

**CONTRACT Y20-2077**  
**VOLUNTEER DENTAL SERVICE AND COORDINATION**

THIS AGREEMENT is entered into this 1<sup>st</sup> day of April, 2020 by and between **Orange COUNTY, Florida**, a charter county and a political subdivision of the State of Florida, hereinafter referred to as the **COUNTY**, and **Orange County Dental Research Clinic, Inc.**, a nonprofit corporation organized under the laws of the State of Florida, hereinafter referred to as the **AGENCY**.

**RECITALS:**

1. The COUNTY finds that provision of services as specified in Attachment “A” are a valid COUNTY purpose as set forth under the laws of Florida.
2. The AGENCY performs such services in the course of its activities and operations.
3. The COUNTY desires to contract with the AGENCY to perform such services for the benefit of the citizens of Orange County.

**THE PARTIES THEREFORE AGREE AS FOLLOWS:**

**ARTICLE I**

**SERVICES TO BE PERFORMED**

1. The AGENCY shall provide services as outlined in Attachment “A”, which are hereby incorporated by reference and made a part of this Agreement.
2. The AGENCY agrees to accept technical assistance from the COUNTY with programmatic issues related to the provision of services.
3. The AGENCY shall notify the COUNTY if sufficient staff, facilities, and equipment necessary to deliver the agreed upon services cannot be maintained. Failure to notify the COUNTY of any such deficiencies or to adequately provide the services described above, may be considered to be a breach of this Agreement and may constitute grounds for termination under Article III.
4. The AGENCY shall use its best efforts to obtain all supplies and services for use in the performance of this Agreement at the lowest practicable cost.

**ARTICLE II**

**PAYMENTS**

1. The COUNTY has appropriated to the AGENCY a sum not to exceed **Fifty-Five Thousand Dollars (\$55,000)** annually, and disbursed by the COUNTY, so long as the

AGENCY is in compliance with all terms and conditions of this contract. Such amount being the maximum compensation to be disbursed for services provided under this Agreement.

2. The COUNTY shall pay the AGENCY in four (4) equal payments on a quarterly basis during the term of this Agreement, in accordance with the Florida Prompt Payment Act, codified at Sections 218.70 to 218.80 of the Florida Statutes. The first payment will be made October, 2019.
3. The COUNTY reserves the sole right to conduct an audit of the AGENCY and reserves the right to seek reimbursement for inappropriate expenditures.
4. The AGENCY understands that it is liable for and accepts responsibility for repayment of any funds disbursed under the terms of this Agreement which may, as a result of audit, be deemed disbursed in error for failure to follow applicable general fund requirements or regulations or failure to provide the services as outlined in this contract.

### **ARTICLE III**

#### **THE TERM OF AGREEMENT AND TERMINATION**

1. The term of this Agreement shall be April 1, 2020 through March 31, 2023. The Agreement may be renewed for two (2) additional one (1) year periods, upon mutual agreement of both parties. If any such renewal results in changes in the terms or conditions, such changes shall be reduced to writing, as an amendment to this Agreement and such amendment shall be executed by both parties. Renewal of the contract shall be subject to appropriation of funds by the Board of County Commissioners.
2. Either party may terminate this Agreement, for convenience, thirty (30) days after receipt by the other party of written notice of intent to terminate except as set forth in paragraphs 3 and 4 herein. In the event of termination, the COUNTY shall pay for services rendered per this Agreement, prorated to the date of termination. If payments are made to the AGENCY before services are rendered, the AGENCY shall repay all excess money paid, prorated to the date of termination.
3. It is further agreed that, in the event funds to finance all or part of this Agreement do not become available, the obligations of each party hereunder may be terminated upon no less than twenty-four (24) hours notice in writing to the other party. Said written notice shall be delivered by either certified mail with return receipt requested, or by fax or in person with proof of delivery. The COUNTY shall be the sole and final authority as to the determination of the availability of funds and how any available funds will be allocated among its various service providers.
4. If the AGENCY breaches any term of this Agreement, the COUNTY may, by written notice of breach to the AGENCY, terminate the whole or any part of this Agreement in any, but limited to, of the following circumstances:

- a. If the AGENCY fails to provide services called for by this Agreement within the time specified herein or any extension thereof; or,
- b. If the AGENCY fails to properly monitor and timely report its services to the COUNTY in accordance with the provisions of the Agreement.

Any such written notice of breach shall be delivered to the AGENCY no less than twenty-four (24) hours before termination, and shall be delivered by certified mail with return receipt, or by fax or in person with proof of delivery. Waiver by the COUNTY of breach of any provision of this Agreement shall not be deemed to be a waiver of any other term provision and shall not be construed to be a modification of the terms of this Agreement.

5. If the AGENCY materially breaches any term of the Agreement, the COUNTY shall send a written notice of breach. If the AGENCY fails to correct the breach within seven (7) calendar days, the COUNTY may terminate this Agreement in whole or in part, upon written notice to the AGENCY.
6. After receipt of a notice of termination and except as otherwise directed, the AGENCY shall:
  - a. Stop working under the Agreement on the date of receipt and to the extent specified in the notice of termination;
  - b. Place no further orders or subcontracts for materials, services or facilities;
  - c. Terminate all orders and subcontracts to the extent that they relate to the performance of the work, which was terminated;
  - d. Handle all property as directed by the COUNTY;
  - e. Finalize all necessary reports and documents required under the terms of the Agreement up to the date of termination, up to and including the final report due at the end of the project, if any, without reimbursement beyond that due as of the date of termination for services rendered to the termination date;
  - f. Take any other actions as directed in writing by the COUNTY.
7. All written notices required herein shall be deemed delivered by either certified mail with return receipt requested or in person with proof of delivery. Notices and remittance of payment to the AGENCY shall be submitted to the authorized official and lawful representative.
8. Except as provided herein, any alterations, variations, modifications or waivers of provisions of this Contract shall only be valid when they have been reduced to writing, duly signed by the legally authorized representatives of both parties and attached to the

original of this Contract. The parties agree to renegotiate this Contract if Warranted due to revisions of any applicable laws or regulations.

9. The laws of the State of Florida shall govern this Contract. Any and all legal action necessary to enforce the provisions of this Contract will be held in Orange County, Florida. Venue for any litigation involving this Contract shall be the Circuit Court in and for Orange County, Florida.

