

BUSINESS ASSOCIATE AGREEMENT

Pursuant to HIPAA (as defined below), this Business Associate Agreement ("**Agreement**") between ServiceNow, Inc. ("**Business Associate**" or "**ServiceNow**") and **San Bernardino County** ("**Covered Entity**") is made as of the date of the ServiceNow signature below ("**Effective Date**"). Covered Entity has purchased the Subscription Service (as defined below) under separate agreement between Covered Entity and an authorized ServiceNow reseller ("**Purchase Agreement**"), wherein Covered Entity has agreed that its use of the Subscription Service is subject to the Public Sector Subscription Terms of Service and the (1) Customer Support Addendum, (2) Data Processing Addendum, and (3) Data Security Addendum, as set forth on <https://www.servicenow.com/upgrade-schedules.html>) or as otherwise mutually agreed in writing between Business Associate and Covered Entity (collectively, the "**Public Sector Subscription Service Terms**"). The Purchase Agreement is solely between Covered Entity and Reseller and is not binding on Business Associate. Covered Entity acknowledges that this Agreement and the obligations set forth herein shall only apply to Business Associate to the extent the services provided by Business Associate are covered by HIPAA and only for the duration of the Subscription Term (as defined in the Public Sector Subscription Service Terms). Covered Entity further acknowledges and agrees that: (i) Covered Entity may elect to purchase other products and services from the Reseller (excluding the Subscription Service) including, without limitation, implementation services to be provided by or on behalf of Reseller in connection with the ServiceNow platform (the "**Reseller Services**"), and (ii) such Reseller Services and any agreements, including business associate agreements required in connection with the Reseller Services (if any) are governed solely by the agreement(s) between Covered Entity and Reseller. Notwithstanding anything to the contrary, the parties agree that this Agreement does not govern any such Reseller Services, Business Associate is not responsible for, and has no liability in connection with, any Reseller Services, and this Agreement does not apply to Reseller Services.

THE PARTIES HEREBY EXECUTE THIS AGREEMENT AS OF THE EFFECTIVE DATE.

Covered Entity's official name: San Bernardino County	ServiceNow, Inc.
Individual signing: (print name) Dawn Rowe	Individual signing: James Schafer (print name)
Signature:	Signature:
Title: Chair, Board of Supervisors	Title: VP OTC&REV
Signing date:	Effective Date:
Covered Entity address for notice:	ServiceNow address for notice: ServiceNow, Inc. 2225 Lawson Lane Santa Clara, CA 95054 Attn: General Counsel cc: legalnotices@servicenow.com

1. Definitions. Unless otherwise defined below, capitalized terms in this Agreement shall have the same meanings as set forth in HIPAA and the regulations thereunder, or the Public Sector Subscription Service Terms.

- (a) "**Breach**" has the meaning set forth in 45 C.F.R. § 164.402.
- (b) "**Custom Application**" means any application created by Covered Entity or a third-party on behalf of Covered Entity on the ServiceNow platform.
- (c) "**Customer Data**" means the electronic data submitted or otherwise made available by Covered Entity or its authorized users to the information systems provided by ServiceNow as part of the Subscription Service.
- (d) "**Designated Record Set**" has the meaning set forth in 45 C.F.R. § 164.501.
- (e) "**Electronic Media**" has the meaning set forth in 45 C.F.R. § 160.103.
- (f) "**ePHI**" means PHI that is transmitted by or maintained in Electronic Media and processed within the Subscription Service.
- (g) "**HHS**" means the Secretary of the United States Department of Health and Human Services.
- (h) "**HIPAA**" means the Health Insurance Portability and Accountability Act of 1996, codified at 42 U.S.C. § 300gg, 29 U.S.C. § 1181 et seq., and 42 U.S.C. § 1320d et seq., and the regulations promulgated thereunder, and any subsequent, updated, amended or revised provisions, including but not limited to, the Privacy Rule and the Security Rule. For purposes of this Agreement, HIPAA is also defined to include the Health Information Technology for Economic and Clinical Health Act (the "HITECH Act"), Title XIII, subtitle D, of the American Recovery and Reinvestment Act of 2009, codified at 42 U.S.C. § 17921 et seq., and the final Omnibus HIPAA/HITECH Rules published on January 25, 2013 at 78 Fed. Reg. 5566.
- (i) "**PHI**" means Protected Health Information (as defined under HIPAA,
- (j) "**Privacy Rule**" means the Privacy Rule as defined by HHS and set forth in the regulations at 45 C.F.R. § 160 and Subparts A and E of §164, including all amendments thereto.

