

MADERA COUNTY MASTER CONTRACT NO. Q21
(Business Associate / Qualified Service Organization Agreement)

1. **DEFINITIONS.** The terms used in this Agreement are specifically defined in Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act (“the HITECH Act”) or Code of Federal Regulations (“CFR”) 42 CFR Part 2 and shall have the same meaning as set forth in HIPAA, HITECH or 42 CFR Part 2. A change to HIPAA or 42 CFR Part 2 which modifies any such defined term, or which alters the regulatory citation for the definition shall be deemed incorporated into this Agreement.

1.01 **"42 CFR Part 2"** means the federal regulations governing the Confidentiality of Substance Use Disorder Patient Records set forth under 42 CFR Part 2, also referred to as Part 2.

1.02 **"Breach"** means the unauthorized acquisition, access, use, or disclosure of Protected Health Information (“PHI”) which compromises the security or privacy of such information in a manner not permitted under the HIPAA Privacy Rule.

1.02.1 Breach excludes:

- a. Any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or COUNTY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
- b. Any inadvertent disclosure by a person who is authorized to access PHI at CONTRACTOR to another person authorized to

access PHI at CONTRACTOR, or organized health care arrangement in which COUNTY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the HIPAA Privacy Rule

- c. A disclosure of PHI where CONTRACTOR or COUNTY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information

1.03 "**Business Associate**" has the meaning given to the term "business associate" under 45 CFR §160.103.

1.04 "**CONTRACTOR**" shall have the same meaning as in the Madera County Cover Contract or Purchasing Agent Agreement, as applicable, in which this Agreement is incorporated by reference, as referred to as "Business Associate"

1.05 "**COUNTY**" means the County of Madera, as referred to as "Covered Entity".

1.06 "**Covered Entity**" has the meaning given to the term under 45 CFR §160.103.

1.07 "**Designated Record Set**" has the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §164.501.

1.08 "**Disclosure**" shall have the meaning given to the term under 45 CFR §160.103.

1.09 "**Electronic Protected Health Information**" and/or "**ePHI**" has the meaning given to the term "electronic protected health information" under 45 CFR §160.103, and includes, without limitation, any ePHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity.

1.10 "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 CFR Parts 160 through 164).

1.11 "**HITECH**" means the Health Information Technology for Economic and Clinical Health Act, as contained in the American Recovery and Reinvestment Act ("ARRA"), Public Law 111-5.

1.12 "**Individual**" has the meaning given to the term under the Privacy Rule, including, but not limited to, 45 CFR §160.103. It also includes a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).

1.13 "**Minimum Necessary**" has the meaning given to the term under 45 CFR §164.514.

1.14 "**Parties**" mean "CONTRACTOR" and "COUNTY", collectively, as defined in this Agreement.

1.15 "**Physical Safeguards**" means physical measures, policies and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment from natural and environmental hazards and unauthorized intrusion.

1.16 "**Privacy Rule**" means the Standards for Privacy of Individually Identifiable Health Information codified at 45 CFR §§160 and 164 (Subpart E) and any other applicable provision of HIPAA and any amendments to HIPAA, including HITECH.

1.17 "**Protected Health Information**" and/or "**PHI**" has the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103, and includes, without limitation, patient records, information identifying or otherwise relating to Covered Entity's patients, other treatment information protected by 42 CFR Part 2 and any PHI provided by Covered Entity or created or received by Business Associate on behalf of Covered Entity. Unless otherwise stated in this Agreement, any provision, restriction, or obligation in this Agreement related to the use of PHI shall apply equally to ePHI.

1.18 "**Required By Law**" has the meaning given to the term under the Privacy Rule, including but not limited to, 45 CFR §164.103.

1.19 "**Qualified Service Organization (QSO)**" has the meaning given to the term under the Privacy Rule, including, but not limited to, 42 CFR §2.11.

1.20 "**Secretary**" means the Secretary of the Department of Health and Human Services (HSS) or his/her designee.

1.21 "**Security Incident**" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as provided in 45 CFR §164.304.

1.22 "**Security Rule**" means the Security Standards for the Protection of Electronic Protected Health Information codified at 45 CFR §§160 and 164 (Subpart C) and any other applicable provision of HIPAA and any amendments to HIPAA, including HITECH.

1.23 "**Subcontractor**" shall have the meaning given to such term in 45 CFR §160.103.

1.24 "**Technical Safeguards**" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.

1.25 "**Use**" shall have the meaning given to such term in 45 CFR §160.103.

