

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the Agreement) is entered into January 1, 2017 (“Effective Date”) by and between County of San Benito, the sponsor (“Sponsor”) of one or more health plans (collectively referred hereafter to as the “Plan”) and Keenan & Associates (Business Associate).

WHEREAS, the Sponsor has independently contracted with Business Associates to provide services to, for or on behalf of the Plan; and

WHEREAS, Plan wishes to allow the Business Associate to have access to PHI including but not limited to, EPHI that is either provided to the Business Associate by the Plan or received and created by the Business Associate on behalf of the Plan in the course of providing its services to, for or on behalf of the Plan;

WHEREAS, the Plan is required to comply with HIPAA (including, but not limited to, its Privacy Rule and Security Rule), and other governmental regulations relating to the privacy and security of individuals’ personally identifiable information.

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, Plan and Business Associate agree as follows:

DEFINITIONS

Catch-all definition:

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in 45 CFR §§ 160.103 and 164.501.

Specific definitions:

(a) **Business Associate** “Business Associate” shall generally have the same meaning as the term “business associate” at 45 CFR 160.103, and in reference to this Agreement, shall mean Keenan & Associates.

(b) **Breach** shall have the same meaning as the term “breach” in 45 CFR § 164.402

(c) **Covered Entity** shall generally have the same meaning as the term “covered entity” at 45 CFR 160.103, and in reference to this Agreement shall mean the health and welfare benefits plans sponsored by the entity that is signatory to this Agreement.

(d) **Individual** shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

(e) **Privacy Rule** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.

(f) **Protected Health Information (“PHI”)** shall have generally the same meaning as the term “protected health information” in 45 CFR § 164.501, and for this Agreement shall be limited to the information created or received by Business Associate from or on behalf of the Covered Entity.

(g) **Secretary** shall mean the Secretary of the Department of Health and Human Services or his designee.

(h) **Security Rule** shall mean the Security Standards for the Protection of Electronic Health Information at 45 CFR Part 160 and Part 164, Subpart A and C.

(i) **Electronic PHI (E-PHI)** shall have the meaning found in the Security Rule 45 CFR, Section 160.103.

(j) **Security Incident** shall have the same meaning as the term “security incident” in 45 CFR Parts 160 and 164, subparts A and C

(k) **HIPAA Rules** shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

(l) **Designated Record Set** shall have the same meaning as the term “designated record set” in 45 CFR 164.501.

(m) **Subcontractor** shall have the same meaning as the term “subcontractor” in 45 CFR §160.103

(n) **Unsecured PHI** shall have the meaning given the term “unsecured protected health information in 45 CFR § 164.402.

OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

Business Associate agrees to:

(a) Business Associate agrees to not request, use, or further disclose PHI other than as permitted or required by the Agreement or as permitted or required by law.

(b) Business Associate agrees that it shall utilize appropriate physical, administrative and technical safeguards to ensure that the PHI is not used or disclosed in any manner inconsistent with this Agreement. Such safeguards shall include, but not be limited to: (1) establishing policies and procedures to prohibit any employee of Business Associate, who does not have a reasonable need for the PHI in order to accomplish an authorized use or disclosure, from accessing such information and to inform all employees of Business Associate whose services may be used to fulfill obligations under this Agreement of the terms of this Agreement; and (2) disclosing to any agent, Subcontractor or other third party, and requesting from Covered Entity, only the minimum PHI necessary to accomplish the intended purpose of the use, disclosure or request. (“Minimum necessary” shall be interpreted in accordance with the HIPAA Rules.) Business Associate shall provide Covered Entity with such information concerning the safeguards as Covered Entity may reasonably request from time to time.

(c) Use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI, to prevent use or disclosure of PHI other than as provided for by the agreement.

(d) Business Associate agrees to 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.

(e) Business Associate agrees to report to Covered Entity, in writing, any use or disclosure by Business Associate of PHI not permitted by this Agreement promptly after Business Associate's first awareness thereof, including but not limited to, any discovery of any inconsistent use or disclosure by Subcontractor of Business Associate.

(f) Report to Covered Entity any use or disclosure of PHI not provided for by the Agreement of which it becomes aware, including breaches of Unsecured PHI information as required at 45 CFR 164.410 (without unreasonable delay, and, in no case later than 10 calendar days after discovery of a Breach), and any security incident of which it becomes aware.

(g) Business Associate agrees to require that any Subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, execute a Business Associate Agreement acknowledging its compliance with the HIPAA Rules.

(h) Business Associate agrees to provide access to PHI, at the request of Covered Entity, and in the time and manner reasonably designated by Covered Entity, to Covered Entity, or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524 (within 30 days after receipt of the request unless there is a 30 day extension.)

