

**Charlotte County Board Of County Commissioners
Agenda Item Summary**

Item Number: F- 1

1 DEPARTMENT MAKING REQUEST

Risk Management

2 MEETING DATE

10/14/2014 9:00:00 AM

3 REQUESTED MOTION/ACTION

- a) Approve the Confidentiality Agreement between the Charlotte County Board of County Commissioners, the Gehring Group and Total Administrative Services Corporation (TASC); and
- b) Approve the Business Associate Agreement between the Charlotte County Board of County Commissioners and the Gehring Group.

4 AGENDA

Consent

5 IS THIS ITEM BUDGETED (IF APPLICABLE) - No

Budget Action

No action needed.

Financial Impact Summary Statement

No impact.

Detailed Analysis Attached - Yes

Budget Officer-

6 BACKGROUND (Why is this Action Necessary, and What Action will be accomplished)

- a) The Confidentiality Agreement is between the Charlotte County Board of Commissioners, the Gehring Group and Total Administrative Services Corporation (TASC)
- b) The Business Associate Agreement is between the Charlotte County Board of Commissioners and the Gehring Group

The Gehring Group is updating its records to meet the requirements under The Health Insurance Portability and Accountability Act of 1996 (HIPAA), as amended by The Health Information Technology for Economic and Clinical Health Act (HITECH).

ATTACHMENTS:

Name:	Description:	Type:
<input type="checkbox"/> 081214 - Charlotte County BOCC and Gehring Group - Business Associate Agreement.pdf	Business Associate Agreement	Cover Memo
<input type="checkbox"/> Charlotte County BOCC TASC Group and Gehring Group - Tri-Party Confidentiality Agreement revised.pdf	Tri Party Confidentiality Agreement	Cover Memo

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the “Agreement”) by and between the Charlotte County Board of County Commissioners, (“Client”), and The Gehring Group, Inc. (“Gehring Group”) is made and entered into effective August 15, 2014.

RECITALS

WHEREAS, Client is a “covered entity” as those terms are defined in 45 C.F.R. § 160.103; and

WHEREAS, Gehring Group provides consulting services to Client; and

WHEREAS, as a result of such functions, Client has identified Gehring Group as a “business associate,” as defined in 45 C.F.R. § 160.103, of Client for purposes of the privacy and security requirements under the Health Insurance Portability and Accountability Act of 1996, (HIPAA) as amended by the Health Information Technology for Economic and Clinical Health Act (HITECH) and the regulations issued thereunder; and

WHEREAS, Gehring Group acknowledges that it is a business associate, as defined in 45 C.F.R. § 160.103, of Client that may create, use, or disclose Protected Health Information or Electronic Protected Health Information on behalf of Client; and

WHEREAS, Client desires to obtain written assurances that Gehring Group will safeguard Protected Health Information or Electronic Protected Health Information created or received by or on behalf of Client.

NOW, THEREFORE, the parties agree as follows:

1. DEFINITIONS

- 1.1 “Breach” shall have the meaning set forth in 45 C.F.R. §164.402.
- 1.2 “Data Aggregation” shall have the meaning as the term “data aggregation” in 45 C.F. R. § 164.501.
- 1.3 “Designated Record Set” shall mean a group of health-related records about an Individual as provided in 45 C.F.R. § 164.501.
- 1.4 “Electronic Health Record” shall mean an electronic record of health-related information with respect to an Individual that is created, gathered, managed and consulted by authorized healthcare clinicians and staff.
- 1.5 “Electronic Protected Health Information” or “Electronic PHI” means information that Gehring Group or its agent, including a subcontractor, creates, receives, maintains or transmits from or on behalf of Client that comes within paragraphs 1(i) or 1(ii) of the definition of “protected health information” at 45 C.F.R. § 160.103.