1.26 "**Unsecured PHI**" shall mean PHI that is not rendered unusable, unreadable or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in the guidance issued on the HHS web site.

2. **OBLIGATIONS OF THE BUSINESS ASSOCIATE.**

2.01 CONTRACTOR acknowledges that in creating, receiving, maintaining, transmitting, transporting, storing, processing, or otherwise dealing with PHI, it is fully bound by 42 CFR Part 2, and is directly subject to HIPAA pursuant to HITECH.

2.02 CONTRACTOR agrees that it will only use and disclose PHI: (a) for the purpose of performing Agreement terms provided such use or disclosure would not violate HIPAA or 42 CFR Part 2; or (b) as Required By Law, provided such use or disclosure is permitted by 42 CFR Part 2. CONTRACTOR must not use or disclose PHI other than as permitted or required by this Agreement.

2.03 If reasonably practicable, CONTRACTOR agrees to resist any efforts in judicial proceedings to obtain access to PHI, except as expressly provided for by 42 CFR Part 2.

2.04 CONTRACTOR will develop, implement, maintain, and use appropriate safeguards to prevent any use or disclosure of the PHI in addition to those provided by this Agreement. CONTRACTOR will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of ePHI. CONTRACTOR acknowledges that the Security Rule provisions

regarding administrative safeguards, physical safeguards, technical safeguards, and policies and procedures and documentation requirements found in 45 CFR §§164.308, 164.310, 164.312 and 164.316 apply to CONTRACTOR in the same manner as to COUNTY .

2.05 CONTRACTOR will, to the extent feasible, adopt a technology or methodology specified by the Secretary pursuant to 42 USC §17932(h) that renders PHI unusable, unreadable, or indecipherable to unauthorized persons.

2.06 CONTRACTOR will only request, use and disclose the minimum amount of PHI necessary for CONTRACTOR to perform the services for which CONTRACTOR has been retained by COUNTY. CONTRACTOR agrees to comply with the Secretary's guidance on what constitutes Minimum Necessary.

2.07 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that COUNTY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of COUNTY.

2.08 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain or transmit PHI on behalf of CONTRACTOR agree, by written contract with CONTRACTOR, to the same restrictions and conditions that apply to CONTRACTOR in this Agreement with respect to such information and such Privacy and Security Rules, except, where applicable to a QSO, such client information is protected under 42 CFR §2.12, which prohibits redisclosures to an agent or subcontractor without authorization.

2.08.1 CONTRACTOR shall ensure that any agent, including a subcontractor, that creates, receives, maintains or transmits PHI on behalf of

CONTRACTOR, enters into a written agreement with CONTRACTOR: (a) complies with HIPAA; and (b) obligates the agent or subcontractor to abide by the same restrictions, conditions and requirements that apply to CONTRACTOR in relation to such PHI and implement the safeguards required above with respect to PHI and ePHI.

2.08.2 CONTRACTOR shall reasonably implement and maintain sanctions against agents and subcontractors that violate such restrictions, conditions and requirements and shall mitigate such effects of any such violation.

2.08.3 If CONTRACTOR has knowledge of a pattern of activity or practice by an agent or subcontractor that constitutes a material breach of this Agreement or violation of CONTRACTOR's obligations under this Agreement, Business Associate must take reasonable steps to end the relevant activity or practice of the agent or subcontractor. If feasible, CONTRACTOR must terminate its agreement with the agent or subcontractor if such agent or subcontractor does not cure the relevant activity or practice within a period of thirty (30) days.

2.09 CONTRACTOR agrees to mitigate any harmful effect that is known to CONTRACTOR of a use or disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement.

2.10 CONTRACTOR will make available PHI in a designated record set to COUNTY as necessary to satisfy COUNTY's obligations under 45 CFR §164.524.

2.11 CONTRACTOR will make any amendment(s) to PHI in a designated record set as directed or agreed to by COUNTY pursuant to 45 CFR §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR §164.526.

2.12 CONTRACTOR will make available its internal practices, books, and records, including policies and procedures, relating directly to the PHI associated with COUNTY, to any authorized agencies including the Secretary for purposes of determining compliance with HIPAA.

2.13 To the extent that CONTRACTOR is required to carry out one or more of COUNTY's obligations under Subpart E of 45 CFR Part 164, CONTRACTOR must comply with the requirements of Subpart E of 45 CFR Part 164 that apply to COUNTY in the performance of such obligation(s).

