

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (“Agreement”), effective the \_\_\_ day of \_\_\_\_\_, 20\_\_ ( “Effective Date”), is entered into by and between **the Seminole Tribe of Florida, a federally recognized Indian tribe under 25 U.S.C. § 476, on behalf of its Covered Entity components defined below** and **CITY OF HOLLYWOOD, FLORIDA, a municipal corporation of the State of Florida, (“Business Associate”)**. The Seminole Tribe of Florida is a hybrid entity under the Health Insurance Portability and Accountability Act of 1996, its amendments and implementing regulations ("HIPAA"). The Seminole Tribe of Florida has designated its **Fire-Rescue Department** as covered entity components under HIPAA (individually and collectively, "Covered Entity.") (Business Associate and Covered Entity are each a “Party” and collectively the “Parties”).

**BACKGROUND**

Pursuant to the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, its amendments and implementing regulations, (“HIPAA”), Covered Entity is required to enter into a written agreement with Business Associate in order to protect the privacy and security of certain health information maintained by Covered Entity and classified as Protected Health Information or PHI (as hereinafter defined). Business Associate and its employees, affiliates, sub-contractors, agents or representatives may access paper and/or electronic records containing PHI to fulfill their obligations to Covered Entity pursuant to either an existing or contemporaneous agreement for services (“Services Agreement”). The Parties desire to enter into this Agreement to protect PHI.

The Parties, intending to be legally bound, hereby agree to the following:

1. **Definitions.**

Terms used, but not otherwise defined, in this Agreement shall have the meanings set forth below.

1.1. “*Breach*” shall mean:

(A) IN GENERAL - The term “breach” means the acquisition, access, use, or disclosure of PHI in a manner not permitted under subpart E of Part II, 45 C.F.R. Parts 160 and 164, which compromises the security or privacy of PHI.

(B) EXCEPTIONS - The term “breach” does not include:

(i) Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of a Covered Entity or a 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 subpart E of Part II, 45 C.F.R. Parts 160 and 164.

(ii) Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access PHI at the

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same Covered Entity or Business Associate, or organized health care arrangement in which the Covered Entity participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under subpart E of Part II, 45 C.F.R. Parts 160 and 164.

(iii) A disclosure of PHI 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.

(C) Except as provided in Paragraph (B) of this definition, an acquisition, access, use or disclosure of PHI in a manner not permitted under subpart E is presumed to be a breach unless Covered Entity or Business Associate, as applicable, demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment as described in 45 C.F.R. § 164.402.

1.2 “*Designated Record Set*” shall mean a group of records maintained by or for the Covered Entity that is (i) the medical records and billing records about Individuals maintained by or for the Covered Entity, (ii) the enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for the Covered Entity; or (iii) used, in whole or in part, by or for the Covered Entity to make decisions about Individuals. As used herein the term “Record” means any item, collection, or grouping of information that includes PHI and is maintained, collected, used, or disseminated by or for the Covered Entity.

1.3 “*Electronic Protected Health Information*” or “*Electronic PHI*” shall mean Protected Health Information transmitted by Electronic Media or maintained in Electronic Media.

1.4 “*Electronic Media*” shall mean (i) electronic storage media on which data is or may be recorded electronically, including computer hard drives and any digital memory medium that is removable or transportable, such as magnetic tape or disk, optical disk, or digital memory card; and (ii) transmission data used to exchange information already in electronic storage media, including, for example, the Internet, extranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.

1.5 “*Health Care Operations*” shall mean activities including: (i) quality assessment and improvement activities (outcomes, evaluation and development of clinical guidelines), population-based activities relating to improving health or reducing health care costs, and related activities that do not include treatment; (ii) peer and entity review, education, credentialing activities; (iii) except as prohibited under 42 C.F.R. § 164.502(a)(5)(i), underwriting, enrollment, premium rating, and other activities related to the creation, renewal or replacement of a contract of health insurance or health benefits; (iv) conducting or arranging for medical review, legal services, and auditing services, including fraud and abuse detection and compliance programs; (v) business planning and development; (vi) business management and general administrative activities of the entity; and (vii) licensure/accreditation.

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1.6. *"HITECH Act"* shall mean the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the Recovery Act.

