

## EXHIBIT E

### Business Associate Provisions relating to HIPAA

This Business Associate Addendum (“Addendum”) supplements and is made a part of the contract (“Contract”) by and between County of Alameda, (hereinafter “Covered Entity”) and «Contractor Name», (hereinafter “Business Associate” or “Contractor”). This addendum is effective as of the effective date of the Contract (the “Addendum Effective Date”).

#### **Recitals**

- a. Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Contract, some of which may constitute Protected Health Information (“PHI”) (defined below).
- b. Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”), and other applicable laws.
- c. The Privacy Rule and the Security Rule (defined below) in the HIPAA Regulations require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (“C.F.R.”) and contained in this Addendum.

#### **Catch-all Definitions**

Capitalized terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in 45 Code of Federal Regulations sections 160 and 164 (the “HIPAA Rules”). In the event of an inconsistency between the provisions of this Agreement and the mandatory provisions of the HIPAA Rules, as amended, the HIPAA Rules shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Rules, but are nonetheless permitted by the HIPAA Rules, the provisions of this Agreement shall control. All regulatory references in this Agreement are to the HIPAA Rules unless otherwise specified.

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Data Aggregation, Designated Record Set, Disclosure, Electronic Health Record, Health Care Operations, Individual, Limited Data Set, Marketing, Minimum Necessary, Minimum Necessary Rule, Protected Health Information (“PHI”), and Security Incident.

The following terms used in this Agreement shall have the same meaning as those terms in the HITECH Act: Breach and Unsecured PHI.

#### **Specific Definitions**

- a. *Business Associate*. “Business Associate” shall generally have the same meaning as the term “business associate” at 45 C.F.R. section 160.103, the Security Rule, and the HITECH Act, and in reference to the party to this agreement, shall mean the Contractor identified above. “Business

Associate” shall also mean any subcontractor that creates, receives, maintains, or transmits PHI in performing a function, activity, or service delegated by Contractor.

- b. *Covered Entity.* “Covered Entity” shall generally have the same meaning as the term “covered entity” at 45 C.F.R. section 160.103, and in reference to the party to this agreement, shall mean any part of County subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 C.F.R. sections 160 and 164.
- c. *Electronic Protected Health Information.* “Electronic Protected Health Information” means Protected Health Information that is maintained in or transmitted by electronic media.
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information that is codified at 45 C.F.R. sections 160 and 164.
- e. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his or her designee.
- f. *Security Rule.* “Security Rule” shall mean the HIPAA Regulation that is codified at 45 C.F.R. sections 160 and 164.

#### **Obligations and Activities of Business Associate**

- (a) *Scope of Agreement.* Business Associate acknowledges and agrees that all PHI that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity’s behalf shall be subject to this Agreement.
- (b) *Ownership Rights.* Business Associate acknowledges that Business Associate has no ownership rights with respect to the PHI.
- (c) *PHI Disclosure Limits.* Business Associate agrees to not use or further disclose PHI other than as permitted or required by this Agreement or as required by law.
- (d) *Minimum Necessary Rule.* When the HIPAA Privacy Rule requires application of the Minimum Necessary Rule, Business Associate agrees to use, disclose, or request only the Limited Data Set, or if that is inadequate, the minimum PHI necessary to accomplish the intended purpose of that use, disclosure, or request, and that the party disclosing the PHI determines to be the Minimum Necessary to accomplish the intended purpose of the disclosure.
- (e) *Safeguards.* Business Associate agrees to use appropriate administrative, physical and technical safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic Protected Health Information, to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- (f) *Mitigation of Harmful Effects.* Business Associate agrees to 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. Mitigation includes, but is not

limited to, the taking of reasonable steps to ensure that the actions or omissions of employees of Business Associate do not cause Business Associate to breach the terms of this Agreement.

