

**CONTINUING SERVICES AGREEMENT
BETWEEN LEVY COUNTY AND
NEW RIVER TECHNOLOGY, LLC
FOR INFORMATION TECHNOLOGY SERVICES**

This Agreement is made and entered into by and between LEVY COUNTY, a political subdivision of the State of Florida, P.O. Box 310, Bronson, FL 32621 (hereinafter referred to as "County"), and NEW RIVER TECHNOLOGY LLC., (hereinafter referred to as "Contractor") on this 21st day of September, 2021.

WITNESSETH:

WHEREAS, County issued a Request for Proposals No. 2021-006 for selection of a provider of information technology services (the "RFP"), in accordance with applicable procurement policies and procedures; and;

WHEREAS, Contractor submitted a proposal in response to the RFP (the "Proposal"), and was subsequently selected by County as the company to provide the services requested by the RFP; and

WHEREAS, County desires to acquire information technology services from Contractor, and Contractor desires to provide such services in accordance with the RFP, Contractor's proposal, and subsequent negotiations between the parties;

NOW, THEREFORE, in consideration of the mutual terms and conditions, promises, covenants and payment hereinafter set forth, County and Contractor agree as follows:

ARTICLE 1

INCORPORATION OF DOCUMENTS

1.1 The RFP, consisting of pages 1 through 50 and including the Addendum 1 to the RFP dated August 31, 2021, Addendum 2 to the RFP dated September 2, 2021, and Addendum 3 to the RFP dated September 8, 2021 issued by County, the Proposal submitted by Contractor dated September 13, 2021, all filed with the Procurement Department of Levy County, are hereby specifically made part of this Agreement as if same had been set forth at length herein.

In the event of any conflict between the documents constituting this Agreement, the documents are given precedence in the following order:

- 1) This Agreement;
- 2) The Business Associate Agreement
- 3) The RFP No. 2021-006;
- 4) Addendum 1;
- 5) Addendum 2;
- 6) Addendum 3; and
- 7) The Proposal submitted by Contractor dated September 13, 2021.

ARTICLE 2

CONTRACTOR'S DUTIES

2.1 Contractor shall perform all the services and shall provide all the materials requested by the RFP and described in the Scope of Services in the RFP as supplemented by the Proposal (hereinafter referred to as the "Scope of Services"). Contractor shall perform all services and provide all materials in strict accordance with the provisions contained herein. Contractor shall perform all services under the Scope of Services in a professional, workmanlike manner, with such professional care, technical skill, ability and diligence as is required of similar contractors having the level of skill, expertise and specialized knowledge, as represented to County, both orally and in writing, to be possessed by Contractor.

2.2 Contractor shall provide its services and materials in the times allowed for performance contained in the Scope of Services.

2.3 Contractor agrees that, to the best of its ability, the key personnel identified in the Proposal will be retained by Contractor throughout the term of this Agreement. If Contractor is unable to retain any of the key personnel identified in its Proposal, it shall provide prompt notice of such event to County, along with the names and qualifications of a replacement for such key personnel.

2.4 Compliance with Laws

Contractor shall comply with all federal, state, and local statutes, laws, ordinances, resolutions and regulations in the performance of its obligations under this agreement.

2.5 Compliance with Chapter 119, Florida Statutes

(a) In addition to compliance with any other laws as required by this Agreement, Contractor, shall comply with the public record laws of the State of Florida contained in Chapter 119, Florida Statutes, as the same may be amended and retain and maintain any record created pursuant to this Contract by either party. Failure to comply with the provision of this subsection shall constitute a substantial failure to perform on the part of Contractor in accordance with the terms of this Agreement. Specifically, but not by way limitation, Contractor shall:

(i) Keep and maintain public records required by County to perform the services;

(ii) Upon request by County's custodian of public records, provide County with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of the term of this Agreement and following completion of the services to be provided by Contractor under this Agreement if Contractor does not transfer the records to County; and

(iv) Upon completion of the services to be provided under this Agreement, transfer, at no cost, to County all public records in possession of Contractor or keep and maintain public records required by County to perform the services. If Contractor transfers all public records to County upon completion of this Agreement, Contractor shall destroy any duplicate public records

that are exempt or confidential and exempt from public records disclosure requirements. If Contractor keeps and maintains public records upon completion of this Agreement, Contractor shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to County, upon requests from County's custodian of public records, in a format that is compatible with the information technology systems of County.

(b) The definitions contained in Chapter 119, Florida Statutes, apply to terms used in this section, unless alternate or more specific definitions for any such terms are provided in this Agreement.

(c) For the purposes of this Agreement, the term "custodian of public records" shall mean the County Coordinator or County or his/her designee.

