

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement") is by and between County of Ventura ("Covered Entity") and _____. ("Business Associate") and is effective as of the latest date indicated in the signature block hereto (the "Effective Date").

RECITALS

A. The U.S. Department of Health and Human Services ("HHS") has issued and adopted regulations under the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-91 (the "Act") and the Health Information Technology for Economic Clinical Health Act, Division A, Title XIII of Pub. L. 111-5 (the "HITECH Act"), including privacy standards (45 CFR, part 164, subpart E) (the "Privacy Rule"), security standards (45 CFR, part 164, subpart C) (the "Security Rule"), and standards for reporting unauthorized disclosures of Protected Health Information (45 CFR, part 164, subpart D) (the "Breach Notification Rule"). The Act, the HITECH Act, the Privacy Rule, the Security Rule, and the Breach Notification Rule are collectively referred to as "HIPAA" and the above regulations as the "HIPAA Standards" for purposes of this Agreement.

B. Business Associate has entered into or may in the future enter into agreements with Covered Entity (the "Underlying Agreement") and, if applicable, with affiliates of Covered Entity (the "Affiliates") by joinders to the Underlying Agreement, pursuant to which Underlying Agreement Business Associate provides services for Covered Entity that require Business Associate to use and/or disclose Protected Health Information.

C. Covered Entity and each Affiliate is a "Covered Entity" and Business Associate is a "Business Associate" within the meaning of the HIPAA Standards.

D. Covered Entity, as a Covered Entity, is required by the HIPAA Standards to obtain satisfactory assurances that Business Associate will appropriately safeguard all Protected Health Information.

E. The parties hereto desire to enter into this Agreement to memorialize their obligations with respect to Protected Health Information pursuant to the requirements of the HIPAA Standards.

NOW THEREFORE, in consideration of the mutual promises and agreements below, the parties hereto agree as follows:

1. Recitals. The terms of the recitals set forth above are hereby incorporated by this reference into this Agreement.

2. Definitions. Unless otherwise indicated in this Agreement, capitalized terms shall have the meanings provided in the HIPAA Standards. The following terms shall have the meanings set forth below:

(a) "Electronic Protected Health Information" or "ePHI" shall have the same meaning as the term "electronic protected health information" in 45 CFR 160.103,

to the extent such information is created, maintained, received or transmitted by Business Associate from or on behalf of Covered Entity;

(b) "Protected Health Information" or "PHI" means "protected health information" as defined in 45 CFR 160.103, limited to the information received by Business Associate from Covered Entity or created or received by Business Associate on behalf of Covered Entity;

(c) "Required by Law" shall have the same meaning as "required by law" in 45 CFR 164.103;

(d) "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR 164.304, limited to incidents that involve or affect Business Associate's information systems that contain Covered Entity's Electronic Protected Health Information. Pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the foregoing or other incidents shall not be considered a "Security Incident" so long as they do not result in the unauthorized access, use, disclosure, modification or destruction of Protected Health Information. Good faith acquisition of Protected Health Information by an authorized employee or subcontractor of the Covered Entity or Business Associate for a legitimate purpose is not considered a Security Incident, provided that the information is not used for a purpose other than a lawful purpose and is not considered an unauthorized disclosure under the Privacy Rule; and

(e) "Unsecured PHI" shall have the same meaning as the term "unsecured protected health information" in 45 CFR 164.402, limited to PHI as defined above.

3. Obligations and Activities of Business Associate. Business Associate shall:

(a) comply with all applicable requirements of the HIPAA Standards and all other applicable privacy laws, rules, and regulations as they may exist or be amended from time during the term of this Agreement, including but not limited to, compliance with all applicable privacy, security, accounting and breach notification laws. Further, it is the responsibility of the Business Associate to understand its obligations under any applicable law;

(b) not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of Covered Entity, provided that such use or disclosure of PHI is in compliance with each applicable requirement of 45 CFR 164.504(e). Except as otherwise limited in this Agreement or any other agreement between Covered Entity and Business Associate, Business Associate may also use and disclose PHI (a) for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate; (b) to report violations of law to appropriate federal and state authorities, consistent with 45 CFR 164.502(j)(1); (c) to provide data aggregation services relating to the health care operations of Covered Entity consistent with 45 CFR 164.504(e)(2)(i)(B);

