HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 COMPLIANCE: BUSINESS ASSOCIATE (BA) AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT ("AGREEMENT") is entered into by and between Florida
Healthy Kids Corporation, a Florida non-profit corporation, ("FHKC" or "Covered Entity") and

(the "BA"), and is incorporated in the Contract or other Ancillary Agreement ("Contract")
between FHKC and ______.

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HIPAA COMPLIANCE

- 9 FHKC and BA agree to comply with the Health Insurance Portability and Accountability Act of 1996, Pub.
- 10 L. No. 104-191, as amended from time to time ("HIPAA") and the Health Information Technology for
- 11 Economic and Clinical Health Act ("HITECH").
- 12 FHKC and BA enter into this Agreement to comply with the requirements of the implementing regulations
- at 45 Code of Federal Regulations (C.F.R) Parts 160-164 for the Administrative Simplification provisions
- 14 of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), and the
- 15 requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated
- in the American Recovery and Reinvestment Act of 2009 (HITECH), that are applicable to business
- 17 associates, along with any guidance and/or regulations issued by Department of Health and Human
- 18 Services ("HHS"). FHKC and BA agree to incorporate into this agreement any regulations issued with
- 19 respect to the HITECH Act that relate to the obligations of business associates. BA recognizes and
- agrees that it is directly obligated by law, through the Contract, and through any other written agreement
- 21 and this Agreement to meet the applicable provisions of HIPAA and HITECH.

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DEFINITIONS FOR USE IN THIS ATTACHMENT

- 24 Terms used but not otherwise defined in this Agreement and the Contract shall have the same meaning
- 25 as those terms in 45 C.F.R. Parts 160, 162 and 164.

26 OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (PRIVACY RULE)

27 Operation on Behalf of FHKC

- 28 The BA shall use and disclose Protected Health Information ("PHI") only as shall be permitted by the
- 29 Contract and this Agreement. BA shall have the same duty to protect FHKC's PHI as such term is
- defined in the Contract, and in furtherance of the duties therein.

31 Compliance with the Privacy Rule

- 32 BA agrees to fully comply with the requirements under the Standards for Privacy of Individually
- 33 Identifiable Health Information ("Privacy Rule") applicable to "business associates," as that term is defined
- 34 in the Privacy Rule, and not use or further disclose PHI other than as permitted or required by the
- 35 Contract, this Agreement or as required by law.
- 36 BA shall create and/or adopt policies and procedures to periodically audit BA's adherence to all HIPAA
- 37 and HITECH regulations. BA acknowledges and promises to perform such audits pursuant to the terms

- 38 and conditions set out herein. BA shall make such audit policies and procedures available to FHKC for
- 39 review.

40 Privacy Safeguards and Policies

- 41 BA agrees to use appropriate safeguards to prevent use or disclosure of PHI other than as provided for
- 42 by the Contract, any Ancillary Agreement(s), this Agreement, or as required by law.

43 Mitigation of Harmful Effect of Violations

- 44 BA agrees to inform FHKC without unreasonable delay and mitigate, to the extent practicable, any
- 45 harmful effect that is known to BA of a use or disclosure of PHI by BA, or by a subcontractor or agent of
- BA, resulting from a violation of the requirements of this Agreement.

Privacy Obligations Breach and Security Incidents

48 Privacy Breach

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- 49 BA will report to FHKC, immediately following discovery and without unreasonable delay, any use or
- 50 disclosure of FHKC's Protected Health Information not permitted by this Agreement or in writing by FHKC.
- In addition, BA will report, immediately following discovery and without unreasonable delay, but in no
- event later than seven (7) business days following discovery, any "Breach" of "Unsecured Protected
- Health Information" as these terms are defined by the HITECH Act and any implementing regulations,
- 54 notwithstanding whether BA has made an internal risk analysis and determined that no notification is
- 55 required. BA shall cooperate with FHKC in investigating the Breach and in meeting FHKC's obligations
- under the HITECH Act and any other security breach notification laws. In the event of a breach, BA and
- 57 FHKC will work together to comply with any required regulatory filings.
- 58 Any such report shall include the identification (if known) of each individual whose unsecured PHI has
- been, or is reasonably believed by BA to have been, accessed, acquired, or disclosed during such
- 60 Breach. BA will make the report to FHKC's Privacy Officer not more than seven (7) business days after
- BA learns of such non-permitted use or disclosure.
- Any items not known at the time of the initial report will be subsequently reported to FHKC as answers
- 63 are determined. All elements will be reported no later than 30 days after the date of the initial report, or as
- soon as feasible, whichever is sooner.