(d) IF CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO CONTRACTOR'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

TELEPHONE: (352) 486-5218

EMAIL: LEVYBOCC@LEVYCOUNTY.ORG

MAILING ADDRESS: P.O. BOX 310, BRONSON, FL 32621

2.6 During the performance of this Agreement, in the event any services to be performed by the Contractor are or may be funded by federal funds or may be reimbursable by federal funds, the Contractor, for itself, its subcontractors, and any assignees and successors in interest agrees as follows:

(a) *Equal Employment Opportunity:* The Contractor shall comply with the regulations relative to equal employment opportunity in federally-assisted construction contracts, as they may be amended from time to time, contained in Appendix II to 2 CFR Part 200, specifically as contained in 41 CFR 6-01.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity", as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR Part 60, as any of the same may be amended, which are herein incorporated by reference and made a part of this Agreement.

(b) *Nondiscrimination:* The Contractor, with regard to any work performed during this Agreement, shall not discriminate on the basis of race, color, national origin, sex, age, disability, religion or family status in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21. In addition, Contractor shall comply with all applicable laws and regulations that prohibit discrimination based on race, color, national origin, sex, disability, age, creed, and/or prohibit unfair treatment of persons displaced or whose property has been acquired because of federal or federal-aid programs and projects.

(c) *Solicitations for Subcontractors, including Procurements of Materials and Equipment:* In all solicitations made by the Contractor, either by competitive bidding or negotiation for work to be

performed under a subcontract, including procurements of materials or leases of equipment; each potential subcontractor or supplier shall be notified by the Contractor of the Contractor's obligations under this Agreement and any applicable regulations relative to nondiscrimination on the basis of race, color, national origin, sex, age, disability, religion or family status.

(d) *Davis-Bacon Act*: The Contractor shall comply with the provisions of the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148), as supplemented by Department of Labor regulations (29 CFR Part 5), as the same may be amended. The prevailing wage determination by the Department of Labor at the time of performance of the particular services by Contractor which may be subject to federal funding or federal reimbursement shall be accepted by Contractor prior to performance of those services.

(e) *Copeland "Anti-Kickback" Act*: The Contractor shall comply with the provisions of Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by the Department of Labor regulations (29 CFR Part 3), as the same may be amended. County shall report any suspected violations to the applicable federal funding agency.

(f) *Contract Work Hours and Safety Standards Act*: In the event in the performance of any services by Contractor are anticipated to be in excess of \$100,000, and Contractor employs mechanics or laborers subject to Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708), as supplemented by Department of Labor regulations (29 CFR Part 5), as the same may be amended, Contractor shall comply with the provisions of 40 U.S.C. 3702 and 3704, as supplemented by such Department of Labor regulations.

(g) *Rights to Inventions Made Under a Contract or Agreement*: (this section intentionally left blank).

(h) *Clean Air Act and Federal Water Pollution Control Act*: Contractor shall comply with all provisions and all applicable standards of the Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as the same may be amended, in the performance of any services pursuant hereto. Any violations of either Act hereunder shall be reported to the applicable federal awarding agency and the Regional Office of the Environmental Protection Agency.

(i) *Energy Policy Conservation Act*: Contractor shall comply with all mandatory standards and policies relating to energy efficiency which are contained in the State of Florida's energy conservation plan issued in compliance with the Energy Policy Conservation Act (41 U.S.C. 62101), as the same may be amended.

(j) *Solid Waste Disposal Act*: Contractor shall comply with the provisions of section 6002 of the federal Solid Waste Disposal Act, as amended by the federal Resource Conservation and Recovery Act, as the same may be amended, which include (but are not necessarily limited to): procuring only items designated in guidelines of the Environmental Protection Agency at 40 CFR Part 247 (as the same may be amended) that contain the highest percentage of recovered materials practicable, consisting with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired by the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the Environmental Protection Agency guidelines.

(l) *Incorporation of Provisions:* The Contractor shall include the provisions of this Section 2.6 in every subcontract, including procurements of materials and leases of equipment, unless exempt by any applicable federal regulations, or directives issued pursuant thereto. The Contractor shall take such action with respect to any subcontract or procurement as the state or federal funding agency may direct as a means of enforcing such provisions including sanctions for noncompliance. In the event the Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the applicable state or federal funding agency to enter into such litigation to protect the interests of such state or federal funding agency.

(m) *Sanctions for Noncompliance:* In the event of the Contractor's noncompliance with the provisions of this Section 2.6, the County or any applicable state or federal funding agency may impose such contract sanctions as the County or the applicable state or federal funding agency may determine to be appropriate, including, but not limited to: (i) withholding of payments to the Contractor until the Contractor complies, and/or (ii) cancellation, termination or suspension of this Agreement, in whole or in part; and/or (iii) any other further sanctions as may be permitted by the applicable federal regulations governing the applicable federal funding or as are not prohibited by law.

ARTICLE 3

ADDITIONAL SERVICES

3.1 In the event that County desires Contractor to perform any additional information technology services not specifically contained in the Scope of Services, the parties will enter into an addendum to this Agreement to provide for the provision of such additional information technology services by Contractor and payment therefor by County.