(d) for public health and other purposes as permitted by and in accordance with 45 CFR 164.512; (e) in accordance with a valid authorization under 45 CFR 164.508 and as permitted by 45 CFR 164.506(c); and (f) as otherwise authorized in writing by Covered Entity. Business Associate may de-identify Protected Health Information as permitted by 45 CFR 164.514(b) and may use and disclose de-identified information, provided that any such use or disclosure shall be consistent with applicable law;

(c) use appropriate safeguards to prevent use or disclosure of Protected Health Information other than as provided for by this Agreement. Without limiting the foregoing, Business Associate will (i) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI and the confidentiality of PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity; and (ii) comply with the Security Rule with respect to Electronic Protected Health Information;

(d) report to Covered Entity, within 5 business days of such use or disclosure, any use or disclosure of Protected Health Information not provided for by the Agreement of which Business Associate becomes aware, including breaches of Unsecured Protected Health Information as required by 45 CFR 164.410, and any Security Incident of which Business Associate becomes aware. Such report shall include at least, to the extent known by Business Associate, the identity of each Individual whose information was, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach;

(e) in accordance with 45 CFR 164.404, Covered Entity shall be responsible for notifying the following in the designated timeframes required by the HIPAA Standards: (i) the affected Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Covered Entity to have been, accessed, acquired, used or disclosed as a result of an error on the part of the Business Associate; and (ii) the HHS;

(f) in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit Protected Health Information on behalf of the Business Associate agree to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such Protected Health Information;

(g) provide, within 10 business days of the receipt of a written request, access to Protected Health Information in a Designated Record Set to Covered Entity or to an Individual or Individual's designee in order to meet the requirements under 45 CFR 164.524, or if Business Associate does not have requested information, then Business Associate will forward the request to Covered Entity;

(h) make an amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R 164.526 at the written request of the Covered Entity, or take other measures as required of Business Associate by 45 CFR 164.526 with respect to amendments, within 15 business days of the receipt of a written request from Covered Entity;

(i) 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 CFR 164.528. Covered Entity and Business Associate each agrees that Covered Entity's disclosures to Business Associate are for purposes of Covered Entity's operation. Covered Entity and Business Associate each further agrees that Business Associate will not maintain any "electronic health record" or "personal health record," as those terms are defined in section 13400 of the HITECH Act for or on behalf of Covered Entity. Business Associate has no obligation to document disclosures that are exempt from the accounting requirement under 45 CFR 164.528(1)(i)-(ix), and Covered Entity agrees not to include Business Associate on any list Covered Entity produces pursuant to section 13405(c)(3) of the HITECH Act;

(j) provide to Covered Entity to provide to an Individual, within 15 business days of the receipt of a written request from Covered Entity, information collected in accordance with the previous paragraph 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 CFR 164.528 or section 13405(c)(3) of the HITECH Act. As set forth in, and as limited by, 45 CFR 164.528, Business Associate shall not provide an accounting to Covered Entity of disclosures: (i) to carry out treatment, payment or health care operations, as set forth in 45 CFR 164.502; (ii) to Individuals of PHI about them as set forth in 45 CFR 164.502; (iii) to persons involved in the Individual's care or other notification purposes as set forth in 45 CFR 164.510; and for such other disclosures as are excepted from the accounting requirement in 45 CFR 164.528;

(k) to the extent Business Associate is specifically required herein to carry out one or more of Covered Entity's obligation(s) under the Privacy Rule, comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligation(s);

(l) make internal practices, books, and records, including policies and procedures 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 HHS Secretary, in a time and manner consistent with applicable law or designated by the HHS Secretary, for purposes of the HHS Secretary determining Covered Entity's compliance with the HIPAA Standards, subject to applicable privileges;

(m) 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; and

(n) require that any PHI placed on any type of mobile media, including lap top computers, tablets, etc., are appropriately safeguarded, such as through encryption, and that Covered Entity's PHI stored on such media is protected in accordance with Security and Privacy Rules.