#### **ARTICLE IV**

##### **ASSIGNMENT AND SUBCONTRACTS**

1. The parties deem the services to be rendered by the AGENCY are personal in nature. The AGENCY shall not assign any rights or duties under this Agreement to any other party without prior written permission of the COUNTY. If the AGENCY attempts to assign any rights or duties without securing written permission, this Contract shall be declared void by the COUNTY, and the AGENCY thereupon agrees to remit to the COUNTY all payments made pursuant to this Agreement for the entire term of this Agreement.
2. The AGENCY shall not enter into any subcontracts for any of the work contemplated under this Agreement without obtaining prior written approval of the COUNTY, which shall be attached to the original Agreement and subject to such conditions and provisions as the COUNTY may deem necessary; provided that, notwithstanding the foregoing, unless otherwise provided herein, such prior written approval shall not be required for purchase by the AGENCY of such articles, supplies, and equipment which are both necessary and incidental to the performance of the work required under this Agreement; and provided further, however, that no provision of this clause and no such approval by the COUNTY of any subcontracts shall be deemed in any event or manner to provide for the incurrence of any obligation of the COUNTY in addition to the total agreed upon price contained herein.

#### **ARTICLE V**

##### **INDEMNITY, SAFETY, AND INSURANCE**

1. **Indemnity.** To the fullest extent permitted by law, the AGENCY shall defend, indemnify and hold harmless the COUNTY from and against all claims, damages, losses, and expenses, including reasonable attorneys' fees and costs, arising out of or resulting from the performance of AGENCY'S operations under this Agreement.
2. **Protection of Persons and Property:** The AGENCY shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with its services or performance of its operations under this Agreement.
  - a. The AGENCY shall take all reasonable precautions for the safety of:
    - 1) All employees and persons whom the AGENCY suffers to be on the premises and other person who may be affected thereby;

- 2) All property, materials, and equipment on the premises under the care, custody and/or control of the AGENCY; and
  - 3) Other property at or surrounding the site, including trees, shrubs, lawns, walks, pavements, and roadways.
- b. The AGENCY agrees that the COUNTY does not guarantee the security of any equipment or personal property brought by the AGENCY, its agents or employees onto the COUNTY property and that the COUNTY shall in no way be liable for damage, destruction, theft, or loss of, any equipment, and appurtenances regardless of the reason for such damage, destruction, theft, or loss.
- c. The AGENCY shall comply with and ensure that its contractors comply with, all applicable safety laws or ordinances, rules, regulations, standards and lawful orders from authority bearing on the safety of persons or property for their protection from damage, injury or loss. This includes but is not limited to the following:
- 1) Occupational Safety & Health Act (OSHA)
  - 2) National Institute for Occupational Safety & Health (NIOSH)
  - 3) National Fire Protection Association (NFPA)

The AGENCY must also comply with the guidelines set forth in the Orange County Safety & Health Manual. The manual can be accessed online at the address below:

[https://orangenet.ocfl.net/\\_layouts/15/WopiFrame.aspx?sourcedoc=/CountyFiles/ORANGE%20COUNTY%20SAFETY%20AND%20HEALTH%20MANUAL.pdf&action=default&DefaultItemOpen=1](https://orangenet.ocfl.net/_layouts/15/WopiFrame.aspx?sourcedoc=/CountyFiles/ORANGE%20COUNTY%20SAFETY%20AND%20HEALTH%20MANUAL.pdf&action=default&DefaultItemOpen=1)

- d. In any emergency affecting the safety of persons or property, the AGENCY will act with reasonable care and discretion to prevent any threatened damage, injury or loss.

### **3. INSURANCE**

- a. The AGENCY agrees to maintain on a primary basis and at its sole expense, at all times throughout the duration of this contract the following types of insurance coverage with limits and on forms (including endorsements) as described herein. These requirements, as well as the COUNTY'S review or acceptance of insurance maintained by AGENCY is not intended to and shall not in any manner limit or qualify the liabilities or obligations assumed by the AGENCY under this Contract.
- b. The AGENCY shall require and ensure that each of its sub-contractors/consultants providing services hereunder (if any) procures and maintains until the completion of their respective services, insurance of the types and to the limits specified herein.
- c. The AGENCY shall have in force the following insurance coverage, and will provide Certificates of Insurance to the COUNTY prior to commencing operations under this Contract to verify such coverage:

- 1) Commercial General Liability - The AGENCY shall maintain coverage issued on the most recent version of the ISO form as filed for use in Florida or its equivalent, with a limit of liability of not less than \$500,000 per occurrence. AGENCY further agrees coverage shall not contain any endorsement(s) excluding or limiting Product/Completed Operations, Contractual Liability, or Separation of Insured. Sexual abuse and molestation coverage with limits of not less than \$100,000 per occurrence shall also be included for those programs that provide services directly to minors. The General Aggregate limit shall either apply separately to this contract or shall be at least twice the required occurrence limit.
  - 2) Professional Liability - The Vendor/Agency shall maintain professional liability (errors and omissions or medical malpractice) coverage with limits of not less than \$1,000,000 per occurrence.
  - 3) Commercial Crime or Third Party Fidelity Bond- The commercial crime policy or fidelity bond shall include coverage for employee dishonesty on a blanket basis with limits of not less than the full amount of this agreement as specified in Article II, Section 1 or as amended from time to time. The bond shall be endorsed to cover third-party liability and include a third-party beneficiary clause in favor of the COUNTY. The bond shall include a minimum twelve (12) month discovery period when written on a claims-made basis.
- d. If the AGENCY is an agency or political subdivision of the State of Florida, then without waiving its right to sovereign immunity as provided in Section 768.28, Florida Statutes, the AGENCY may self-insure its liability with coverage limits of \$100,000 per person and \$200,000 per occurrence or such other limited sovereign immunity as set forth by the Florida legislature. A statement of self-insurance shall be provided to the COUNTY.
  - e. The AGENCY agrees to endorse the COUNTY as an Additional Insured with a CG 20 26 Additional Insured – Designated Person or Organization endorsement, or its equivalent to all commercial general liability policies. The additional insured shall be listed in the name of Orange County Board of County Commissioners.
  - f. Insurance carriers providing coverage required herein must be licensed to conduct business in the State of Florida and must possess a current A.M. Best’s Financial Strength Rating of A- Class VIII.
  - g. Any request for an exception to these insurance requirements must be submitted in writing to the COUNTY for approval.
  - h. The AGENCY shall provide to the COUNTY current certificates of insurance evidencing all required coverage prior to execution and commencement of any operations/services provided under this Contract. In addition to the certificate(s) of insurance the AGENCY shall also provide copies of the additional insured and the waiver of subrogation endorsements as required above for continuing service

contracts, renewal certificates shall be submitted upon request by either the COUNTY or its certificate management representative. The certificates shall clearly indicate that the AGENCY has obtained insurance of the type, amount and classification as required for strict compliance with this insurance section. No material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the COUNTY. Certificates shall specifically reference the respective Contract number. The certificate holder shall read:

**Orange County Florida  
Risk Management Division  
109 E. Church Street, Suite 200  
Orlando, Florida 32801**

## **ARTICLE VI**

### **RECORDS**

1. The AGENCY shall keep orderly and complete records of its accounts and operations. Said records and accounts shall be retained by the AGENCY during the entire term of this Agreement, plus five (5) years after the ending date of this Agreement. If any litigation, claim or audit is commenced prior to the expiration of the five (5) year period, the records shall be maintained until all litigation, claims or audit findings involving the records have been resolved.
2. The AGENCY shall maintain financial records relating to funds paid under this Agreement and submit a financial report to the COUNTY within ninety (90) days of the close of the AGENCY'S fiscal year. Such reports shall be audited by an independent certified public accountant. Any exceptions to this requirement must be submitted to the COUNTY in writing prior to the execution of this Agreement.
3. The AGENCY shall maintain program records related to the services provided under this Agreement and shall if requested submit reports to the COUNTY that indicate persons impacted or served by this Agreement. Failure to submit reports or records within three (3) COUNTY working days may result in the termination of this Contract.
4. The AGENCY shall maintain necessary records of board members by date of appointment, race and sex. The AGENCY shall maintain records of employees by job classification, name, date of hire, race and sex.
5. Time records and cost data shall be maintained in accordance with generally accepted accounting principles. This includes full and timely disclosure of all transactions associated with this Agreement. Also, if applicable, all information and data necessary to determine overhead rates in accordance with Federal and State regulatory agencies and this Agreement shall be maintained at all times.
6. The AGENCY'S "records and documents" as referred to in this agreement shall include any and all information, materials and data of every kind and character, including without

limitation, records, books, papers, documents, subscriptions, recordings, agreements, purchase orders, invoices, leases, contracts, commitments, arrangements, notes, daily diaries, reports, receipts, vouchers and memoranda, and any and all other agreements, sources of information and matters that may in the COUNTY's judgment have any bearing on or pertain to any matters, rights, duties or obligations under or covered by any contract document. Such records and documents shall include (hard copy, as well as computer readable data, written policies and procedures; time sheets; payroll registers; cancelled checks; subcontract files (including proposals of successful and unsuccessful bidders, bid recaps, etc.); original estimates; estimating worksheets; correspondence; general ledger entries detailing cash and trade discounts earned, insurance rebates and dividends; and any other AGENCY records which may have a bearing on matters of interest in connection with the AGENCY's dealings with the extent necessary to adequately permit evaluation and verification of:

- a) AGENCY's compliance with requirements of this Agreement, or
  - b) AGENCY's achievement of program objectives, or
  - c) Accuracy of reported program results, or
  - d) Accuracy of AGENCY's financial records and reports, or
  - e) Compliance with the COUNTY's business ethics, or
  - f) Compliance with applicable State Statutes and Ordinances and regulations.
7. Records and documents subject to audit shall also include those necessary to evaluate and verify direct and indirect costs, (including overhead allocations) as they may apply to costs associated with this agreement. In those situations where the AGENCY's records have been generated from computerized data (whether mainframe, mini-computer, or PC based computer systems), the AGENCY agrees to provide the COUNTY's representatives with extracts of data files in computer readable format on data disks or suitable alternative computer exchange formats.
8. The COUNTY and its authorized agents shall have the right to audit, inspect and copy records and documentation, including performance standards documentation, as often as the COUNTY deems necessary throughout the term of this contract and for a period of five (5) years after the ending date of this Agreement. Such activity shall be conducted during normal business working hours.
9. The County, during the period of time defined by the preceding paragraph, shall have the right to obtain a copy of and otherwise inspect any audit made at the direction of the AGENCY as concerns the aforesaid records and documentation.
10. The AGENCY shall require all payees (examples of payees include subcontractors, insurance agents, material suppliers, etc.) to comply with the provisions of this article by including the requirements hereof in a written contract agreement between AGENCY and payee. Such requirements include a flow-down right of audit provision in contracts with payees, which will also apply to subcontractors and material suppliers, etc. to cooperate fully in furnishing or in making available to the COUNTY, whenever requested, in an expeditious manner any and all such records, documents, information, materials and data.



11. If applicable, the COUNTY may request and the AGENCY shall provide original records.
12. If applicable, the COUNTY may request and the AGENCY shall provide an AGENCY staff member or AGENCY business record custodian, to be present during the time period while the COUNTY or its designee reviews the AGENCY'S records.
13. The AGENCY shall have adequate and appropriate workspace, in order to conduct audits in compliance with this article.
14. The AGENCY shall create written policies and procedures and provide documentation (cost centers) to account for direct and indirect cost whenever two or more funding sources are in use for the same COUNTY funded programs.

## **ARTICLE VII**

### **AUDIT REMEDIES FOR IMPROPER USE OF FUNDS**

1. The Orange County Comptroller (or designee) shall have a right to audit the Funds disbursed under the Agreement periodically for compliance by the AGENCY of the terms, conditions, and obligations of this Agreement. The Comptroller (or designee) shall have full access to all records, documents, and information, whether on paper or electronic media necessary to perform this audit.
2. The AGENCY shall establish and maintain a reasonable accounting system, which enables ready identification of AGENCY'S use of funds. Accounting system shall include adequate records and documents to justify prices for all items invoiced as well as all charges, expenses and costs incurred in providing the goods for at least five (5) years after completion of this contract. The COUNTY or its designee shall have access to such books, records, subcontract(s), financial operations, and documents of the AGENCY or its subconsultants as required complying with this section for the purpose of inspection or audit anytime during normal business hours at the AGENCY'S place of business. This right to audit shall include the AGENCY'S subconsultants used to procure goods or services under the contract with the COUNTY. AGENCY shall ensure the COUNTY has these same rights with sub-consultant(s) and suppliers.
3. The COUNTY shall have all legal and equitable remedies available to it including, but not limited to, injunctive relief, the right to terminate quarterly contribution payments; payment of restitution for any funds utilized by the AGENCY in a manner which is not in conformance with the terms of this Agreement.