2.14 CONTRACTOR agrees that COUNTY has sole ownership rights in any of the PHI.

3. **PRIVACY AND SECURITY RULE.**

3.01 CONTRACTOR's additional PHI requirements include the California Information Practices Act of 1977 ("CIPA") in Civil Code §1798 et seq., any Information Exchange Agreement ("IEA") with Social Security Administration, the Computer Matching and Privacy Protection Act Agreement of 1988 ("CMPPA"), the HITECH requirements and the Confidentiality of Alcohol and Drug Abuse Patient Records Law.

3.02 CONTRACTOR shall establish and maintain appropriate administrative, physical and technical safeguards as defined in 45 CFR §164.304 and in accordance with 45 CFR §§164.308, 164.310, 164.312 and 164.316 with respect to electronic PHI that COUNTY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains or transmits on behalf of COUNTY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.

4. **BREACHES AND SECURITY INCIDENTS.** CONTRACTOR agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident including any use or disclosure of PHI as required by 45 CFR §164.410. In the event of any security incident of which CONTRACTOR becomes aware, involving CONTRACTOR, CONTRACTOR employees, or CONTRACTOR agents or subcontractors and potentially involving COUNTY's ePHI, CONTRACTOR shall to take the following steps:

4.01 CONTRACTOR will report upon discovery any unsecured HIPAA and/or HITECH breach to the DHCS, DHCS Information Security Officer and Madera County Behavioral Health Services Director within twenty-four (24) hours of an occurrence and as required by 45 CFR;

4.02 A notice to DHCS must use the most current "Privacy Incident Report" form available on the dhcs.ca.gov, with a copy to Madera County Behavioral Health Services Director;

4.03 CONTRACTOR will have seventy-two (72) hours from discovery to investigate such security incident, breach or unauthorized access, to the extent known at that time and report this information to the parties identified in 4.02, above.

4.04 A completed investigation report must be submitted within ten (10) business days to the parties identify in 4.02, above.

4.05 Responsibility for Reporting Breaches. CONTRACTOR shall be responsible for all required reporting of the breach as specified in 42 U.S.C. §17932 and its implementing regulations, including notification to media outlets and to the Secretary.

4.05.1 If a breach of unsecured PHI involves more than 500 residents of the State of California or under its jurisdiction, CONTRACTOR shall first notify COUNTY, then the Secretary of the breach immediately upon discovery.

4.05.2 If a breach involves more than 500 California residents, CONTRACTOR shall also provide, after obtaining written prior approval of COUNTY, notice to the California Attorney General, Privacy Enforcement and Protection Unit.

4.05.3 If CONTRACTOR has reason to believe duplicate reporting of the same breach or security incident may occur because its subcontractors, agents or vendors may report the breach or security incident to COUNTY in addition to CONTRACTOR, CONTRACTOR shall notify COUNTY, and COUNTY and CONTRACTOR may take appropriate action to prevent duplicate reporting.

5. **TERMINATION/REMEDIES.**

5.01 COUNTY may terminate this Agreement if CONTRACTOR has violated any material term of this Agreement and CONTRACTOR has not cured the breach or ended the violation within the time specified by COUNTY. COUNTY may in its discretion provide CONTRACTOR with an opportunity to cure a violation or breach of the Agreement before termination for cause.

5.02 Upon termination of this Agreement for any reason, CONTRACTOR shall return or destroy all PHI (in any form) received from COUNTY as specified by COUNTY. If CONTRACTOR has a legal responsibility to retain PHI after termination of this Agreement, then CONTRACTOR must continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as business

associate retains the PHI. This provision shall also apply to PHI that is in the possession of subcontractors or agents of CONTRACTOR.

5.03 The obligations of CONTRACTOR under this Section shall survive the termination of the Agreement

6. **OBLIGATIONS OF COUNTY.**

6.01 COUNTY shall notify CONTRACTOR of any limitations in its Notice of Privacy Practices of COUNTY in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR's use or disclosure of PHI.

6.02 COUNTY shall notify CONTRACTOR of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

6.03 COUNTY shall notify CONTRACTOR of any restriction to the use or disclosure of PHI that COUNTY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR's use or disclosure of PHI.

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IN WITNESS WHEREOF the foregoing Agreement is executed on the date and year first above-written.

COUNTY OF MADERA


Chairman, Board of Supervisors
09/11/2018

ATTEST:


Clerk, Board of Supervisors

Approved as to Legal Form:
COUNTY COUNSEL

Mary E.
Binning

Digitally signed by: Mary E. Binning
DN: CN = Mary E. Binning email =
mbinning@lozanosmith.com C = US O =
Lozano Smith
Date: 2018.08.14 14:49:12 -08'00'

By: _____

