BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is made by and among Sarasota County, a political subdivision of the State of Florida, hereinafter referred to as the "Covered Entity" and [INSERT COMPANY NAME HERE], a Florida corporation/limited liability company, authorized to do business in the state of Florida, hereinafter known as "Business Associate." Covered Entity and Business Associate shall collectively be known herein as the "Parties."

WHEREAS, Covered Entity wishes to commence a business relationship with Business Associate that shall be memorialized in a separate agreement (the "Underlying Agreement") pursuant to which Business Associate may be considered a "business associate" of Covered Entity as defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") including all pertinent regulations (45 C.F.R. Parts 160 and 64) issued by the U.S. Department of Health and Human Services as either have been amended by Subtitle D of the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111–5); and

WHEREAS, the nature of the prospective contractual relationship between Covered Entity and Business Associate may involve the exchange of Protected Health Information ("PHI") as that term is defined under HIPAA; and

WHEREAS, for good and lawful consideration as set forth in the Underlying Agreement, Covered Entity and Business Associate enter into this Agreement for the purpose of ensuring compliance with the requirements of HIPAA, its implementing regulations and the HITECH Act.

NOW THEREFORE, the premises having been considered and with acknowledgment of the mutual promises and of other good and valuable consideration herein contained, the Parties, intending to be legally bound, hereby agree as follows:

I. Definitions.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.

Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 C.F.R. 160.103, and in reference to the party to this Agreement, shall mean [INSERT LEGAL BUSINESS NAME HERE].

Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 C.F.R. 160.103, and in reference to the party to this Agreement, shall mean Sarasota County.

HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 C.F.R. Part 160 and Part 164.

Privacy Rule. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164, Subparts A and E, as amended by the HITECH Act and as may otherwise be amended from time to time.

II. Use or Disclosure of PHI by Business Associate.

A. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Underlying Agreement, provided that such use or disclosure would not violate the Privacy Rule.

B. Business Associate may use or disclose Protected Health Information as required by law.

C. Business Associate shall only use and disclose PHI if such use or disclosure complies with each applicable requirement of 45 C.F.R. §164.504(e).

D. Business Associate agrees to make uses and disclosures and requests for Protected Health Information consistent with Covered Entity's minimum necessary policies and procedures.

E. Business Associate shall be directly responsible for full compliance with the relevant requirements of the Privacy Rule to the same extent as Covered Entity.

III. Duties of Business Associate Relative to PHI.

A. Business Associate shall not use or disclose Protected Health Information other than as permitted or required by the Underlying Agreement or as required by law.

B. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic Protected Health Information, to prevent use or disclosure of Protected Health Information other than as provided for by the Agreement.

C. Business Associate shall immediately notify Covered Entity of any use or disclosure of Protected Health Information not provided for by the Agreement of which it becomes aware, including breaches of unsecured Protected Health Information as required at 45 C.F.R. 164.410, and any security incident of which it becomes aware.

D. Business Associate shall immediately notify Covered Entity of a Breach of Unsecured PHI of which Business Associate (or Business Associate's

employee, office or agent) knows of such Breach or following the fifth business day on which Business Associate (or Business Associate's employee, office or agent) should have known of such Breach. Business Associate's notification to Covered Entity hereunder shall:

i. Be made to Covered Entity no later than five (5) calendar days after discovery of the Breach, except where a law enforcement official determines that a notification would impede a criminal investigation or cause damage to national security;

ii. Include the individuals whose Unsecured PHI has been, or is reasonably believed to have been, the subject of a Breach; and

iii. Be in substantially the same form as **Exhibit 1** hereto.

E. In the event of an unauthorized use or disclosure of PHI or a Breach of Unsecured PHI, Business Associate shall mitigate, to the extent practicable, any harmful effects of said disclosure that are known to it. Business Associate shall comply with all requirements as defined in §13402 of the HITECH Act.

F. In accordance with 45 C.F.R. 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate agrees to ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information.

G. To the extent applicable, Business Associate shall provide access to Protected Health Information in a Designated Record Set at reasonable times, at the request of Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. §164.524.

H. To the extent applicable, Business Associate shall make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 C.F.R. §164.526 at the request of Covered Entity or an Individual.

I. Business Associate shall, upon request with reasonable notice, provide Covered Entity access to its premises for a review and demonstration of its internal practices and procedures for safeguarding PHI.

J. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for a Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. §164.528. Should an individual make a request to Covered Entity for an accounting of disclosures of his or her PHI pursuant to 45 C.F.R. §164.528, Business

Associate agrees to promptly provide Covered Entity with information in a format and manner sufficient to respond to the individual's request.

K. Business Associate shall, upon request with reasonable notice, provide Covered Entity with an accounting of uses and disclosures of PHI provided to it by Covered Entity.