## **ARTICLE VIII**

### **CIVIL RIGHTS**

1. It is hereby declared that equal opportunity and nondiscrimination shall be the County's policy intended to assure equal opportunities to every person, regardless of race, religion,

sex, color, age, disability or national origin, in securing or holding employment in a field of work or labor for which the person is qualified, as provided by Section 17-314 of the Orange County Code and the County Administrative Regulations.

Further, the AGENCY shall abide by the following provisions:

- (a) The AGENCY shall represent that the AGENCY has adopted and maintains a policy of nondiscrimination as defined by applicable County ordinance throughout the term of this contract.
- (b) The AGENCY shall allow reasonable access to all business and employment records for the purpose of ascertaining compliance with the non-discrimination provision of the contract.
- (c) The provisions of the prime contract shall be incorporate by the AGENCY into the contracts of any applicable subcontractors.
- (d) The AGENCY shall comply with Title VI of the Civil Rights Act of 1964 (42 USC 2000d) in regards to persons served.
- (e) The AGENCY shall comply with Title VII of the Civil Rights Act of 1964 (42 USC 2000e) in regards to employees or applicants for employment.
- (f) The AGENCY shall comply with Section 504 of the Rehabilitation Act of 1973, in regards to employees or applicants for employment and clients served.
- (g) It is expressly understood that, upon receipt of evidence of such discrimination, the COUNTY shall have the right to terminate this Contract.

## **ARTICLE IX**

### **SAFEGUARDING INFORMATION**

1. The AGENCY shall not use or disclose any information concerning a recipient of services under this Agreement for any purpose not in conformity with all applicable Federal, Florida State, and local laws, rules and regulations, except on written consent of the recipient, his or her attorney, or his or her responsible parent or guardian, and the COUNTY.
2. In the course and scope of performing services under this Contract, the AGENCY may receive, be exposed to or acquire confidential information including, but not limited to, all information, data, reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer database or computer readable form, as well as any information identified as confidential (“Confidential Information”) of another party. The AGENCY, including their employees, agents or representatives, shall: (A) not disclose to any third party the Confidential Information of the other party except as otherwise permitted by this Contract; and (B) only permit use of such Confidential Information by employees, agents and representatives that have a need to know in connection with

performance of services under this Contract; and (C) advise each of their employees, agents and representatives of their obligations to keep such Confidential Information confidential. However, on a case by case basis, in accordance with Florida law, this provision may not be applicable to Confidential Information: (A) after such information becomes available to the public through no fault of any party to this Contract; or (B) which may have been later lawfully publicly released by any party in writing; or (C) which is lawfully obtained from third parties without restriction or (D) which can be shown to be previously known or developed by either AGENCY independently of any other AGENCY.

3. The Business Associate Agreement as Attachment “C” shall govern all matters necessary to enforce the provisions of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164 as applicable to this contract.

## ARTICLE X

### OTHER CONDITIONS

1. Any alterations, variations, modifications or waivers of provisions of this Agreement shall only be valid when they have been reduced to writing, duly signed by both parties, and attached to the original of this Agreement. The parties agree to renegotiate this Agreement if revisions of any applicable laws or regulations make changes in this Agreement necessary.
2. This Agreement contains all the terms and conditions agreed upon by the parties. All items incorporated by reference are physically attached hereto. No other agreements, oral or otherwise, regarding the subject matter of this Agreement, shall be deemed to exist or to bind any of the parties hereto.
3. The AGENCY shall obtain and possess throughout the term of this Agreement all licenses and permits applicable to its operations under federal, state and local laws and shall comply with all fire, health and other applicable regulatory codes.
4. The AGENCY agrees to submit reports to Orange County Health Services Department according to the terms described in Attachment “B”. Failure to comply with the COUNTY’s request for submission of such reports shall constitute ground for termination.
5. The AGENCY agrees to fully participate in any Primary Care Access Network (PCAN) data sharing project and will supply agreed upon patient information to expedite medical care as well as provide aggregate information for analysis, research and planning purposes.
6. Funding provided in this Agreement shall be prioritized so that designated funding shall first be used to fund the Medicaid program (including Low Income Pool (LIP)) and used secondarily for other purposes.
7. The name, and address of the official payee to whom the COUNTY shall issue checks shall be: **Orange County Dental Research Clinic, Inc., 301 W. Amelia Street, Orlando, Florida 32801**

**Execution of this contract does not guarantee funding in subsequent years.**

**WITNESS WHEREOF, the Parties, attesting that they are duly authorized to enter into this Contract, have executed this Agreement on the dates indicated below.**

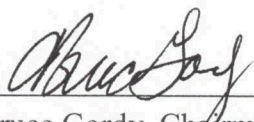
BOARD OF COUNTY COMMISSIONERS  
ORANGE COUNTY, FLORIDA

By:  \_\_\_\_\_  
Carrie Mathes, CFCEM, CPPO, C.P.M.  
Manager, Procurement Division

Zulay Millan, Assistant Manager  
Procurement Division

Date: May 4, 2020

ORANGE COUNTY DENTAL RESEARCH CLINIC, INC.

By:  \_\_\_\_\_  
C. Bruce Gordy, Chairman

Date: 4/20/2020

## **ATTACHMENT “A”**

### **Scope of Work and Funding:**

Funding will support the provision of dental care services, including prescription drugs, laboratory and radiology, to uninsured, underinsured and medically indigent residents of Orange County.

## **ATTACHMENT “B”**

The following reports shall be submitted by the AGENCY to the COUNTY on a Monthly basis.

**Patient Census** detailing both new and established patients

**Services Provided** detailing patient encounters

All Required reports shall be forwarded to:

Blain Mustain, Department Office

Orange County Health Services Department

2002A East Michigan St

Orlando, FL 32806

407-836-8994

[Blain.mustain@ocfl.net](mailto:Blain.mustain@ocfl.net)

**ATTACHMENT “C”**  
**BUSINESS ASSOCIATE AGREEMENT**

**RECITALS**

**WHEREAS**, Orange County meets the definitions of a Covered Entity 45 CFR § 164.103.

**WHEREAS**, Orange County has been designated as a Hybrid Entity under the HIPAA Privacy and Security Rules 45 CFR § 164.105.

**WHEREAS**, Orange County, as a Covered Entity, pursuant to 45 CFR § 164.105(a)(2)(iii)(D) has documented that Orange County’s Health Services Department is a health care component of the County and as such will be treated as a “Covered Entity.”