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- (k) **"Security Rule"** means the Security Standards for the Protection of Electronic Protected Health Information at 45 C.F.R. § 160 and Subparts A and C of §164, including all amendments thereto.
- (l) **"Security Incident"** means the successful unauthorized access, use, disclosure, modification, or destruction of information of Customer Data.
- (m) **"Subcontractor"** means any third-party entity that creates, receives, maintains, or transmits PHI on behalf of Business Associate.
- (n) **"Subscription Service"** means the ServiceNow applications and platform delivered as a software-as-a-service offering via web access designated by Business Associate and made available by Business Associate to Covered Entity under the Purchase Agreement and the Public Sector Subscription Service Terms (as applicable).
- (o) **"Unsecured PHI"** means PHI that has not been rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology as may be specified from time to time by HHS.

2. Obligations of Business Associate

- 2.1. **Provision of Subscription Service.** During the Subscription Term, Business Associate will provide the Subscription Service which allows for the automation of company workflows using Business Associate's platform. Business Associate will ensure that Covered Entity at all times during the Subscription Term has the full and independent ability to access, modify and delete all of its Customer Data, including PHI, that Covered Entity stores on the platform. Business Associate will not view or otherwise access Covered Entity's Customer Data, unless specifically requested to do so by Covered Entity.
- 2.2. **Subcontractors.** To the extent Business Associate employs a Subcontractor in its provision of the Subscription Service or Professional Services pursuant to the Public Sector Subscription Service Terms and such obligations require the Subcontractor to create, receive, maintain or transmit PHI on behalf of Business Associate, Business Associate shall ensure that the Subcontractor agrees in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI. Business Associate's use of any Subcontractor will not relieve, waive, or diminish any obligation Business Associate has under this Agreement.
- 2.3. **Security Standards.** Business Associate will implement and maintain the appropriate security standards set forth at 45 C.F.R. § 164.306, administrative safeguards set forth at 45 C.F.R. §164.308, the physical safeguards set forth at 45 C.F.R. § 164.310, the technical safeguards set forth at 45 C.F.R. § 164.312, and the policies and procedures set forth at 45 C.F.R. § 164.316 and otherwise comply with the Security Rule, to the extent applicable to Business Associate and as described in the Data Security Addendum, to prevent the use or disclosure of any ePHI of the Covered Entity's Customer Data other than as set forth in this Agreement..
- 2.4. **Practices, Books and Records.** Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of PHI available to HHS for the purpose of determining the Covered Entity's compliance with the Privacy Rule.
- 2.5. **Availability.** Upon the Covered Entity's request during the Subscription Term, Business Associate will make PHI available to Covered Entity in order for Covered Entity to comply with its obligations with 45 C.F.R. § 164.524, provided that Covered Entity will be solely responsible for identifying the relevant Designated Record Set and PHI and for complying with any request made by individuals under 45 C.F.R. § 164.524.
- 2.6. **Amendments.** Upon the Covered Entity's request during the Subscription Term, Business Associate will make PHI in a Designated Record Set available to Covered Entity for amendment, in order for Covered Entity to comply with its obligations with 45 C.F.R. § 164.526, provided that Covered Entity will be solely responsible for identifying the relevant individuals and associated PHI and for complying with any request made by individuals under 45 C.F.R. § 164.526.
- 2.7. **Accounting of Disclosures.** Business Associate will, upon the Covered Entity's request, during the Subscription Term make available the information reasonably required to provide an accounting of disclosures of PHI of which Business Associate is aware in accordance with 45 C.F.R. § 164.528, provided that Covered Entity will be solely responsible for identifying the relevant individuals and associated PHI and for complying with any request made by individuals under 45 C.F.R. § 164.528.
- 2.8. **Business Associate Activities.** To the extent Business Associate expressly agrees to carry out one or more of Covered Entity's obligations under Subpart E of 45 C.F.R. Part 164 pursuant to a mutually agreed upon written amendment to this Agreement, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations. Notwithstanding anything to the contrary, in no event shall Business Associate have any liability under this Agreement or otherwise, as a result of Covered Entity's failure to comply with Section 4 (Obligations of Covered Entity) and/or any Breach caused by a Custom Application or modifications to the Subscription Service by Covered Entity or a third-party acting on behalf of Covered Entity.

