

HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT

Selected vendor will adhere to the following:

A. The parties to this Agreement shall be in strict conformance with all applicable Federal and State of California laws and regulations, including but not limited to Sections 5328, 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, Sections 11977 and 11812 of Title 22 of the California Code of Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of Title 42, United States Code (USC) and its implementing regulations, including, but not limited to Title 45, CFR, Sections 142, 160, 162, and 164, and The Health Information Technology for Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient information.

Except as otherwise provided in this Agreement, CONTRACTOR(S), as a Business Associate of COUNTY, may use or disclose Protected Health Information (PHI) to perform functions, activities or services for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure shall not violate the HIPAA, USC 1320d *et seq.* The uses and disclosures of PHI may not be more expansive than those applicable to COUNTY, as the “Covered Entity” under the HIPAA Privacy Rule (45 CFR 164.500 *et seq.*), except as authorized for management, administrative or legal responsibilities of the Business Associate.

B. CONTRACTOR(S) shall protect, from unauthorized access, use, or disclosure of names and other identifying information concerning persons receiving services pursuant to this Agreement, except where permitted in order to carry out data aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i), 164.504 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]- This pertains to any and all persons receiving services pursuant to a COUNTY funded program. CONTRACTOR(S) shall not use such identifying information for any purpose other than carrying out CONTRACTOR(S)’s obligations under this Agreement.

C. CONTRACTOR(S) shall not disclose any such identifying information to

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any person or entity, except as otherwise specifically permitted by this Agreement, authorized by law, or authorized by the client/patient.

D. For purposes of the above sections, identifying information shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print, or a photograph.

E. CONTRACTOR(S) shall provide access, at the request of COUNTY, and in the time and manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR Section 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR Section 164.524 regarding access by individuals to their PHI.

CONTRACTOR(S) shall make any amendment(s) to PHI in a designated record set at the request of COUNTY, and in the time and manner designated by COUNTY in accordance with 45 CFR Section 164.526.

CONTRACTOR(S) shall provide to COUNTY or to an individual, in a time and manner designated by COUNTY, information collected in accordance with 45 CFR Section 164.528, to permit COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in accordance with 45 CFR Section 164.528.

F. CONTRACTOR(S) shall report to COUNTY, in writing, any knowledge or reasonable belief that there has been unauthorized access, viewing, use, disclosure, or breach of Protected Information not permitted by this Agreement, and any breach of unsecured PHI of which it becomes aware, immediately and without reasonable delay and in no case later than two (2) business days of discovery. Immediate notification shall be made to COUNTY's Information Security Officer and Privacy Officer and COUNTY's DBH HIPAA Representative, within two (2) business days of discovery. The notification shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or breached. CONTRACTOR(S) shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State Laws and regulations. CONTRACTOR(S)

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shall investigate such breach and is responsible for all notifications required by law and regulation or deemed necessary by COUNTY and shall provide a written report of the investigation and reporting required to COUNTY's Information Security Officer and Privacy Officer and COUNTY's DBH HIPAA Representative. This written investigation and description of any reporting necessary shall be postmarked within the thirty (30) working days of the discovery of the breach to the addresses below:

County of Fresno Department of Behavioral Health Services	County of Fresno Dept. of Public Health	County of Fresno Information Technology
HIPAA Representative (559) 453-4809 4441 E. Kings Canyon Fresno, CA 93702	Privacy Officer (559) 445-3249 1221 Fulton Mall Fresno, CA 93721	Information Security Officer (559) 600-5800 2048 N. Fine Ave Fresno, CA 93727

G. CONTRACTOR(S) shall make its internal practices, books, and records relating to the use and disclosure of PHI received from COUNTY, or created or received by the CONTRACTOR(S) on behalf of COUNTY, available to the United States Department of Health and Human Services upon demand.

H. Safeguards

CONTRACTOR(S) shall implement administrative, physical, and technical safeguards as required by 45 CFR 164.308, 164.310, and 164.312 that reasonably and appropriately protect the confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives, maintains or transmits on behalf of COUNTY; and to prevent access, use or disclosure of PHI other than as provided for by this Agreement.

CONTRACTOR(S) shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR(S)'s operations and the nature and scope of its activities. Upon COUNTY's request, CONTRACTOR(S) shall provide COUNTY with information concerning such safeguards.

CONTRACTOR(S) shall implement strong access controls and other

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security safeguards and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or sensitive data to authorized users only. Said safeguards and precautions shall include the following administrative and technical password controls for all systems used to process or store confidential, personal, or sensitive data:

1. Passwords must not be:
 - a. Shared or written down where they are accessible or recognizable by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;
 - b. A dictionary word; or
 - c. Stored in clear text
2. Passwords must be:
 - a. Eight (8) characters or more in length;
 - b. Changed every ninety (90) days;
 - c. Changed immediately if revealed or compromised; and
 - d. Composed of characters from at least three of the following four groups from the standard keyboard:
 - 1) Upper case letters (A-Z);
 - 2) Lowercase letters (a-z);
 - 3) Arabic numerals (0 through 9); and
 - 4) Non-alphanumeric characters (punctuation symbols).