- 1.6 “Genetic Information” shall have the meaning assigned to such term in 45 C.F.R. § 160.103.
- 1.7 “HIPAA” shall mean the health information privacy provisions under the Health Insurance Portability and Accountability Act of 1996, and regulations issued thereunder at 45 C.F.R. Parts 160 and 164, as amended by HITECH.
- 1.8 “HITECH” shall mean the Health Information Technology for Economic and Clinical Health Act and the regulations issued thereunder.
- 1.9 “Individual” shall mean a person who is the subject to the Protected Health Information of the Client, and shall include a person who qualifies as the Individual’s personal representative in accordance with 45 C.F.R. § 164.502(g).
- 1.10 “Limited Data Set” shall have the meaning assigned to such term in 45 C.F.R. §164.514(e)(2).
- 1.11 “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Gehring Group from or on behalf of Client. Genetic Information shall be considered PHI.
- 1.12 “Required by Law” shall mean a mandate contained in an applicable state, federal, or local law that compels Client (or business associates acting on behalf of Client) to make a use or disclosure of PHI that is enforceable in a court of law.
- 1.13 “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system, as defined at 45 C.F.R. § 164.304. However, certain low risk attempts to breach network security, such as the incidents listed below, shall not constitute a Security Incident under this Agreement, provided they do not penetrate the perimeter, do not result in an actual breach of security and remain within the normal incident level:
- pings on the firewall;
 - port scans;
 - attempts to log on to a system or enter a database with an invalid password or username;
 - denial-of-service attacks that do not result in a server being taken off-line; and
 - malware such as worms or viruses.
- 1.14 “Subcontractor” shall have the meaning as the term in 45 C.F.R. § 160.103.

1.15 “Unsecured Protected Health Information” or “Unsecured PHI” shall have the meaning assigned to such term in 45 C.F.R. § 164.402 and guidance issued thereunder.

2. OBLIGATIONS OF THE PARTIES

2.1 Gehring Group shall safeguard all PHI and Electronic PHI created or received by Gehring Group on behalf of Client in accordance with HIPAA. Gehring Group shall implement administrative, physical and technical safeguards that prevent use or disclosure of the Electronic Protected Health Information other than as permitted by the Security Rules. Specifically, Gehring Group agrees to implement policies and procedures in accordance with 45 C.F.R. § 164.316 that:

- i. Prevent, detect, contain and correct security violations in accordance with the administrative safeguards set forth in 45 C.F.R. § 164.308;
- ii. Limit physical access to electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed in accordance with the physical safeguards set forth in 45 C.F.R. § 164.310; and
- iii. Allow access to electronic information systems that maintain Electronic PHI to only those persons or software programs that have been granted access rights in accordance with the technical safeguards set forth in 45 C.F.R. § 164.312.

2.2 Gehring Group shall not use or disclose PHI or Electronic PHI except as permitted or required by Article 3 of this Agreement or as Required by Law. Gehring Group shall notify Client of all requests for the disclosure of PHI and Electronic PHI from a law enforcement or government official, or pursuant to a subpoena, court or administrative order, or other legal request as soon as possible prior to making the requested disclosure. Gehring Group shall provide to Client all PHI and Electronic PHI necessary to respond to these requests as soon as possible, but no later than ten (10) business days following its receipt of a written request from Client.

2.3 Client shall provide to Gehring Group, and Gehring Group shall request from Client, disclose to its affiliates, subsidiaries, agents and subcontractors or other third parties, only a Limited Data Set or, if necessary or otherwise permitted by HHS regulations, the minimum PHI or Electronic PHI necessary to perform or fulfill a specific function required or permitted under the Agreement. “Minimum necessary” shall be interpreted in accordance with HITECH, and in any event shall not include any direct identifiers of individuals such as names, street addresses, phone numbers or social security numbers, except for a unique identifier assigned by Client as necessary for the strategic analysis.

2.4 Gehring Group shall comply with all granted restrictions on the use and/or disclosure of PHI, pursuant to 45 C.F.R. § 164.522(a), upon written notice from Client; provided, however, that Client shall not grant any restriction that affects Gehring Group’s use or disclosure of PHI without first consulting with Gehring Group.

