

RESOLUTION NO. 2010-143

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND PATTY KAKE, INC, D/B/A MEDDATA AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE TO EXECUTE THE AGREEMENT ON BEHALF OF THE COUNTY

WHEREAS, the St. Johns County Social Services Department and Mental Health Department have purchased access services for the Meddata Software Program, in order to assist their clients with Prescription Assistance Programs to lessen each Department's client medication costs; and

WHEREAS, Patty Kake, Inc., d/b/a Meddata has requested the County through its Social Services Department to enter into a Business Associate Agreement concerning the software program and the client information entered into the program; and

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the attached and incorporated Agreement; and

WHEREAS, the County has determined that accepting the terms of the Agreement, and entering into said Agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

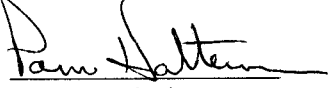
Section 2. The Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of the Agreement between the St. Johns County Government, Florida, and Patty Kake, Inc., d/b/a Meddata, and authorizes the County Administrator, or designee, to execute the Agreement on behalf of the County.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners.

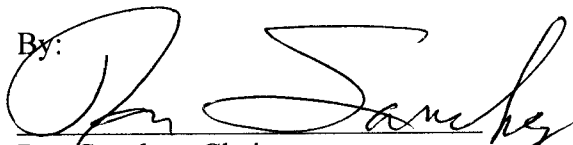
PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 20th day of July, 2010.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

Attest: Cheryl Strickland, Clerk


Pam Haltem
Deputy Clerk

By:


Ron Sanchez, Chair

072010 MEDDATA AGREEMENT.DOC
REVISED 10/13/05

RENDITION DATE 7/21/10

BUSINESS ASSOCIATE AGREEMENT

Patty Kake Inc., d.b.a. MedData Services a Nevada Corporation, with offices at 2022 West Northwest Hwy, Ste 210, Grapevine, TX 76051 (“**Business Associate**”) and St. Johns County Social Services, with offices at 1955 US 1 South, #D9, St. Augustine, FL 32086 (“**Covered Entity**” or “**County**”) enter into this Business Associate Agreement (“**Agreement**”) to be effective as of July 1, 2010 (the “**Effective Date**”) (Business Associate and Covered Entity, each a “**Party**,” collectively, the “**Parties**”). Capitalized terms used, but not otherwise defined in this Agreement, have the same meaning as those terms in 45 C.F.R. §§ 160.103 and 164.501.

Recitals

A. Business Associate and Covered Entity are engaged in a business relationship where Covered Entity purchases, and Business Associate sells or provides, certain services to Covered Entity (“**Business Relationship**”).

B. As part of this Business Relationship, Business Associate performs or assists in performing a function or activity on behalf of Covered Entity that involves the use and/or disclosure of Protected Health Information (as defined in 45 C.F.R. § 164.501, as such provision is currently drafted and if applicable subsequently updated, amended or revised).

C. The Parties desire to enter into this Agreement regarding the use and/or disclosure of Protected Health Information as required by the Health Insurance Portability and Accountability Act of 1996 (“**HIPAA**”); the Standard for Privacy of Individually Identifiable Health Information (“**Privacy Rule**”) and the Standard for Security of Individually Identifiable Health Information (“**Security Rule**”) promulgated under HIPPA; and the Health Information Technology for Economic and Clinical Health Act (“**HITECH**”) provisions of the American Recovery and Reinvestment Act of 2009 (“**ARRA**”).

Based upon the above recitals and the mutual covenants in this Agreement, the Parties agree as follows:

Article 1

Use, Disclosure & Obligations

1.01. **Permitted Uses and Disclosures in General.** Except as otherwise limited in the Business Relationship or this Agreement, Business Associate may use and/or disclose Protected Health Information to perform the functions, activities, or services for or on behalf of Covered Entity as specified in the Business Relationship provided that such use and/or disclosure would not violate the Privacy Rule if done by Covered Entity. All other uses and/or disclosures not authorized by the Business Relationship or this Agreement are prohibited.