**WHEREAS**, in connection with providing services to the Covered Entity (“Services”) by the Business Associate, the Covered Entity discloses to the Business Associate certain Protected Health Information (“PHI”) that is subject to protection under the HIPAA Privacy and Security Rules 45 CFR Parts 160,162, and 164.

**WHEREAS**, the HIPAA Privacy and Security Rules requires that Covered Entity receive adequate assurances that the Business Associate will comply with certain obligations with respect to the PHI received in the course of providing Services to or on behalf of Covered Entity; and

**WHEREAS**, the purpose of this Agreement is to comply with the requirements of the HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, § 501.171, Florida Statutes.

**NOW, THEREFORE**, in consideration of the terms, conditions, covenants, agreements and obligations herein stated, the Parties agree as follows:

**INCORPORATION OF RECITALS**

1.1 **Recitals Incorporated.** The above recitals are true and correct and are hereby incorporated as a material part of this Agreement.

1.2 **HIPAA Privacy and Security Rules 45 CFR Parts 160, 162, and 164, and the Florida Information Protection Act, Section 501.171, Florida Statutes. Incorporated.**

- 1.3 The parties hereby incorporated into the Agreement, the requirements and obligations imposed upon them by the HIPAA Privacy and Security Rules 45 CFR Parts 160,162, and 164, and the Florida Information Protection Act, § 501.171, Florida Statutes. To the extent that the Agreement imposed more stringent requirements than those contained in HIPAA Privacy and Security Rules 45 CFR Parts 160,162, and 164, and the Florida Information Protection Act, § 501.171, Florida Statutes, those more stringent requirements of the Agreement will control.

## DEFINITIONS

- 1.4 **Terms.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103, 162,103, 164.103, 164.402, and 164.501, and § 501.171, Florida Statutes.
- 1.5 **Breach.** Breach shall have the meaning given to such term as found in 45 CFR § 164.402, and the Florida Information Protection Act, § 501.171, Florida Statutes.
- 1.6 **Designated Record Set.** A group of records maintained by or for a covered entity that is: A group of records maintained by or for a covered entity that is: (A) The medical records and billing records about individuals maintained by or for a covered health care provider; (B) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or (C) Used, in whole or in part, by or for the covered entity to make decisions about individuals. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for a covered entity.
- 1.7 **Disclosure.** The release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.
- 1.8 **Florida Information Protection Act.** Florida Information Protection Act (“FIPA”) codified at Section 501.171, Florida Statutes.
- 1.9 **HIPAA Privacy and Security Rules.** Standards for Privacy, Security, Breach, Notification, and Enforcement at 45 CFR Parts 160, 162 and 164.
- 1.10 **Individual.** The person who is the subject of PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).
- 1.11 **Individually Identifiable Health Information.** Information that is a subset of health information, including demographic information collected from an individual, and: (A) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and (B) 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 (i) that identifies the individual; or (ii) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.



- 1.12 **Party or Parties.** Are the terms the Covered Entity and Business Associate may be referred to in this Agreement, individually or collectively and the Business Associate may be referred to herein, individually or collectively.
- 1.13 **Privacy Officer.** The individual designated by the County or Covered Entity, pursuant to 45 CFR § 164.530, who is responsible for the development and implementation of the Covered Entity’s policies and procedures as they related to the HIPAA Privacy and Security Rules.
- 1.14 **Personal Information.** Personal Information (“PI”) means either of the following:
- 1.14.1 An individual’s first name or first initial and last name in combination with any one or more of the following data elements for that individual:
    - 1.14.1.1 A social security number;
    - 1.14.1.2 A driver’s license or identification card number, passport number, military identification number, or other similar number issued on a government document used to verify identity;
    - 1.14.1.3 A financial account number or credit or debit card number in combination with any required security code, access code, or password that is necessary to permit access to an individual’s financial account;
    - 1.14.1.4 Any information regarding an individual’s medical history, mental or physical condition, or medical treatment or diagnosis by a health care professional; or
    - 1.14.1.5 An individual’s health insurance policy number or subscriber identification number and any unique identifier used by a health insurer to identify the individual.
    - 1.14.1.6 A user name or e-mail address in combination with a password or security question and answer that would permit access to an online account.
    - 1.14.1.7 The term does not include information about an individual that has been made publicly available by a federal, state, or local governmental entity. The term also does not include information that is encrypted, secured, or modified by any other method or technology that removes elements that personally identify an individual or that otherwise renders the information unusable.
- 1.15 **Protected Health Information.** Protected Health Information (“PHI”) is individual identifiable health information that is or has been created, received, transmitted or maintained in any form or medium, on or behalf of the Covered Entity, with the exception of education records covered by the Family Educational Rights and Privacy Act, as amend, 20 U.S.C. 1232g, and the health care records of students at post-secondary educational institutions or of students eighteen (18) years of age or older, used

exclusively for their health care treatment which have not been disclosed to anyone other than a health care provider at the student's request.

- 1.16 **Required by law.** Required by law shall have the same meaning as the term "required by law" in 45 CFR § 164.103.
- 1.17 **Secretary of HHS.** Secretary of Health and Human Services or any other officer or employee of Health and Human Services ("HHS") to whom the authority involved has been delegated.
- 1.18 **Security Incident or Incident.** Security Incident or Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PHI or PI contained in any form or interference with system operations in an information system that contains PHI or PI.
- 1.19 **Use.** Use shall mean the sharing, employment, application, utilization, examination, or analysis of PI or PHI within an entity that maintains such information.

#### **SCOPE OF AGREEMENT**

- 1.20 **INDEPENDENT STATUS OF PARTIES.** The Parties agree that they are and shall be independently responsible for complying, and shall independently comply, with the HIPAA Privacy and Security Rules and FIPA as it may be amended from time to time. The Parties further agree that they are and shall be responsible for their own actions and conduct and shall not assume responsibility for the actions and conduct of one another. The Parties agree that they are and shall independently maintain all corporate formalities establishing separate and individual control by each organization's board of directors, as applicable.
- 1.21 Business Associate acknowledges that the confidentiality requirements herein apply to all its employees, agents and representatives. Business Associate assumes responsibility and liability for any damages or claims, including state and federal administrative proceedings and sanctions, the County, including costs and attorneys' fees, resulting from the breach by Business Associate of the confidentiality requirements of this Agreement.

