

56797

DATE: April 27, 2017

TO: Board of Acquisition and Contract

FROM: Sherlita Amler, M.D.
Commissioner of Health

RE: Authority for the County of Westchester, acting by and through its Department of Health, to enter into, with HealthlinkNY, Inc.

- a.) a participation agreement, to enable the County to access and/or exchange clinical data through the established “Health Information Exchange” of HealthlinkNY, Inc., and
- b.) a business associate agreement, in order to assure compliance with the Health Insurance Portability and Accountability Act, as amended, and its implementing regulations, in the handling of protected health information in the course of the relationship between the County and HealthlinkNY, Inc.

Authority is respectfully requested from your Honorable Board for the County of Westchester (the “County”), acting by and through its Department of Health (“WCDH”), to enter into, with HealthlinkNY, Inc. (“HealthlinkNY”):

- a.) a participation agreement (the “Participation Agreement”), pursuant to which HealthlinkNY will allow the County to access and/or exchange clinical and health data through HealthlinkNY’s established “Health Information Exchange” (“HIE”), and
- b.) a business associate agreement (the “Business Associate Agreement”), in order to assure compliance with the Health Insurance Portability and Accountability Act, as amended, and its implementing regulations, (“HIPAA”) in the handling of health information by the County and HealthlinkNY in the course of their relationship under the Participation Agreement.

HealthlinkNY, as a Qualified Entity (“QE”), as determined by the New York State Department of Health (“NYSDOH”) under its regulations, operates its HIE for a region specified by NYSDOH that covers Westchester County. The HealthlinkNY HIE is intended to foster collaboration among health care providers for a 13-county region spanning the Hudson Valley, Catskills, and Southern Tier of New York. The HealthlinkNY HIE offers electronic access to patients’ community-wide health records and serves as the region’s access point to the Statewide Health Information Network of New York (“SHIN-NY”), supporting collaboration between health care providers across the state.

The Participation Agreement will be for a term commencing upon execution and continuing until termination by either party in accordance with each party’s respective termination rights. Under the Participation Agreement, there will be no cost to the County for the “Base Services” (as defined in the Participation Agreement), so long as HealthlinkNY receives SHIN-NY funding from NYSDOH. However, under the Participation Agreement, the County will agree to provide an indemnification to HealthlinkNY. In Exhibit “A” to the Agreement, the County will agree as follows:

“8.1. Indemnification Obligation. [The County] shall indemnify and hold harmless [HealthlinkNY] and its directors, officers and employees (the “Indemnified Parties”) from and against any losses, damages or liabilities (including reasonable costs and expenses, and excluding attorneys’ fees, in each case, incurred by the Indemnified Parties in connection with any third party claim, action, lawsuit, proceeding or investigations) awarded or otherwise paid by the Indemnified Parties to any third party (whether pursuant

to a court order, or as part of a settlement approved by the [County]) arising out of any action, suit, proceeding or other claim, or any threat thereof (whether civil, criminal, administrative, arbitral, investigative or otherwise) against any Indemnified Party to the extent relating to: (a) the negligent acts or omissions of [the County]; or (b) the intentional acts or omission of [the County]

8.2. Limitation. In no event shall the liability of [the County] pursuant to Section 8.1(a) exceed \$1,000,000.”

The above-specified indemnity will be further limited by a negotiated addendum to the above-mentioned Exhibit “A”, which provides as follows:

“The [County’s] obligation to indemnify [HealthlinkNY] for its negligent acts or omission and intentional acts or omissions shall be subject to the availability of lawful appropriations and restrictions on the [County’s] ability to indemnify under applicable laws.”

The Participation Agreement shall also be on all of the other terms specified in Schedule “1”, which is attached hereto and made a part hereof.

The Business Associate Agreement will be for a term commencing upon execution and continuing until termination under the terms of the agreement. There are no costs specified in the Business Associate Agreement that are to be paid by the County. However, under the Business Associate Agreement, the County will agree to provide an indemnification to HealthlinkNY, while HealthlinkNY also agrees to provide an indemnification to the County. In the body of the Business Associate Agreement, the County will agree as follows:

“4.11. Indemnification. (a) [HealthlinkNY] shall indemnify and hold harmless [the County] and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by [the County] arising from a violation by [HealthlinkNY] of its obligations under this [Business Associate Agreement]. (b) [The County] shall indemnify and hold harmless [HealthlinkNY] and its officers, trustees, employees and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by [HealthlinkNY] arising from a violation by [the County] of its obligations under this [Business Associate Agreement].”