ARTICLE 4

TERM/TERMINATION

4.1 The term of this Agreement shall begin on the date and year first above written and shall continue for three (3) years. The term of this Agreement may be renewed for three (3) additional one (1) year terms for a total potential of six (6) one-year terms. At the end of the initial and any renewal term, County may provide written notice to Contractor of County's intention to renew for the following annual term.

4.2 This Agreement may be terminated by County, with or without cause, by written notice to Contractor of the intent to terminate. Such termination shall be effective thirty (30) days after receipt by Contractor of such written notice of intent to terminate. However, no termination for cause will be effective unless Contractor is first given ten (10) calendar days after receipt of notice of intent to terminate in which to cure the cause for termination.

4.3 In the event of termination, Contractor shall be entitled to compensation for services rendered and costs incurred through the effective date of termination. All finished or unfinished documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other work product prepared by Contractor shall become the property of County and shall be delivered by Contractor to County immediately upon the effective date of termination.

4.4 Notwithstanding the foregoing, the Contractor shall not be relieved of liability to the County for damages sustained by it by virtue of a breach of the Agreement by Contractor and the County may reasonably withhold payment to Contractor for the purposes of set-off until such time as the exact amount of damages due the County from the Contractor is determined.

4.5 The County also reserves the right to terminate the remaining Services to be performed in the event the Contractor is placed either in voluntary or involuntary bankruptcy or makes any assignment for the benefit of creditors.

4.6 Failure of the Contractor to adhere to the requirements of Chapter 119 of the Florida Statutes and Section 2.5 above may result in immediate termination of this Agreement.

ARTICLE 5

METHOD OF INVOICE AND PAYMENT

5.1 County shall pay to Contractor the hourly rates and direct costs, as indicated in Contractor's Proposal, for information technology services as described in the RFP.

5.2 Contractor shall submit all billings for payment of services rendered pursuant to the Scope of Services on a monthly basis to the County Procurement Department for processing. Billings shall be detailed as to nature of services performed and shall refer to the particular line item(s) in the Scope of Services to which services apply. Billings shall include a summary of any amounts previously billed and any credits for amounts previously paid.

5.3 Contractor acknowledges that each billing must be reviewed and approved by the County Coordinator or his/her designee. Should the County Coordinator, or his/her designee, determine the billing is not commensurate with services performed, work accomplished, or hours expended, Contractor shall adjust billing accordingly. However, Contractor will be entitled to payment of any portion of a billing not in dispute.

5.4 Invoices will be subject to, and County shall pay Contractor's proper invoices in accordance with the Florida Local Government Prompt Payment Act.

5.5 The County's performance and obligation to pay under this Agreement is contingent upon annual appropriation for its purpose by the County Commission. In the event budget funds sufficient for the County to pay the amounts provided under this Agreement are not available, the County shall notify the Contractor of such occurrence and this Agreement shall terminate on the last day of the then current fiscal period without penalty or expense to the County.

ARTICLE 6

COUNTY'S RESPONSIBILITIES

6.1 County shall perform the responsibilities contained in this Article 6 in a timely manner so as not to delay services of the Contractor.

6.2 County shall furnish to Contractor, upon request of Contractor and at County expense, all existing studies, reports and other available data pertinent to the services to be performed under this Agreement

which are within the County's possession. However, Contractor shall be required to evaluate all materials furnished hereunder using reasonable professional judgment before relying on such materials.

6.3 County shall provide reasonable access and entry to all public property required by Contractor to perform the services described in this Agreement. All such access and entry shall be provided at County expense. County shall also use reasonable efforts to obtain permission for reasonable access and entry to any private property required by Contractor to perform the services described in this Agreement.

ARTICLE 7

STANDARDS AND CORRECTIONS

7.1 Contractor shall perform or furnish to County all information technology services to a level of technical skill, ability, and diligence as required for information technology service professionals having the level of skill, expertise and specialized knowledge, as represented to the County, both orally and in writing, to be possessed by Contractor, all in accordance with the standards contained elsewhere in this Agreement and in accordance with generally accepted standards contained elsewhere in this Agreement and in accordance with generally accepted standards of professional information technology service practice and with the laws, statues, ordinances, codes, rules and regulations governing Contractor's profession. The same standards of care shall be required of any subconsultant or subcontractor engaged by Contractor.

7.2 Contractor shall, without additional compensation, correct and revise any errors, omissions, or other deficiencies in its work product, services, or materials arising from the negligent act, error or omission of Contractor or any subconsultant or subcontractor engaged by Contractor under this Agreement. The foregoing shall be construed as an independent duty to correct rather than a waiver of County's rights under any applicable statute of limitations. County review of, approval of, acceptance of, or payment for any of Contractor's work product, services, or materials shall not be construed to operate as a waiver of any County's rights under this Agreement, or cause of action County may have arising out of the performance of this Agreement. The provisions of this section shall survive the termination of this Agreement.

