

HIPAA BUSINESS ASSOCIATE AGREEMENT

This HIPAA Business Associate Agreement (the "**BAA**") effective as of the date of last signature below ("**Effective Date**") is between San Bernardino County on behalf of Arrowhead Regional Medical Center ("**Covered Entity**") and Rubrik, Inc. ("**Business Associate**"). The purpose of this BAA is to address the measures that the Business Associate will take to protect the confidentiality of certain health information that Covered Entity may deliver to the Business Associate or that the Business Associate may create, receive or maintain on behalf of Covered Entity in the provision of products and services.

WHEREAS, Covered Entity and Business Associate have entered into the Rubrik End User License Agreement or other mutually accepted written or electronic agreement between Business Associate and Covered Entity (the "**Agreement**"), pursuant to which, Business Associate will provide certain products and services to Covered Entity as defined therein ("**Services**").

WHEREAS, Covered Entity may disclose Protected Health Information ("**PHI**") as defined in this BAA to Business Associate, creating a business associate relationship between Covered Entity and Business Associate, and such relationship shall only arise to the extent Covered Entity actually discloses PHI to Business Associate; and,

WHEREAS, both parties intend to protect the privacy and provide for the security of PHI disclosed to the Business Associate pursuant to the Agreement in compliance with: (i) the Health Insurance Portability and Accountability Act of 1996 ("**HIPAA**"); (ii) the Health Information Technology for Economic and Clinical Health Act ("**HITECH**"); and (iii) regulations promulgated thereunder by the U.S. Department of Health and Human Services, including the HIPAA Standard Transactions and Code Sets Regulations and the HIPAA Omnibus Final Rule (the "**HIPAA Final Rule**"), which amended the HIPAA Standards for Privacy of Individually Identifiable Health Information (the "**Privacy Rule**") and the HIPAA Security Standards Regulations (the "**Security Rule**") pursuant to HITECH, extending certain HIPAA obligations to business associates and their subcontractors (all of the foregoing regulations collectively referred to herein as "**HIPAA**"). The parties agree to enter into this mutually acceptable BAA as necessary to so comply.

NOW, THEREFORE, for and in consideration of the foregoing obligations and for other good and valuable consideration of the parties set forth in the Agreement and this BAA and intending to be legally bound hereby, the parties agree as follows:

1. DEFINITIONS

1.1 **Defined Terms.** The terms set forth below shall be defined in this BAA as follows:

a. "**Breach**" shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82 "**Electronic Protected Health Information**" shall have the same meaning as the term "electronic protected health information" in 45 C.F.R § 160.103.

b. "**Privacy Rule**" means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R Part 160 and Part 164, Subparts A and E.

c. "**Protected Health Information**" or "**PHI**" shall have the same meaning as the term "protected health information" in 45 C.F.R § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

d. "**Required By Law**" shall have the same meaning as the term "required by law" in 45 C.F.R. § 164.103

e. "**Secretary**" means the Secretary of the Department of Health and Human Services or his designee.

f. **"Security Incident"** shall have the same meaning as the term "security incident" in 45 C.F.R. § 164.304.

g. **"Security Rule"** means the Security Standards and Implementation Specifications at 45 CFR §§ 164.306, 164.308, 164.310, 164.312, and 164.316.

h. **"Unsecured Protected Health Information"** shall have the same meaning as the term "unsecured protected health information" in 45 C.F.R. § 164.402 and the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

1.2 **General.** The following terms used in this BAA shall have the same meaning as those terms in HIPAA: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Subcontractor, and Use. Regulatory citations in this BAA are to the C.F.R., as interpreted by HHS, for so long as such regulations remain in effect. Unless otherwise specified in this BAA, all terms not otherwise defined in this BAA shall have the meanings established under 45 C.F.R. parts 160 through 164.

2. **PERMITTED USES AND DISCLOSURES OF PHI**

2.1 **Use and Disclosure.**

a. Business Associate shall not use or further disclose PHI other than as permitted or required by this BAA or as Required By Law. PHI for purposes of this BAA shall be limited to PHI created, received or maintained by Business Associate from or on behalf of Covered Entity.

b. Business Associate shall not use or disclose PHI for fundraising or marketing purposes.

c. Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508), to the extent possible based on the nature of the Services; however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to this Agreement.

