINAL HISTORY RECORDS CHECK

The MEDICAL DIRECTOR shall comply with the provisions of Ordinance 2003-030, the Criminal History Records Check Ordinance (“Ordinance”), if MEDICAL DIRECTOR, its employees or subcontractors are required under this Agreement to enter a “critical facility” as identified in Resolution R-2003-1274. The MEDICAL DIRECTOR acknowledges and agrees that it and all employees and subcontractors who are to enter a “critical facility” will be subject to a fingerprint based criminal history records check. Although COUNTY agrees to pay for all applicable FDLE/FBI fees required for criminal history record checks, the MEDICAL DIRECTOR shall be solely responsible for the financial, schedule, and staffing implications associated in complying with Ordinance 2003-030.

ARTICLE 30 - REGULATIONS; LICENSING REQUIREMENTS

The MEDICAL DIRECTOR shall comply with all laws, ordinances and regulations applicable to the services contemplated herein, to include those applicable to conflict of interest and collusion. MEDICAL DIRECTOR is presumed to be familiar with all federal, state and local laws, ordinances, codes and regulations that may in any way affect the services offered.

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IN WITNESS WHEREOF, the Board of County Commissioners of Palm Beach County, Florida has made and executed this Agreement on behalf of the COUNTY and MEDICAL DIRECTOR has hereunto set its hand the day and year above written.

ATTEST:
SHARON R. BOCK, Clerk
& Comptroller

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


By: _____
Deputy Clerk

By: _____
Karen T. Marcus, Chair

Approved as to form and
Legal sufficiency

Approved as to terms and Conditions

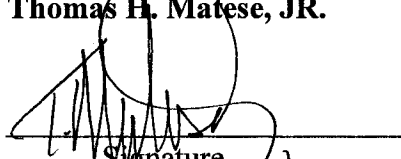
By: 
Assistant County Attorney

By: 
Fire-Rescue Department

WITNESS:

MEDICAL DIRECTOR
Thomas H. Matese, JR.


Signature


Signature

ELLA E. KOEHL.
Name (type or print)

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement is made as of the _____ day of _____, 2011, by and between Palm Beach County, a Political Subdivision of the State of Florida, by and through its Board of County Commissioners, hereinafter referred to as "Covered Entity" or "County", and Dr. Thomas H. Matese, JR., 106 Victorian Lane, Jupiter, Florida 33458, hereinafter referred to "Business Associate" or "Medical Director".

RECITALS

WHEREAS, Covered Entity has engaged Business Associate to perform services or provide goods, or both;

WHEREAS, Covered Entity possesses Individually Identifiable Health Information that is protected under HIPAA, HIPAA Regulations and HITECH Standards (each as hereinafter defined) and is permitted to use or disclose such information only in accordance with such laws and regulations;

WHEREAS, Business Associate may receive such information from Covered Entity, or create and receive such information on behalf of Covered Entity, in order to perform certain of the services or provide certain of the goods, or both; and

WHEREAS, Covered Entity wishes to ensure that Business Associate will appropriately safeguard Individually Identifiable Health Information;

NOW THEREFORE, Covered Entity and Business Associate agree as follows:

1. Definitions.

The parties agree that the following terms, when used in this Business Associate Agreement (hereinafter referred to as "Agreement") shall have the following meanings, provided that the terms set forth below shall be deemed to be modified to reflect any changes made to such terms from time to time as defined in HIPAA Privacy Regulations and HITECH Standards.

a. "*Breach*" shall mean the acquisition, access, use, or disclosure of Protected Health Information in a manner not permitted under 45 C.F.R. Part 164, Subpart E (the "HIPAA Privacy Rule") which compromises the security or privacy of the Protected Health Information. "Breach" shall not include:

(1) Any unintentional acquisition, access, or use of Protected Health Information by a workforce member or person acting under the authority of Covered Entity or Business Associate, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under HIPAA Privacy Rule; or