- 2.5 Gehring Group shall comply with all granted requests for confidential communication of PHI, pursuant to 45 C.F.R. § 164.522(b), upon written notice from Client.
- 2.6 Gehring Group shall report to Client any use or disclosure of PHI not permitted by this Agreement of which Gehring Group becomes aware within fifteen (15) business days of its becoming aware, and will take such corrective action necessary, or as reasonably directed by Client, in order to prevent and minimize damage to any Individual and to prevent any further such occurrences.
- 2.7 Following the discovery of a Breach of Unsecured PHI, Gehring Group shall notify the Client without unreasonable delay and in no case no later than fifteen (15) days after discovery of the Breach. The notification shall include the identification of each Individual whose Unsecured PHI has been or is reasonably believed by Gehring Group to have been accessed, acquired, used or disclosed during the Breach. Gehring Group shall provide the Client with any other available information that the Client requires to notify affected individuals under the Privacy Rule.
- 2.8 Gehring Group shall make reasonable efforts to mitigate, to the extent practicable or as reasonably directed by Client, any harmful effect that is known to Gehring Group resulting from a breach of this Agreement or HIPAA that is directly caused by Gehring Group.
- 2.9 Gehring Group shall report to Client any Security Incident within five (5) business days of when it becomes aware of such Security Incident. Gehring Group shall mitigate to the extent practicable or as reasonably directed by Client any harmful effect that is known to Gehring Group of a Security Incident by Gehring Group.
- 2.10 Gehring Group shall take reasonable steps to ensure that any Subcontractor performing services for Client agrees in writing to the same restrictions and conditions that apply to Gehring Group with regard to its creation, use, and disclosure of PHI and Electronic PHI in accordance with 45 C.F.R. §§ 164.308(b)(2), 164.502(e)(1)(ii) and 164.504(e)(5). Gehring Group shall, upon written request from Client, provide a list of any Subcontractors with whom Gehring Group has contracted to perform services for Client. Gehring Group shall advise Client if any Subcontractor breaches its agreement with Gehring Group with respect to the disclosure or use of PHI or Electronic PHI. If Gehring Group knows of a pattern of activity or practice of its Subcontractor that constitutes a material breach or violation of the Subcontractor's duties and obligations under its agreement with the Subcontractor ("Subcontractor Material Breach"), Gehring Group shall cure the breach or provide a reasonable period for Subcontractor to cure the Subcontractor Material Breach; provided, however, that if Gehring Group cannot, or Subcontractor does not, cure the Subcontractor Material Breach within such period, Gehring Group shall terminate the agreement with Subcontractor, if feasible, at the end of such period.
- 2.11 Gehring Group shall, upon written request from Client, provide to Client a copy of any PHI or Electronic PHI in a Designated Record Set, as defined in 45 C.F.R. § 164.501,

created or maintained by Gehring Group, and not also maintained by Client, within thirty (30) days of receipt of the request.

- 2.12 Gehring Group shall, upon written request from Client, make any amendment to PHI in a Designated Record Set maintained by Gehring Group within thirty (30) days of receipt of the request unless Gehring Group can establish to Client's satisfaction that the PHI at issue is accurate and complete.
- 2.13 If an Individual's PHI is held in an Electronic Health Record, Gehring Group shall provide requested copies in electronic format to the individual or to an entity or person designated by the Individual, provided such designation is clearly and conspicuously made by the Individual or Client.
- 2.14 Gehring Group shall make its internal practices, written policies and procedures, books, records, and other documents relating to the use and disclosure of PHI and/or Electronic PHI created or maintained by Gehring Group on behalf of Client available to the Secretary of the Department of Health and Human Services, or his or her designee, for purposes of the Secretary determining Client's compliance with HIPAA.
- 2.15 Gehring Group shall make available the information required to provide an accounting of disclosures made on and after the Effective Date, as necessary for Client to comply with 45 C.F.R. § 164.528, within twenty (20) business days of receipt of the request. Gehring Group shall provide one such accounting within a twelve month period without charge, but may make a reasonable charge for any additional such accountings within the same twelve month period.
- 2.16 Gehring Group shall maintain all records, other than those records that are also maintained by Client, for six (6) years from the date created or last in effect, whichever is later, as necessary for Client to comply with 45 C.F.R. § 164.530(j)(2).