ARTICLE 8

COUNTY PROPERTY

8.1 All documents, data, studies, surveys, analyses, sketches, tracings, specifications, plans, designs, design calculations, details, computations, drawings, maps, models, photographs, reports, and other documents and plans resulting from Contractor's services under this Agreement shall become property of and shall be delivered to County without restriction or limitation as to use. Any other use by Contractor or other parties shall be approved in writing by the County. If requested, Contractor shall deliver the documents to the County within fifteen (15) calendar days.

ARTICLE 9

NOTICES

9.1 Any notice required or permitted to be sent hereunder shall be sent by United States first class mail, postage prepaid, or hand-delivered to the parties at the addresses listed below:

If to County:

County Coordinator

P.O. Box 310

Bronson, FL 32621

If to Contractor:

New River Technology, LLC

333 SE Lofton Glen

Lake City, FL 32025

ARTICLE 10

NO CONTINGENT FEES

10.1 Contractor certifies that it has not employed or retained any company or person, other than a bona fide employee working solely for Contractor to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual or firm, other than a bona fide employee working solely for Contractor any fee, commission, percentage, gift or other consideration contingent upon or resulting from the award or making of this Agreement. For the breach or violation of this provision, County shall have the right to terminate the Agreement without liability at its discretion, to deduct from the contract price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.

ARTICLE 11

NO ASSIGNMENT

11.1 This Agreement, or any interest herein, shall not be assigned, transferred or otherwise encumbered, under any circumstances by Contractor without prior written consent of County.

11.2 Consultant shall not subcontract any services or work to be provided to County without the prior written approval of the County. The County reserves the right to accept the use of a subcontractor or subconsultant or to reject the selection of a particular subcontractor or subconsultant and to inspect all facilities of any subcontractors in order to determine the capability of the subcontractor or subconsultant to perform properly under this Contract. The County's acceptance of a subcontractor or subconsultant shall not be unreasonably withheld. The Consultant is encouraged to seek minority and women business enterprises for participation in subcontracting opportunities.

11.3 Pursuant to Florida Statutes Section 215.4725, contracting with any entity listed on the Scrutinized Companies that Boycott Israel List or that is engaged in the boycott of Israel is prohibited. Contractors must certify that the company is not participating in a boycott of Israel. Any contract for goods or services of One Million Dollars (1,000,000) or more shall be terminated at the County's option if

it is discovered that the entity submitted false documents of certification, is listed on the Scrutinized Companies with Activities in Sudan List, the Scrutinized Companies with Activities in the Iran Petroleum Energy Sector List, or has been engaged in business operations in Cuba or Syria after July 1, 2018. Any contract entered into or renewed after July 1, 2018, shall be terminated at the County's option if the company is listed on the Scrutinized Companies that Boycott Israel List or engaged in the boycott of Israel. Contractors must submit the certification that is attached to this agreement as Attachment "A". Submitting a false certification shall be deemed a material breach of contract. The County shall provide notice, in writing, to the Contractor of the County's determination concerning the false certification. The Contractor shall have ninety (90) days following receipt of the notice to respond in writing and demonstrate that the determination was in error, then the County shall have the right to terminate the contract and seek civil remedies pursuant to Florida Statute Section 215.4725.

ARTICLE 12

INDEMNIFICATION

12.1 The Contractor agrees, to the fullest extent permitted by law, to indemnify and hold harmless the County, its agents, representatives, officers, directors, officials and employees from and against claims, damages, losses and expenses (including but not limited to attorney's fees, court costs and costs of appellate proceedings) relating to, arising out of or resulting from the Contractor's negligent acts, errors, mistakes or omissions relating to professional Services performed under this Agreement. The Contractor's duty to defend, hold harmless and indemnify the County its agents, representatives, officers, directors, officials and employees shall arise in connection with any claim, damage, loss or expense that is attributable to bodily injury; sickness; disease; death; or injury to impairment, or destruction of tangible property including loss of use resulting therefrom, caused by any negligent acts, errors, mistakes or omissions related to Services in the performance of this Agreement including any person for whose acts, errors, mistakes or omissions the Contractor may be legally liable. The parties agree that TEN DOLLARS (\$10.00) represents specific consideration to the Contractor for the indemnification set forth herein.

12.2 The waiver by a party of any breach or default in performance shall not be deemed to constitute a waiver of any other or succeeding breach or default. The failure of the County to enforce any of the provisions hereof shall not be construed to be a waiver of the right of the County thereafter to enforce such provisions.

12.3 The provisions of this Article shall survive the termination of the Agreement.

ARTICLE 13

INSURANCE

13.1 Before performing any work, Contractor shall procure and shall continue to maintain, at its sole cost and expense, throughout the term of this Agreement, insurance policies meeting requirements, and in the coverages and amounts all as contained in the RFP.