2.2 **Services.** Except as otherwise limited by this BAA, the Business Associate may use or disclose the PHI necessary to provide the Services for, or on behalf of Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by the Covered Entity. To the extent that the Business Associate is carrying out any of Covered Entity's obligations under the Privacy Rule pursuant to the terms of the Agreement or this BAA, Business Associate shall comply with the requirements of the Privacy Rule that apply to Covered Entity in the performance of such obligation(s). All other uses not authorized by this BAA are prohibited.

2.3 **Subcontractors.** Business Associate shall enter into written or electronic agreements with agents and subcontractors to whom it provides PHI received from (or created or received by Business Associate on behalf of) Covered Entity that impose the same restrictions and conditions that apply to Business Associate with respect to such PHI in this BAA

2.4 **De-identification.** If applicable as part of the services, Business Associate will de-identify any and all PHI, provided that the de-identification conforms to the requirements of 45 C.F.R. § 164.514(b). De-identified information does not constitute PHI and is not subject to the terms of this BAA.

3. **RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI**

3.1 **Responsibilities of the Business Associate.** With regard to any PHI that may be disclosed to Business Associate, including any use and/or disclosure of PHI and the privacy and security of PHI, Business Associate hereby agrees to do the following:

a. **Appropriate Safeguards.** Business Associate will use reasonable and appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI Business Associate creates, receives, maintains, or transmits on behalf of the Covered Entity, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b)] and shall comply with the Security Rule with respect to Electronic PHI.

b. **Sanctions.** Business Associate shall (i) train its workforce on the requirements of the Privacy Rule and Security Rule and (ii) establish and implement procedures to sanction its employees who violate the provisions of this BAA.

c. **Mitigation.** Business Associate shall mitigate, to extent practicable, any harmful effects known to Business Associate of a use or disclosure of PHI that is not permitted by this BAA.

d. **Reporting.**

(i) Business Associate shall report to Covered Entity's Office of Compliance, consistent with the regulations under the HITECH Act any Security Incident, without unreasonable delay, and in any event no more than seventy-two (72) hours following discovery; provided, however, that the parties acknowledge and agree that this Section constitutes notice by Business Associate to Covered Entity of the ongoing existence and occurrence of attempted but Unsuccessful Security Incidents (as defined below) for which notice to Covered Entity by Business Associate shall be required only upon request. "Unsuccessful Security Incidents" shall include, but not be limited to, pings and other broadcast attacks on Business Associate's firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as no such incident results in a Breach. Business Associate's notification to Covered Entity of a Breach shall include, to the extent possible based on the nature of the Services and known at the time: (i) the number and identification of each individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired or disclosed during the Breach; (ii) a general description of the incident (including who the threat actor is or is suspected to be, the general type of attack, if the incident is contained, a general timeline of the attack and Business Associate's operability); and (iii) any particulars regarding the Breach that Covered Entity would need to include in its notification, as such particulars are identified in 45 C.F.R. § 164.404.

(ii) Business Associate shall investigate the Security Incident in cooperation with Covered Entity. At the time of the initial report (if known), or without unreasonable delay after the initial report (if unknown at the time of the original report), Business Associate shall report the following to the extent known and subsequently as such information becomes available: identity of each individual whose unsecured PHI has been or is reasonably believed to have been, accessed, acquired or disclosed, the date of the disclosure, a brief description of the PHI disclosed, and brief description what happened with respect to the disclosure, and any other information required in order for the Covered Entity to fulfill its breach notification obligations under the HIPAA Regulations (

(iii) Business Associate shall 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 this Agreement. Upon request, each party shall promptly provide the other party with information relating to its discovery, investigation and mitigation activities associated with a Breach that affects the other party.

(iv) Subject to the limitation of liabilities set forth in the Agreement, Business Associate shall reimburse Covered Entity for the reasonable costs incurred by Covered Entity in responding to a Breach of Unsecured PHI or Security Incident due to Business Associate's breach of its obligations in this BAA.

e. **Access to Internal Practices.** At the request of, and at the time and in the manner designated by Covered Entity or the Secretary, the Business Associate shall make its internal practices, books and records (including policies and procedures, and PHI) relating to the use and/or disclosure of PHI available to (i) the Covered Entity, and its representatives for the purpose of assessing the Business Associate's compliance with this BAA and/or the Covered Entity's compliance with the Privacy Rule, or (ii) to the Secretary for purposes of the Secretary determining Covered Entity's Business Associate's compliance with the Privacy Rule.