(o) not, directly or indirectly receive remuneration in exchange for any PHI in violation of the HIPAA Standards implementing 42 U.S.C. section 17935(d).

4. Permitted General Uses and Disclosures by Business Associate. Business Associate shall make reasonable efforts to only request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in accordance with, and subject to the exceptions in 45 CFR 164.502(b). Business Associate shall make reasonable efforts to limit requests, uses and disclosure of PHI, to the extent practicable, to a limited data set (as defined at 45 CFR 164.514(e)) or if needed to the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure, in accordance with, and subject to the exceptions in 45 CFR 164.502(b). Business Associate shall comply with subsequent binding guidance issued by the HHS Secretary pursuant to 42 U.S.C. section 17935 (b).

5. Obligations of Covered Entity. Covered Entity shall:

(a) notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information;

(b) notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information; and

(c) notify Business Associate of any restriction on the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

Notwithstanding anything to the contrary in this Section, Covered Entity agrees that any additional limitations or restrictions on the use or disclosure of Protected Health Information otherwise permitted or required by this Agreement shall not be implemented except by mutual agreement in an amendment to this Agreement. Covered Entity shall be responsible for obtaining all authorizations or consents required for Business Associate to use or disclosure PHI as permitted under this Agreement.

6. 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 except as permitted by 45 CFR 164.504(e).

7. Term and Termination.

(a) Term. The term of this Agreement shall be effective as of the 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 the Protected Health Information, protections are extended to such information, in accordance with the termination provision in this section.

(b) Termination for Cause.

(1) Upon Covered Entity's knowledge of a material breach of this Agreement by Business Associate, Covered Entity shall notify Business Associate in writing of the nature of the alleged breach and shall provide an opportunity of not less than thirty (30) business days for Business Associate to cure the breach and terminate this Agreement and the Underlying Agreement if Business Associate does not cure the breach within the time specified by Covered Entity.

(2) Upon Business Associate's knowledge of a material breach of this Agreement by Covered Entity, Business Associate shall notify Covered Entity in writing of the nature of the alleged breach and shall provide an opportunity of not less than thirty (30) business days for Covered Entity to cure the breach and terminate this Agreement and the Underlying Agreement if Covered Entity does not cure the breach within the time specified by Business Associate.

(c) Effect of Termination. Upon termination of this Agreement for any reason, Business Associate shall promptly return or destroy all PHI, including electronic PHI, pursuant to 45 CFR 164.504(e)(2)(I), if it is feasible to do so, or, if such return or destruction is not feasible, extend the protections of this Agreement to the PHI and limit further uses and disclosures to those purposes that make the return or destruction of the PHI infeasible, for so long as Business Associate maintains such PHI.

8. Indemnification and Limitation of Liability. Each Party hereby agrees to indemnify the other Party from any and all third-party claims, demands, costs, liabilities, losses, expenses and damages (including reasonable attorneys' fees, costs, and expert witnesses' fees) to the extent arising from the indemnifying Party's breach of its obligations in this Agreement. Notwithstanding the foregoing, no Party will be liable to another Party for any commercial loss or lost profits or for any indirect, incidental, consequential, special or punitive damages with respect to the matters addressed in this Agreement, regardless of the cause or legal theory and whether or not foreseeable. In addition, each Party's liability to the other Party under this Agreement, regardless of the nature of claim, shall not exceed \$500,000.00.

9. Miscellaneous.

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Standards means the section then in effect or as amended and as of its applicable compliance date.

(b) Amendments. No amendment to this Agreement shall be effective unless in writing and signed and dated by the parties hereto; however, this Agreement shall be deemed automatically amended to the extent necessary to comply with the HIPAA Standards. If Business Associate is unable to comply with the HIPAA Standards,

then either party may immediately terminate this this Agreement and the Underlying Agreement.

(c) Survival. The respective rights and obligations of the parties in Section 7(c) shall survive the expiration or termination of this Agreement for any reason.

(d) Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with the HIPAA Standards.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement.

COVERED ENTITY:

County of Ventura

By: _____

Print Name: _____

Title: _____

Date: _____

BUSINESS ASSOCIATE:

By: _____

Print Name: _____

Title: _____

Date: _____