

SALT LAKE COUNTY
Standard Contract Form No. 17-09692
Approved November 7, 2017, Expires January 1, 2019*

BUSINESS ASSOCIATE AGREEMENT
Between
SALT LAKE COUNTY
And

[NAME OF CONTRACTING ENTITY]
For

[Name of project]

This Agreement is entered into this _____ day of _____, 20____, between Salt Lake County, a body corporate and politic of the State of Utah (“County”), on behalf of its Division of Aging and Adult Services and _____ (“Contractor”),

a(n) (check the applicable designation)

- individual limited partnership
 proprietorship corporation of the State of _____
 general partnership limited liability company of the State of _____
 other: _____

with its principal place of business address: _____.
County and Contractor may be referred to as “the parties.”

RECITALS

A. County is a “Hybrid Entity” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the American Recovery and Reinvestment Act of 2009, Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH Act”) and their implementing regulations, including the Standards for Privacy of Individually Identifiable Health Information and the Security Standards at 45 CFR parts 160 and 164, subparts A, C, D and E (“Privacy and Security Rules”) and engages in business activities which include both covered and non-covered functions.

B. County has designated the Aging Waiver Program, the Medicaid Aging Waiver Program, and the Veteran’s Directed Home and Community Based Services Program of its Community Care Transitions Program and Health Promotion Program of the Division of Aging

* This expiration date applies only to the approved use of this Standard Form Contract, and does not impact or alter the survival provision in section F3 or the termination provision found in Section H below.

and Adult Services of the Department of Human Services as “Health Care Components” subject to HIPAA, the HITECH Act, and the Privacy and Security Rules.

C. On or about _____, 201_, County and Contractor entered into an agreement in which Contractor would provide services pursuant to a Request for Applications. Hereafter referred to as “Agreement.”

D. In performance of their respective obligations under this Agreement, County’s Health Care Components may from time to time disclose to Contractor certain Protected Health Information (“PHI”) governed by the HIPAA, the HITECH Act, Privacy and Security Rules and other information governed by the Government Records Access and Management Act (“GRAMA”), Utah Code Ann. §§ 63G-2-101 to -901 (2011).

E. County and Contractor wish to address certain requirements of HIPAA, the HITECH Act, the Privacy and Security Rules, and GRAMA with respect to the performance of their obligations under this Agreement

NOW, THEREFORE, in consideration of the mutual promises, covenants and conditions hereinafter set forth, the Parties hereby agree as follows:

A. Definitions:

The following terms are defined for purposes of this Agreement. Terms used, but not otherwise defined in this Agreement shall have the same meaning as those terms in HIPAA and the HITECH Act.

1. “Breach” shall have the meaning given to such term under the HITECH Act, 42 U.S.C. § 17921 and 45 CFR § 164.402.

2. “Business Associate” shall mean Contractor for the purposes of this agreement and shall have the same meaning given to the term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. § 17938 and 45 CFR § 160.103.

3. “Covered Entity” shall mean County for the purposes of this agreement and shall have the same meaning given to such term under the Privacy Rule and the Security Rule, including but not limited to 45 CFR § 160.103.

4. “Disclosure” shall have the same meaning given to such term in the Privacy and Security Rule, including but not limited to 45 CFR § 160.103.

5. “Electronic Protected Health Information” or “Electronic PHI” means Protected Health Information which is transmitted by Electronic Media or maintained as Electronic Media as defined in 45 CFR § 160.103.

6. “Electronic Health Record” shall have the same meaning given to such term in the HITECH Act, including but not limited to 42 U.S.C. § 17921.

7. “Health Care Operations” shall have the same meaning given to such term in the HITECH Act, including but not limited to 45 CFR § 164.501.

8. “HITECH Act” shall mean the American Recovery and Reinvestment Act of 2009, Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 and associated regulations, including but not limited to 45 CFR § 164, Subpart D.

9. “Individual” shall have the same meaning as the term “individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

10. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A, D, and E.

11. “Protected Health Information” or “PHI” shall have the same meaning as the term “protected health information” in 45 CFR § 160.103, limited to the Protected Health Information created, maintained, received, or transmitted by Business Associate from or on behalf of County. If Business Associate creates, maintains, receives or transmits Electronic Protected Health Information, as defined in 45 CFR § 164.501, on behalf of County, Protected Health Information or PHI also includes Electronic Protected Health Information created, maintained, received, or transmitted by Business Associate from or on behalf of County.

12. “Required by Law” shall have the same meaning as the term “required by law” in 45 CFR § 164.103.

13. “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.

14. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system as defined in 45 CFR § 164.304.

15. “Security Rule” shall mean the Security Standards at 45 CFR Parts 160 and 164, subparts A and C.