ARTICLE 14

CONTACT PERSONS

14.1 Upon written request of Contractor, the County Coordinator shall designate one or more County employee(s) to whom all communication pertaining to the day-to-day conduct of the performance of this Agreement shall be addressed.

ARTICLE 15

SEVERABILITY

15.1 In the event that a court having appropriate jurisdiction deems any provision of this Agreement invalid and unenforceable, the remaining provisions shall be valid and binding upon the parties. This Agreement shall not be more strictly construed against either party hereto by reason of the fact that one party may have drafted or prepared any or all terms and provisions hereof. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed by the other party as a waiver of any subsequent breach.

ARTICLE 16

GOVERNING LAW/VENUE/WAIVER OF JURY TRIAL

16.1 This Agreement shall be interpreted and construed in accordance with and governed by the laws of the State of Florida. All parties agree and accept that jurisdiction of any dispute or controversy arising out of this Agreement, and any action involving the enforcement or interpretation of any rights hereunder shall be brought exclusively in the First Judicial Circuit in and for Levy County, Florida, and venue for litigation arising out of this Agreement shall be exclusively in such state courts, forsaking any other jurisdiction which either party may claim by virtue of its residency or other jurisdictional device. In the event it becomes necessary for the County file a lawsuit to enforce any term or provision under this Agreement, then the County shall be entitled to its costs and attorney's fees at the pretrial, trial and appellate levels. BY ENTERING INTO THIS AGREEMENT, CONTRACTOR AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. Nothing in this Agreement is intended to serve as a waiver of sovereign immunity, or of any other immunity, defense, or privilege enjoyed by the County pursuant to Section 768.28, Florida Statutes.

ARTICLE 17

INDEPENDENT CONTRACTOR STATUS

17.1 Contractor enters into this Agreement as, and shall continue to be, an independent contractor. All services shall be performed only by Contractor and Contractor's employees. Under no circumstances shall Contractor or any of Contractor's employees look to the County as his/her employer, or as a partner, agent of principal. Neither Contractor, nor any of Contractor's employees, shall be entitled to any benefits accorded to the County's employees, including without limitation worker's compensation, disability insurance, vacation or sick pay. Contractor shall be responsible for providing, at Contractor's expense, and in Contractor's name, unemployment, disability, worker's compensation and other insurance as well as licenses and permits usual and necessary for conducting the services to be provided under this Agreement.

ARTICLE 18

OIG/AHCA SCREENING

18.1 Contractor is not now excluded and will not become excluded from participation in a federal healthcare program by the United States Office of the Inspector General (“OIG”), and is not now and will not become the subject of a final order by the Florida Agency on Health Care Administration (“AHCA”). Contractor will not allow any of its employees, agents, officers, contractors, or subcontractors who are or become excluded from participation in a federal healthcare program by OIG or the subject of a final order by AHCA to perform or provide any services to County pursuant to this Agreement. Any such employees, agents, officers, contractors or subcontractors who do or will perform or provide services to County pursuant to this Agreement shall be referred to as “Personnel” herein. Contractor shall screen all potential Personnel prior to initial employment, engagement or contracting, and shall continue to screen all Personnel every 30 days for the duration of this Agreement. Contractor may perform screenings required herein using its own work force or may utilize a third party agency to perform such screenings. Contractor will perform the required screenings of its own name and of all Personnel to ensure and confirm that neither Contractor nor any such Personnel are excluded from participation in federal health care programs by OIG or the subject of a final order by AHCA by searching the List of Excluded Individuals/Entities (“LEIE”), located at <http://www.oig.hhs.gov/fraud/exclusions.asp>, and the AHCA final order database, located at http://apps.ahca.myflorida.com/dm_web, to determine whether the Contractor’s entity or whether any Personnel of Contractor has been excluded. In the event either both of these websites change, Contractor will provide the results of these monthly searches to County upon completion.

In the event that Contractor finds any individual or entity that qualifies as Personnel that have been excluded from participation in federal healthcare programs by OIG or are subject of a final order by AHCA, Contractor shall notify the County immediately and shall immediately terminate the use of such individual or entity as Personnel. Failure to comply with any provisions of this section shall result in immediate termination of this Agreement with no further obligation of County to Contractor. In addition, Contractor agrees to indemnify, defend and hold harmless County from any and all costs, fees, fines, or other obligation or liability of any kind arising directly or indirectly from Contractor’s failure to comply with the provisions of this section.

The parties may elect to have County perform the screenings of Contractor and Contractor’s Personnel required in this Article on Contractor’s behalf. Any such election or performance of screenings by County on Contractor’s behalf will not exempt Contractor from the obligations and liability imposed on Contractor by this Article.