Access of Individual to PHI and other Requests to Business Associate

- 66 If BA receives PHI from FHKC in a designated record set, BA agrees to provide access to PHI in a
- designated record set to FHKC in order to meet its requirements under 45 CFR § 164.524. If BA receives
- 68 a request from an individual for a copy of the individual's PHI, and the PHI is in the sole possession of the
- 69 BA, BA will provide the requested copies to the individual and notify FHKC of such action within five (5)
- 50 business days of completion of the request. If BA receives a request for PHI in the possession of FHKC,
- or receives a request to exercise other individual rights as set forth in the Privacy Rule, BA shall promptly
- 72 forward the request to FHKC within two (2) business days. BA shall then assist FHKC as necessary in
- 73 responding to the request in a timely manner. If a BA provides copies of PHI to the individual, it may
- 74 charge a reasonable fee for hard copies as the regulations shall permit. If requested, BA shall provide
- 75 electronic copies as required by law.

76 Recording of Designated Disclosures of PHI

- 77 BA agrees to document disclosures of PHI and information related to such disclosures as would be
- 78 required for FHKC to respond to a request by an Individual for an accounting of disclosures of PHI in
- 79 accordance with 45 CFR § 164.528.

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Security and Privacy Compliance Review upon Request

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HHS Inspection

- 84 BA shall make its internal practices, books and records relating to the Use and Disclosure of PHI
- 85 available to the HHS for purposes of determining Covered Entity's compliance with HIPAA and HITECH.
- 86 Except to the extent prohibited by law, BA agrees to notify FHKC of all requests served upon BA for
- information or documentation by or on behalf of the HHS. BA shall provide to FHKC a copy of any PHI
- that BA provides to the HHS concurrently with providing such PHI to the HHS.

89 FHKC Inspection

- 90 Upon written request, BA agrees to make available to FHKC during normal business hours BA's internal
- 91 practices, books, and records relating to the use and disclosure of PHI or EPHI received from, or created
- 92 or received on behalf of, FHKC in a time and manner designated by FHKC for the purposes of FHKC
- 93 determining compliance with the HIPAA Privacy and Security Requirements.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE (SECURITY RULE)

95 Compliance with Security Rule

- 96 BA shall ensure compliance with the HIPAA Security Standards for the Protection of Electronic Protected
- 97 Health Information ("EPHI"), 45 C.F.R. Part 160 and Part 164, Subparts A and C (the "Security Rule"),
- 98 with respect to Electronic Protected Health Information covered by the Contract and this Agreement
- 99 effective on the compliance date for initial implementation of the security standards set for in 45 C.F.R.
- 100 §164.318.

101 Security Safeguards and Policies

- 102 BA agrees to implement administrative, physical, and technical safeguards that reasonably and
- appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates,
- 104 receives, maintains, or transmits on behalf of FHKC as required by the Security Rule. The BA will
- 105 maintain appropriate documentation of its compliance with the Security Rule. These safeguards will
- 106 include, but shall not be limited to:
- Annual training to relevant employees, contractors and subcontractors on preventing improper use or disclosure of PHI, updated as appropriate;
- Adopting policies and procedures regarding the safeguarding of PHI, updated and enforced as
 necessary;
- Implementing appropriate technical and physical safeguards to protect PHI, including access controls, transmission security, workstation security, etc.

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114 Security Provisions in Business Associate Contracts

- 115 BA shall ensure that any agent, including a subcontractor, to whom it provides electronic PHI received
- from, maintained, or created for FHKC or that carries out any duties for the BA involving the use, custody,
- 117 disclosure, creation of, or access to PHI supplied by FHKC, shall execute a bilateral contract (or the
- appropriate equivalent if the agent is a government entity) with BA, incorporating the same restrictions
- and conditions in this Agreement with BA regarding PHI.