3. Scope of Permitted Use and Disclosures by Business Associate

- 3.1. Business Associate agrees not to use or disclose PHI other than as necessary to provide the Subscription Service or as otherwise permitted or required under this Agreement; provided that the use or disclosure would not violate the Privacy Rule, including 45 C.F.R. §164.504(e), if the use or disclosure would be done by Covered Entity.
- 3.2. Business Associate hereby agrees that the hosting of Customer's instances of the Subscription Service will be assigned to the data center region per the applicable Order Form(s) and ServiceNow will not relocate Customer's instances of the Subscription Service to data centers outside the region specified on the applicable Order Forms during the Subscription Term, except as expressly agreed to in writing by Customer and ServiceNow. Business Associate hereby agrees that if the Customer instance(s) of the Subscription Service is assigned to a data center located in the United States pursuant to the applicable Order Form, Business Associate shall not transfer Customer instance(s) to a data center located outside of the United States without Covered Entity's prior consent, which shall not be unreasonably withheld. Notwithstanding the foregoing, Covered Entity acknowledges and agrees that Business Associate may provide support for the Subscription Service with support personnel located outside of the hosting region and such personnel may access and process the minimum necessary Customer Data for the purpose of providing support for the Subscription Service.

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3.3. Business Associate may use or disclose PHI:

- (a) To carry out Business Associate's obligations under this Agreement and the Public Sector Subscription Service Terms;
- (b) As necessary for the proper management or administration of Business Associate, or to carry out any legal responsibilities of Business Associate, provided that Business Associate may disclose PHI for these purposes only if Business Associate is required to do so by law, or if Business Associate obtains reasonable assurances from the recipient of the information (1) that it will be held confidentially, and used or further disclosed only as required by law or for the purpose for which it was disclosed to the recipient, and (2) that the recipient will notify Business Associate of any instances of which the recipient is aware in which the confidentiality of the information is breached; and/or
- (c) As otherwise required by law.

4. Obligations of Covered Entity

4.1. Covered Entity shall:

- (a) Not make any commitments or requests that would make Business Associate violate this Agreement, the Public Sector Subscription Service Terms or HIPAA; and
- (b) Not agree to any restrictions to use or disclose PHI that would make Business Associate violate this Agreement, the Public Sector Subscription Service Terms or HIPAA.

4.2. Covered Entity shall be solely responsible for responding to any requests for PHI made by individuals in accordance with 45 C.F.R. § 164.524, 45 C.F.R. § 164.526, and 45 C.F.R. § 164.528. If Business Associate receives any such request directly, Business Associate will instruct the individual to contact Covered Entity and notify Covered Entity of the request, provided that Covered Entity is identified in the request.

4.3. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule and the Security Rule if done by Covered Entity.

4.4. Covered Entity shall restrict the access and use of the Subscription Service to its authorized users only. Covered Entity shall be responsible for ensuring all Covered Entity's users, or anyone to whom Covered Entity shall provide access, maintain the security of any passwords, username, or other form of authentication involved in obtaining access to the Subscription Service. Usernames and passwords must be uniquely assigned to a specific individual and may not be shared by multiple individuals at any one time or transferred.

4.5. Covered Entity shall use available encryption functionality on all Covered Entity-created fields for all Customer Data containing PHI.

5. Security Incident and Breach Notification

5.1. **Notification.** Business Associate agrees to the following notification requirements:

- (a) Business Associate shall promptly, but no later than five (5) business day, report to Covered Entity any Security Incident of which it becomes aware involving Covered Entity's Customer Data in accordance with 45 C.F.R. § 164.314(a)(2)(i)(C)).
- (b) Unless notification is delayed by a law enforcement agency, Business Associate shall promptly, but no later than five (5) business days, report to Covered Entity any Breach of Covered Entity's Unsecured PHI contained in Customer Data in accordance with 45 C.F.R. § 164.410. Business Associate shall provide information reasonably requested by Covered Entity for purposes of investigating the Breach and any other information that Covered Entity is required to include in the notification to the individual under 45 C.F.R. § 164.404(c) to the extent such information is available in Business Associate's ordinary course of operating the Subscription Service.

6. LIMITATION OF LIABILITY

(a) **LIMITED LIABILITY.** SERVICENOW SHALL HAVE NO LIABILITY FOR ANY REFUND THAT, IN ACCORDANCE WITH THE PUBLIC SECTOR SUBSCRIPTION SERVICE TERMS OR THE PURCHASE AGREEMENT, IS TO BE PAID BY RESELLER. TO THE EXTENT PERMITTED BY LAW, SERVICENOW'S TOTAL, CUMULATIVE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER BASED ON CONTRACT, TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE THEORY, WILL BE LIMITED TO THE AMOUNTS RECEIVED FOR THE SUBSCRIPTION SERVICE GIVING RISE TO THE CLAIM DURING THE 12-MONTH PERIOD PRECEDING THE FIRST EVENT GIVING RISE TO LIABILITY. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE THIS LIMIT.