3. PERMITTED USES OF PHI

- 3.1 Gehring Group may use and disclose PHI and Electronic PHI as necessary to provide services to Client, subject to Section 2.3 of this Agreement and consistent with the requirements of HIPAA.
- 3.2 Gehring Group may use and disclose PHI and Electronic PHI as necessary for the proper management and administration of Gehring Group or to carry out Gehring Group's legal responsibilities, subject to Section 2.4 of this Agreement and consistent with the requirements of HIPAA; provided, however, that Gehring Group may disclose the PHI and Electronic PHI for such purposes only if:
 - i. the disclosure is Required by Law, or
 - ii. Gehring Group obtains reasonable assurances that the party to whom the PHI or Electronic PHI is disclosed (a) will protect the confidentiality of the PHI and Electronic PHI, (b) will not further disclose the PHI or Electronic PHI except as Required by Law or for the purposes for which it was disclosed to the other party,

and (c) will report any improper use or disclosure of the PHI and/or Electronic PHI to Gehring Group.

- 3.3 Except as otherwise limited in this Agreement, and to the extent provided for under this Agreement, Gehring Group may use PHI and Electronic PHI to provide Data Aggregation services to Client, as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

4. TERMINATION OF AGREEMENT

- 4.1 Except as described in Section 4.3, this Agreement shall continue in effect so long as Gehring Group provides service to Client involving maintaining, using or disclosing PHI or Electronic PHI, or otherwise retains a copy of PHI or Electronic PHI provided to Gehring Group by Client.
- 4.2 Client may terminate this Agreement at any time if Client discovers that Gehring Group has materially breached any provision of this Agreement.
- 4.3 If Gehring Group becomes aware of a pattern of activity or practice of the Client that constitutes a material breach or violation of the Client's duties and obligations under the Agreement, Gehring Group shall take reasonable steps and provide a period of thirty (30) calendar days for the Client to cure the material breach or violation. If the Client does not cure the material breach or violation within such 30-day period, Gehring Group shall terminate the Agreement, if feasible, at the end of such 30-day period.
- 4.4 Upon the expiration of Client's relationship with Gehring Group, and contingent upon the payment of all outstanding fees, Gehring Group shall return PHI and Electronic PHI to Client or Client's designated agent upon Client's request. If return of all PHI and Electronic PHI is not feasible, the provisions of this Agreement shall continue to apply to Gehring Group until such time as all PHI and Electronic PHI is either returned to Client or destroyed pursuant to Gehring Group's document retention policy, provided that Gehring Group shall limit further use of PHI and Electronic PHI only to those purposes that make the destruction or return of the PHI and Electronic PHI infeasible. Following the expiration of the relationship, Gehring Group agrees not to disclose PHI and Electronic PHI except to Client or as Required by Law.

5. NOTICES

Whenever, under this Agreement, Gehring Group is required to give notice to Client, such notice shall be sent via First Class Mail to:

JANINE HEWITT, Risk/Benefits Coordinator
Charlotte County Risk Management
18500 Murdock Circle, Room B201, Port Charlotte, FL 33948
Attention: Privacy Officer

Whenever, under this Agreement, Client is required to give notice to Gehring Group, such notice shall be sent via First Class Mail to:

Katherine Bellantoni, Privacy Officer
Gehring Group, Inc.
11505 Fairchild Gardens Ave.
Suite 202
Palm Beach Gardens, FL 33410

6. INDEMNIFICATION

Gehring Group agrees to indemnify Client, and any employees, directors, officers of Client (collectively "Client Indemnitees"), against all actual and direct losses resulting from or in connection with any breach of this Agreement by Gehring Group, or its partners, employees or other members of its workforce. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Client Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

Client agrees to indemnify Gehring Group and any employees, directors, officers of Gehring Group (collectively "Gehring Group Indemnitees") against all actual and direct losses resulting from or in connection with any breach of this Agreement by Client, or any violation of HIPAA resulting from any improper use or disclosure of PHI and Electronic PHI pursuant to Client's direction. Actual and direct losses shall include, but shall not be limited to, judgments, liabilities, fines, penalties, costs, and expenses (including reasonable attorneys' fees) which are imposed upon or incurred by Gehring Group Indemnitees by reason of any suit, claim, action, investigation, or demand by any Individual, government entity, or third party. This obligation to indemnify shall survive the termination of this Agreement.