16. “Unsecured Protected Health Information” or “Unsecured PHI” shall have the meaning given to such term under the HITECH Act, 42 U.S.C. § 17932(h), and any guidance issued pursuant to such Act, including but not limited to 45 CFR § 164.402.

B. Obligations and Activities of Business Associate:

1. Business Associate agrees not to use or further disclose Protected Health

Information other than as permitted or required by the Agreement or as Required by Law.

2. Business Associate agrees to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to Electronic Protected Health Information, to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement or the Privacy Rule, Security Rule, and the HITECH Act. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of County as required by the Privacy Rule, Security Rule, and the HITECH Act. Business Associate agrees to comply with the policies, procedures, and documentation requirements of the Security Rule, including but not limited to 45 CFR § 164.316.

3. Business Associate and its agents or subcontractors shall request, use and disclose only the minimum amount of PHI necessary to accomplish the purpose of the request, use or disclosure.

4. 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 or the Privacy Rule, Security Rule, the HITECH Act, and HIPAA.

5. As required by 45 C.F.R. § 164.410, Business Associate agrees to report to County's Privacy Officer in writing any use or disclosure or any suspected use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware, including any Breach, any Security Incident, or any use or disclosure or any suspected use or disclosure not permitted by the Privacy Rule, Security Rule, the HITECH Act, and HIPAA, within five (5) business days of discovery. For any Breach involving Protected Health Information, Business Associate agrees to provide the names of all individuals whose Unsecured PHI was disclosed, a description of what happened, the types of Unsecured PHI that may be or were involved, contact information for the individuals whose Unsecured PHI was involved, what steps individuals should take to protect themselves, and what Agency and Business Associate are doing to investigate the breach, mitigate the losses, and protect against further Breaches.

6. Business Associate agrees to ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate agrees in writing to the same restrictions and conditions that apply throughout this Agreement to Business Associate with respect to such information and agrees to implement reasonable and appropriate safeguards to protect any Electronic Protected Health Information as required by the HITECH Act.

7. Upon advance written notice and during normal business hours, Business Associate agrees to provide access to any Protected Health Information to County or, as directed by County, to an individual in order to meet the requirements under 45 CFR § 164.524. If

Business Associate maintains an Electronic Health Record as part of performing a function or activity on behalf of County, Business Associate shall provide such record in electronic format to enable County, or as directed by County to an individual, to fulfill its obligations under the HITECH Act, including but not limited to providing a copy in electronic format as provided by 42 U.S.C. § 17935(e).

8. In a timely manner, Business Associate agrees to make available Protected Health Information for amendment and incorporate any amendments to Protected Health Information in accordance with 45 CFR § 164.526.

9. Business Associate agrees to make available the information required to provide an accounting of disclosures of Protected Health Information in accordance with 45 CFR § 164.528.

10. To the extent Business Associate is to carry out County's obligations under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to County in performance of such obligation(s).

11. Business Associate agrees to make its internal practices, books, and records, relating to the use and disclosure of Protected Health Information, received from, or created or received by Business Associate on behalf of, County available to County, and/or to the Secretary, in a time and manner as reasonably requested by County or as otherwise designated by the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.

12. Business Associate acknowledges that, as a business associate of County, it is subject to the requirements of the provisions of the Privacy Rule concerning contracts, knowledge elements, and penalties, as set out in the HITECH Act, 42 U.S.C. § 17934. To the extent that Business Associate creates, maintains, receives or transmits Electronic Protected Health Information from County, Business Associate acknowledges that it is subject to the following provisions of the Security Rule, 45 CFR § 164.308, § 164.310, § 164.312, and § 164.316, as provided in the HITECH Act, 42 U.S.C. § 17931, with respect to such Electronic Protected Health Information.

13. Business Associate agrees not to use or disclose PHI for marketing or fundraising. If a person has requested restrictions on certain disclosures of their PHI, Business Associate agrees to comply with the requested restriction if the disclosure is not for treatment and the disclosure is to a health plan for health care operations and the health care provider has been paid out of pocket in full. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless permitted by the HITECH Act, § 17935(d).

C. Permitted Uses and Disclosures By Business Associate:

1. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on

behalf of, County as specified in this Agreement, provided that such use or disclosure would not violate the Privacy Rule, Security Rule, the HITECH Act, or HIPAA if done by County or the minimum necessary policies and procedures of County.

2. In addition to the foregoing general permitted uses and disclosures, and except as otherwise limited in this Agreement:

a. Business Associate may use Protected Health Information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.

b. Business Associate may disclose Protected Health Information for the proper management and administration of Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable written assurances from the person to whom the information is disclosed that it will be held confidentially and will be used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person has signed a written agreement that the person will notify Business Associate within five (5) business days of any instances in which confidentiality of the information has been breached.

c. Business Associate may use Protected Health Information to provide data aggregation services to County as permitted by 45 CFR § 164.504(e)(2)(i)(B).

d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR § 164.502(j)(1).