- (g) *Notification of Breach.* During the term of the Contract, Business Associate shall notify Covered Entity in writing within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. This includes the reporting of any security incident, of which it becomes aware, affecting the electronic Protected Health Information. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized use or disclosure required by applicable federal and state laws and regulations. Business Associate shall investigate such breach or unauthorized use or disclosure of PHI, and provide a written report of the investigation to Covered Entity's Privacy Officer within fifteen (15) working days of the discovery of the breach or unauthorized use or disclosure at:

Privacy Officer

Alameda Department of Behavioral Health Care Services

2000 Embarcadero Cove, Suite 400

Oakland, CA 94606

- (h) *Breach by Covered Entity.* Pursuant to 42 U.S.C. section 17934(b), if Business Associate knows of a pattern of activity or practice of Covered Entity that constitutes a material breach or violation of Covered Entity's obligations under the Contract or Addendum or other arrangement, Business Associate must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, Business Associate must terminate the Contract or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.
- (i) *Agents.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions, conditions, and requirements that apply through this Agreement to Business Associate with respect to such information. Business Associate shall obtain and provide to Covered Entity written contracts agreeing to such terms from all subcontractors. Any subcontractor who contracts for another company's services with regards to the PHI shall likewise obtain and provide to Covered Entity written contracts agreeing to such terms. Neither Business Associate nor any subcontractors may subcontract with respect to this agreement without the advanced consent of Covered Entity.
- (j) *Right to Review Practices, Books, and Records.* Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to Covered Entity, or at the request of Covered Entity to the Secretary, in a time and manner designated by Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule. Business Associate agrees to make copies of training records available to Covered Entity at the request of Covered Entity.
- (k) *Individual Access to PHI.* Business Associate agrees to provide an individual's access to PHI about the individual in a Designated Record Set, for as long as the PHI is maintained in the Designated Record Set, subject to the limitations identified in 45 C.F.R. section 164.524. Business Associate agrees to provide individuals access in electronic format, and to transmit a copy of that PHI to an entity or person designated by the individual. To the extent Business Associate is required to make PHI available to an Individual pursuant to Sections 164.524 and/or 164.526, Business Associate shall do so solely by way of coordination with Covered Entity.

- (l) *Process for Disclosure of PHI to Individuals.* Business Associate agrees to document disclosures of PHI 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 PHI in accordance with 45 C.F.R. section 164.528. To the extent Business Associate is required to make PHI available to an Individual pursuant to Sections 164.524 and/or 164.526, Business Associate shall do so solely by way of coordination with Covered Entity.
- (m) *Accounting of Disclosures of PHI to Individuals.* Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section (l) 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 C.F.R. section 164.528.
- (n) *Amendment to PHI in Designated Record Set.* Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. Section 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. Section 164.526. To the extent Business Associate is required to amend PHI pursuant to Section 164.526, Business Associate shall do so solely by way of coordination with Covered Entity, and in the time and manner designated by Covered Entity.
- (o) *Compliance with Rules when Performing Covered Entity's Obligations.* To the extent Business Associate is required to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. section 164, Business Associate must comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

#### **Permitted Uses and Disclosures by Business Associate**

- (p) *Permitted Uses of PHI.* Business Associate may use and disclose PHI for the proper management and administration of Business Associate, and to carry out the legal responsibilities of Business Associate. Business Associate may use PHI to provide Data Aggregation services relating to the Health Care Operations of Covered Entity. Except as otherwise limited in this Agreement, Business Associate may only use or disclose PHI as necessary to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in this Contract, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- (q) *Compliance with Minimum Necessary Policies and Procedures.* Business Associate agrees to make uses and disclosures and requests for PHI consistent with Covered Entity's Minimum Necessary policies and procedures.
- (r) *General Prohibitions on Use of PHI.* Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 C.F.R. section 164 if done by Covered Entity.
- (s) *Prohibitions on Use of PHI for Fundraising or Marketing Purposes.* Business Associate shall not use or disclose PHI for fundraising or marketing purposes unless authorized as set forth under paragraphs (t) and (u). Business Associate shall not disclose PHI to a health plan for payment or Health Care Operation purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates [42 U.S.C. Section 17935(a)].

Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement.