1.7. *"Individual"* shall have the same meaning given such term in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.8. *"Individually Identifiable Health Information"* shall have the same meaning given such term in 45 C.F.R. § 160.103 and thus shall mean information that is a subset of health information, including demographic information collected from an Individual, and (i) is created or received by Covered Entity or Business Associate on behalf of the Covered Entity; and (ii) 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 identifies the Individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

1.9. *"Payment"* shall mean (i) except as prohibited under 45 C.F.R. § 164.502(a)(5)(i), the activities undertaken by Covered Entity to obtain premiums or to determine or fulfill its responsibility for coverage and the provision of benefits under the Covered Entity's health plan(s); or (ii) a covered health care provider or health plan's activity to obtain or provide reimbursement for the provision of health care. Such activities include eligibility/coverage determinations, risk adjusting, billing, claims management and collection activities, health care data processing, reviews of health care services with respect to medical necessity, coverage under the Covered Entity's health plans, appropriateness of care, or justification of charges; utilization review activities (including prior authorization), disclosure to consumer reporting agencies relating to the collection of premiums or reimbursement.

1.10. *"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.

1.11. *"Privacy Standards"* shall mean the Standard for Privacy of Individually Identifiable Health Information, 45 C.F.R. Parts 160 and 164.

1.12. *"Protected Health Information"* or *"PHI"* shall have the same meaning given such term in 45 C.F.R. § 160.103 and thus shall mean Individually Identifiable Health Information that is (i) transmitted by Electronic Media, (ii) maintained in any medium constituting Electronic Media; or (iii) transmitted or maintained in any other form or medium. "Protected Health Information" shall not include (i) education records covered by the Family Educational Right and Privacy Act, as amended, 20 U.S.C. § 1232g, (ii) records described in 20 U.S.C. § 1232g(a)(4)(B)(iv); (iii) employment records held by Covered Entity in its role as employer, and (iv) records regarding a person who has been deceased more than fifty (50) years.

1.13. *"Recovery Act"* shall mean the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (Feb. 17, 2009).

1.14. *"Required By Law"* shall have the same meaning as the term "required by law" in 45 C.F.R. 164.103.

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1.15. “*Secretary*” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

1.16. “*Security Incident*” shall mean any attempted or successful unauthorized access, use, disclosure, modification or destruction of information or systems operations in an electronic information system.

1.17. “*Subcontractor*” shall mean a person or entity to whom Business Associate delegates a function, activity or service, other than in the capacity of a member of the workforce of Business Associate.

1.18. “*Security Rule*” shall mean the security standards at 45 C.F.R. Parts 160, 162 and 164.

1.19. “*Treatment*” shall mean the provision, coordination, or management of health care and related services by one or more health care providers, including the coordination or management of health care by a health care provider with a third party, including Covered Entity and/or Business Associate; consultation between health care providers relating to an Individual; or the referral of an Individual for health care from one health care provider to another.

1.20. “*Tribe*” shall mean, individually and collectively, the Seminole Tribe of Florida and Seminole Tribe of Florida, Inc., as the context requires.

### 2. **Services Agreement.**

2.1. To the extent that the Services Agreement between the parties has already been committed to writing, such Services Agreement hereby incorporates the terms of this Agreement. In the event of conflict between the terms of any written Services Agreement and this Agreement related to HIPAA matters and other topics discussed herein, the terms and conditions of this Agreement shall govern.

2.2. Except as otherwise permitted by this Agreement, the Services Agreement, or HIPAA, the Privacy Rule, the Security Rule or the Recovery Act, Business Associate will use and disclose PHI only as permitted or required by the terms of this Agreement, to the extent required to fulfill Business Associate’s obligations under the Services Agreement, or to perform any other related function, activity or service specifically requested by Covered Entity in writing, or as Required By Law. All other uses not authorized by this Agreement are prohibited.

### 3. **Responsibilities of Business Associate.**

Business Associate agrees to:

3.1. Use or further disclose only the minimum necessary PHI in performing the activities required under the Services Agreement.

3.2. Not use or further disclose PHI except as permitted under this Agreement, HIPAA, the Privacy Rule, the Security Rule, the Recovery Act and other applicable law or regulation, each as amended from time to time.

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3.3. Establish, implement and enforce all appropriate administrative, technical, and physical safeguards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement.

3.4. Take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.

3.5. Document disclosures of PHI in accordance with 45 C.F.R. § 164.528, in order for Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI or in order for the Business Associate to respond to a request for an accounting to the extent required by the Recovery Act.