(2) Any inadvertent disclosure by a person who is authorized to access Protected Health Information at Covered Entity or Business Associate to another person authorized to access Protected Health Information at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under HIPAA Privacy Rule; or

(3) A disclosure of Protected Health Information where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

b. "*Business Associate*" means the Medical Director. The Medical Director is, with respect to Covered Entity, a business associate as defined in HIPAA Regulations. The Medical Director is referred to herein as "Business Associate".

c. "*Covered Entity*" means the County. The County, on behalf of its Fire-Rescue Department, is a covered entity as defined in HIPAA Regulations, and is referred to herein as "Covered Entity".

d. "*Data Aggregation*" means, with respect to PHI created or received by Business Associate in its capacity as a business associate 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 another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

e. "*Electronic Protected Health Information*" or "*ePHI*" means Protected Health Information that is transmitted by or maintained in electronic media as defined in HIPAA Regulations.

f. "*HIPAA*" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.

g. "*HIPAA Regulations*" means regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart E and to protect the security of Electronic Protected Health Information, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, Subpart A and Subpart C.

h. "*HITECH Standards*" means the privacy, security and security Breach notification provisions applicable to business associates under Subtitle D of the Health Information Technology for Economic and Clinical Health Act ("*HITECH*"), Title XIII of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and any regulations promulgated thereunder.

i. "*Individually Identifiable Health Information*" means information that is a subset of Health Information, including demographic information collected from an individual, and;

(1) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and

(2) relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual; or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

j. "*Protected Health Information*" or "*PHI*" means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. § 1232g, records described at 20 U.S.C. § 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.

k. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, HIPAA Privacy Regulations and HITECH Standards.

2. Status of Parties.

Business Associate hereby acknowledges and agrees that the County, on behalf of its Fire-Rescue Department, is a covered entity as defined in HIPAA Regulations, and that the Medical Director is a business associate, as defined in HIPAA Regulations, of the County.

3. Permitted Uses and Disclosures.

a. *Performance of Services.* Business Associate may use and disclose PHI in connection with the performance of services if such use or disclosure of PHI would not violate HIPAA, HIPAA Regulations, or HITECH Standards if done by Covered Entity or such use or disclosure is expressly permitted under Section 3.b. or 3.c. of this Agreement.

b. *Proper Management and Administration.* Business Associate may use PHI for the proper management and administration of Business Associate in connection with the performance of services described in any underlying Service Agreement and as permitted by this Agreement. Business Associate may disclose PHI for such proper management and administration of Business Associate only with the prior consent of Covered Entity. Any such disclosure of PHI shall only be made if Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that:

(1) the PHI will be held confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person; and

(2) Business Associate will be notified by such person of any instances of which it becomes aware in which the confidentiality of the PHI has been Breached.

c. *Other Permitted Uses.* Unless otherwise limited herein, Business Associate may also:

(1) perform Data Aggregation for the Health Care Operations of Covered Entity;

(2) use, analyze, and disclose the PHI in its possession for the public health activities and purposes set forth at 45 C.F.R. § 164.512(b); and

(3) de-identify any and all PHI provided that Business Associate implements de-identification criteria in accord with 45 C.F.R. §164.514(b).

4. Nondisclosure.

a. *As Provided In Agreement.* Business Associate shall not use or further disclose PHI except as permitted or required by this Agreement.

b. *Disclosures Required By Law.* Business Associate shall not, without the prior written consent of Covered Entity, disclose any PHI on the basis that such disclosure is required by law without notifying Covered Entity so that Covered Entity shall have an opportunity to object to the disclosure and to seek appropriate relief. If Covered Entity objects to such disclosure, Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all alternatives for relief. Business Associate shall require reasonable assurances from persons receiving PHI in accordance with Section 3.b. hereof that such persons will provide Covered Entity with similar notice and opportunity to object before disclosing PHI on the basis that such disclosure is required by law.

c. *Additional Restrictions.* If Covered Entity notifies Business Associate that Covered Entity has agreed to be bound by additional restrictions on the uses or disclosures of PHI pursuant to HIPAA, HIPAA Regulations or HITECH Standards, Business Associate shall be bound by such additional restrictions and shall not disclose PHI in violation of such additional restrictions.