ARTICLE 19

THIRD PARTY BENEFICIARIES

It is specifically agreed between the parties executing this Agreement that it is not intended by any of the provisions of any part of the Agreement to create in the public or any member thereof, a third party beneficiary under this Agreement, or to authorize anyone not a party to this Agreement to maintain a suit for personal injuries or property damage pursuant to the terms or provisions of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the date and year first above written.

BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA

[Signature], Chair
Date: 9/21/21

ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

[Signature]
Danny Shipp, Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

[Signature]
Name: Heather Encinas

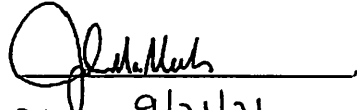
CONTRACTOR

By: _____
Title: _____
Date: _____

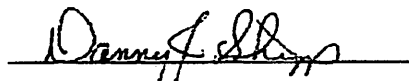
ATTEST/WITNESS

Secretary of Corporation

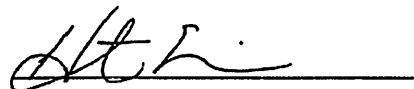
BOARD OF COUNTY COMMISSIONERS
LEVY COUNTY, FLORIDA

 _____, Chair
Date: 9/21/21

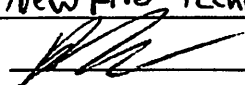
ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

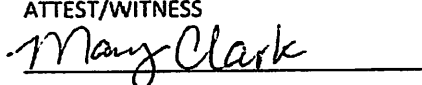

Danny Shipp, Clerk

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:


Name: Heather Encinas

CONTRACTOR

New River Technology LLC
By:  _____
Title: owner
Date: 9/21/21

ATTEST/WITNESS

Secretary of Corporation

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is entered into as of 9/21, 2021 between Levy County, Florida, ("Covered Entity and New River Technology, LLC.") ("Business Associate").

Recitals

Pursuant to the parties' separate services agreement dated 9/21, 2021 ("Services Agreement"), Business Associate has agreed to perform certain services for or on behalf of Covered Entity that may involve the creation, maintenance, use, transmission or disclosure of protected health information within the meaning of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), and its implementing regulations, 45 CFR Parts 160 and 164 ("HIPAA Rules"). This Agreement supplements the Services Agreement and is intended to and shall be interpreted to satisfy the requirements for business associate agreements as set forth in the HIPAA Rules as they shall be amended. Business Associate understands and acknowledges that Business Associate is subject to the HIPAA Rules, and that the violation of the HIPAA Rules carry significant penalties as described in 45 CFR § 160.404.

Definitions

1. **General Definitions.** The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: *Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.*
2. **Specific Definitions.**
 - 2.1. **Business Associate** has the same meaning as the term "business associate" at 45 CFR § 160.103, and in reference to the party to this Agreement shall mean Business Associate.
 - 2.2. **Covered Entity** has the same meaning as the term "covered entity" at 45 CFR § 160.103, and in reference to the party to this Agreement shall mean Covered Entity.
 - 2.3. **PHI** has the same meaning as the term "protected health information" at 45 CFR § 160.103, and includes any individually identifiable information that is created, received, maintained or transmitted by Business Associate on behalf of Covered Entity that relates to an individual's past, present, or future physical or mental health, health care or payment for health care, whether in oral, hard copy, electronic or any other form or medium.
 - 2.4. Terms used but not otherwise defined in this Agreement shall be defined as set forth in 45 C.F.R. Part 160 and Part 164, Subparts A, C, D, and E, as they shall be amended.

Agreement

3. **Relationship of Parties.** Business Associate is and at all times during this Agreement shall be acting as an independent contractor to Covered Entity, and not as a Covered Entity's agent. Covered Entity shall not have authority to control the method or manner in which Business Associate performs its services on behalf of Covered Entity, provided that Business Associate complies with the terms of this Agreement and the HIPAA Rules. Business Associate shall not have authority to bind Covered Entity to any liability unless expressly authorized by Covered Entity in writing, and Covered Entity shall not be liable for the acts or omissions of Business Associate. Business Associate shall not

represent itself as the agent of Covered Entity. Nothing in this Agreement shall be deemed to established an agency, partnership, joint venture or other relationship except that of independently contracting entities.