7. AMENDMENT

The parties agree to negotiate in good faith any amendments necessary to conform this Agreement to changes in applicable law. Gehring Group further agrees to promptly attempt to amend its agreements with its subcontractors and agents to conform to the terms of this Agreement. In the event Gehring Group is unable to amend this Agreement or its agreements with its subcontractors in a way that is sufficient to satisfy the requirements under HIPAA, Client may terminate this Agreement in accordance with Section 4 upon thirty (30) days written notice.

8. TERMS OF AGREEMENT GOVERN

Any ambiguity in this Agreement shall be resolved in a way that permits compliance with HIPAA. In the event of a conflict between the terms of this Agreement and any other contract or agreement between Client and Gehring Group, this Agreement shall govern.

9. REGULATORY REFERENCES

A reference in this Agreement to a section in the Privacy Rules or Security Rules means the section as in effect or as amended, and for which compliance is required.

* * *

IN WITNESS HEREOF, the parties have executed this Agreement by their respective duly authorized officers or representatives.

CHARLOTTE COUNTY BOCC

GEHRING GROUP, INC.

By: _____
Kenneth W. Doherty

By: _____

Title: Chairman

Title: _____

Date: _____

Date: _____

ATTEST:

Barbara T. Scott, Clerk of the Circuit Court and Ex-Officio Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton, County Attorney
LR 14-2994 _____

CONFIDENTIALITY AGREEMENT

THIS CONFIDENTIALITY AGREEMENT (this “Agreement”) is made and entered into as of August 15, 2014 (the “Effective Date”) by and between Charlotte County Board of County Commissioners (“Client”), The Gehring Group, Inc. (“Gehring Group”), and Total Administrative Services Corporation (TASC) (“Service Provider”). Client, Gehring Group, and Service Provider are referred to individually as a “Party” and collectively as the “Parties” herein.

WHEREAS, Client is a Covered Entity under HIPAA (as defined below);

WHEREAS, effective May 28, 2013, Client entered into a Service Agreement with Service Provider (the “Service Provider Agreement”) pursuant to which Service Provider performs services (the “Service Provider Services”) on behalf of the Client;

WHEREAS, effective September 27, 2000, Client entered into a Consulting Agreement with Gehring Group (the “Gehring Group Agreement”) pursuant to which the Client has engaged Gehring Group to provide or arrange for the provision of certain consulting services (the “Gehring Group Services”) to the Client;

WHEREAS, Client has entered into business associate agreements with each Service Provider and Gehring Group pursuant to which the Parties have agreed to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191 (the “Act”), the privacy standards adopted by the U.S. Department of Health and Human Services (“HHS”) as they may be amended from time to time, 45 C.F.R. parts 160 and 164, subparts A and E (the “Privacy Rule”), the security standards adopted by HHS as they may be amended from time to time, 45 C.F.R. parts 160, 162, and 164, subpart C (the “Security Rule”), and the privacy provisions (Subtitle D) of the Health Information Technology for Economic and Clinical Health Act, Division A, Title XIII of Pub. L. 111-5, and its implementing regulations (the “HITECH Act”) (collectively referred to herein as “HIPAA”), in providing the Service Provider Services and the Gehring Group Services to the Client;

WHEREAS, Client has requested that Gehring Group provide information directly to Service Provider, which may include individually identifiable health information, as that term is defined by HIPAA;

WHEREAS, the Parties agree to comply with the applicable requirements of HIPAA, and will appropriately safeguard all protected health information (“PHI”) or electronic protected health information (“electronic PHI”) that is transferred, created, received or accessed pursuant to this Agreement; and

WHEREAS, the Parties desire to enter into this Agreement in order to (i) protect the privacy and provide for the security of PHI and electronic PHI transferred, received, accessed, used or maintained pursuant to this Agreement, and (ii) satisfy certain requirements imposed on the Parties by HIPAA.

NOW, THEREFORE, in consideration of the mutual benefits of complying with laws and regulations stated above, the Client, Gehring Group, and Service Provider agree as follows:

ARTICLE I

DEFINITIONS

1.1 **“Minimum Necessary”** means the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request or the amount of PHI described and defined by HHS from time to time as the “minimum necessary,” and in any event shall not include any direct identifiers of individuals such as names, street addresses, phone numbers or social security number, except for a unique identifier assigned by Client as necessary for the strategic analysis.