CONTRACTOR(S) shall implement the following security controls on each workstation or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive data:

1. Network-based firewall and/or personal firewall;
2. Continuously updated anti-virus software; and
3. Patch management process including installation of all operating

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system/software vendor security patches.

CONTRACTOR(S) shall utilize a commercial encryption solution that has received FIPS 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, compact disks and thumb drives) and on portable computing devices (including, but not limited to, laptop and notebook computers).

CONTRACTOR(S) shall not transmit confidential, personal, or sensitive data via e-mail or other internet transport protocol unless the data is encrypted by a solution that has been validated by the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption Standard (AES) Algorithm.

I. Mitigation of Harmful Effects

CONTRACTOR(S) shall mitigate, to the extent practicable, any harmful effect that is known to CONTRACTOR(S) of an unauthorized access, viewing, use, disclosure, or breach of PHI by CONTRACTOR(S) or its subcontractors in violation of the requirements of these provisions.

J. Contractor's Subcontractors

CONTRACTOR(S) shall ensure that any of its contractors, including subcontractors, if applicable, to whom CONTRACTOR(S) provides PHI received from or created or received by CONTRACTOR(S) on behalf of COUNTY, agree to the same restrictions and conditions that apply to CONTRACTOR(S) with respect to such PHI; and to incorporate, when applicable, the relevant provisions of these provisions into each subcontract or sub-award to such agents or subcontractors..

K. Employee Training and Discipline

CONTRACTOR(S) shall train and use reasonable measures to ensure compliance with the requirements of these provisions by employees who assist in the performance of functions or activities on behalf of COUNTY under this Agreement and use or disclose PHI and discipline such employees who intentionally violate any provisions of these provisions, including termination of employment.

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L. Termination for Cause

Upon COUNTY's knowledge of a material breach of these provisions by CONTRACTOR(S), COUNTY shall either:

1. Provide an opportunity for CONTRACTOR(S) to cure the breach or end the violation and terminate this Agreement if CONTRACTOR does not cure the breach or end the violation within the time specified by COUNTY; or
2. Immediately terminate this Agreement if CONTRACTOR(S) has breached a material term of these provisions and cure is not possible.
3. If neither cure nor termination is feasible, the COUNTY Privacy Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.

M. Judicial or Administrative Proceedings

COUNTY may terminate this Agreement in accordance with the terms and conditions of this Agreement as written hereinabove, if: (1) CONTRACTOR(S) is found guilty in a criminal proceeding for a violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or stipulation that the CONTRACTOR(S) has violated a privacy or security standard or requirement of the HITECH Act, HIPAA; or other security or privacy laws in an administrative or civil proceeding in which the CONTRACTOR(S) is a party.

N. Effect of Termination

Upon termination or expiration of this Agreement for any reason, CONTRACTOR(S) shall return or destroy all PHI received from COUNTY (or created or received by CONTRACTOR(S) on behalf of COUNTY) that CONTRACTOR(S) still maintains in any form, and shall retain no copies of such PHI. If return or destruction of PHI is not feasible, it shall continue to extend the protections of these provisions to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession of subcontractors or agents, if applicable, of CONTRACTOR(S). If Contractor destroys the PHI data, a certification

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of date and time of destruction shall be provided to the COUNTY by CONTRACTOR(S).

O. Disclaimer

COUNTY makes no warranty or representation that compliance by CONTRACTOR(S) with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or satisfactory for CONTRACTOR(S)'s own purposes or that any information in CONTRACTOR(S)'s possession or control, or transmitted or received by CONTRACTOR(S), is or will be secure from unauthorized access, viewing, use, disclosure, or breach. CONTRACTOR(S) is solely responsible for all decisions made by CONTRACTOR(S) regarding the safeguarding of PHI.

P. Amendment

The parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of these provisions may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to amend this agreement in order to implement the standards and requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating to the security or privacy of PHI. COUNTY may terminate this Agreement upon thirty (30) days written notice in the event that CONTRACTOR(S) does not enter into an amendment providing assurances regarding the safeguarding of PHI that COUNTY in its sole discretion deems sufficient to satisfy the standards and requirements of HIPAA, the HIPAA regulations and the HITECH Act.

Q. No Third-Party Beneficiaries

Nothing express or implied in the terms and conditions of these provisions is intended to confer, nor shall anything herein confer, upon any person other than COUNTY or CONTRACTOR(S) and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.

R. Interpretation

The terms and conditions in these provisions shall be interpreted as

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broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

S. Regulatory References

A reference in the terms and conditions of these provisions to a section in the HIPAA regulations means the section as in effect or as amended.

T. Survival

The respective rights and obligations of CONTRACTOR(S) as stated in this Section shall survive the termination or expiration of this Agreement.

U. No Waiver of Obligations

No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation on any other occasion.