D. Obligations of County:

1. County shall notify Business Associate of any limitation(s) in its notice of privacy practices of County in accordance with 45 CFR § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

2. County shall notify Business Associate of any changes in, or revocation of, permission by an Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

3. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

E. Permissible Requests by County:

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by County; provided however, that Business Associate may use or disclose Protected Health

Information for data aggregation and other management and administrative activities to the extent permitted under this Agreement and all applicable laws.

F. Miscellaneous:

1. Regulatory References. Any reference to this Agreement to HIPAA, the Privacy Rule, Security Rule, or HITECH Act shall mean the referenced sections as is then in effect or as amended.

2. Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for County to comply with the requirements of HIPAA, the Privacy Rule, Security Rule, and the HITECH Act and any other applicable laws relating to the security or confidentiality of Protected Health Information.

3. Survival. The respective rights and obligations of Business Associate under Sections B above and Sections G and H below of this Agreement shall survive the termination of this Agreement.

4. Interpretation. Any ambiguity in this Agreement shall be interpreted in a manner consistent with HIPAA, the Privacy Rule, the Security Rule, and the HITECH Act.

G. Indemnity:

Regardless of the coverage provided by any insurance, Business Associate shall pay all costs necessary to defend and shall indemnify and hold harmless County from any and all claims, demands, actions, attorney's fees, costs and expenses arising out of related to any incident by Business Entity or its subcontractors involving the acquisition, access, use or disclosure of Unsecured Protected Health Information received from County by Business Associate or any subcontractor or created, maintained, or transmitted by Business Associate or subcontractor for or on behalf of County in any manner not permitted under HIPAA, the HITECH Act, the Privacy Rule, or the Security Rule.

H. Term and Termination:

1. Term. This Agreement shall be effective from [date] and expire on [date], unless terminated earlier as provided for in Section H.2 below.

2. Termination.

a. Voluntary Termination. Either Party may terminate this Agreement for convenience by giving sixty (60) calendar days advance written notice to the other party's project representative of the desired termination date. Either party may terminate this Agreement immediately if the other party is named as a defendant in a criminal proceeding for violation of HIPAA, the HITECH Act, the Privacy Rule, or Security Rule or is found to be in violation of HIPAA, the HITECH Act, the Privacy Rule, or Security Rule in any administrative or judicial proceeding.

b. Termination for Cause. Upon either Party's knowledge of a material breach by the other Party, the non-breaching Party shall either:

i. Provide an opportunity for the breaching Party to cure the breach or end the violation and immediately terminate this Agreement if the breaching Party does not cure the breach or end the violation within the time specified by the non-breaching Party; or

ii. Immediately terminate this Agreement if the breaching Party has breached a material term of this Agreement; or

iii. If either Party has breached a provision of Section C of this Agreement, and neither termination nor cure is feasible, the non-breaching Party shall report the violation of Section C of this Agreement to the Secretary.

iv. The rights of the Parties provided in this section are in addition to any other rights and remedies provided by law or under this Agreement. The parties agree that a waiver of any breach of this Agreement by either party shall in no event constitute a waiver as to any future breach.

c. Effect of Termination. Upon termination for any reason, expiration of this Agreement, or failure to enter a similar agreement:

i. Except as provided in paragraph ii of this section, Contractor shall return to County or destroy any Protected Health Information received from, or created or received by Contractor on behalf of County that Contractor still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Contractor. Contractor and its subcontractors or agents shall retain no copies of the Protected Health Information and limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible.

ii. In the event that Contractor determines that returning or destroying the Protected Health Information is infeasible, Contractor shall provide to County notification of the conditions and reasons that make return or destruction infeasible. If County agrees with Contractor's determination that the return or destruction of Protected Health Information is infeasible, County shall provide written notice of its agreement to Contractor and upon receipt of such written notice, Contractor shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to only those purposes that make the return or destruction infeasible, for so long as Contractor maintains such Protected Health Information. If County does not agree that return or destruction of Protected Health Information is infeasible, Contractor shall return or destroy the information.

I. Default:

If either party defaults in the performance of the Agreement, or any of its covenants, terms, conditions or provisions, the defaulting party shall pay all costs and expenses, not including attorney's fees, which may arise or accrue to the non-defaulting party from enforcing the Agreement.

IN WITNESS WHEREOF, the Parties execute this Agreement the day and year recited above.

Salt Lake County

Contractor

By: _____
Mayor or Designee

By: _____

Printed Name: _____

Date: _____

Title: _____

Date: _____

The individual signing above hereby represents and warrants that s/he is duly authorized to execute and deliver this Agreement on behalf of the Contractor by authority of law and that this Agreement is binding upon the Contractor. A person who makes a false representation of authority may be subject to criminal prosecution under UTAH CODE ANN. § 76-8-504 (2015).