L. To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

M. Business Associate shall make its internal practices, books, records, and any other material requested by the Secretary relating to the use, disclosure, and safeguarding of PHI received from Covered Entity available to the Secretary for the purpose of determining compliance with the Privacy Rule. The aforementioned information shall be made available to the Secretary in the manner and place as designated by the Secretary or the Secretary's duly appointed delegate. Under this Agreement, Business Associate shall comply and cooperate with any request for documents or other information from the Secretary directed to Covered Entity that seeks documents or other information held by Business Associate.

N. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 42 C.F.R. §164.502(j)(1).

O. Except as otherwise limited in this Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

IV. Term and Termination.

A. Term. The Term of this Agreement shall be effective as of the date the Underlying Agreement is effective, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section IV.

B. Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall:

i. Provide an opportunity for Business Associate to cure the breach or end the violation and, if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, terminate this Agreement;

ii. Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible; or

iii. If neither termination nor cure is feasible, report the violation to the Secretary.

C. Effect of Termination. Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall not retain any copies of the Protected Health Information.

D. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity written notification of the conditions that make return or destruction infeasible. After written notification that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

E. Should Business Associate make a disclosure of PHI in violation of this Agreement, Covered Entity shall have the right to immediately terminate any contract, other than this Agreement, then in force between the Parties, including the Underlying Agreement.

V. Consideration.

Business Associate recognizes that the promises it has made in this Agreement shall, henceforth, be detrimentally relied upon by Covered Entity in choosing to continue or commence a business relationship with Business Associate.

VI. Remedies in Event of Breach.

Business Associate hereby recognizes that irreparable harm will result to Covered Entity, and to the business of Covered Entity, in the event of breach by Business Associate of any of the covenants and assurances contained in this Agreement. As such, in the event of breach of any of the covenants and assurances contained in Sections II or III above, Covered Entity shall be entitled to enjoin and restrain Business Associate from any continued violation of Sections II or III. Furthermore, in the event of breach of Sections II or III by Business Associate, Covered Entity is entitled to reimbursement and indemnification from Business Associate for Covered Entity's reasonable attorneys' fees and expenses and costs that were reasonably incurred as a proximate result of Business Associate's breach. The remedies contained in this Section VI shall be in addition to (and not supersede) any action for damages and/or any other remedy Covered Entity may have for breach of any part of this Agreement.

VII. Modification.

This Agreement may only be modified through a writing signed by the Parties and, thus, no oral modification hereof shall be permitted. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and HIPAA.

VIII. Interpretation of this Agreement in Relation to Other Contracts Between the Parties.

Should there be any conflict between the language of this Agreement and any other contract entered into between the Parties (either previous or subsequent to the date of this Agreement), the language and provisions of this Agreement shall control and prevail unless the Parties specifically refer in a subsequent written agreement to this Agreement by its title and date and specifically state that the provisions of the later written agreement shall control over this Agreement.

IX. Miscellaneous.

A. Ambiguity. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

B. Regulatory References. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended.

C. Notice to Covered Entity. Any notice required under this Agreement to be given Covered Entity shall be made in writing to:

Unit/Department: Ethics & Compliance Office
Address: 1660 Ringling Boulevard, Fourth Floor
Sarasota, FL 34236

Attention: Ethics & Compliance Officer
Phone: (941) 861-5000

D. Notice to Business Associate. Any notice required under this Agreement to be given Business Associate shall be made in writing to:

Address: _____

_____

Attention: _____

[Remainder of Page Intentionally Blank]

IN WITNESS WHEREOF, Covered Entity and Business Associate have caused this Business Associate Agreement to be executed by duly authorized officers.

WITNESS:

Print Name: _____

Signed By: _____

Date:_____

INSERT LEGAL NAME HERE

Print Name:_____

Signed By: _____

Title:_____

Date: _____

SARASOTA COUNTY

BOARD OF COUNTY COMMISSIONERS
OF SARASOTA COUNTY, FLORIDA

BY: _____
CHAIR

DATE: _____

ATTEST:
KAREN E. RUSHING, Clerk of the Circuit Court and Ex-Officio Clerk of the Board of County Commissioners

BY:_____

Approved as to form and correctness:

BY:_____
COUNTY ATTORNEY

EXHIBIT 1

Notification to Sarasota County Government regarding a Breach of Unsecured Protected Health Information

This notification is made pursuant to Section IIID(iii) of the Business Associate Agreement between Sarasota County Government (County) and [INSERT LEGAL BUSINESS NAME HERE] (Business Associate).

Business Associate hereby notifies County that there has been a breach of unsecured (unencrypted) Protected Health Information (PHI) that Business Associate has used or has had access to under the terms of the Business Associate Agreement.

Description of the breach: _____

_____

Date of the breach: _____

Date of the discovery of the breach: _____

Number of individuals affected by the breach: _____

The types of unsecured PHI that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code): _____

_____

_____

Description of what Business Associate is doing to investigate the breach, to mitigate losses, and to protect against any further breaches: _____

_____

_____

_____

Contact information to ask questions or learn additional information:

Name: _____

Title: _____

Address: _____

_____

Email Address: _____

Phone Number: _____