(b) **SERVICENOW'S AND ITS AFFILIATES' LIABILITY TO COVERED ENTITY FOR ANY CLAIM UNDER THIS AGREEMENT, OR IN ANY OTHER MANNER OR CLAIM HOWEVER ARISING OUT OF OR RELATED TO THE SUBJECT MATTER OF THIS AGREEMENT, SHALL BE REDUCED BY ANY AMOUNTS THAT COVERED ENTITY AND ITS AFFILIATES RECOVER UNDER THE PURCHASE AGREEMENT, OR OTHERWISE FROM THE AUTHORIZED SERVICENOW RESELLER OR AFFILIATE, FOR THE SAME EVENT GIVING RISE TO A CLAIM FOR LIABILITY UNDER THIS AGREEMENT. FOR THE PURPOSES OF THIS AGREEMENT, "AFFILIATE" SHALL MEAN ANY PERSON OR ENTITY DIRECTLY OR INDIRECTLY CONTROLLING, CONTROLLED BY, OR UNDER COMMON CONTROL OF ANOTHER ENTITY, WHERE "CONTROL" MEANS THE LEGAL POWER TO DIRECT OR CAUSE THE DIRECTION OF THE GENERAL MANAGEMENT OF THE COMPANY, PARTNERSHIP, OR OTHER LEGAL ENTITY.**

(c) **EXCLUSION OF DAMAGES.** TO THE EXTENT PERMITTED BY LAW, NEITHER BUSINESS ASSOCIATE NOR COVERED ENTITY WILL BE LIABLE TO THE OTHER OR ANY THIRD-PARTY FOR LOST PROFITS (DIRECT OR INDIRECT) OR LOSS OF USE OR DATA OR FOR ANY INCIDENTAL, OTHER CONSEQUENTIAL, PUNITIVE, SPECIAL, OR EXEMPLARY DAMAGES (INCLUDING DAMAGE TO BUSINESS, REPUTATION, OR GOODWILL), OR INDIRECT DAMAGES OF ANY TYPE

HOWEVER CAUSED, WHETHER BY BREACH OF WARRANTY, BREACH OF CONTRACT, IN TORT (INCLUDING NEGLIGENCE), OR ANY OTHER LEGAL OR EQUITABLE CAUSE OF ACTION, EVEN IF SUCH PARTY HAS BEEN ADVISED OF SUCH DAMAGES IN ADVANCE OR IF SUCH DAMAGES WERE FORESEEABLE.

(i) NOTWITHSTANDING THE FOREGOING, THIS SUBSECTION (C) SHALL NOT PREVENT CUSTOMER'S RECOVERY FOR: (A) COSTS INCURRED TO PREPARE AND MAIL LEGALLY REQUIRED COMMUNICATIONS TO THIRD PARTIES; (B) COSTS INCURRED FOR IDENTITY PROTECTION SERVICES FOR THIRD PARTIES [TO THE EXTENT THE PROVISION OF SUCH SERVICES IS REQUIRED UNDER APPLICABLE LAWS]; AND (C) GOVERNMENT OR REGULATORY FINES PAID BY CUSTOMER, IN EACH CASE TO THE EXTENT CAUSED BY SERVICENOW'S MATERIAL BREACH OF SECTION 3 OF THE DATA SECURITY ADDENDUM THAT RESULTS IN AN UNAUTHORIZED DISCLOSURE OF CUSTOMER DATA, PROVIDED THAT SERVICENOW'S CUMULATIVE AND AGGREGATED LIABILITY AT ALL TIMES ARISING OUT OF OR RELATED TO THIS AGREEMENT SHALL BE LIMITED TO THE LIABILITY AMOUNT SET FORTH IN SECTION 6(A).

