

Appendix ____ : BUSINESS ASSOCIATE AGREEMENT

WHEREAS, COUNTY entered into this Agreement on behalf of _____ which is a “covered entity” as defined in 45 CFR §160.103; and,

WHEREAS, COUNTY has determined that [CONTRACTOR] is a “business associate” of COUNTY as defined in 45 CFR §160.103; and,

WHEREAS, the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E require that an agreement be entered into specifying the ways in which [CONTRACTOR] is permitted to use and disclose protected health information which is provided by COUNTY;

NOW, THEREFORE, [CONTRACTOR] agrees to comply with and be bound by the following Business Associate Agreement provisions:

1. Definitions. Terms used, but not otherwise defined in this Appendix shall have the same meaning as those terms in 45 CFR Parts 160 and 164 as currently drafted or subsequently amended.

1.1 “Business associate” means _____

1.2 “Covered entity” means COUNTY’S _____

1.3 “HIPAA Rules” means the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1.4 “HITECH” means the provisions of the Health Information Technology for Economic and Clinical Health Act enacted on February 17, 2009 as Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (ARRA) (PL 111-5).

1.5 “Individual” has the same meaning as the term “individual” in 45 CFR §164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.6 “Minimum necessary” means the standard as set forth in 45 CFR §164.502(b).

1.7 “PHI” means “protected health information” the term is defined in 45 CFR 164.501, limited to the information created or received by the business associate from or on behalf of the covered entity.

1.8 “Privacy Rule” means the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E.

1.9 “Security Rule” means the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR part 164, subpart C.

2. Permissive uses of PHI by business associate.

2.1 Services. Except as otherwise specified herein, business associate may make only those uses of PHI necessary to perform its obligations under the Agreement provided that such use or disclosure would not violate the HIPAA Rules if done by the covered entity. All other uses not authorized by this Appendix are prohibited, unless agreed to in writing by COUNTY.

2.2 Activities. Excepts as otherwise limited in this Appendix, business associate may:

2.2.1 Use the PHI for the proper management and administration of the business associate and to fulfill any present or future legal responsibilities of business associate provided that such uses are permitted under State and Federal confidentiality laws.

2.2.2 Disclose the PHI to a third party for the proper management and administration of the business associate, provided that:

2.2.2.1 Disclosures are required by law; or

2.2.2.2 Business associate obtains reasonable assurances from the third party that the PHI will remain confidential and not be used or further disclosed except as required by law or for the purpose for which it was disclosed to that third party and the third party notifies the business associate of any instances of which it is aware in which the confidentiality of the PHI has been breached.

3. Obligations of business associate with respect to PHI.

3.1 With regard to use and disclosure of PHI provided by covered entity, business associate agrees not to use or further disclose PHI other than as permitted or required by this Appendix or as required by law.

3.2 With regard to use and disclosure of PHI provided by covered entity, business associate further agrees to:

3.2.1 Use appropriate safeguards to prevent use or disclosure of PHI other than as provided for by this Appendix;

3.2.2 Mitigate, to the extent practicable, any harmful effect that is known to business associate of a use or disclosure of PHI by business associate in violation of the requirements of this Appendix;

3.2.3 Report to covered entity, in writing, any use or disclosure of PHI not permitted or required by this Appendix of which it becomes aware within fifteen (15) days of business associate's discovery of such unauthorized use or disclosure;

3.2.4 Ensure that any agent, including a subcontractor, to whom business associate provides PHI agrees in writing to the same restrictions and conditions on use and disclosure of PHI that apply to business associate;

3.2.5 Make available all records, books, agreements, policies and procedures relating to the use or disclosure of PHI to the Secretary of HHS for purposes of determining compliance with the HIPAA Rules, subject to applicable legal privileges;

3.2.6 Make available, within seven (7) days of a written request, to covered entity during normal business hours at business associate's offices all records, books, agreements, policies and procedures relating to business associate's use or disclosure of PHI to enable covered entity to determine business associate compliance with the terms of this Appendix;

3.2.7 Provide access to PHI to the covered entity or the individual to whom PHI relates at the request of and in the time and manner chosen by covered entity or the individual to meet the requirements of 45 CFR § 164.524;

3.2.8 Make any amendment(s) to PHI that covered entity directs pursuant to 45 CFR §164.526;

3.2.9 Provide, within fifteen (15) days of a written request, to covered entity such information as is requested by covered entity to permit covered entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 CFR §164.528; and

3.2.10 Disclose to subcontractors, agents or other third parties, and request from covered entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted under the Agreement.