#### **PRIVACY OF PROTECTED HEALTH INFORMATION AND CONFIDENTIALITY OF PERSONAL INFORMATION.**

- 1.22 **Permitted Uses and Disclosures of PHI and PI by Business Associate.** Business Associate may use or disclosure PHI and PI received from Covered Entity to its officers and employees. Business Associate may disclose PHI and PI to a business associate that is a subcontractor and may allow the subcontractor to create, receive, maintain, or transmit PHI and PI on its behalf if the Business Associate obtains satisfactory assurances in accordance with 45 CFR §164.504(e)(1)(i) and § 501.171(2) that the subcontractor will appropriately safeguard the information. All other uses or disclosures not authorized by this Agreement or otherwise governed by law are prohibited.
- 1.23 **Responsibilities of Business Associate.** Regarding the use or disclosure of PHI and PI, Business Associate agrees to:

- 1.23.1 Only use or further disclose the PHI and PI as allowable under this Agreement or applicable law.
- 1.23.2 Only use or further disclosure PHI and PI in a manner that would not violate the HIPAA Privacy and Security Rules or FIPA if done so by the Covered Entity.
- 1.23.3 Establish and implement appropriate procedures, physical, and technical safeguards to prevent improper access, uses, transmissions, or disclosures of PHI and PI for mitigating to the greatest extents possible under the circumstances any deleterious effects from any improper access, use, or disclosure of PHI and PI that Business Associate reports to Covered Entity. Safeguards shall include, but are not limited to, the implementation and use of electronic security measures to safeguard electronic data, requiring employees to agree to access, use, or disclose PHI and PI only as permitted or required by this Agreement and taking related disciplinary action for inappropriate access, use or disclosure as necessary.
- 1.23.4 Report to Covered Entity's Privacy Officer, in writing, any suspected or confirmed access, use or disclosure of PHI or PI, regardless of form, not permitted or required by this Agreement of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such unauthorized use or disclosure.
- 1.23.5 Ensure that Business Associate's subcontractors or agents to whom Business Associate provides PHI or PI, received from, created, or received by the Business Associate on behalf of the Covered Entity, agree to the same restrictions and conditions that apply to the Business Associate with respect to PHI and PI, and ensure that its subcontractors or agents agree to establish and implement reasonable and appropriate safeguards to protect the confidentiality, integrity, and availability of all PHI and PI that it creates receives, maintains, or transmits on behalf of Covered Entity.
- 1.23.6 In order to determine compliance with HIPAA Privacy and Security Rules and FIPA, the Business Associate must make its records, books, accounts, agreements, policies, and procedures available to the Secretary of HHS for determining the Covered Entity's compliance with the HIPAA Privacy and Security Rules, and also, with the State of Florida, Department of Legal Affairs to determine the Covered Entity's compliance with FIPA.
- 1.23.7 Use or disclosure to its subcontractors, agents, other third parties, and Covered Entity, only the minimum PHI and PI necessary to perform or fulfill a specific function required or permitted hereunder.
- 1.23.8 Provide information to Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of disclosures within five (5) days of receiving a written request from Covered Entity, if Business Associate maintains a Designated Records Set on behalf of Covered Entity.
- 1.23.9 At the request, of, and in the time and manner designated by Covered Entity, provide access to the PHI and PI maintained by Business Associate to

Covered Entity or individual, if Business Associate maintains a Designated Records Set on behalf of Covered Entity.

- 1.23.10 At the request, of and in the time and manner designated by Covered Entity, make any amendment(s) to the PHI and PI when directed by Covered Entity, if Business Associate maintains a Designated Record Set on behalf of Covered Entity.
- 1.23.11 Establish and implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI and PI Business Associate creates, receives, maintains or transmits on behalf of Covered Entity.
- 1.23.12 Report to Covered Entity any Security Incident involving PHI and PI that Business Associate discovers.
- 1.24 **Compliance with Covered Entity's Policies.** Business Associate hereby agrees to abide by Covered Entity's policies and practices relating to the confidentiality, privacy, and security of PHI and PI.
- 1.25 **Use of PHI and PI for Management and Administration or Legal Responsibilities of Business Associate.** The Business Associate may use PHI and PI received by the Covered Entity pursuant to this Agreement for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- However, Business Associate will only be allowed to use PHI and PI for the aforementioned uses if (A) the disclosure is required by law; or (b) the Business Associate obtains reasonable assurances from the person to whom the PHI and PI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notified the Business Associate of any instances in which the person is aware of a confidentiality breach of PHI or PI.
- 1.26 **Data Aggregation Services.** With respect to PHI and PI created or received by the Business Associate in its capacity as the Business Associate of the Covered Entity, Business Associate may combine such PHI and PI it has received from the Covered Entity with the PHI and PI received by the Business Associate in its capacity as a Business Associate of another Covered Entity to permit data analysis that relate to the health care operation of the respective Covered Entity, if data analyses is part of the Services that Business Associate is to provide to Covered Entity.
- 1.27 **Compliance.** Business Associate agrees to keep all PHI and PI confidential and secure in compliance with the provisions of this Agreement and according to current state and federal laws.

## CONFIDENTIALITY

- 1.28 In the course of performing under this Agreement, each Party may receive, be exposed to, or acquire the confidential information including, but not limited to, all information, data,

reports, records, summaries, tables and studies, whether written or oral, fixed in hard copy or contained in any computer database or computer readable form, as well as any information identifiable as confidential (“Confidential Information”) of the other Party.

- 1.29 For purposes of this Agreement, Confidential Information shall **not** include PHI, the security and privacy of which is the subject of this Agreement. The Parties including their employees, agents, or representatives shall (A) not disclose to any third party the Confidential Information of the other Party except as otherwise permitted by this Agreement, (B) only permit use of such Confidential Information by employees, agents, and representatives having a need to know in connection with performance under this Agreement, and (c) advise each of their employees, agents, and representatives of their obligations to keep such Confidential Information confidential.
- 1.30 This provision shall not apply to Confidential Information: (A) after it becomes publically available through **no fault** of either Party; (B) which is later publically released by either Party in writing; (C) which is lawfully obtained from third parties without restrictions; or (D) which can be shown to be previously known or developed by either Party independently of the other Party.

