

**COUNTY OF SAN MATEO
BUSINESS ASSOCIATE AGREEMENT**

Agreement No. _____

Contractor Name and Address

It is agreed between the County of San Mateo, California, and Contractor as follows:

1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this Agreement are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

(a) *Business Associate*. "Business Associate" shall mean _____
[Insert Name of Contractor].

(b) *Covered Entity*. "Covered Entity" shall mean that part of the County of San Mateo designated as the hybrid entity within the County of San Mateo subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E ("County").

(c) *Designated Record Set*. "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.

(d) *Individual*. "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(e) *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

(f) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Business Associate from or on behalf of

Covered Entity.

(g) *Required By Law*. "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.

(h) *Secretary*. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees 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.

(d) Business Associate agrees to report to Covered Entity promptly of any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, if Business Associate has 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 Section 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if applicable, that the Covered Entity directs or agrees to make pursuant to Section 164.526 at the request of Covered Entity or an Individual, and in the time and manner designated by Covered Entity.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(i) Business Associate agrees 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 Section 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 2(i) 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 Section 164.528.

3. Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in _____ [Insert Name of Services Agreement], provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the 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 the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 Code of Federal Regulations 164.504(e)(2)(i)(B).

4. Obligations of Covered Entity

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522.

5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, unless the Business Associate will use or disclose Protected Health Information for, and the service contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

6. Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of _____ [Insert Effective Date], and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation or else the County/Covered Entity will terminate the service agreement with Business Associate.

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall 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.

7. Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *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 the Health Insurance Portability and Accountability Act, Public Law 104-191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section 6 of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES

Contractor/Business Associate Signature

Date

Contractor/ Business Associate Name

County of San Mateo/Covered Entity Signature

Date

County Manager Signature

Date

BBC:sl