3.3 With regard to securing PHI provided by covered entity, business associate agrees to comply with the requirements for business associates established by the HIPAA Rules and such modifications or additions to the Security Rule as may be established by the Secretary of the U.S. Department of Health and Human Services related to the HIPAA Rules.

4. Term and Termination.

4.1 Term. This Appendix shall become effective on _____ and shall continue in effect until all obligations of the Parties have been met, unless the Agreement is terminated as provided in Article _____ or as provided in this Section 4.

4.2 Termination by County. Upon COUNTY'S knowledge of a material breach or violation of the terms of this Appendix by business associate COUNTY, in its sole discretion, may:

4.2.1 Immediately terminate the Agreement; or,

4.2.2 Provide business associate with an opportunity to cure the breach or violation within the time specified by COUNTY. If business associate fails to cure the breach or end the violation within the time specified by COUNTY, then COUNTY will either:

4.2.2.1 Terminate the Agreement; or,

4.2.2.2 If COUNTY determines termination is not feasible, report the breach or violation to the Secretary of HHS.

4.3 Effect of termination.

4.3.1 Upon termination of the Agreement, for any reason, business associate agrees to return or destroy all PHI, if it is feasible to do so, and retain no copies thereof. Return or destruction shall occur within 60 days of the termination of the Agreement. Business associate shall, upon return or destruction of PHI, provide written attestation to COUNTY that all PHI held by business associate has been returned to COUNTY or has been destroyed.

4.3.2 Business associate further agrees to recover any PHI in the possession of its subcontractors, agents or third parties to whom business associate has provided PHI and return or destroy such PHI within the 60 days after termination of the Agreement. Business associate shall, upon return or destruction of PHI, provide written attestation to COUNTY that all PHI held by business associate has been returned to COUNTY or has been destroyed.

4.3.3 If return or destruction of PHI is not feasible, business associate shall:

4.3.3.1 Notify covered entity in writing of the specific reasons why the business associate has determined it is infeasible to return or destroy the PHI;

4.3.3.2 Agree to extend any and all protections, limitations, and restrictions contained in this Appendix to business associate use, disclosure, security, breach notification and enforcement of any PHI retained after the termination of this Agreement; and

4.3.3.3 Agree to limit any further uses and disclosures to those allowed under the HIPAA Rules for the purposes that make the return or destruction of PHI infeasible.

4.3.4 If it is not feasible for business associate to obtain PHI in the possession of a subcontractor, agent, or third party to whom business associate has provided PHI, business associate shall:

4.3.4.1 Provide a written explanation to the covered entity why the PHI cannot be obtained;

4.3.4.2 Require the subcontractor, agent, or third party to agree, in writing, to extend any and all protections, limitations, and restrictions contained in this Appendix to the subcontractor's, agent's, or third party's use and disclosure of any PHI retained after the termination of this Agreement; and

4.3.4.3 Require the subcontractor, agent, or third party to agree, in writing, to limit any further uses and disclosures to those allowed under the HIPAA Rules for the purposes that make it infeasible for the business associate to obtain the PHI.

5. Miscellaneous.

5.1 Survival. Sections 4.3 and 2.1 solely with respect to PHI retained by the business associate in accordance with Section 4.3(c) and 4.3 (d), shall survive the termination of the Contract for services between COUNTY and [CONTRACTOR] .

5.2 Superceding Effect. Should the terms of this Appendix conflict with the terms of the Agreement, the terms providing for more stringent protections of PHI shall apply. Nothing contained in this Appendix shall be held to vary, alter, waive or extend any of the terms, conditions, provisions, agreements, or limitations of the Agreement other than as stated above in this Appendix.