1.02. **Responsibilities of Business Associate.** With regard to the use and/or disclosure of Protected Health Information, Business Associate agrees to do the following:

(a) to not use and/or disclose Protected Health Information other than as permitted or required by the Business Relationship or this Agreement or as Required By Law;

(b) to use appropriate safeguards to prevent the use and/or disclosure of Protected Health Information other than as provided for by the Business Relationship or this Agreement;

(c) to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information;

(d) to report to Covered Entity any security incident of which it becomes aware;

(e) to notify Covered Entity in writing within 12 business days of any use and/or disclosure of Protected Health Information that is not provided for by the Business Relationship or this Agreement; and to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement;

(f) to ensure that all agents, including subcontractors, to whom it provides Protected Health Information received from, or created or received by, Business Associate on behalf of Covered Entity agree in writing to the same restrictions and conditions on the use and/or disclosure of Protected Health Information that apply to Business Associate pursuant to the Business Relationship and this Agreement, and that any agent, including subcontractors, to whom it provides Protected Health Information agree in writing to implement reasonable and appropriate safeguards to protect such Protected Health Information. This will include, without limitation, ensuring that agents and subcontractors implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the Security Rule. Business Associate is fully liable to Covered Entity for any acts, failures or omissions of its agents, including subcontractors, in providing the services as if they were Business Associate's own acts, failures or omissions to the extent permitted by law;

(g) to provide access (at the request of, and in the time and manner designated by, Covered Entity) to Protected Health Information in a Designated Record Set to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet

the requirements under 45 C.F.R. 164.524 (this provision will be applicable only if Business Associate has Protected Health Information in a Designated Record Set);

(h) to make any amendment(s) (at the request of, and in the time and manner designated by, Covered Entity) to Protected Health Information in a Designated Record Set that Covered Entity directs pursuant to 45 C.F.R. 164.526. This provision will be applicable only if Business Associate has Protected Health Information in a Designated Record Set;

(i) to make internal practices, books, and records relating to the use and/or disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or at the request of Covered Entity, to the Secretary of the Department of Health and Human Services or his/her designee (“Secretary”), in a time and manner designated by Covered Entity or the Secretary, for purposes of determining Covered Entity’s and/or Business Associate’s compliance with the Privacy Rule. Business Associate will promptly notify Covered Entity of communications with the Secretary regarding Protected Health Information provided by or created by Covered Entity and will provide Covered Entity with copies of any information Business Associate has made available under this provision. Notwithstanding the foregoing, no attorney-client, accountant-client, or other legal privilege will be deemed waived by Business Associate or Covered Entity by virtue of this Agreement;

(j) to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 incorporating exceptions to such accounting designated under the regulation. Accounting of disclosures will be in accordance with the policies and procedures of the Covered Entity and will be made within a time specified by Covered Entity. The first accounting in any 12-month period requested by an Individual will be provided without charge. A reasonable charge may be made for subsequent accountings if Business Associate informs the Individual in advance of the fee and the Individual is afforded an opportunity to withdraw or modify the request. Such accounting is limited to disclosures that were made in the 6 years prior to the request (not including any disclosures prior to the compliance date of the Privacy Rule) and will be provided as long as Business Associate maintains the Protected Health Information. In addition, to the extent that Business Associate maintains Protected Health Information in an electronic health record, Business Associate agrees to account for all disclosures of electronic Protected Health Information upon request of an Individual for a period of at least 3 years prior to the request (but no earlier than the Effective Date of this Agreement) as required by HITECH. Such accounting will be directly to the Individual if requested by Covered Entity;

(k) to provide to Covered Entity, in a time and manner designed by Covered Entity, information collected in accordance with Section 1.02(j) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an

accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528;

(l) to ensure that all disclosures of Protected Health Information are subject to the principle of “minimum necessary use and disclosure,” i.e., only Protected Health Information that is the minimum necessary to accomplish the intended purpose of the use, disclosure, or request may be disclosed;