f. **Access to PHI.** If applicable as part of the Services for Business Associate to maintain a designated record set, Business Associate shall make an individual's PHI in a designated record set available for inspection and copying in accordance with 45 C.F.R. § 164.524. Further, within ten (10) days of Business Associate's receipt of Covered Entity's request, Business Associate shall provide Covered Entity with the PHI requested by an individual pursuant to 45 C.F.R. § 164.524, to the extent possible based upon the nature of the Services. Alternatively, at Covered Entity's request, Business Associate shall provide an individual with access to his/her PHI in the time and manner designated by the Covered Entity.

g. **Amendments to PHI.** Business Associate shall make an individual's PHI available for amendment and shall incorporate any amendments to the PHI in accordance with 45 C.F.R. § 164.526, to the extent possible based upon the nature of the Services. Further, within ten (10) days of Business Associate's receipt of the Covered Entity's request, Business Associate shall provide Covered Entity with the PHI that an individual seeks to amend pursuant to 45 C.F.R. § 164.526, to the extent possible based upon the nature of the Services.

h. **Accounting of Disclosures.** Business Associate shall make available the information required to provide an accounting of disclosures to an individual pursuant to 45 C.F.R. § 164.528, to the extent possible based upon the nature of the Services. Further, at Covered Entity's request, within ten (10) days of Business Associate's receipt of Covered Entity's, Business Associate shall provide Covered Entity with such information. To fulfill this obligation Business Associate agrees to document those disclosures of PHI and related information that would be necessary for the Covered Entity to respond to an individual's request for an accounting of disclosures. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request, to the extent possible based on the nature of the Services.

i. **Restrictions/Alternatives.** Business Associate shall abide by any arrangements that Covered Entity has made with an individual regarding restricting the use or disclosure of the individual's PHI, or providing the individual with confidential communications of PHI by alternative means or at an alternative location pursuant to 45 C.F.R. § 164.522, to the extent possible based upon the nature of the Services.

j. **Minimum Necessary.** Business Associate (and its agents or Subcontractors) shall request, use and disclose the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure in accordance with 45 C.F.R. § 164.502(b). Business Associate shall implement access controls that enable authorized users to access the minimum necessary PHI needed to perform job functions. Rights and/or privileges should be granted to authorized users based on a set of access rules that Business Associate is required to implement as part of 45 C.F.R. § 164.308(a)(3) and 45 C.F.R. § 164.308(a)(4).

3.2 **Responsibilities of Covered Entity.**

a. **Consent.** Covered Entity agrees to obtain in writing any individual's consent, authorization, and other permissions that may be necessary or required by applicable laws in order to transfer or disclose the PHI to Business Associate.

b. **Notification.** Covered Entity shall promptly notify Business Associate of any changes or limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.

c. **Changes.** Covered Entity shall promptly notify Business Associate of any changes in, or revocation of, the permission by an individual to use or disclose his or her PHI, to the extent that such changes may affect Business Associate's use or disclosure of PHI.

d. **Restrictions.** Covered Entity shall promptly notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to or is required to abide by under 45 C.F.R. §164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

e. **Requests.** Covered Entity agrees to promptly notify Business Associate, in writing, of the PHI in Business Associate's custody that Covered Entity seeks to make available to an individual pursuant to 45 C.F.R. § 164.524 and agree with Business Associate as to the time, manner, and form in which Business Associate shall make the PHI available.

f. **Disclosures.** Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under Subpart E of 45 CFR Part 164 if done by Covered Entity.

4. **STANDARD TRANSACTIONS AND CODE SETS**

If applicable as part of the Services, should Business Associate conduct, in whole or in part, Standard Transactions for or on behalf of Covered Entity, Business Associate shall comply, and shall require any Subcontractor involved with the conduct of such Standard Transactions to comply, with each applicable requirement of 45 C.F.R. Part 162. Business Associate shall comply with the National Provider Identifier requirements, if and to the extent applicable. Business Associate shall provide to Covered Entity any documentation of compliance with the Transaction Rule, which Covered Entity may reasonably need, if any, pursuant to section 1104(b) of the Patient Protection and Affordable Care Act, as amended.

5. **BUSINESS CONTINUITY**

Pursuant to 45 C.F.R. § 164.308, Business Associate has established a contingency plan for recovering, securing and protecting PHI during a general disaster or disruption of critical business functions.

6. **TERMS AND TERMINATION**

6.1 **Term.** This BAA shall become effective on the Effective Date and shall continue in effect until all obligations of the parties have been met, unless terminated as provided herein. This BAA shall automatically expire or terminate without any further action of the parties upon the termination or expiration of the License Agreement.