1.2 **Other terms.** All other terms not specifically defined in this Agreement shall have the meanings attributed to them under HIPAA.

ARTICLE II

PRIVACY OF PROTECTED HEALTH INFORMATION

2.1 **Permitted Uses & Disclosures.**

(a) Except as otherwise limited by this Agreement, Service Provider may access, use or disclose PHI on behalf of, or to provide the Service Provider Services to Client pursuant to the Service Provider Agreement, if such use or disclosure of PHI would not violate HIPAA or the terms of this Agreement. Service Provider may use PHI for the proper management and administration of Service Provider’s business or to provide data aggregation services relating to the health care operations of the Client.

(b) Notwithstanding the foregoing, Service Provider shall not disclose PHI unless: (i) required by law; or (ii) Service Provider obtains written assurance from the person to whom the PHI is disclosed that it will be kept confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person agrees to notify Service Provider of any instances of which it is aware in which the confidentiality of the information has been breached as required under 45 C.F.R. 164.504(e)(4). If Service Provider discloses PHI to a subcontractor or agent, Service Provider shall comply with Section 2.3 of this Agreement.

2.2 **Safeguards for the Protection of PHI.** Gehring Group and Service Provider shall implement and maintain the administrative, physical and technical safeguards required by HIPAA to protect the confidentiality, integrity and availability of electronic PHI and to ensure that PHI disclosed by and between Service Provider and Gehring Group is not used or disclosed by either Party, or by any of its subcontractors, affiliates, or associates, except as provided in this Agreement.

2.3 **Reporting of Unauthorized Uses or Disclosures and Unauthorized Attempts to Use or Disclose.**

(a) Service Provider shall notify Client and Gehring Group in writing, within ten (10) business days, of any use or disclosure of PHI of which Service Provider becomes aware

that is not provided for or permitted by this Agreement or under HIPAA. Service Provider shall be responsible for all reasonable costs of notification associated with a breach or impermissible disclosure.

(b) Service Provider agrees to report to Client and Gehring Group the aggregate number of unsuccessful, unauthorized attempts to access, use, disclose, modify or destroy electronic versions of any of PHI or interfere with systems operations in an Information System containing PHI, of which Service Provider becomes aware, provided that: (a) such reports will be provided only as frequently as the Parties mutually agree, but no more than once per month; and, (b) if the definition of "Security Incident" is amended under the Security Rule to remove the requirement for reporting "unsuccessful" attempts to use, disclose, modify or destroy electronic PHI, this Section 2.3 shall no longer apply as of the effective date of such amendment.

(c) Service Provider shall notify Client and Gehring Group of a Breach of unsecured PHI within ten (10) business days after discovery of such a Breach in accordance with 45 CFR 164.410. The notice required by this Section 2.3(c) shall include, to the extent possible, the identification of each individual whose unsecured protected health information has been, or is reasonably believed by Service Provider to have been, accessed, acquired, used, or disclosed during the breach. Such notice shall also include, any of the following information, if available:

(i) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;

(ii) A description of the types of unsecured protected health information that were involved in the breach; and

(iii) A brief description of what the breaching Party is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches.

2.4 Use of Subcontractors.

(a) Service Provider shall not delegate the performance of any Services without the prior written consent of Gehring Group and Client.

(b) To the extent that Service Provider uses one or more subcontractors or agents to perform its obligations under the Service Provider Agreement, and such subcontractors or agents receive or have access to PHI, Service Provider agrees to obtain written Service Providers that any such subcontractor or agent agrees to the same restrictions and conditions that apply to Service Provider with respect to such PHI, including the requirement that subcontractors and agents agree to implement reasonable and appropriate safeguards to protect electronic PHI that is disclosed to subcontractors and agents by Subcontractor. Service Provider will disclose to any such subcontractor no more than a limited data set or the Minimum Necessary, as applicable, pursuant to HIPAA requirements.

(c) If, pursuant to future regulations promulgated by HHS, subcontractors of business associates are deemed to be business associates, Service Provider will (i) ensure its subcontractors comply with all of the provisions of HIPAA applicable to business associates; and

(ii) require any agent or contractor with whom it shares PHI to sign a business associate subcontract that complies with HIPAA; provided, however, that Service Provider shall not enter into such subcontract without prior written consent of Gehring Group.