Florida Consumer Notice of System Breach

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- 121 BA understands that FHKC or its customers may be a "information holder" (as may be BA) under the
- terms of section 817.5681, Florida Statutes, and that in the event of a breach of the BA's security system
- as defined by that statute, the BA shall indemnify and hold FHKC harmless for expenses and/or damages
- related to the breach. Such obligation shall include, but is not limited to, the mailed notification to any
- 125 Florida resident whose personal information is reasonably believed to have been acquired by an
- 126 unauthorized individual. In the event that the BA discovers circumstances requiring notification of more
- than one thousand (1,000) persons at one time, the person shall also notify, without unreasonable delay,
- 128 all consumer reporting agencies and credit bureaus that compile and maintain files on consumers on a
- nationwide basis, as defined by section 817.5681(12), Florida Statutes, of the timing, distribution and
- content of the notices. Substitute notice, as defined by section 817.5681(6)(c), Florida Statutes, shall not
- be permitted except as approved in writing in advance by FHKC. The parties agree that PHI includes data
- elements in addition to those included described as "personal information" under section 817.5681,
- 133 Florida Statutes, and agree that BA's responsibilities under this paragraph shall include all PHI.

Reporting of Security Incidents

- The BA shall track all "Security Incidents" as defined by HIPAA and shall periodically report such security
- incidents in summary fashion as may be requested by FHKC, but not less than annually within sixty (60)
- days of each anniversary of this Agreement. The BA shall reasonably use its own vulnerability
- assessment of damage potential and monitoring to define levels of Security Incidents and responses for
- 139 BA's operations. However, the BA shall expediently notify FHKC's Privacy Officer of any "Security
- 140 Incident" which would constitute a "Security Event" as defined by this Agreement, including any "breach of
- the security of the system" under section 817.5681, *Florida Statutes*, in a preliminary report within two (2)
- business days, with a full report of the incident not less than five (5) business days of the time it became
- aware of the incident. The BA shall likewise notify FHKC in a preliminary report within two (2) business
- days of any unauthorized acquisition including but not limited to internal user access to non-test records
- reported to BA's privacy manager, and any use, disclosure, modification, or destruction of PHI by an
- employee or otherwise authorized user of its system of which it becomes aware with a full report of the
- incident not less than five (5) business days from the time it became aware of the incident.
- 148 BA shall identify in writing key contact persons for administration, data processing, marketing, information
- systems and audit reporting within thirty (30) days of the execution of this Agreement. BA shall notify
- 150 FHKC of any reduction of in-house staff during the term of this Agreement, in writing, within ten (10)
- 151 business days.

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HITECH Act

- 153 BA will adhere to all Privacy and Security provisions in the HITECH Act as passed as part of the
- American Recovery and Reinvestment Act of 2009 ("ARRA") under Sections 13401 and 13404.

Unsecured Protected Health Information

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- 156 BA shall notify each individual whose Unsecured Protected Health Information has been or is reasonably
- believed by the BA to have been accessed, acquired, used, or disclosed as a result of a breach, except
- when law enforcement requires a delay pursuant to 45 CFR 164.412.
- BA shall notify such individuals without unreasonable delay, and in no case later than sixty (60) days after discovery of the breach, as follows:
 - By written notice in plain language including, to the extent possible:
 - A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
 - A description of the types of Unsecured Protected Health Information involved in the breach (including but not limited to items such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved):
 - Any steps individuals should take to protect themselves from potential harm resulting from the breach;
 - A brief description of what BA and FHKC are doing to investigate the breach, to mitigate the harm to individuals, and to protect against further breaches; and
 - o Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an email address, website or postal address.
 - BA must use a method of notification that meets the requirements of 45 CFR 164.404(d).
 - BA must provide notice to the media when required under 45 CFR 164.406, and to HHS pursuant to 45 CFR 164.408.

ELECTRONIC TRANSACTION AND CODE SETS

- To the extent that the services performed by BA pursuant to the Agreement involve transactions that are
- subject to the HIPAA Standards for Electronic Transactions and Code Sets, 45 C.F.R. Parts 160 and 162,
- 181 with respect to Electronic Protected Health Information covered by the Contract and this Agreement, BA
- shall conduct such transactions in conformance with such regulations as amended from time to time.
- 183 Without limiting the generality of the foregoing, BA also agrees that it will, in accordance with 45 C.F.R. §
- 184 162.923(c), comply with all applicable requirements of 45 C.F.R. Part 162, and require any agent or
- subcontractor to comply with all applicable requirements of 45 C.F.R. Part 162.