(m) to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a misuse or unauthorized disclosure of Protected Health Information by Business Associate in violation of this Agreement and to report to Covered Entity any security incident of which Business Associate becomes aware;

(n) to provide training to its members of its workforce regarding the requirements of the HIPAA Rules, HITECH, and this Agreement;

(o) to review and understand HIPAA Rules and HITECH as they apply to Business Associate and to comply with applicable requirements and any amendments affecting the obligations of Business Associates; and

(p) to provide Business Associate’s policies and procedures for maintaining the confidentiality of records in a Designated Record Set as required by the Privacy Rule and this Agreement to Covered Entity at its request.

1.03. **Business Associate Obligations under ARRA.** Business Associate acknowledges that it is subject to the security and data breach provisions of HIPAA and agrees to abide by those provisions. Business Associate also agrees to abide by all of the privacy provisions set forth in Title XIII, Subtitle D of ARRA, including, without limitation, restrictions on marketing and requirements related to limited data sets and minimum necessary disclosures.

1.04. **Responsibilities of Covered Entity.** If deemed applicable by Covered Entity, Covered Entity will:

(a) provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 C.F.R. § 164.520 as well as any changes to such notice;

(b) provide Business Associate with any changes in, or revocation of, permission by Individual to the use and/or disclosure of Protected Health Information, if such changes affect Business Associate’s permitted or required uses and/or disclosures. Covered Entity will further notify Business Associate of any restriction on the use and/or disclosure of Protected Health Information agreed to by Covered Entity in accordance with the provisions of 45 C.F.R. § 164.522 and any restriction requested by an Individual that Covered Entity is required to comply with in accordance with the provisions of HITECH;

(c) notify Business Associate of any restriction to the use and/or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522;

(d) notify Business Associate, in writing, of any amendment(s) to the Protected Health Information in the possession of Business Associate that the Business Associate will make to the Protected Health Information and inform the Business Associate of the time, form and manner in which such amendment(s) will be made; and

(e) to inform the Business Associate of any opt-outs exercised by any individual from marketing and/or fundraising activities of the Covered Entity pursuant to 45 C.F.R. § 164.514(e) when the Business Relationship pertains to marketing or fundraising.

1.05. **Specific Use and Disclosure by Business Associate.** Except as otherwise limited in the Business Relationship and this Agreement, Business Associate may:

(a) use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate provided that such use is permitted under state and federal confidentiality laws;

(b) disclose Protected Health Information for the proper management and administration of Business Associate, provided the disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom Protected Health Information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of Protected Health Information has been breached; and

(c) use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 C.F.R. § 164.504(e)(2)(i)(B).

1.06. **De-Identified Information.** Use and disclosure of de-identified health information is permitted, but only if (1) the precise use is disclosed to Covered Entity and permitted by Covered Entity in its sole discretion, and (2) the de-identification is in compliance with 45 C.F.R. § 164.502(d), and any such de-identified health information meets the standards and implementation specifications for de-identification under 45 C.F.R. § 164.514(a) and (b), or such regulations as they may be amended from time to time.

Article 2

Term and Termination

2.01. **Term.** The duration of this Agreement runs from (insert date), through and until 11:59 p.m. on (insert date).

2.02. **Extension.** Either the County or the Business Associate may request in writing, an extension of this Agreement. If the extension request is acceptable to the other party, then such party shall approve the extension request in writing. Both the extension request, and the approval of the extension request shall indicate the same timeframe/duration of this Agreement.

2.03. **Termination for Cause; Termination Without Cause.** Covered Entity may immediately terminate the Business Relationship and/or this Agreement if Covered Entity determines that Business Associate has breached a material term of this Agreement. As an alternative to the immediate termination provision noted above, either the Covered Entity or the Business Associate may terminate this Agreement, with or without cause, upon either party providing at least ninety (90) days advance written notice to the other party.