2.5 Authorized Access to PHI. To the extent that Service Provider maintains PHI in a Designated Record Set, Service Provider shall provide Gehring Group with access to such PHI no later than five (5) business days after receipt of such written request by Gehring Group pursuant to 45 CFR 164.524.

2.6 Amendment to PHI. To the extent that Service Provider maintains PHI in a Designated Record Set, Service Provider shall amend such PHI in accordance with Gehring Group's written request no later than five (5) business days after receipt of such request by Gehring Group pursuant to 45 CFR 164.526.

2.7 Accounting of Disclosures of PHI. Service Provider shall keep records of all disclosures of PHI made by Service Provider (the "Disclosure Accounting") on an ongoing basis to the extent required by HIPAA and for the period of time for which, under HIPAA, a Covered Entity must maintain a record of such disclosures, except for disclosures:

- (a) To carry out Treatment, Payment, or Health Care Operations, as provided in 45 CFR 164.502; provided, however, that, Service Provider shall, to the extent required by the HITECH Act and the accompanying regulations, keep a record of disclosures to carry out Treatment, Payment, or Health Care Operations made via an electronic health record for a period of at least three (3) years; or
- (b) As otherwise excluded, as described at 45 C.F.R. 164.528(i)-(ix).

Service Provider shall provide the Disclosure Accounting to Client and Gehring Group (or to an Individual, if so directed by Client and Gehring Group, as applicable) (i) no later than five (5) business days after receipt of written request for such Disclosure Accounting by Client and Gehring Group pursuant to 45 CFR 164.528, or (ii) in accordance with HIPAA.

2.8 Obligations of Client.

- (a) Client shall notify Gehring Group and Service Provider of any restriction on the use or disclosure of PHI to which Client has agreed in accordance with the relevant provisions of HIPAA, to the extent that such restriction may affect Gehring Group's use or disclosure of PHI to Service Provider.
- (b) Client shall notify Gehring Group and Service Provider of any changes in, or revocation of, permission by an individual to use or disclose such individual's PHI to the extent that such change may affect Gehring Group's use or disclosure of PHI to Service Provider.

2.9 Additional Obligations.

- (a) Electronic Copies of PHI. As applicable, Service Provider will (i)

cooperate with Client and Gehring Group to provide an Individual with an electronic copy of such individual's PHI if the PHI is maintained by Service Provider in an electronic health record and the individual requests an electronic copy of his or her PHI, and (ii) comply with, and cooperate with Client and Gehring Group to facilitate Client's and Gehring Group's compliance with its obligations regarding electronic health records pursuant to Section 13405(e)(1) of the HITECH Act and any regulations HHS may promulgate thereunder.

(b) Non-Disclosure for Out-of-Pocket Services. As applicable, Service Provider will (i) abide by any directive from Client and Gehring Group not to disclose PHI in connection with an item or service for which an individual has paid out-of-pocket, in full, and (ii) cooperate with Client and Gehring Group to facilitate Client's and Gehring Group's compliance with its obligations not to disclose certain PHI in accordance with Section 13405(a) of the HITECH Act and any regulations HHS may promulgate thereunder.

(c) Prohibition on Sale of PHI. Service Provider will not sell PHI or receive any direct or indirect remuneration in exchange for PHI, except as expressly permitted by this Agreement and the Service Provider Agreement.

(d) Prohibition on Marketing. Service Provider will not transmit, to any individual for whom Service Provider has PHI, any communication about a product or service that encourages the recipient of the communication to purchase or use that product or service unless permitted to do so under the HITECH Act.

ARTICLE III

MISCELLANEOUS

3.1 Applicability. This Agreement shall be applicable to PHI received by Service Provider from Gehring Group or created or received by Service Provider from Client on behalf of Gehring Group.

3.2 Amendments. The Parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this Agreement may be required to provide for procedures to ensure compliance with such developments. The Parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA and other applicable laws relating to the security or confidentiality of PHI.