5. Safeguards, Reporting, Mitigation and Enforcement.

a. *Safeguards.* Business Associate shall use appropriate safeguards to prevent use or disclosure of PHI otherwise than as provided by this Agreement. Business Associate further agrees to use appropriate administrative, physical and technical safeguards to protect the confidentiality, integrity and availability of ePHI in accordance with HIPAA Regulations and HITECH Standards.

b. *Business Associate's Agents.* Business Associate shall ensure that any agents, including subcontractors, to whom it discloses or provides access to PHI agree in writing to be bound by the same restrictions and conditions that apply to Business Associate with respect to such PHI; provided, however, that Business Associate shall not disclose or provide access to PHI to any subcontractor or agent without the prior written consent of Covered Entity.

c. *Reporting.* Business Associate shall report immediately to Covered Entity any use or disclosure of PHI in violation of this Agreement or applicable law of which it becomes aware. Business Associate shall further report immediately to Covered Entity any security incident (as defined by HIPAA Regulations, as amended) of which it becomes aware. In addition, Business Associate shall immediately report to Covered Entity any Breach consistent with regulations promulgated under HITECH by the United States Department of Health and Human Services at 45 C.F.R. Part 164, Subpart D. If requested by Covered Entity, Business Associate shall provide any breach notifications required by HITECH Standards. In this event, Business Associate shall provide Covered Entity with documentation of Business Associate's actions, including documentation of the names and addresses of those to whom the notifications were provided.

d. *Mitigation.* Business Associate shall have procedures in place to mitigate, to the maximum extent practicable, any deleterious effect from any use or disclosure of PHI in violation of this Agreement or applicable law. Business Associate shall provide Covered Entity with documentation of Business Associate's mitigation actions.

e. *Sanctions.* Business Associate shall have and apply appropriate sanctions against any employee, subcontractor or agent who uses or discloses PHI in violation of this Agreement or applicable law.

f. *Covered Entity's Rights of Access and Inspection.* From time to time upon reasonable notice, or upon a reasonable determination by Covered Entity that Business Associate has breached this Agreement, Covered Entity may inspect the facilities, systems, books and records of Business Associate to monitor compliance with this Agreement. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems and procedures does not relieve Business Associate of its responsibility to comply with this Agreement; nor does Covered Entity's failure to detect or detection of, but failure to notify Business Associate or require Business Associate's remediation of, any unsatisfactory practices constitute acceptance of such practice or a waiver of Covered Entity's enforcement or termination rights under this Agreement. The parties' respective rights and obligations under this Section 5.f. shall survive termination of the Agreement.

g. *United States Department of Health and Human Services.* Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI, and the security of Electronic PHI, available to the Secretary of the United States Department of Health and Human Services

("HHS") for purposes of determining Covered Entity's compliance with HIPAA Privacy Regulations and HITECH Standards; provided, however, that Business Associate shall immediately notify Covered Entity upon receipt by Business Associate of any such request for access by the Secretary of HHS, and shall provide Covered Entity with a copy thereof as well as a copy of all materials disclosed pursuant thereto. The parties' respective rights and obligations under this Section 5.g. shall survive termination of the Agreement.

