

**FIFTH AMENDMENT TO THE AGREEMENT WITH THE HEALTH COMMISSION
DBA HEALTH PLAN OF SAN MATEO FOR THE ADMINISTRATION OF THE
CONSOLIDATED ACCESS AND CARE FOR EVERYONE (ACE) PROGRAM**

This Amendment is made this ____ day of _____, 2011 by and between the San Mateo Health Commission dba Health Plan of San Mateo (HPSM), an independent public entity established by the San Mateo County Board of Supervisors pursuant to Welfare and Institutions Code Section 14087.51, hereinafter referred to as "HPSM" and/or "Contractor," and the County of San Mateo, Health System, hereinafter referred to as "Health System" and /or "County".

WITNESSETH:

WHEREAS, pursuant to Government Code Section 31000, County may contract with independent contractors for the furnishing of such services to or for the County or Department thereof; and

WHEREAS, the parties entered into an Agreement (Resolution No. 069818) for the Contractor to administer the Consolidated Access and Care for Everyone (ACE) Program, which includes the Wellness, Education, Linkage Low Cost (WELL) Program as well as payment for indigent medical services for the term of January 1, 2009 to December 31, 2011; and

WHEREAS, Article 11.14 of such Agreement provides for amending such Agreement; and

WHEREAS, said Agreement was amended on April 28, 2009, by Resolution No. 070059, to clarify contract terms for audit purposes, allow for payment to Ravenswood Family Health Center for outside pharmacy services and provide greater flexibility to the HPSM to negotiate rates with medical providers upon written agreement between both parties; and

WHEREAS, Resolution No. 070059 also authorized the Chief of the Health System to execute contract amendments which modify the County's maximum fiscal obligation by no more than Twenty Five Thousand dollars (\$25,000.00) in aggregate, and/or modify the contract term and/or services so long as the modified term or services is/are within the current or revised fiscal provisions; and

WHEREAS, pursuant to the above resolution, the Chief of the Health System and HPSM executed a second amendment for the Agreement on April 28, 2009, adjusting the rate schedule for cardiac services at Seton Medical Center; and

WHEREAS, pursuant to the above resolution, the Chief of the Health System and HPSM executed a third amendment to change the designation of primary care provider based on zip code, including the option of faxing notifications regarding denial, modification or deferral of benefits, updating the contact information based on staffing changes and changes to the rate schedule; and

WHEREAS, pursuant to the above resolution, the Chief of the Health System and HPSM executed a fourth amendment to change the fifth tier of the payment schedule; and

WHEREAS, the parties now wish to amend the Agreement for a fifth time to adjust the monthly flat rate for the five tiers.

NOW, THEREFORE, IT IS HERBY AGREED BY THE PARTIES HERETO AS FOLLOWS:

1. EXHIBIT B, PAYMENT

Exhibit B is replaced in its entirety as follows:

For the Third Party Administrative (TPA) services provided pursuant to the Agreement, the Health System shall pay HPSM a flat rate based on the following tiers:

Tier	Participant Count	Monthly Payment
1	17,501 – 20,000	\$191,070
2	20,001 – 22,500	\$203,195
3	22,501 – 25,000	\$215,320
4	25,001 – 27,500	\$227,446
5	27,501 - 30,000	\$239,571

Participation shall be determined by Eligible Participant count reflected in the One-E-App eligibility system with which the Health System contracts as of the 15th of each month. HPSM shall retrieve the participation count on the 15th of each month and submit an invoice (TPA Statement) to the Health System on the 16th of each month.

The Health System’s total fiscal obligation for TPA services under this Agreement shall not exceed \$2,874,852 per year or \$8,454,852 over three years. Notwithstanding the foregoing, TPA services provided for the administration of the Coverage Initiative may be terminated immediately under this contract by the County if its participation in the Coverage Initiative is terminated; this Agreement shall continue to be in effect for the non Coverage Initiative program services through the remainder of the term of the Agreement.

The Health System is fully responsible for the health care costs incurred under Agreement in so far as they are properly adjudicated and paid by HPSM in accordance with the Benefit Plan for services provided to Eligible Participants as identified on the Eligible Participant List. Payment for these health care costs shall be provided in accordance with Article 4 of this Agreement and shall separate and distinct from the Health System’s total fiscal obligation of \$2,874,852 or \$8,454,852 over three years, noted above. Costs for health care are estimated at \$300 per participant, per month, for an annual total of \$54,000,000 or \$162,000,000 for the term of the Agreement.

Total costs for this Agreement payable by the County shall not exceed \$179,370,000.00 during the term of the Agreement.

2. This amendment shall be effective April 1, 2011
3. By signing this Amendment, both parties mutually agree to waive the 45 business day notice requirement for this contract amendment as provided for in Section 1375.7 of the California Health and Safety Code.
4. All other terms and provisions of said Agreement shall remain in full force and effect so that all rights, duties and obligations, and liabilities of the parties hereto otherwise remain unchanged

SAN MATEO HEALTH COMMISSION

Date: 3/7/11 By: 

Title: Maya Altman
Chief Executive Officer

COUNTY OF SAN MATEO

Date: _____ By: _____

President, Board of Supervisors, San Mateo County

Attest:

By: _____
Clerk of Said Board

Attachment H
Health Insurance Portability and Accountability Act (HIPAA)
Business Associate Requirements

Definitions

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“EPHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *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.
- e. *Protected Health Information.* “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103 and is limited to the information created or received by Contractor from or on behalf of County.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations and Activities of Contractor

- a. Contractor 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. Contractor 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. Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Health Information by Contractor in violation of the requirements of this Agreement.
- d. Contractor agrees to report to County any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. Contractor agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Contractor on behalf of County, agrees to the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
- f. If Contractor has protected health information in a designated record set, Contractor agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.
- g. If Contractor has protected health information in a designated record set, Contractor agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- h. Contractor 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 Contractor on behalf of, County available to the County or to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- i. Contractor agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

- j. Contractor agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (i) of this Schedule, to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. Contractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Contractor creates, receives, maintains, or transmits on behalf of County.
- l. Contractor shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. Contractor shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. Contractor shall report to County any Security Incident within 5 business days of becoming aware of such incident.
- o. Contractor shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at County's request, to the County for purposes of the Secretary determining County's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by Contractor

Except as otherwise limited in this Schedule, Contractor may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

Obligations of County

- a. County shall provide Contractor with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Contractor with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Contractor's permitted or required uses and disclosures.
- c. County shall notify Contractor of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

Permissible Requests by County

County shall not request Contractor to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County, unless the Contractor will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Contractor.

Duties Upon Termination of Agreement

- a. Upon termination of the Agreement, for any reason, Contractor shall return or destroy all Protected Health Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Health Information.
- b. In the event that Contractor determines that returning or destroying Protected Health Information is infeasible, Contractor shall provide to County 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, Contractor shall extend the protections of the 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 Contractor maintains such Protected Health Information.

Miscellaneous

- a. *Regulatory References.* A reference in this Schedule 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 Schedule from time to time as is necessary for County 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 Contractor under this Schedule shall survive the termination of the Agreement.
- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* County reserves the right to monitor the security policies and procedures of Contractor

(rev. 8/08)