3.6. Report to Covered Entity in writing any use or disclosure of PHI of which Business Associate becomes aware that is not permitted by this Agreement within three (3) calendar days of Business Associate's discovery of such use or disclosure, including breaches of unsecured PHI other than as provided in this Agreement, and any security incident of which Business Associate becomes aware.

3.7. Mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement.

3.8. Enter into a written agreement with any sub-contractors or agents that receives, creates, maintains, or transmits PHI received from Business Associate on behalf of Covered Entity, legally binding such subcontractors or agents to the same restrictions, terms and conditions that apply to Business Associate pursuant to this Agreement with respect to such PHI, including the requirement that the subcontractor or agent, as applicable, implement reasonable and appropriate safeguards to protect any electronic PHI that is disclosed to it by Business Associate.

3.9. Upon Covered Entity's request and within ten (10) calendar days of such request, provide to Covered Entity all required information to permit Covered Entity to respond to a request from an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.

3.10. Maintain the integrity of any PHI transmitted by or received from Covered Entity.

3.11. Provide to Covered Entity or, as directed by Covered Entity, to an Individual to whom the PHI relates, the rights of access, amendment, and accounting as set forth in 45 C.F.R. 164.524, 45 C.F.R. 164.526 and 45 C.F.R. 164.528.

3.12. Implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall implement policies and procedures regarding such safeguards. Business Associate shall also comply, where applicable, with subpart C of 45 C.F.R. Part 164, with respect to Electronic PHI.

3.13. Promptly report to Covered Entity, in writing, any Security Incident, or facts which may give rise to a Security Incident, of which Business Associate becomes aware.

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3.14. Notify Covered Entity of any Breach without unreasonable delay and within three (3) calendar days of discovery by Business Associate as required by federal law. Delay in notification may only be allowed under the Recovery Act § 13402(g) and 45 C.F.R. § 164.412. The notice shall include the identification of each Individual whose unsecured PHI has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach.

3.15. Pay or reimburse any reasonable expenses, damages, penalties, or other losses that Covered Entity or the Tribe incurs in connection with any Breach notification that Covered Entity or Tribe is required or elects to transmit, in connection with a Breach of PHI by Business Associate or any of Business Associate's employees, officers, directors, sub-contractors, or other agents.

3.16. Comply with requested restrictions on the disclosure of PHI as communicated to Business Associate by Covered Entity if the disclosure is to a health plan for the purposes of carrying out Payment or Health Care Operations (and is not for the purpose of carrying out Treatment) and the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.

3.17. Limit required use and disclosure of PHI, to the extent practicable, to the limited data set as defined by 42 C.F.R. § 164.514(e)(2), or the minimum necessary to accomplish the intended purpose of such disclosure, subject to exceptions set forth in the Privacy Rule.

3.18. If Business Associate maintains Electronic Health Records as that term is defined in Section 13400 of the Recovery Act and an Individual requests a copy of such records, transmit the electronic records directly to an entity or person designated by the Individual, provided that any such choice is clear, conspicuous, and specific. Any fee charged for such electronic records shall not exceed Business Associate's labor costs.

3.19. Refrain from marketing practices prohibited by Section 13046 of the HITECH Act or the Privacy Rule.

3.20. Refrain from receiving or providing direct or indirect remuneration in exchange for any PHI in a manner that would violate Section 13405(d) of the HITECH Act or 45 C.F.R. § 164.502(a)(5)(ii).

3.21. Upon fifteen (15) calendar days prior notice from Covered Entity, allow Covered Entity to audit Business Associate's records, systems, agreements, policies, and procedures and to conduct visits of Business Associate's offices and facilities to verify Business Associate's compliance with this Agreement. Business Associate shall provide Covered Entity with suitable space in its offices or facilities to allow Covered Entity to conduct any such audit or site visit.

3.22. If Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under this Agreement, unless Covered Entity successfully takes steps to cure the Breach or end the violation after receipt of notice from Business Associate, then Business Associate shall terminate this Agreement and the Services Agreement or, if not feasible, notify the Secretary.