## **SECURITY**

- 1.31 **Security of Electronic Protected Health Information and Personal Information.** Business Associate will develop, implement, maintain, and use administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic PHI (as defined in 45 C.F.R. §160.103) and PI (as defined by § 501.171, Florida Statutes) that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity consistent with the HIPAA Privacy and Security Rules and FIPA.
- 1.32 **Reporting Security Incidents.** Business Associate will report to the Covered Entity and County’s Privacy Officer any Incident of which Business Associate becomes aware that is (1) a successful unauthorized access, use or disclosure of Electronic PHI or PI; or (2) (a) modification or destruction of Electronic PHI or PI or (b) interference with system operations in an information system containing Electronic PHI or PI.

## **REPORTING REQUIREMENTS**

- 1.33 **Reporting.** The Business Associate shall make a good faith effort to identify any use or disclosure of protected information not provided for in this Agreement.
- 1.34 **To Covered Entity.** The Business Associate will report to the Covered Entity and the County’s Privacy Officer, within (2) business days of discovery, any use or disclosure of PHI or PI not provided for in this Agreement of which the Business Associate is aware. The Business Associate will report to the Covered Entity and the County’s Privacy Officer within twenty-four (24) hours of discovery, any Security Incident of which the Business Associate is aware. A violation of this paragraph shall be a material violation of this Agreement. Such notice shall include the identification of each individual whose unsecured PHI and PI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, or disclosed during such breach.

Title: Orange County's Privacy Officer,  
Health Services Department  
Telephone: (407) 836-9214  
Fax: (407) 246-5342  
Address: 2002 A. E. Michigan Street, Orlando, FL 32806  
E-Mail: [privacy.officer@ocfl.net](mailto:privacy.officer@ocfl.net)

- 1.34.1 Reports of Security Incidents shall include a detailed description of each Incident, at a minimum to include the date of the Incident, the nature of the Incident, the information involved, whether the information was accessed, disclosed, used, modified, destroyed, etc., and the identities of the individual(s) and their relationship to the Business Associate, a description of the Business's response to each Incident, and the name and title of the individual the Covered Entity should contact for additional information.
- 1.34.2 Business Associate will conduct such further investigation as is reasonably required by the Covered Entity and promptly advise the Covered Entity of additional information pertinent to the Incident.
- 1.34.3 Business Associate will cooperate with Covered Entity in conducting any required risk analysis related to such Security Incident(s).
- 1.34.4 Business Associate will cooperate with Covered Entity in complying with any applicable notification requirements pursuant to the Breach Notification Rule and/or pursuant to Florida law (including but not limited to §§ 501.171 and 817.5681, Florida Statutes), and in taking steps determined by Covered Entity to be necessary to mitigate any potential harm caused by a Security Incident. Business Associate will pay and/or reimburse Covered Entity for any reasonable expenses Covered Entity incurs in notifying individuals of, and /or mitigating potential harm caused by a Security Incident caused by Business Associate and/or its subcontractors or agents.
- 1.35 **To Individuals.** In the case of a breach of PHI or PI discovered by the Business Associate, the Business Associate shall first notify the Covered Entity and the County's Privacy Officer of the pertinent details of the breach and upon prior approval of the County's Privacy Officer shall notify each individual whose unsecured PHI or PI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed as a result of such breach. Such notification shall be in writing by first-class mail to the individual (or the next of kin if the individual is deceased) at the last known address of the individual or next of kin, respectively, or, if specified as a preference by the individual, by electronic mail. Where there is insufficient, or out-of-date contact information (including a phone number, email address, or any other form of appropriate communication) that precludes written (or, if specifically requested, electronic) notification to the individual, a substitute form of notice shall be provided, including, in the case that there are ten (10) or more individuals for which there is insufficient or out-of-date contact information, a conspicuous posting on the web site of the Business Associate involved or notice in major print of broadcast media, including major media in the geographic areas where the individuals affected by the breach likely reside. In any case deemed by the Business Associate to require urgency because of possible imminent misuse of unsecured PHI or PI, the Business Associate may also provide information to individuals by telephone or other means, as appropriate.

- 1.36 **To Media.** In the case of a breach of PHI discovered by the Business Associate where the unsecured PHI of more than five hundred (500) persons or unsecured PI or more than five thousand (5000) persons is reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the Covered Entity, the Business Associate shall provide notice to prominent media outlets serving the State or relevant portion of the State involved.
- 1.37 **To HHS and the State of Florida Department of Legal Affairs.** The Business Associate shall cooperate with the Covered Entity to provide notice to the Secretary of HHS, of unsecured PHI and to the State of Florida, Department of Legal Affairs of unsecured PI, that has been acquired or disclosed in a breach. If the breach was with respect to five hundred (500) or more individuals, such notice must be provided immediately. If the breach was with respect to less than five hundred (500) individuals, the Business Associate may maintain a log of such breach occurring and annually submit such log to the Covered Entity so that it may satisfy its obligation to notify the Secretary of HHS documenting such breaches occurring in the year involved.
- 1.38 **Content of Notices.** All notices required under this Attachment shall include the content set forth 45 C.F.R § 164.404 and FIPA. Notification to individuals except that references therein to a "covered entity" shall be read as references to the Business Associate. Regardless of the method by which notice is provided to individuals under this section, notice of a breach shall include, to the extent possible, the following: (1) a brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known; (2) a description of the types of unsecured PHI and PI that were involved in the breach (such as full name, social security number, date of birth, home address, account number, or disability code); (3) the steps individuals should take to protect themselves from potential harm resulting from the breach; (4) a brief description of what the covered entity involved is doing to investigate the breach, to mitigate losses, and to protect against any further breaches; (5) contact procedures for individuals to ask questions or learn additional information, which shall include a toll free telephone number, an e-mail address, web site, or postal address.
- 1.39 **Notice to Credit Reporting Agencies.** In the case of a breach of PI discovered by the Business Associate where the unsecured PI of more than one thousand (1000) individuals has reasonably believed to have been, accessed, acquired, or disclosed, after prior approval by the Covered Entity, the Business Associate shall notify all consumer reporting agencies nationwide, that complete and maintain files in accordance with the provisions of § 501.171(5).
- 1.40 **Financial Responsibility.** The Business Associate shall be responsible for all costs related to the notice required by this Section.
- 1.41 **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effects that is known to the Business Associate of use or disclosure of PHI or PI in violation of this Agreement, the HIPAA Privacy and Rules, and FIPA.

## **TERMINATION**

- 1.42 **Automatic Termination.** Covered Entity is authorized to automatically terminate this Agreement, if it determines that the Business Associate has violated a material term of the Agreement.