6. Obligation to Provide Access, Amendment and Accounting of PHI.

a. *Access to PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide access to, and copies of, PHI in accordance with HIPAA, HIPAA Regulations, and HITECH Standards.

b. *Amendment of PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to amend PHI in accordance with HIPAA, HIPAA Regulations and HITECH Standards. In addition, Business Associate shall, as directed by Covered Entity, incorporate any amendments to Covered Entity's PHI into copies of such information maintained by Business Associate.

c. *Accounting of Disclosures of PHI.* Business Associate shall make available to Covered Entity such information as Covered Entity may require to fulfill Covered Entity's obligations to provide an accounting of disclosures with respect to PHI in accordance with HIPAA, HIPAA Regulations, and HITECH Standards. Business Associate shall make this information available to Covered Entity upon Covered Entity's request.

d. *Forwarding Requests From Individual.* In the event that any individual requests access to, amendment of, or accounting of PHI directly from Business Associate, Business Associate shall within two (2) business days forward such request to Covered Entity. Covered Entity shall have the responsibility of responding to forwarded requests. However, if forwarding the individual's request to Covered Entity would cause Covered Entity or Business Associate to violate HIPAA, HIPAA Regulations, or HITECH Standards, Business Associate shall instead respond to the individual's request as required by such law and notify Covered Entity of such response as soon as practicable.

7. Compliance with HITECH Standards.

Business Associate shall comply with HITECH Standards, including, but not limited to: (i) compliance with the requirements regarding minimum necessary under HITECH § 13405(b); (ii) requests for restrictions on use or disclosure to health plans for payment or health care operations purposes when the provider has been paid out of pocket in full consistent with HITECH § 13405(a); (iii) the prohibition of sale of PHI without authorization unless an exception under HITECH § 13405(d) applies; (iv) the prohibition on receiving remuneration for certain communications that fall within the exceptions to the definition of marketing under 45 C.F.R. § 164.501 unless permitted by this Agreement and Section 13406 of HITECH; (v) the requirements relating to the provision of access to certain information in electronic access under HITECH § 13405(e); (vi) compliance with each of the Standards and Implementation Specifications of 45 C.F.R. §§ 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards) and 164.316 (Policies and Procedures and Documentation Requirements); and (vii) the requirements regarding accounting of certain disclosures of PHI maintained in an Electronic Health Record under HITECH § 13405(c).

8. Material Breach, Enforcement and Termination.

a. *Term.* This Agreement shall be effective as of October 1, 2011, and shall continue in full force and effect until any underlying Service Agreement between the parties expires or is terminated; provided, however, that this Agreement may be terminated sooner in accordance with the provisions herein.

b. *Termination.* Covered Entity may terminate this Agreement and/or any underlying Service Agreement:

(1) immediately if Business Associate is named as a defendant in any proceeding for a violation of HIPAA, HIPAA Regulations, or HITECH Standards;

(2) immediately if a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, HITECH or other security or privacy laws is made in any administrative or civil proceeding in which Business Associate has been joined; or

(3) pursuant to Sections 8.c. or 9.b. of this Agreement.

c. *Remedies.* If Covered Entity determines that Business Associate has breached or violated a material term of this Agreement, Covered Entity may, at its option, pursue any and all of the following remedies:

(1) exercise any of its rights of access and inspection under Section 5.f. of this Agreement;

(2) take any other reasonable steps that Covered Entity, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or

(3) terminate this Agreement and/or any underlying Service Agreement immediately.

If Business Associate determines that Covered Entity has breached or violated a material term of this Agreement, Business Associate may, at its option, pursue any and all of the following remedies:

(1) take any reasonable steps that Business Associate, in its sole discretion, shall deem necessary to cure such breach or end such violation; and/or

(2) terminate this Agreement immediately.

d. *Knowledge of Non-Compliance.* Any non-compliance by Business Associate with this Agreement or with HIPAA, HIPAA Regulations, or HITECH Standards shall automatically be considered in Covered Entity's sole discretion a breach or violation of a material term of this Agreement if Business Associate knew or reasonably should have known of such non-compliance and failed to immediately take reasonable steps to cure the non-compliance.