The Business Associate Agreement shall also be on all of the other terms specified in Schedule “2”, which is attached hereto and made a part hereof.

The Participation Agreement and the Business Associate Agreement will, together, serve a public purpose by enabling the County to access and/or exchange clinical and health data through HealthlinkNY’s HIE in a HIPAA-compliant way, with the anticipated result of fostering collaboration among health care providers.

The Participation Agreement and the Business Associate Agreement, together, have the goal and objective of enabling the County to access and/or exchange clinical and health data through HealthlinkNY’s HIE in a HIPAA-compliant way, with the anticipated result of fostering collaboration among health care providers.

The goal and objective of the Participation Agreement and the Business Associate Agreement is in the best interests of the County in terms of public health, safety and general welfare, as enabling the County to access and/or exchange clinical and health data through HealthlinkNY’s HIE in a HIPAA-compliant way, and thereby fostering collaboration among health care providers, is anticipated to effect better health outcomes for patients.

The goal and objective of the Participation Agreement and the Business Associate Agreement will be tracked and monitored by the staff of the WCDH.

The procurement of the Participation Agreement and the Business Associate Agreement are exempt from the procedures of the Westchester County Procurement Policy, pursuant to Section 3(a)(xi) thereof, as the State of New York determined, and specified to the County, the QE with jurisdiction over Westchester County.

Your approval of the attached resolution is respectfully requested.

SA/dc/rev

Attachment

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/25/2017 - LISA MRIJANAC SECRETARY

RESOLUTION

UPON A COMMUNICATION FROM THE COMMISSIONER OF HEALTH, be it hereby:

RESOLVED, that the County of Westchester, acting by and through its Department of Health ("WCDH"), is hereby authorized to enter into, with HealthlinkNY, Inc. ("HealthlinkNY"):

- a.) a participation agreement (the "Participation Agreement"), pursuant to which HealthlinkNY will allow the County to access and/or exchange clinical and health data through HealthlinkNY's established Health Information Exchange ("HIE"), and
- b.) a business associate agreement (the "Business Associate Agreement"), in order to assure compliance with the Health Insurance Portability and Accountability Act, as amended, and its implementing regulations, in the handling of health information by the County and HealthlinkNY in the course of their relationship under the Participation Agreement;

and be it further

RESOLVED, that the Participation Agreement shall be for a term commencing upon execution and continuing until termination by either party in accordance with each party's respective termination rights, and that under the Participation Agreement, there shall be no cost to the County for the "Base Services" (as defined in the Participation Agreement), so long as HealthlinkNY receives "Statewide Health Information Network of New York" funding from the New York State Department of Health; and be it further

RESOLVED, that the Participation Agreement shall also be on all of the other terms specified in Schedule "1" which is attached hereto and made a part hereof, including, without limitation, the terms concerning indemnification that are contained therein, pursuant to which the County will be required to indemnify HealthlinkNY under circumstances; and be it further

RESOLVED, that the Business Associate Agreement shall be for a term commencing upon execution and continuing until termination under the terms of the agreement, and that there shall be no costs specified in the Business Associate Agreement that are to be paid by the County; and be it further

RESOLVED, that the Business Associate Agreement shall also be on all of the other terms specified in Schedule "2", which is attached hereto and made a part hereof, including, without limitation, the terms concerning indemnification that are contained therein, pursuant to which the County will be required to indemnify HealthlinkNY under certain terms; and be it further

RESOLVED, that the County Executive or his duly authorized designee is hereby authorized to execute any documents and take any actions reasonably necessary and appropriate to effectuate the purposes of this Resolution.

Department of Health
 County of Westchester
 10 County Center Road, 2nd Floor
 White Plains, New York 10607
 April 27, 2017

This Agreement \$ _____.

Agreement # _____

Account to be Charged/Credited	Fund	Dept	Major Program, Program & Phase or Unit	Object/ Sub-Object	Trust Account	Dollars
	N/A					

Budget Funding Year(s) _____ Start Date _____ End Date _____
 (must match resolution)

Funding Source Tax Dollars _____
 State Aid _____
 \$ Federal Aid _____
 (must match resolution) Other _____

APPROVED BOARD OF ACQUISITION & CONTRACT - 03/25/2017 - LISA MRIJAJ, SECRETARY

APPROVED BOARD OF ACQUISITION & CONTRACT - 05/25/2017 - LISA MRIJAJ, SECRETARY