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3.23. Make itself, and any of its directors, officers, employees, subcontractors, and other agents, available to Covered Entity or the Tribe, to assist Covered Entity and/or the Tribe in any litigation or administrative proceeding threatened or commenced against Covered Entity, the Tribe, and/or a government official, director, officer, employee, independent contractor, or agent of the foregoing, which relates to a claimed violation of the Privacy or Security Rule involving Business Associate, except where Business Associate is named as an adverse party.

3.24. Be subject to the application of civil and criminal penalties for violation of Sections 13401 and 13404(a) and (b) of Part 1 of the HITECH Act.

3.25. Provide prompt notice to Covered Entity of the commencement and nature of any investigation of, or initiation of any legal proceedings against, Business Associate or any of its directors, officers, employees, subcontractors, or other agents by any state, federal, tribal, or local governmental agency or other prosecutorial entity relating to its compliance with HIPAA or other similar federal, state, tribal, or local privacy law, irrespective of whether such investigation involves PHI created, used, or disclosed on behalf of Covered Entity. Business Associate shall also provide prompt notice to Covered Entity of the outcome of any such investigation or legal proceeding.

3.26. Not transfer PHI outside the United States without the prior written consent of Covered Entity. In this context, a "transfer outside the United States" occurs if Business Associate's workforce members, agents or subcontractors physically located outside the United States are able to access, use, or disclose PHI.

3.27. Not use or disclose Genetic Information as defined in 45 C.F.R. § 164.103 for underwriting purposes in violation of the HIPAA Privacy Rule.

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

3.29. Business Associate shall keep such records and submit such compliance reports in such time and manner and containing such information as the Secretary may determine to be necessary to enable the Secretary to ascertain whether Business Associate has complied or is complying with the applicable administrative simplification provisions.

#### 4. **Permitted Disclosures by Business Associate.**

Business Associate may:

4.1. Use PHI in its possession for proper management and administration of its duties under the Services Agreement or to fulfill any of its legal responsibilities under the Services Agreement.

4.2. Disclose PHI in its possession to third-parties for proper management and administration, or to fulfill any of its legal responsibilities under this Agreement or the Services Agreement; *provided that* (i) the disclosures are Required By Law, as provided for in 45 C.F.R. § 164.103, or (ii) Business Associate has received written assurances from the third party that the

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PHI will be held confidentially, and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and that the third party will notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached, as required under 45 C.F.R. § 164.504(e)(4).

4.3. Use PHI in its possession to provide data aggregation services relating to the health care operations of Covered Entity, as provided in 45 C.F.R. § 164.501.

4.4. If requested by Covered Entity, de-identify any and all PHI, *provided that* the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b), and *further provided that* Business Associate maintains the documentation required by 45 C.F.R. § 164.514(b), which may be in the form of a written assurance from Business Associate. Pursuant to 45 C.F.R. § 164.502(d), de-identified information does not constitute PHI and is not subject to the terms of the Agreement.

### 5. **Responsibilities of Covered Entity.**

Covered Entity shall:

5.1. Not request or require that Business Associate make any use, disclosure or alteration of PHI that would violate HIPAA, the Privacy Rule, the Security Rule or the Recovery Act if done by Covered Entity.

5.2. Use appropriate safeguards to maintain and ensure the confidentiality, privacy and security of PHI transmitted to Business Associate pursuant to this Agreement and the Services Agreement in accordance with the standards and requirements of HIPAA and the Privacy Rule, the Security Rule or the Recovery Act until such PHI is received by Business Associate.

5.3. Provide to Individuals a notice of privacy practices pursuant to 45 C.F.R. § 164.520 that shall, throughout the term of this Agreement, give notice of the types of uses and disclosures that are allowed, including types undertaken by Business Associate pursuant to this Agreement. Covered Entity shall also notify Business Associate of any limitations in Covered Entity's notice of privacy practices to the extent such limitation(s) may affect Business Associate's use or disclosure of PHI.

5.4. Notify Business Associate in writing of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522 or a restriction pursuant to the Recovery Act § 13405(a) to which Covered Entity's compliance was mandatory to the extent such restriction may affect Business Associate's use or disclosure of PHI.

5.5. Notify Business Associate of any changes to, or withdrawal of, the consent or authorization of an Individual provided to Covered Entity pursuant to 45 C.F.R. §§ 164.506 or 164.508 to the extent such changes may affect Business Associate's ability to perform its obligations under this Agreement.

