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Contract Number
23-96

SAP Number

San Bernardino County Fire Protection District

Department Contract Representative	Dan Munsey
Telephone Number	909-387-5779
Contractor	San Bernardino County on behalf of its Department of Risk Management and Office of County Counsel
Contractor Representative	
Telephone Number	
Contract Term	
Original Contract Amount	
Amendment Amount	
Total Contract Amount	
Cost Center	

IT IS HEREBY AGREED AS FOLLOWS:

MEMORANDUM OF UNDERSTANDING
BETWEEN
SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT
AND
SAN BERNARDINO COUNTY ON BEHALF OF ITS DEPARTMENT OF RISK MANAGEMENT AND OFFICE OF COUNTY COUNSEL

This Memorandum of Understanding ("MOU"), which shall serve as a Business Associate Agreement, is entered into by and between the San Bernardino County Fire Protection District (hereinafter "Covered Entity" or "CE") and San Bernardino County on behalf of its Department of Risk Management and Office of County Counsel (hereinafter "Business Associate" or "BA").

RECITALS

WHEREAS, Covered Entity wishes to disclose certain information, which may include Protected Health Information (PHI), to Business Associate for the purposes of assisting CE in its health care operations relating to legal and risk management services; and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed by CE to BA in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), as amended, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), as amended, their implementing regulations, and other applicable laws; and

WHEREAS, the Privacy Rule and the Security Rule require CE to enter into an arrangement containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45 of the Code of Federal Regulations (C.F.R.), sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) and contained in this MOU; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA must fulfill the responsibilities of this MOU by being in compliance with the applicable provisions of the HIPAA Standards for Privacy and Security of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), 164.400, 164.530 and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this MOU, the parties agree as follows:

A. Definitions

Unless otherwise specified herein, capitalized terms used in this MOU shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

   i. CE will Disclose PHI to BA only for the following purposes: to assist CE in its Health Care Operations (as defined in 45 C.F.R. 164.501) relating to legal and risk management services.

   ii. BA may Disclose PHI (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. If required by law and/or regulatory requirement, BA must obtain a written authorization from the Individual prior to making any other disclosures.

   iii. If BA wishes to Disclose PHI to a third party for purposes not stated in this MOU, BA must obtain, prior to making any such Disclosure, (i) written authorization from an authorized representative of the CE for such disclosures; (ii) if authorization is given, reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this MOU and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (iii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. § 17932; 45 C.F.R. §§ 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

2. Prohibited Uses and Disclosures

   i. BA must not use, access or further disclose PHI other than as permitted or required by this MOU or as required by law. Further, BA must not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA must disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder, except where otherwise permitted by law.

   ii. BA must not use or disclose PHI for fundraising or marketing purposes.

   iii. BA must not disclose PHI to a Health Plan for payment or Health Care Operations purposes if the patient has requested a special restriction, and/or has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. § 17935(a) and 45 C.F.R. § 164.522(a)(1)(i)(A).)

iv. BA must not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. § 17935(d)(2); and 45 C.F.R. § 164.508); however, this prohibition shall not affect payment by CE to BA for services provided by BA.

3. Appropriate Safeguards

i. BA must implement mutually acceptable safeguards in alignment with applicable laws and regulatory regulations 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 BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. §§ 164.504(e)(2)(ii)(b) and 164.308(b).]

ii. In accordance with 45 C.F.R. section 164.316, BA must maintain current, reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule. These policies and procedures should be made available within a reasonable timeframe to the CE upon request.

iii. BA must provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI. These trainings and/or evidence of completion of such trainings should be made available to the CE within a reasonable timeframe upon request.

The training must include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this MOU.

4. Assessments

BA must perform initial and ongoing assessments to review the written policies and procedures for handling secured and confidential materials, and identify any policies or procedures that are either sources of data security weaknesses or barriers to information sharing. BA must review any history of data security breaches or near-breaches, and lessons learned.

5. Electronic Security Protections Review

BA must review electronic security protections and methods of electronic data transfer and storage to ensure they comply with the requirements of this MOU and are sufficient to protect shared PHI.

6. Subcontractors

BA must enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this MOU.

7. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach must be reported immediately, but no later than one (1) business day upon discovery, to CE's HIPAA Privacy Officer, consistent with the regulations under HITECH Act. Upon notification from BA, CE will coordinate notification of the actual or suspected Breach to CE's HIPAA Privacy Officer. Upon discovery of a Breach or suspected Breach, BA must complete the following actions:

i. Provide CE's HIPAA Privacy Officer with the following information to include but not limited to:

a) Date the Breach or suspected Breach occurred;

b) Date the Breach or suspected Breach was discovered;

c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;

d) Number of potentially affected Individual(s) with contact information; and

e) Description of how the Breach or suspected Breach allegedly occurred.

ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:

a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;

b) The unauthorized person who had access to the PHI;

c) Whether the PHI was actually acquired or viewed; and

d) The extent to which the risk to PHI has been mitigated.

iii. Provide a completed risk assessment and investigation documentation to CE's HIPAA Privacy Officer within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.

a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.

b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.

iv. Make available to CE and governing state and federal agencies in a time and manner designated by CE or governing state and federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

8. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA must make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) calendar days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA must provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA must immediately forward such request to CE.

9. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA must make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

10. Access to Records

BA must make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary must also be provided to the CE upon request.

11. Accounting for Disclosures

BA, its agents and subcontractors must document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of treatment, payment, and health care operations. BA must provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained must include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement

of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

12. Termination

Either party may terminate this MOU with at least thirty (30) days written notice to the other party. CE may also immediately terminate this MOU if CE determines that BA has breached a material term of this MOU. CE may, at its reasonable discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

13. Return of PHI

Upon termination of this MOU, BA must return or destroy all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA must provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this MOU, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this MOU, and to limit any further use, access or disclosures.

14. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this MOU, the BA must take reasonable steps to address the Breach and/or end the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the MOU (if feasible) and report the violation to the Secretary of HHS.

15. Mitigation

BA must have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this MOU.

16. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the MOU at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

17. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

18. Assistance in Litigation or Administrative Proceedings

BA must make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the MOU, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, 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 BA or its subcontractor, employee or agent is a named adverse party.

C. Obligations of CE

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
   i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
   ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
   iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

D. General Provisions

1. Term

   This MOU is effective as of the date fully executed and shall continue until terminated by either party pursuant to the terms of this MOU.

2. Department Contact

   CE and BA must identify an individual from each entity who must be responsible for implementation and enforcement of the requirements of this MOU. The identified member must have the authority to make decisions about operations that may affect authorizing, accessing, or using the data and should serve as the contact for inquiries regarding the security and confidentiality policies and practices.

3. Ownership

   The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

4. Regulatory References

   A reference in this MOU to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

5. Amendment

   The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this MOU when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the MOU upon written notice. To the extent an amendment to this MOU is required by law and this MOU has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this MOU automatically and without further action required by either of the parties. Subject to the foregoing, this MOU may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

   Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy Rule, Security Rule, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

   In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this MOU or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA must comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of this Agreement.

9. Dispute Resolution

CE and BA agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to escalate problem resolution through the appropriate chain-of-command, as deemed necessary.

10. Entire Agreement

This MOU contains the entire agreement and understanding between the parties hereto with respect to the subject matter hereof, and supersedes all prior MOUs, agreements, understandings, inducements and conditions, express or implied, oral or written, of any nature whatsoever with respect to the subject matter hereof.

E. Conclusion

1. This MOU, consisting of seven (7) pages, is the full and complete document describing the parties' responsibilities and obligations as it relates to the exchange of PHI between the parties under this MOU.
2. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.

IN WITNESS WHEREOF, the Covered Entity and Business Associate have each caused this MOU to be subscribed by its respective duly authorized representative, on its behalf.

SAN BERNARDINO COUNTY FIRE PROTECTION DISTRICT

► Dawn Rowe

Dawn Rowe, Chair, Board of Directors

Dated: JAN 24 2023

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell, Secretary

By _____ Deputy

SAN BERNARDINO COUNTY

► Dawn Rowe

Dawn Rowe, Chair, Board of Supervisors

Dated: JAN 24 2023

SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

By: _____ Deputy

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
►	►	►
Scott Runyan, Principal Assistant County Counsel		
Date 1/17/23	Date	Date