186 PERMITTED USES AND DISCLOSURES BY BA – GENERAL USE AND DISCLOSURE PROVISIONS

Use of PHI for Operations on Behalf of FHKC

- 188 Except as otherwise limited by this Agreement, BA may use or disclose PHI to perform functions,
- activities, or services for, or on behalf of, FHKC as specified in the Contract, provided that such use or
- 190 disclosure would not violate HIPAA if done by FHKC, or violate other policies and procedures of FHKC.
- 191 Except as otherwise provided in the Contract or this Agreement, BA is prohibited from further using or
- disclosing any information received from FHKC, or from any other business associate of FHKC for any
- 193 commercial purposes of the BA, including, by way of example, "data mining."
- 194 BA shall only request, use and disclose the minimum amount of PHI necessary to accomplish the
- 195 purposes of the request, use or disclosure.

196 PERMITTED USES AND DISCLOSURES BY BA - SPECIFIC USE AND DISCLOSURE PROVISIONS 197 Third Party Disclosure Confidentiality 198 Except as otherwise limited in the Contract or this Agreement, BA may disclose PHI for the proper 199 management and administration of the BA, provided that disclosures are required by law, or, if permitted 200 by law, this Agreement, the Contract and any Ancillary Agreements, provided that, if BA discloses any 201 PHI to a third party for such a purpose, BA shall enter into a written agreement with such third party 202 requiring the third party to: (a) maintain the confidentiality, integrity, and availability of PHI and not to use 203 or further disclose such information except as Required By Law or for the purpose for which it was 204 disclosed, and (b) notify BA of any instances in which it becomes aware in which the confidentiality, 205 integrity, and/or availability of the PHI is breached in a preliminary report within two (2) business days with 206 a full report of the incident not less than five (5) business days from the time it became aware of the 207 incident. 208 **Data Aggregation Services** 209 Except as otherwise limited in this Agreement, BA may use PHI to provide Data Aggregation Services to 210 FHKC as permitted by 42 CFR § 164.504(e)(2)(I)(B). 211 PROVISIONS FOR FHKC TO INFORM BA OF PRIVACY PRACTICES AND RESTRICTIONS 212 **Notice of Privacy Practices** 213 FHKC shall provide BA with the notice of Privacy Practices produced by FHKC or provided to FHKC as a 214 result of FHKC's obligations with other organizations in accordance with 45 CFR § 164.520, as well as 215 any changes to such notice. 216 Notice of Changes in Individual's Access or PHI 217 FHKC shall provide BA with any changes in, or revocation of, permission by an Individual to use or 218 disclose PHI, if such changes affect BA's permitted or required uses. 219 Notice of Restriction in Individual's Access or PHI 220 FHKC shall notify BA of any restriction to the use or disclosure of PHI that FHKC has agreed to in 221 accordance with 45 CFR § 164.522, to the extent that such restriction may affect BA's use of PHI. 222 **TERM AND TERMINATION** 223 Term 224 The Term of this Attachment shall be effective concurrent with the Contract, and shall terminate when all 225 of the PHI provided by FHKC to BA, or created or received by BA on behalf of FHKC, is destroyed or 226 returned to FHKC, or, if it is not feasible to return or destroy PHI, protections are extended to such 227 information, in accordance with the termination provisions in this section. 228 **Termination for Cause** 229 This Agreement authorizes and BA acknowledges and agrees FHKC shall have the right to immediately 230 terminate this Agreement in the event BA fails to comply with, or violates a material provision of this 231 Agreement or any provision of the Privacy and Security Rules. Notwithstanding the aforementioned, BA 232 shall not be relieved of liability to FHKC for damages sustained by virtue of any breach of this Agreement 233 by BA.