2.04. **Effect of Termination.**

(a) Except as provided in paragraph (b) of this Section 2.03 upon termination of the Business Relationship and/or this Agreement, for any reason, Business Associate will return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This Section 12.03(a) will apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the Protected Health Information.

(b) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate will provide in writing to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual written agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate will extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

Article 3

Additional Provisions

3.01. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply

with the requirements of the Privacy Rule and HIPAA. Alterations, modifications, or amendments of a provision of this Agreement will not be binding unless such alteration, modification, or amendment is in writing and signed by an authorized representative of each Party.

3.02. **Governing Law and Venue.** This Agreement shall be construed according to the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

3.03. **Waiver of Trial by Jury.** THE PARTIES EXPRESSLY WAIVE TRIAL BY JURY IN ANY JUDICIAL PROCEEDING INVOLVING ANY DISPUTE, CONTROVERSY, OR CLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT.

3.04. **Waiver.** A waiver by a Party of any provision of this Agreement in any instance will not be deemed a waiver of such provision, or any other provision of this Agreement as to any future instance or occurrence. All remedies, rights, undertakings, and obligations contained in this Agreement will be cumulative and none of them will be in limitation of any other remedy, right, undertaking, or obligation of a Party.

3.05. **Entire Agreement.** This Agreement constitutes the complete and exclusive statement of the agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior proposals, understandings, and agreements, whether oral or written, between the Parties with respect to the subject matter of this Agreement, including any non-disclosure agreements previously entered into by the Parties.

3.06. **Severability.** The provisions of this Agreement are severable. The invalidity, in whole or in part, of any provision of this Agreement will not affect the validity or enforceability of any other of its provisions. If one or more provisions of this Agreement are declared invalid or unenforceable, the remaining provisions will remain in full force and effect and will be construed in the broadest possible manner to effectuate the purposes of this Agreement. The Parties further agree to replace such void or unenforceable provisions of this Agreement with valid and enforceable provisions that will achieve, to the extent possible, the economic, business, and other purposes of the void or unenforceable provisions.

3.07. **Captions.** The headings and captions of this Agreement are inserted for reference convenience and do not define, limit or describe the scope or intent of this Agreement or any particular section, paragraph, or provision of this Agreement. Unless otherwise expressly provided, the words "include(s)," "included," or "including" do not limit the preceding words or terms. Pronouns will refer to the masculine, feminine, neuter, singular or plural as the context will require.

3.08. **Counterparts.** This Agreement may be executed in any number of counterparts, each of which may be executed by less than all of the Parties, each of which

will be enforceable against the Parties actually executing such counterparts, and all of which together will constitute one instrument. This Agreement may be executed by facsimile signature; such signature is deemed an original signature.

3.09. **Notices.** All notices, requests, or consents required or permitted under this Agreement will be in writing (including electronic form) and will be delivered to the address set forth by each Party in this Agreement, or to such other party and/or address as any of such Parties may designate in a written notice served upon the other Parties in the manner provided for below. Each notice, request, consent, or other communication will be given and will be effective: (1) if delivered by hand, when so delivered; (2) if delivered by nationally recognized overnight courier service or sent by United States Express Mail, upon confirmation of delivery; (3) if delivered by certified or registered mail, on the third following day after deposit with the United States Postal Service; or (4) if delivered by facsimile, upon confirmation of successful transmission.

3.10. **Survival.** The respective rights and obligations of Business Associate under Section 2.03 of this Agreement will survive the termination of the Business Relationship and/or this Agreement.

3.11. **Interpretation.** Despite the possibility that one Party or its representatives may have prepared the initial draft of this Agreement or played a greater role in the preparation of subsequent drafts, the Parties agree that neither of them will be deemed the drafter of this Agreement and that, in construing this Agreement, no provision will be construed in favor of one Party on the ground that such provision was drafted by the other. If any claim is made by a Party relating to any conflict, omission, or ambiguity in the provisions of this Agreement, no presumption or burden of proof or persuasion will be implied because this Agreement was prepared by or at the request of either Party or its counsel.