(d) **ENCRYPTION.** NOTHING HEREIN SHALL WAIVE OR OTHERWISE DIMINISH COVERED ENTITY'S OBLIGATION TO USE THE AVAILABLE ENCRYPTION FUNCTIONALITY TO ENCRYPT CUSTOMER DATA CONSISTING OF PHI OR OTHER SENSITIVE DATA AND HEALTH INFORMATION. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, BUSINESS ASSOCIATE SHALL HAVE NO LIABILITY ARISING FROM COVERED ENTITY'S FAILURE TO USE THE AVAILABLE ENCRYPTION FUNCTIONALITY MADE AVAILABLE IN THE SUBSCRIPTION SERVICE, AND BUSINESS ASSOCIATE SHALL HAVE NO LIABILITY TO THE EXTENT THAT DAMAGES WOULD HAVE BEEN MITIGATED BY COVERED ENTITY'S USE OF SUCH ENCRYPTION MEASURES.

7. Term and Termination

7.1. **Term.** The term of this Agreement shall be effective as of the Effective Date and shall continue until the Public Sector Subscription Service Terms have expired or been terminated.

7.2. **Termination.**

- (a) **BAA Termination.** In addition to the termination provisions in the Public Sector Subscription Service Terms, Covered Entity may terminate this Agreement immediately on notice if Covered Entity determines, after consultation with Business Associate, that the Business Associate has breached a material term of this Agreement and such breach is not cured within thirty (30) days after Business Associate receives written notice of the breach.
- (b) **Return of Records Upon Termination.** Upon expiration or termination of this Agreement, Covered Entity shall request the return of Customer Data in accordance with the procedure set forth in the Public Sector Subscription Service Terms, and Business Associate shall make available such Customer Data in accordance with such procedure. If Business Associate determines such return or deletion is not feasible, Business Associate shall continue to protect any PHI in accordance with the terms of the Public Sector Subscription Service Terms so long as it maintains it.

8. General

- 8.1. **Survival.** The obligations of Business Associate under the Termination section (Section 7.2) shall survive the termination of this Agreement until such time as all Customer Data is returned, deleted, or destroyed.
- 8.2. **Assignment.** Neither party may assign or novate its rights or obligations under this Agreement, by operation of law or otherwise (any of the foregoing, "Assign"), without the other party's prior written consent. Notwithstanding the foregoing, on notice and without the other's consent: (a) either party may in connection with a merger, reorganization, or sale of all or substantially all of such party's assets or equity, Assign this Agreement in its entirety to such party's successor; and (b) ServiceNow may Assign this Agreement in its entirety to any ServiceNow Affiliate. Any attempted or purported Assignment in violation of this Section will be null and void. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors, and permitted assigns.
- 8.3. **Waiver and Amendment.** Failure by a party to enforce any part of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. A waiver of any right is effective only if in a writing signed by an authorized representative of the waiving party. Any modification of this Agreement must be in writing and signed by authorized representatives of both parties. The parties agree to negotiate in good faith to amend this Agreement as necessary to comply with the Privacy Rule, the Security Rule, and such other regulations promulgated by HHS pursuant to HIPAA, to the extent applicable to the Subscription Service.
- 8.4. **Severability.** If any term of this Agreement is held invalid, unenforceable, or void by a court of competent jurisdiction, such term will be enforced to the maximum extent permissible, such holding will not affect the remaining terms, and the invalid, unenforceable, or void term will be deemed amended or replaced by a valid, legal, and enforceable term that matches the intent of the original language as closely as possible.
- 8.5. **Relationship.** The parties are independent contractors. Nothing in this Agreement will be construed to create a partnership, joint venture, agency, or other relationship. Neither party has any right or authority to assume or create any obligation of any kind, express or implied, in the other party's name or on its behalf. No third-party is a third-party beneficiary of, or liable under, this Agreement.
- 8.6. **Governing Law; Jurisdiction and Venue.** This Agreement will be governed by the Laws of the State of California, without regard to its conflict of laws principles. The parties irrevocably consent to the exclusive jurisdiction of, and venue in, any federal or state court

of competent jurisdiction, for the purposes of adjudicating any dispute arising out of or related to this Agreement. Each party expressly consents to service of process by registered mail. To the extent permitted by Law, choice of law rules and the United Nations Convention on Contracts for the International Sale of Goods will not apply.

- 8.7. **Entire Agreement.** This Agreement is the parties' entire agreement regarding its subject matter and supersedes all prior or contemporaneous oral or written agreements, representations, understandings, undertakings, and negotiations with respect to such subjects. The terms of this Agreement apply to the exclusion of any other terms Covered Entity seeks to impose or incorporate, or that may be implied by trade, custom, practice, or course of dealing. Covered Entity acknowledges it has not relied on any statement, promise, or representation made or given by or on behalf of ServiceNow that is not expressly stated in this Agreement.
- 8.8. **Electronic Signatures.** This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.