- (t) *Opt-Out Provisions.* Business Associate agrees that any written fundraising communication that is a Health Care Operation shall, in a clear and conspicuous manner, provide a description of how the individual may opt-out of receiving any further fundraising communications, and to make reasonable efforts to ensure that individuals who decide to opt out of receiving future fundraising communications are not sent such communications. When an individual elects not to receive any further such communication, such election shall be treated as a revocation of authorization under 45 C.F.R. section 164.508.
- (u) *Marketing.* Business Associate must obtain an authorization for any use or disclosure of PHI for marketing. Business Associate agrees to comply with all rules governing marketing communications as set forth in the HIPAA Rules, and the HITECH Act, including, but not limited to, 45 C.F.R. section 164.508 and 42 U.S.C. section 13406.
- (v) *De-identification of PHI.* Unless otherwise agreed to in writing and by both parties, Business Associate and its agents shall not have the right to de-identify the PHI. Any such de-identification shall be in compliance with 45 C.F.R. sections 164.502(d) and 164.514(a) and (b).
- (w) *Material Breach or Violation.* Business Associate understands and agrees that in accordance with the HITECH Act and the HIPAA Privacy and Security Regulations, it will be held to the same standards as Covered Entity to rectify a pattern of activity or practice that constitutes a material breach or violation of Privacy Laws. Business Associate further understands: (i) it will also be subject to the same penalties as a covered entity for any violation of the HIPAA Privacy and Security Regulations, and (ii) it will be subject to periodic audits by the Secretary.
- (x) *Rules Promulgated by the Secretary.* Business Associate understands and agrees that the Secretary will adopt rules and/or provide further guidance regarding various aspects of the Privacy Rules. Business Associate agrees to comply with any such rule and/or guidance provided by the Secretary as soon as it becomes effective.

#### **Business Associate Obligations upon Termination or Expiration of Agreement**

- (y) *Termination for Cause.* A breach by Business Associate of any provision of this Addendum, as determined by Covered Entity, shall constitute a material breach of the Contract and shall provide grounds for immediate termination of the Contract, any provision in the Contract to the contrary notwithstanding. Contracts between Business Associates and subcontractors are subject to the same requirements.
- (z) *Termination due to Criminal Proceedings or Statutory Violations.* Covered Entity may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

(aa) *Obligations of Business Associate upon Termination.* Covered Entity has the right to terminate this Agreement as set forth above and as otherwise permitted by applicable state and federal law. In the event of termination for any reason, or upon the expiration of this Agreement, Business Associate shall return or, if agreed upon by Covered Entity, destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible, Business Associate shall extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

### **Miscellaneous**

(bb) *Disclaimer.* Covered Entity makes no warranty or representation that compliance by Business Associate with this Agreement, HIPAA, the HIPAA regulations, or the HITECH Act will be adequate or satisfactory for Business Associate's own purposes or that any information in Business Associate's possession or control, or transmitted or received by Business Associate is or will be secure from unauthorized use or disclosure. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

(cc) *Current Law.* A reference in this Agreement to a section in HIPAA, HIPAA regulations, or the HITECH ACT means the section as in effect or as amended, and for which compliance is required.

(dd) *Amendments.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA, the HIPAA Regulations, and the HITECH Act.

(ee) *Survival.* The respective rights and obligations of Business Associate with respect to PHI in the event of termination, cancellation or expiration of this Agreement shall survive said termination, cancellation or expiration of this Agreement, and shall continue to bind Business Associate, its agents, employees, contractors and successors as set forth herein.

(ff) *Insurance.* Business Associate shall maintain general liability insurance to cover the risks related to this Business Associate Agreement and shall, upon request, provide a copy of such policy to Covered Entity.

(gg) *Indemnification.* Business Associate agrees to indemnify and hold harmless Covered Entity from and against any and all claims, losses, liabilities, fines, costs, and any other expenses, including attorneys' fees, which may be claimed against Covered Entity by any persons or entity resulting from Business Associate's failure to comply with the HIPAA Privacy Rule and the provisions of this Business Associate Agreement. At the request of Covered Entity, if Business Associate is the cause of a breach of unsecured PHI, Business Associate further agrees to carry out the notification to affected individuals, the media, and state and federal entities as required by law.

- (hh) *Assistance in Litigation or Administrative Proceedings.* Business Associate shall make itself, and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under the Contract or Addendum, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party.
- (ii) *No Third Party Beneficiaries.* Except as expressly provided herein or expressly stated in the Privacy Rule, the parties to this Agreement do not intend to create any rights in any third parties.
- (jj) *Governing Law.* The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of PHI under the HIPAA Privacy Rule and the HITECH Act. The use and disclosure of individually identified health information is also covered by applicable California law. To the extent that California law is more stringent with respect to the protection of such information, applicable California law shall govern Business Associate's use and disclosure of confidential information related to the performance of this Agreement.
- (kk) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule, HITECH Act, and in favor of the protection of PHI.

**CONTRACTOR:** «Contractor Name»

**PRINCIPAL:** «Executive Director»

**TITLE:** Executive Director

**SIGNATURE:** \_\_\_\_\_

**DATE:** \_\_\_\_\_