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234	Effect of Termination; Return of Protected Health Information		
235 236 237 238 239	Upon termination of this Agreement for any reason, except as provided in subsections below, BA shall, a its own expense, either return and/or destroy all PHI and other confidential information received from FHKC or created or received by BA on behalf of FHKC. This provision applies to all confidential information regardless of form, including but not limited to electronic or paper format. This provision shall also apply to PHI and other confidential information in the possession of sub-contractors or agents of BA		
240 241 242 243	The BA shall consult with FHKC as necessary to assure an appropriate means of return and/or destruction of PHI, and shall notify FHKC in writing when such destruction is complete. If PHI is to be returned, the parties shall document when all information has been received by FHKC.		
244 245 246 247 248	The BA shall notify FHKC whether it intends to return and/or destroy the confidential information with such additional detail as requested. In the event BA determines that returning or destroying the PHI and other confidential information received by or created for FHKC at the end or other termination of this Agreement is not feasible, BA shall provide to FHKC notification of the conditions that make return or destruction not feasible.		
249	MISCELLANEOUS		
250	Severability		
251252253	If any of the provisions of this Agreement shall be held by a court of competent jurisdiction to be no longer required by the Privacy Rule or the Security Rule, the parties shall exercise their best efforts to determine whether such provisions shall be retained, replaced or otherwise modified.		
254	Cooperation		
255 256 257	The parties agree to cooperate and to comply with procedures mutually agreed upon to facilitate compliance with the Privacy Rule and Security Rule, including procedures designed to mitigate the harmful effects of any improper use or disclosure of PHI.		
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259	Regulatory Reference		
260 261	Any reference in this Agreement to a section in the Privacy and/or Security Rule means those provisions currently in effect or as may be amended in the future.		
262	Modification and Amendment		
263 264 265	This Agreement may be modified only by express written amendment executed by all Parties hereto. The Parties agree to take such action to amend this Agreement from time to time as is necessary for FHKC to comply with the requirements of the Privacy and Security Rules, HIPAA and HITECH.		
266	Survival		
267 268	The respective rights and obligations of BA under Paragraph VIII, "Term and Termination" of this Agreement shall survive the termination of this Agreement and the Contract		

269	Interpretation
270 271	Any ambiguity in this Agreement or the Contract shall be resolved so as to permit FHKC to comply with HIPAA and HITECH.
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273	REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK
274	TWO (2) SIGNATURE PAGES FOLLOW
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278 279	IN WITNESS WHEREOF, the Parties have caused this BUSINESS ASSOCIATE AGREEMENT, to be executed by their undersigned officials as duly authorized.
280 281 282 283	FOR ENTITY:
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286 287 288 289	NAME: TITLE: DATE SIGNED:
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291	WITNESS #1 SIGNATURE
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305	FLORIDA HEALTHY KIDS CORPORATION:
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325 NOTIFICATION TO THE FHKC OF BREACH OF UNSECURED PROTECTED HEALTH INFORMATION

Contract Information		
Contract Numb	er Contract Title	
Contract Contact Information		
Contact Person For This Incident:		
Contact Person's Title:		
Contact's Address		
Contact's Email:		
Contact's Telephone No:		

Business Associate hereby notifies FHKC that there has been a Breach of Unsecured (unencrypted)
Protected Health Information that Business Associate has used or has had access to under the terms of
the Business Associate Agreement, as described in detail below:

Breach Detail			
	Date of Breach	Date of Discovery of Breach	
	Information about the Breach		
Type of Breach:			
 Lost or stolen laptop, computer, flash drive, disk, etc. Stolen password or credentials Unauthorized access by an employee or contractor Unauthorized access by an outsider Other (describe) 			
Detailed Description of the Breach			

Types of Unsecured Protected Health Information			
of Birth, Address, Accoun	nt Number, Disability Cod	e, etc).	
Personal Information:	Health Information:		
 Name Address Date of birth Social Security number Drivers license or identification card number Financial insurance information (credit card number, bank account number, etc Health insurance information (insurance carrier, insurance card number, etc) Other Personal or Health Information (describe): 	Disease or I Medication Treatments Immunizati Allergies Information Test results Hereditary Mental hea Information etc) Correspond medical poor	or procedures ons n about children	
What steps are being taken to investigate the breach, mitigate losses, and protect against any further breaches?			
List any law enforcement agencies	you've contacted about t	ne breach	
Number of Individuals Impacted	If over 500, do individua	Is live in multiple states?	
	Yes	No	
Breac	h Notification		
Have you made the breach public?	If YES, when did	you make it public	

Yes	No				
Have you notified the	Have you notified the people whose information was breached?				
☐ YES. We notified them on: Attach a copy of the letter to this form. Don't include any personally identifiable information, other than your own contact information.					
□ NO. Our i	□ NO. Our investigation isn't complete.				
		Comments			
1. 2.					
Submitted By:		Date of Submission:			