6. **Access to PHI.** Within five (5) calendar days of a request by Covered Entity for access to PHI maintained by Business Associate, Business Associate shall make PHI available to Covered Entity, or at the written direction of Covered Entity, to an Individual to whom such PHI relates or



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his or her authorized representative. In the event any Individual requests access to PHI directly from Business Associate, Business Associate shall, within five (5) calendar days, forward such request to Covered Entity. Any denials of access to the PHI requested shall be the responsibility of Covered Entity.

7. **Amendment of PHI.** Business Associate shall make PHI available to Covered Entity and will amend PHI as instructed by Covered Entity, in a manner consistent with the Privacy Rule within ten (10) calendar days of receipt of a request from Covered Entity for the amendment of patient's PHI.

8. **Accounting for Disclosures of PHI.** Within thirty (30) calendar days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI, Business Associate shall make available to Covered Entity such information as is in Business Associate's possession required for Covered Entity to satisfy the accounting of disclosures requirement set forth in the Privacy Rule. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall, within five (5) calendar days, forward the request to Covered Entity. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested.

9. **Individual Rights Regarding Designated Record Sets.** If Business Associate maintains any PHI that could be construed to be part of a Designated Record Set of Covered Entity, Business Associate shall (i) provide access to, and permit inspection and copying of, PHI by Covered Entity, or if directed by Covered Entity, an Individual who is the subject of the PHI under conditions and limitations required under 45 C.F.R. § 164.524, as it may be amended from time-to-time, and (ii) amend PHI maintained by Business Associate as requested by Covered Entity. Business Associate shall respond to any request from Covered Entity for access by an individual within five (5) calendar days of such request and shall make any amendment requested by Covered Entity within ten (10) calendar days of such request. Any information requested under this Section 9 shall be provided in the form or format requested, if it is readily producible in such form or format. Business Associate may charge a reasonable fee based upon Business Associate's labor cost in responding to a request for electronic information (or a cost-based fee for the production of non-electronic media copies). Covered Entity shall determine whether a denial is appropriate or an exception applies. Business Associate shall notify Covered Entity within five (5) calendar days of receipt of any request for access or amendment by an individual. Covered Entity shall determine whether to grant or deny access or amendment requested by the individual. Business Associate shall have a process in place for receiving requests for amendments and for appending such requests to the Designated Record Set, as requested by Covered Entity.

10. **Data Ownership.** Covered Entity, and not Business Associate, maintains ownership of all PHI created or received by Business Associate in connection with this Agreement and the Services Agreement.

11. **Records and Audit.** If Business Associate receives a request, made by or on behalf of the Secretary, requiring Business Associate to make available its internal practices, books, and records relating to the use and disclosure of PHI to the Secretary for the purpose of determining compliance of Covered Entity with the Privacy Standards, then Business Associate shall promptly notify Covered Entity that Business Associate has received such request. Except as otherwise set forth

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below, Business Associate shall make its books and records relating to the use and disclosure of PHI by Covered Entity available to the Secretary and the Secretary's authorized representatives for purposes of determining compliance of Covered Entity with the Privacy and Security Rules.

12. **Government Access.** To the extent permitted by Tribal and other applicable laws, Business Associate will make its internal policies, procedures, books and records relating to use and disclosure of PHI (excluding the actual PHI) received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Rules.

13. **Representations and Warranties.**

Each Party represents and warrants to the other Party:

13.1. That all of its employees, agents, representatives and members of its workforce, whose services may be used to fulfill obligations under this Agreement are, or shall be, appropriately informed of the terms of this Agreement and are under legal obligation to each Party, respectively, by contract or otherwise, sufficient to enable each Party to fully comply with all provisions of this Agreement.

13.2. That it will reasonably cooperate with the other Party in the performance of the mutual obligations under this Agreement.

14. **Term.** Unless otherwise terminated as provided in Section 15, this Agreement shall become effective on the Effective Date and shall be coterminous with the Services Agreement.

15. **Termination.**

15.1. This Agreement will automatically terminate without any further action of the Parties upon termination of Business Associate's Services Agreement with Covered Entity; provided, however, that all provisions herein that may reasonably be expected to survive expiration or termination of this Agreement, including but not limited to Sections 3, 4, 5, 10, 11, 12, 16, and 21, shall survive such expiration or termination.