- 1.43 **Opportunity to Cure or Terminate.** At the Covered Entity's sole discretion, Covered Entity may either (a) provide notice of breach and an opportunity for Business Associate to reasonably and promptly cure the breach or end the violation, and terminate this Agreement if Business Associate does not cure the breach, or end the violation within the reasonable time specified by Covered Entity, or (b) immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.
- 1.44 **Effects of Termination.** Termination of this Agreement shall not affect any claim or rights that arise based on the acts or omissions of the parties prior to the effective date of termination.
- 1.45 **Duties of Business Associate Upon Termination.**
- 1.45.1 When this Agreement is terminated, the PHI and PI that Business Associate received from, created, or received on behalf of Covered Entity must be destroyed or returned to Covered Entity, at the Business Associate's expense, including all PHI and PI in the possession of Business Associate's subcontractors or agents. However, if Business Associate determines that returning or destroying PHI and PI is not feasible, Business Associate must maintain the privacy protections under this Agreement and according to applicable law for as long as Business Associate retains the PHI and PI, and Business Associate may only use or disclose the PHI and PI for specific uses or disclosures that make it necessary for Business Associate to retain the PHI and PI.
- 1.45.2 If Business Associate determines that it is not feasible for Business Associate to return PHI or PI in the subcontractor's or agent's possession, Business Associate must provide a written explanation to Covered Entity of such reasons and require the subcontractors and agents to agree to extend any and all protections, limitations, and restrictions contained in this Agreement to the subcontractor's or agent's use or disclosure of any PHI and PI retained after the termination of this Agreement, and to limit any further uses or disclosures for the purposes that make the return or destruction of the PHI or PI not feasible.

## MISCELLANEOUS

- 1.46 **Agreement Subject to All Applicable Laws.** The Parties recognize and agree that this Agreement and their activities are governed by federal, state, and local laws, including the regulations, rules, and policies of the U.S. Department of Health and Human Services including, but not limited to, HIPAA Privacy and Security Rules, FIPA, and their accompanying regulations. The parties further recognize and agree that this Agreement is subject to new legislation as well as amendments to government regulations, rules, and police, and agree to amend this Agreement accordingly.
- 1.47 **No Third party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties any rights, remedies, obligations, or liabilities whatsoever.



- 1.48 **Survival.** The rights and obligations of the Parties in Articles IV, V, VI, VII, and Sections 8.4, 9.6, 9.8, 9.9 shall survive termination of this Agreement indefinitely.
- 1.49 **Amendment.** This Agreement may be revoked, amended, changed, or modified only by a written amended executed by both Parties.
- 1.50 **Assignment.** This Agreement, including each and every right and obligation referenced herein, shall not be assigned by the Business Associate without the express prior written consent of the County.
- 1.51 **Enforcement Costs.** If any legal action or other proceedings, including arbitration, is brought for the enforcement of this Agreement or because of an alleged dispute, breach, default, or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party or Parties shall be entitled to recover reasonable court costs and all expenses, if not taxable as court costs, incurred in that action or proceeding, including all appeals, in addition to any other relief to which such Party or Parties may be entitled. Such enforcement costs shall not be dischargeable in bankruptcy.
- 1.52 **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy and Security Rules.
- 1.53 **Indemnification.** Business Associate agrees to defend, indemnify and hold harmless Covered Entity, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses (including attorney's fees) attributable to its negligent acts or omissions, or those of its officials and employees acting within the scope of their employment, or arising out of or resulting from the indemnifying party's negligent performance under this Agreement. Nothing contained herein shall constitute a waiver of sovereign immunity or the provisions of § 768.28, Florida Statutes. The foregoing shall not constitute an agreement by either party to assume any liability for the acts, omissions and/or negligence of the other party.
- 1.54 **Execution/Authority.** Each signatory to this Agreement represents and warrants that he or she possesses all necessary capacity and authority to act for, sign, and bind the respective entity or person on whose behalf he or she is signing.
- 1.55 **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the state of Florida to the extent not preempted by the Privacy Rules or other applicable federal law.
- 1.56 **Notice.** All notices and other communications under this Agreement shall be in writing and shall be deemed received when delivered personally or when deposited in the U.S. mail, postage prepaid, sent registered, or certified mail, return receipt requested, or sent via nationally recognized and receipted overnight courier service, to the Parties at their respective principal office or record as set forth below or as designed in writing from time-to-time. No notice of a change of address shall be effective until received by the other Party(ies).

**Health Services Department**

Director, Health Services/EMS  
2002 A E Michigan St  
Orlando, FL 32806  
(407) 836-7611

Copy to:  
Orange County Administrator  
Administration Building, 5th Floor  
201 S Rosalind Avenue  
Orlando, FL 32801

**Business Associate**

Orange County Dental Research Clinic, Inc.  
301 W. Amelia Street  
Orlando, Florida 32801

- 1.57 **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance, shall to any extent be invalid or unenforceable, the remainder of this Agreement, or the application of such affected provision to persons or circumstances other than those to which it is held invalid or unenforceable, shall not be affected thereby, and each provision of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law. It is further the intention of the Parties that if any provision of this Agreement were capable of two constructions, one that rendered the provision void and one that renders the provision valid, then the provision shall have the meaning that renders it valid.
- 1.58 **Successors and Assigns.** Business Associate shall not assign either its obligations or benefits under this Agreement without the expressed written consent of the Covered Entity, which shall be at the sole discretion of the Covered Entity. Given the nature of this Agreement, neither subcontracting nor assignment by the Business Associate is anticipated and the use of those terms herein does not indicate that permission to assign or subcontract has been granted.
- 1.59 **Venue.** Any action or proceeding seeking to enforce any provision, or based on any right arising out of this Agreement shall be brought against any of the Parties in the courts of the State of Florida, County of Orange and each of the Parties consents to the jurisdiction of such courts (and of the appropriate appellate courts) in any such action or proceeding and waives any objection to venue therein. Process in any action or proceeding referred to in the proceeding sentence may be served on any Party anywhere.
- 1.60 **Waiver and Breach.** No failure by a Party to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement shall constitute a waiver of any such breach or such covenant, agreement, term, or condition. Any party may waive compliance by the other Party with any of the provisions of this Agreement if done so in writing. No waiver of any provision shall be construed as a waiver of any other provision or any subsequent waiver of the same provision.

1.61 **Entire Agreement.** The original Contract executed by the Parties known as Contract Y20-2077, this Agreement, and any addenda or attachments thereto shall construe the entire understanding between the Parties as to the rights, obligations, duties, and services to be performed hereunder.