3.3 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 Client, Gehring Group, Service Provider and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

3.4 Conflicts. The terms and conditions of this Agreement will override and control any conflicting term or condition of any other agreements that may be in place between the Parties; provided, however, that the Business Associate Agreements between Client and Service Provider and Client and Gehring Group shall supersede this Agreement with respect to the

relationships between such parties. All non-conflicting terms and conditions of this Agreement and any other agreement between the Parties remain in full force and effect.

3.5 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA. Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies with HIPAA.

3.6 Audit Rights. Service Provider shall make its practices, books and records related to PHI available to HHS for the purpose of determining Service Provider's compliance with this Agreement and HIPAA. In the event it is determined that Service Provider is in violation of HIPAA, or this Agreement, Service Provider will take reasonable steps to cure such violation or breach, in accordance with HIPAA.

3.7 Subpoenas. Each Party will provide written notice to the other Parties of any subpoena or other legal process seeking PHI received from or created on behalf of Gehring Group or the written notice shall be provided within 48 hours of receipt of a subpoena or other legal process.

3.8 Notices. All notices required to be given to any Party under this Agreement will be in writing and sent by traceable carrier to each Party's address indicated below, or such other address as a Party may indicate by at least ten (10) days' prior written notice to the other Parties. Notices will be effective upon receipt.

Charlotte County BOCC

JANINE HEWITT, Risk/Benefits Coordinator

18500 Murdock Circle, Room B201, Port Charlotte, FL 33948

Attention: Privacy Officer

The Gehring Group, Inc.

11505 Fairchild Gardens Ave., Suite 202

Palm Beach Gardens, FL 33410

Attention: Privacy Officer, Katherine Bellantoni

Total Administrative Services Corporation (TASC)

Attention: Privacy Officer

3.9 Term. The term of this Agreement shall commence as of the Effective Date of this Agreement and shall continue in effect until terminated in accordance with Section 3.10.

3.10 Termination.

(a) This Agreement shall terminate upon the earlier to occur of: (i) termination of the Gehring Group Agreement (ii) the termination of the Service Provider Agreement or (iii) receipt by any Party of the Party's notice to terminate in the event of an

uncured breach of a material term of this Agreement where the breach is not cured to the reasonable satisfaction of the non-breaching Part(ies) after thirty (30) days written notice of such breach.

(b) Upon termination of this Agreement for any reason, Service Provider shall, if feasible, return or destroy all PHI and electronic PHI or any copies thereof received from Gehring Group that Service Provider or its agents or subcontractors still maintain in any form. If return or destruction is infeasible, Service Provider or its agents or subcontractors shall continue to extend the protections of this Agreement to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

3.11 Indemnification.

(a) Service Provider will indemnify and hold harmless Gehring Group and any of its affiliates, officers, directors, employees, subcontractors, agents, or other members of its workforce, from and against any claim, cause of action, liability, damage, fine, penalty, cost or expense arising out of or in connection with any non-permitted use or disclosure of PHI, electronic PHI or other breach of this Agreement by Service Provider or any subcontractor, agent, person or entity of Service Provider that provides the Service Provider Services. Notwithstanding any provision of the Service Provider Agreement to the contrary, Service Provider's responsibility for indemnification arising out of or in connection with this Agreement will be governed solely by this Section 3.11 and no provision set forth in the Service Provider Agreement, including indemnification provisions thereunder or any terms that define, restrict or limit the types or amounts of damages, costs or expenses, will in any way restrict or limit Service Provider's indemnification liability hereunder.

3.12 Governing Law. This Agreement shall be governed by and interpreted in accordance with the laws of Florida. Jurisdiction and venue for any dispute relating to this Agreement shall rest exclusively with the state courts of Florida and the federal courts of the Southern District of Florida, as applicable.

[Signatures on following page]

IN WITNESS WHEREOF, the Parties have entered into this Agreement to be effective as of the Effective Date.

Charlotte County BOCC:

By: _____
Its: Chairman
Name: Kenneth W. Doherty

The Gehring Group, Inc.:

By: _____
Its: _____
Name: _____

Total Administrative Services Corporation (TASC):

By: _____
Name: _____
Its: _____

ATTEST:
Barbara T. Scott, Clerk of the Circuit Court and Ex-Officio Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM AND LEGAL SUFFICIENCY:

By: _____
Janette S. Knowlton, County Attorney
LR #14-2994 _____