15.2. Either Party may immediately terminate this Agreement, the Services Agreement, and any related agreements if the Party makes the determination that the other Party has breached a material term of this Agreement. Alternatively, and in the sole discretion of the non-breaching Party, the non-breaching Party may choose to provide the breaching Party with written notice of the existence of the breach and provide the breaching Party thirty (30) calendar days to cure said breach upon mutually agreeable terms. Failure by the breaching Party to cure said breach or violation in the manner set forth above shall be grounds for immediate termination of the Services Agreement by the non-breaching Party. If termination is not feasible, the Covered Entity shall report the problem to the Secretary if the problem relates to matters within the Secretary's purview.

16. **Effect of Termination.**

16.1. Upon termination of this Agreement, Business Associate agrees to return or destroy all PHI in whatever form or medium (including any Electronic Media under Business Associate's

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custody or control, such as by destroying all back-up tapes and permanently deleting all Electronic PHI) received from Covered Entity, or created, received, transmitted or maintained by Business Associate on behalf of Covered Entity, including all copies of any data or compilations derived from PHI that are in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate will complete such return or destruction as promptly as possible, following termination, cancellation, expiration or other conclusion of this Agreement and provide Covered Entity written certification of such return or destruction. In the event that Business Associate determines that returning or destroying any of the PHI is infeasible, Business Associate will identify such PHI that Business Associate created, maintained, or transmitted for or received from Covered Entity that cannot feasibly be returned or destroyed and the conditions that make return or destruction infeasible. Upon mutual agreement of Business Associate and Covered Entity that return or destruction of the PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI solely to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Business Associate may retain such PHI and related information for such purposes after termination or expiration of the Agreement.

16.2. Following termination of the Business Associate Agreement and within thirty (30) calendar days of receipt of a written demand from Covered Entity, Business Associate will a) certify in writing to Covered Entity that the return or destruction of all PHI has been completed; b) will identify any PHI for which return or destruction is infeasible; and, c) will certify that it will only use or disclose such non-destroyed and non-returned PHI for those purposes that make return or destruction infeasible.

17. **Third-Party Beneficiaries.** Nothing in this Agreement shall be construed to create third-party beneficiary rights in any person or entity.

18. **Amendments; Waiver.** This Agreement may not be modified, nor shall any provision be waived or amended, except in a writing duly signed by authorized representatives of the Parties. The failure of either Party to enforce at any time any provision of this Agreement shall not be construed to be a waiver of such provision, nor in any way to affect the validity of this Agreement or the right of either Party thereafter to enforce each and every such provision.

19. **Notices.** Any notice or other communication required or desired to be given to any Party under this Agreement shall be in writing and shall be deemed given when (a) deposited in the United States mail, first-class postage prepaid, and addressed to that Party at the address for such Party set forth below; (b) the next business day immediately following delivery to Federal Express, or any other similar express delivery service for next-day delivery to that Party at that address; or (c) sent by facsimile transmission, with electronic confirmation, to that Party at its facsimile number set forth below. Any Party may change its address or facsimile number for notices under this Agreement by giving the other party notice of such change.

**Covered Entity:**       **Seminole Tribe of Florida Fire-Rescue  
Department**  
Attn: Fire Rescue Chief  
6300 Stirling Road  
Hollywood, FL 33024

**Business Associate:** **City of Hollywood**  
Attn: Fire Chief Dan Booker  
2741 Stirling Road  
Hollywood, FL 33312

Notice of change of address of a Party shall be given in writing to the other Party as provided above.

20.    **Governing Law and Venue.** This Agreement shall be governed by and interpreted in accordance with the laws of the Seminole Tribe of Florida and applicable federal law. To the extent not governed by the laws of the Seminole Tribe of Florida, and to the extent not preempted by the Employee Retirement Income Security Act of 1974, this Agreement will be governed by and construed in accordance with the laws of the State of Florida. Business Associate waives all pleas of lack of jurisdiction, improper venue and forum non-conveniens as not being a resident of any County in Florida where suit is instituted and hereby specifically authorizes any action brought in connection with the enforcement of this Agreement by Covered Entity or Tribe to be instituted and prosecuted in either the Circuit Court of Broward County, in the State of Florida, or the United States District Court for the Southern District of the State of Florida, at the election of Covered Entity or Tribe.