4. Business Associate Responsibilities. Business Associate agrees to:

- 4.1. Fully comply with the HIPAA Rules as they apply to Business Associate.
- 4.2. Not use or disclose PHI except as permitted by this Agreement or as otherwise required by law.
- 4.3. Use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement. Business Associate shall comply with the requirements in 45 CFR Part 164, Subpart C applicable to business associates, including using administrative, physical and technical safeguards to protect electronic PHI. In addition, if Business Associate performs activities related to Covered Entity's covered accounts as defined in 16 C.F.R. § 681.1, Business Associate will implement and comply with reasonable policies to identify, prevent and mitigate any instance of identity theft relating to the covered accounts.
- 4.4. Immediately report to Covered Entity's Privacy Officer any use or disclosure of PHI not permitted by this Agreement or the HIPAA Rules of which Business Associate becomes aware, including reporting breaches of unsecured PHI as required by 45 CFR § 164.410, and reporting security incidents as require by 45 CFR § 164.314(e)(2)(i)(C). Additionally, if Business Associate performs activities related to Covered Entity's covered accounts as defined in 16 C.F.R. §681.1, Business Associate will report to Covered Entity any actual or suspected instance of identity theft involving a Covered Entity covered account. Business Associate shall report the information necessary and in such a manner as to enable Covered Entity to investigate the incident and comply with Covered Entity's obligations under applicable law.
- 4.5. Mitigate, to the extent practicable, any harmful effect caused by a use or disclosure of PHI by Business Associate in violation of this Agreement.
- 4.6. Fully cooperate with Covered Entity's efforts to promptly investigate, mitigate and notify third parties of breaches of unsecured PHI or security incidents as required by the HIPAA Rules.
- 4.7. Ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions and requirements set forth in this Agreement and the HIPAA Rules applicable to such subcontractors. Business Associate may fulfill this requirement by executing a written agreement with the subcontractor incorporating the terms of this Agreement and otherwise complying with the requirements in 45 CFR §§164.502(e)(1)(ii), 164.502(e)(2) and 164.308(b)(2),(3).
- 4.8. To the extent Business Associate maintains a designated record set on behalf of Covered Entity, Business Associate shall make available to PHI in a designated record set to Covered Entity, within 10 days of request, to satisfy Covered Entity's obligations under 45 CFR §164.524. Should Business Associate or its subcontractors receive a direct request from an

individual, Business Associate will promptly forward the individual's request to Covered Entity.

- 4.9. To the extent Business Associate maintains a designated record set on behalf of Covered Entity, Business Associate shall make any amendment(s) to PHI in a designated record set within 10 days of request, as directed or agreed to by Covered Entity pursuant to 45 CFR § 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR § 164.526. Should Business Associate or its subcontractors receive a direct request from individual, Business Associate will promptly forward the individual's request to Covered Entity.
- 4.10. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity, within 10 days of request, to satisfy Covered Entity's obligations under 45 CFR § 164.528. Should Business Associate or its subcontractors receive a direct request from an individual, Business Associate will promptly forward the individual's request to Covered Entity.
- 4.11. To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performing such obligations.
- 4.12. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

5. Uses and Disclosures by Business Associate.

5.1. **Permissible Uses and Disclosures.** Business Associate may use or disclose PHI only as follows:

- 5.1.1 As necessary to perform the services set forth in the Services Agreement.
- 5.1.2 As authorized, to de-identify PHI in accordance with 45 CFR § 164.514(a)-(c).
- 5.1.3 As required by law.
- 5.1.4 Business Associate may not use or disclose PHI in a manner that would violate 45 CFR Part 164, Subpart E, if done by Covered Entity.
- 5.1.5 Business Associate agrees to use or disclose the minimum amount of PHI necessary for a permitted purpose pursuant to this Section 5, Covered Entity's policies and procedures, and 45 CFR § 164.502(b).

5.2. Additional Use and Disclosure Provisions

- 5.2.1 Except as limited in the Services Agreement, Business Associate may use PHI for the proper management and administration of Business Associate or to carry out Business Associate's legal responsibilities.
- 5.2.2 Except as limited in the Services Agreement, Business Associate may disclose PHI for the proper management and administration of Business Associate or to carry out its legal responsibilities, provided that any disclosures for these

purposes (i) are required by law, or (ii)(a) Business Associate obtains reasonable assurances from the person to whom the PHI is disclosed that the PHI will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed, and (ii)(b) the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

5.2.3 Except as limited in the Services Agreement, Business Associate may use PHI to provide data aggregation services relating to the health care operations of Covered Entity as defined in 45 CFR § 164.501.

6. **Term and Termination.** Unless otherwise agreed to in writing by the parties, this Agreement shall be effective as of the Effective Date and shall continue until the termination of the Services Agreement or until terminated as provided below.

6.1 **Termination.** This Agreement shall terminate on the date the Services Agreement is terminated for any reason. In addition, this Agreement may be terminated earlier as follows:

6.1.1 Covered Entity may terminate this Agreement upon thirty (30) days prior notice if Covered Entity determines that Business Associate or any subcontractor has violated the HIPAA Rules, a material term of this Agreement, or otherwise engaged in conduct that may compromise PHI. Subject to Section 6.1.2, Business Associate shall have the opportunity to cure the breach or violation within the 30-day notice period. If Business Associate fails to cure the breach or violation within the 30-day notice period, Covered Entity may terminate this Agreement.

6.1.2 Notwithstanding Section 6.1.1, Covered Entity may terminate this Agreement immediately if Business Associate or any subcontractor engages in any conduct that Covered Entity reasonably believes may result in adverse action against Covered Entity by any governmental agency or third party.