e. *Reporting to United States Department of Health and Human Services.* If Covered Entity's efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement is not feasible, Covered Entity shall report Business Associate's breach or violation to the Secretary of HHS, and Business Associate agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Covered Entity with respect to such report(s). If Business Associate's efforts to cure any breach or end any violation are unsuccessful, and if termination of this Agreement is not feasible, Business Associate shall report Covered Entity's breach or violation to the Secretary of HHS, and Covered Entity agrees that it shall not have or make any claim(s), whether at law, in equity, or under this Agreement, against Business Associate with respect to such report(s).

f. *Return or Destruction of Records.* Upon expiration or termination of this Agreement for any reason, Business Associate shall return or destroy, as specified by Covered Entity, all PHI that Business Associate still maintains in any form, and shall retain no copies of such PHI. If Covered Entity, in its sole discretion, requires that Business Associate destroy any or all PHI, Business Associate shall certify to Covered Entity that the PHI has been destroyed. If return or destruction is not feasible, Business Associate shall inform Covered Entity of the reason it is not feasible and shall continue to extend the protections of this Agreement to such information and limit further use and disclosure of such PHI to those purposes that make the return or destruction of such PHI infeasible.

g. *Injunctions.* Covered Entity and Business Associate agree that any violation of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, in the event of any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to such violation or explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages. The parties' respective rights and obligations under this Section 8.g. shall survive termination of the Agreement.

h. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses, including attorneys' fees before, during and after trial or appeal, resulting from, or relating to, the acts or omissions of Business Associate, including its officers, employees, agents and subcontractors, relating to any duty or obligation imposed by HIPAA, HIPAA Regulations, HITECH, HITECH Standards or this Agreement, or otherwise arising from or in connection with any representation, duty or obligation of Business Associate under this Agreement. The parties' respective rights and obligations under this Section 8.h. shall survive termination of the Agreement.

9. Miscellaneous Terms.

a. *State Law.* Nothing in this Agreement shall be construed to require Business Associate to use or disclose PHI without a written authorization from an individual who is a subject of the PHI, or written authorization from any other person, where such authorization would be required under Florida law for such use or disclosure.

b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in Florida and federal laws and regulations relating to the privacy, security, and confidentiality of PHI, including, but not limited to, changes under HIPAA Regulations and HITECH Standards. Covered Entity may terminate this Agreement and/or any underlying Service Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations. This Agreement may not otherwise be amended except by written agreement between both parties.

c. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity and Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.

d. *Ambiguities.* The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with applicable law protecting the privacy, security and confidentiality of PHI, including, but not limited to, Florida law, HIPAA, HIPAA Regulations and HITECH Standards.

e. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control with respect to the subject matter of this Agreement. This Agreement supersedes any previous Business Associate Agreement between the parties.

f. *Venue.* Venue for any action to enforce this Agreement shall be in the 15th Judicial Circuit Court, Palm Beach County, Florida or the United States District Court for the Southern District of Florida, Palm Beach County, Florida.

g. *Ownership of PHI.* As between Covered Entity and Business Associate, Covered Entity holds all right, title and interest in and to any and all PHI received by Business Associate from, or created or received by Business Associate on behalf of, Covered Entity, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to Covered Entity, any right, title or interest in or to such PHI or any portion thereof. Except as specified in Section 3.c. above or as otherwise agreed

to in writing by both parties, Business Associate shall have no right to compile and/or distribute any statistical analysis or report utilizing such PHI, any aggregate information derived from such PHI, or any other health and medical information obtained from Covered Entity.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement the day and year above written.

ATTEST:

SHARON R. BOCK, Clerk
& Comptroller

By: _____
Deputy Clerk

COVERED ENTITY:
PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY
COMMISSIONERS

By: _____
Karen T. Marcus, Chair

Approved as to form and
Legal sufficiency

By: *Sharon Bock*
County Attorney

Approved as to terms and Conditions

By: *[Signature]*
Fire-Rescue Department

WITNESS:

[Signature]
Signature

ELLA E. KOEHL
Name (type or print)

BUSINESS ASSOCIATE:
Thomas H. Matese, JR.

[Signature]
Signature