3.12. **No Third Party Beneficiary.** Nothing in this Agreement is intended, nor will be deemed, to confer any benefits on any third party.

3.13. **Access to Records.** The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Agreement shall be subject to the applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. It is specifically understood that access to "*personally identifiable information*" as defined in the Health Insurance Portability and Accountability Act of 1996 (HIPAA), is controlled by, and subject to, the provisions of HIPAA. Access to records subject to disclosure may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

3.14. **Permits and Licenses.** To the extent that the Business Associate needs to secure, obtain/acquire, and maintain permits, certificates, and/or licenses, in order to perform the Services noted in this Agreement, then the Business Associate shall be responsible for securing, obtaining/acquiring, and maintaining, at the Business

Associate's sole expense, any, and all, permits, licenses, certificates, and/or approvals required by Federal State, and/or County law, rule, regulation, or ordinance.

3.15. **Independent Contractor Relationship.** The Business Associate is, and shall be, in the performance of all work, services, and activities, under this Agreement, an Independent Contractor, and not an employee, agent, or official, or servant of the County. As such, neither the Business Associate, nor any employees, agents, officials, servants, or subcontractors of the Business Associate are eligible for any benefits afforded employees or officials of the County. The Business Associate shall exercise control over the means and manner in the Business Associate, and Business Associate's employees perform the work that is set forth in this Agreement. The Business Associate does not have the power or authority to bind (legally or equitably), in any manner whatsoever the County in any promise, agreement, or representation, other than as specifically provided for in this Agreement.

3.16. **Assignment.** In light of the scope and rationale for this Agreement, neither the County, nor the Business Associate may assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the express written approval of the other party. Should either the County, or the Business Associate, assign, transfer, and/or sell any of the rights noted in this Agreement, without such prior written approval of the other party, then such action on the part of either the County or the Business Associate shall result in the automatic termination of this Agreement without further notice or action required on the part of the other party.

3.17. **Indemnity.** To the extent permitted by law, the Business Associate shall indemnify, defend, and hold harmless the County, its officials, agents, and employees, from and against, any, and all, claims and liabilities, which may arise from any act, or omission on the part of the Business Associate, or its agents, representatives, or subcontractors, to the extent that such negligent act or omission is connected with the Services noted in this Agreement.

3.18. **Compensation.** For the term and duration of this Agreement, the maximum amount available as compensation/re-imbursable expenses to the Business Associate is (insert amount), unless the County approves another amount, and this Agreement is amended, so as to reflect the amended amount of compensation. It is strictly understood that the Business Associate is not entitled to the above-noted amount of compensation/re-imbursable expenses as a matter of right, except as the Business Associate's compensation/re-imbursable expenses are based on the provision of Services noted in this Agreement.

3.19. **Billing/Invoicing.** To the extent that the Business Associate is not in violation of any material aspect of this Agreement, or received notice of termination of this Agreement, or received notice of termination of this Agreement, then the Business Associate may bill/invoice the County on a monthly basis. Though there is no billing form or format pre-approved by either the County or the Business Associate, bills/invoices submitted by the Business Associate shall be consistent with the basis of

compensation that is agreed upon between the County and the Business Associate. Upon receipt and verification of the Business Associate's bill/invoice, the County shall process the bill/invoice, and forward payment to the Business Associate within thirty (30) days of verification.

3.20. **Effect of Agreement.** Except as amended by this Agreement, the terms and provisions of the Business Relationship will remain in full force and effect.

(Signature Page Follows)

The Parties have executed this Agreement duly authorized to be effective as of the Effective Date.

COVERED ENTITY

BUSINESS ASSOCIATE

[Entity Name]

Patty Kake Inc., d.b.a MedData Services

By: _____

By: Matthew AS

Printed Name

MATTHEW SEBUCI
Printed Name

Title

COO
Title