21.    **Indemnification.** Business Associate will indemnify, defend and hold harmless Covered Entity and the Tribe's government officials, employees, directors, officers, subcontractors, agents and affiliates from and against all claims, actions, damages, losses, liabilities, fines, penalties, costs or expenses (including without limitation reasonable attorneys' fees) (each, a "Loss") suffered by Covered Entity or the Tribe, arising from or in connection with any breach of this Agreement, or any negligent or wrongful acts or omissions in connection with this Agreement, by Business Associate or by its employees, directors, officers, subcontractors, or agents. Accordingly, on demand, Business Associate shall reimburse Covered Entity or the Tribe for any Loss incurred by Covered Entity or the Tribe.

22.    **Assignment.** Neither Party may assign this Agreement without the prior written consent of the other.

23.    **Compliance with Law; Regulatory Changes.** It is the Parties' intent to comply strictly with all applicable laws, including without limitation, HIPAA, Medicare or Medicaid statutes, other federal statutes, state statutes, or regulations, each as applicable to the Tribe (collectively, the "Regulatory Laws"), in connection with this Agreement. In the event there shall be a change in the Regulatory Laws, or in the reasoned interpretation of any of the Regulatory Laws or the adoption of new applicable Tribal, federal or state legislation, any of which are reasonably likely to materially and adversely affect the manner in which either Party may perform or be compensated

## EXHIBIT "B" - TO BE REPLACED WITH EXECUTED DOCUMENT

under this Agreement or which shall make this Agreement unlawful, the Parties shall immediately enter into good faith negotiations regarding a new arrangement or basis for compensation pursuant to this Agreement that complies with the law, regulation or policy and that approximates as closely as possible the economic position of the Parties prior to the change. In addition, the Parties hereto have negotiated and prepared the terms of this Agreement in good faith with the intent that each and every one or the terms, covenants and conditions herein be binding upon and inure to the benefit of the respective Parties. To the extent this Agreement is in violation of applicable law, then the Parties agree to negotiate in good faith to amend this Agreement, to the extent possible consistent with its purposes, to conform to law.

24. **Interpretation.** Any ambiguity in this Agreement will be resolved in such a manner to permit the Parties to comply with the Privacy Rule and the Security Rule, as amended by the HITECH Act.

25. **Tribe's Relationship with U.S. Government.** Business Associate acknowledges that the Seminole Tribe of Florida is a federally-recognized Indian tribe, and that Seminole Tribe of Florida, Inc. is a federally-chartered Tribal corporation, and as such, they maintain a unique government-to-government relationship with the United States, which accords them rights and responsibilities which may be different from Business Associate's other clients. To the extent that Tribe's relationship with the United States government may require deviations in the provisions set forth herein, Tribe shall provide Business Associate with a written description of such deviations and Business Associate shall implement them, notwithstanding anything herein to the contrary.

26. **Remedies.** No right or remedy given to a Party under this Agreement is intended to be exclusive; each will be in addition to any other right or remedy provided by this Agreement and/or otherwise available at law or in equity. Business Associate acknowledges and agrees that no right or remedy hereunder is in lieu of the imposition of any applicable civil and/or criminal penalties on Business Associate, including but not limited to, penalties imposed under the HITECH Act.

27. **Statutory References.** Any references herein to a federal act or statute shall be a reference to such act or statute as it may be subsequently updated, amended, or modified.

28. **Regulatory References.** Any references herein to a federal regulatory section within the Code of Federal Regulations shall be a reference to such section as it may be subsequently updated, amended, or modified.

29. **Severability.** In the event any provision of this Agreement is held to be unenforceable for any reason, the unenforceability thereof shall not affect the remainder of this Agreement, which shall remain in full force and effect and enforceable in accordance with its terms.

30. **Binding Effect.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the Parties and their respective heirs, executors, administrators, legal representatives, successors and assigns.

31. **NO WAIVER OF SOVEREIGN IMMUNITY.** Notwithstanding anything herein to the contrary, nothing herein shall be construed as a waiver of the Tribe's sovereign immunity.

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32. **Counterparts.** This Agreement may be executed in counterparts, each of which will constitute an original and all of which will be one and the same document.

INTENDING TO BE LEGALLY BOUND, the Parties hereto have duly executed this Agreement as of the Effective Date.

**COVERED ENTITY:**

*Seminole Tribe of Florida Fire-Rescue  
Department*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**BUSINESS ASSOCIATE:**

*City of Hollywood, Florida*

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_