6.2 **Termination.** Notwithstanding anything in the Agreement to the contrary, if either party breaches its obligations under this BAA, in any form or manner, the other party may, in its sole discretion, immediately terminate this BAA or the applicable portion of the Agreement covering the affected Services, by giving written notice of the existence of the alleged breach and allowing the breaching party an opportunity to cure the alleged breach within thirty (30) calendar days.

6.3 **Effect of Termination.** Except as provided herein, upon expiration or termination of this BAA or the Agreement, Business Associate shall return or destroy all PHI and not retain any copies of such PHI in any format, if it is feasible to do so, within forty-five (45) days. If Business Associate determines that returning or destroying PHI is infeasible, Business Associate shall notify Covered Entity in writing of the conditions that make return or destruction infeasible. With regard to any PHI that is not returned or

destroyed at the expiration or termination of this BAA, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for as long as the Business Associate maintain such PHI. In addition, Business Associate shall maintain the PHI in accordance with the records retention requirements under the Privacy Rule and Security Rule.

7. MISCELLANEOUS

7.1 **Entire Agreement.** This BAA is subject to the terms of the Agreement, and together, the BAA and Agreement constitute the entire agreement of the parties and supersede all prior or contemporaneous written or oral memoranda, arrangements, contracts or understandings between the parties hereto relating to the subject matter of this BAA.

7.2 **Regulatory References.** A reference in this BAA to a section in the Privacy Rule, the Standard Transactions and Code Sets Regulations, the Security Rule or the HIPAA Final Rule means the section as in effect or as amended, and for which compliance is required.

7.3 **Injunctive Relief.** If Business Associate, or any agents, employees or contractors of Business Associate, breaches or threatens to breach this BAA, then in addition to and without waiving any other available remedies, Covered Entity shall have the right to injunctive relief enjoining any such breach or threatened breach, it being acknowledged that legal remedies are inadequate and that the actions or inactions of Business Associate at issue may cause irreparable harm.

7.4 **Survival.** The provisions of this BAA shall survive the expiration or any termination of the term of the Agreement to the extent that the Business Associate continues to maintain PHI. Further, after expiration or termination of this BAA, those provisions in this BAA that provide for survival, or which due to their nature reasonably should be deemed to survive, beyond expiration or termination, shall survive indefinitely.

7.5 **Interpretation.** Any ambiguity in this BAA shall be resolved to permit compliance with the Privacy Rule, the Standard Transactions and Code Sets Regulations, the Security Rule and HIPAA Final Rule.

7.6 **Amendments; Waiver.** This BAA may not be modified, and no provision hereof shall be waived or amended, except in a writing duly signed by authorized representatives of the parties. The parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for compliance with the requirements of or conform to any changes in the Privacy Rule, Standard Transactions and Code Sets Regulations, the Security Rule or the HIPAA Final Rule. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

7.7 **Order of Precedence.** This BAA shall take precedence and control if there are any conflicts between the terms of this BAA and the Agreement. With the exception of the terms and conditions set forth in this BAA, all other terms and conditions of the Agreement shall remain unaltered and in full force and effect.

7.8 **No Third Party Beneficiaries.** Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the parties and the respective successors or assigns of the parties, any rights, remedies, obligations, or liabilities whatsoever.

7.9 **Counterparts; Signatures.** This BAA may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. Delivery of a facsimile copy or an emailed pdf copy, of a manually signed signature to this BAA, shall be deemed to be an original and a valid execution of this BAA by the signatory.

7.10 **Disputes.** Subject to and to the extent allowable by law, if any controversy, dispute or claim arises between the parties with respect to this BAA, the parties shall comply with any relevant provision of the Agreement pertaining to disputes, including without limitation the processes and obligations identified therein.

7.11 **Judicial or Administrative Proceedings.** Each party may terminate this baa, effective immediately, if (i) the other party is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the other party has been joined that such party has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

IN WITNESS WHEREOF, each of the undersigned has caused this BAA to be duly executed in its name and on its behalf effective as of the Effective Date.

Rubrik, Inc.

**San Bernardino County on behalf of Arrowhead Regional
Medical Center**

By: _____

By: _____

Print Name: Anne-Marie Eilerass

Print Name Dawn Rowe

Print Title: VP, Commercial Legal

Print Title: Chair, Board of Supervisors

Date: _____

Date: _____