6.2 **Termination of Services Agreement.** Notwithstanding anything in the Services Agreement to the contrary, Covered Entity shall have the right to terminate the Services Agreement immediately if Business Associate's creation, maintenance, use, transmission or disclosure of PHI is a material purpose of the Services Agreement and this Agreement is terminated for any reason.

6.3 **Obligations of Business Associate Upon Termination.** Upon Termination of this Agreement for any reason, Business Associate shall, with respect to PHI received from Covered Entity, or created, maintained, used or received by Business Associate on behalf of Covered Entity:

6.3.1 If feasible, return all PHI to Covered Entity at Covered Entity's sole expense, or, if Covered Entity agrees, destroy such PHI.

6.3.2 If the return or destruction of PHI is not feasible, continue to extend the protections of this Agreement and HIPAA Rules to such PHI and not use or further disclose the PHI in a manner that is not permitted by this Agreement or the HIPAA Rules.

6.4 **Survival.** Business Associate's obligations under this Section 6 shall survive the termination of this Agreement.

7. **Regulatory References.** A reference in this Agreement to a section in the HITECH Act or HIPAA Rules means the section as in effect or as amended.
8. **Amendment.** The parties agree to take such action as is necessary to amend this Agreement from time to time to comply with the requirements of the HITECH Act, HIPAA Rules, the FTC Identity Theft "Red Flag" Rules and any other applicable laws and regulations.
9. **Interpretation.** Any ambiguity in this Agreement shall be interpreted to permit compliance with the HITECH Act, HIPAA Rules and other applicable law.
10. **Governing Law.** This Agreement shall be construed to comply with the requirements of HIPAA Rules, and any ambiguity in this Agreement shall be interpreted to permit compliance with HIPAA Rules. All other aspects of this Agreement shall be governed under the laws of the State of Florida and venue for any actions relating to this Agreement shall be in court with jurisdiction over actions in Levy County, Florida.
11. **Assignments/Subcontracting.** This Agreement shall inure to the benefit of and be binding upon the parties and their respective legal representatives, successors and assigns. Business Associate may assign or subcontract rights or obligations under this Agreement to subcontractors or third parties without the express written consent of Covered Entity provided that Business Associate complies with Section 4.7, above, and provided that Business Associate provides written notice to Covered Entity prior to such assignment or subcontracting. Covered Entity may assign its rights and obligations under this Agreement to any successor or affiliated entity.
12. **Cooperation.** The parties agree to cooperate with each other to comply with the requirements of the HITECH Act, the HIPAA Rules, the FTC Identity Theft Rules and other applicable laws; to assist each other in responding to and mitigating the effects of any breach of PHI in violation of the HIPAA Rules or this Agreement; and to assist the other party in responding to any investigation, complaint, or action by any government agency or third party relating to the performance of this Agreement. In addition, Business Associate shall make its officers, members, employees and agents available without charge for interview or testimony.
13. **Relation to Services Agreement.** This Agreement supplements the Services Agreement. The terms and conditions of the Services Agreement shall continue to apply to the extent not inconsistent with this Agreement. If there is a conflict between this Agreement and the Services Agreement, this Agreement shall control.
14. **No Third Party Beneficiaries.** Nothing in this Agreement is intended to nor shall it confer any rights on any other persons except Covered Entity and Business Associate and their respective successors and assigns.

15. **Entire Agreement.** This Agreement contains the entire agreement between the parties as it related to the use or disclosure of PHI, and supersedes all prior discussions, negotiations and services relating to the same to the extent such other prior communications are inconsistent with this Agreement.

THE REMAINDER FO THIS PAGE IS INTENTIONALLY LEFT BLANK.

SIGNATURE PAGE FOLLOWS.

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the date and year first above written.

BOARD OF COUNTY COMMISSIONERS

LEVY COUNTY, FLORIDA

[Signature], Chair

Date: 9/21/21

ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

[Signature]

Danny Shipp, Clerk

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY:

[Signature]

Name: Heather Encinas
New River Tech.

By: _____

Title: _____

Date: _____

ATTEST/WITNESS

Secretary of Corporation

IN WITNESS WHEREOF, the parties hereto have caused the execution of these premises as of the date and year first above written.

BOARD OF COUNTY COMMISSIONERS

LEVY COUNTY, FLORIDA

Jill. Mel, Chair

Date: 9/21/21

ATTEST: Danny Shipp, Clerk of the
Circuit Court and Ex-Officio Clerk of
the Board of County Commissioners

Danny Shipp

Danny Shipp, Clerk

APPROVED AS TO FORM AND

LEGAL SUFFICIENCY:

Heather Encinela

Name: Heather Encinela

Contractor: New River Tech.

By: [Signature]

Title: Owner

Date: 9/21/21

ATTEST/WITNESS

Mary Clark

Secretary of Corporation