(i) Business Associate agrees to make any amendment(s) to PHI that the Covered Entity directs or agrees to pursuant to 45 CFR 164.526, and in the time and manner reasonably designated by Covered Entity, in a Designated Record Set, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526 no later than 60 days after the receipt of the request.

(j) Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of the PHI available to the Secretary or the Secretary's designee for the purposes of determining Covered Entity's compliance with the HIPAA Rules. Business Associate shall immediately notify Covered Entity of its receipt of any such request for access, but in no case later than 60 days after the receipt of the request.

(k) Business Associate agrees to document such disclosures of PHI to the extent necessary for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR § 164.528 no later than 60 days after the receipt of the request.

(l) Maintain and make available the information required to provide an accounting of disclosures to either the Covered Entity, or the Individual, as necessary to satisfy Covered Entity's obligations under 45 CFR 164-528 within 60 days after receipt of the request.

(m) Business Associate agrees to provide Covered Entity, in the time and manner reasonably designated by Covered Entity, information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528 no later than 60 days after the receipt of the request.

(n) Business Associate agrees to provide information and documentation concerning Business Associate's compliance with this Agreement to the extent reasonably requested by Covered Entity as necessary to permit to respond to third parties' inquiries of and/or claims against Covered Entity relating to use and/or disclosure of PHI and/or for Covered Entity to comply with law(s) relating to its monitoring of compliance with this Agreement. Business Associate shall, upon Covered Entity's request, certify to Covered Entity that it complies with the terms of this Agreement (no later than 60 days after the receipt of the request).

PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE

(a) Except as otherwise limited in this Agreement, Business Associate may obtain and/or use PHI as necessary to perform its obligation to provide services to, for, or on behalf of the Plans, so long as such access and/or use is either permitted or required by law and, provided further, that Business Associate has met all legal requirements for such access and/or use. This specifically includes, but is not limited to, Business Associate's access and/or use of PHI as necessary to perform the services set forth in the Service Agreement.

(b) Business Associate may not use or disclose PHI in a manner that would violate the HIPAA Rules. If the Agreement permits the Business Associate to use or disclose PHI for its own management and administration and legal responsibilities, or for data aggregation services, then disclosure is permitted for the specific uses and disclosures set forth below.

- i) Business Associate may use PHI for proper management and administration of the Business Associate, or to carry out the legal responsibilities of the Business Associate.
- ii) Business associate may disclose PHI for the proper management and administration of Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used, or further disclosed, only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- iii) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

OBLIGATIONS OF COVERED ENTITY

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with 45 CFR § 164.520, as well as any changes to such notice.

(b) Neither Sponsor nor Covered Entity shall request Business Associate to use or disclose PHI in any manner that would not be permitted or required by law if done by Covered Entity.

(c) Covered Entity shall notify Business Associate in writing of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522.

INDEMNIFICATION

(a) Business Associate agrees to indemnify, defend, and hold harmless the Covered Entity, its trustees, officers, directors, employees, agents, or representatives, from any claim or penalty arising out of any improper use and/or disclosure of PHI in violation of the Privacy Regulation, to the extent that such improper use and/or disclosure resulted from Business Associate's negligence or failure to comply with the terms of this Agreement or the Privacy Regulation.

(b) The Sponsor and Covered Entity agree to indemnify, defend and hold harmless Business Associate and/or all of Business Associate's officers, directors, employees, agents, or representatives, from any claim or penalty from any improper use and/or disclosure of PHI, to the extent that such improper use and/or disclosure resulted from the Sponsor's or Covered Entity's negligence, failure to comply with the terms of this Agreement or the Privacy Regulation, or was based upon the Sponsor's or Covered Entity's written direction to use and/or disclose PHI in the manner challenged.

SECURITY

Business Associate agrees to:

i) Implement safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of the Covered Entity;

ii) Ensure that any Subcontractor, to whom it provides this information agrees to implement reasonable and appropriate safeguards;

iii) Report on a quarterly basis to the Covered Entity, in writing, any Security Incident involving Covered Entity's data. If, however, a Security Incident results in the unauthorized disclosure of Unsecured PHI, Business Associate shall notify Covered Entity in accordance with the Breach notification provisions below.

iv) Notify Covered Entity no later than ten (10) days after discovery of a Breach of Unsecured PHI.¹

¹Covered Entity has 60 days from the discovery date of a reportable Breach to report said Breach to the Individual and HHS (if Breach involves 500 or more Individuals.)

v) Perform the four factor risk assessment of any Breach that is discovered in accordance with the HIPAA Rules to determine if notification is required, and advise Covered Entity of its findings.

vi) Make its policies and procedures, and documentation required by this subpart relating to such safeguards, available to the Secretary for purposes of determining the Covered Entity's compliance with 45 CFR Parts, 162 and 164 and;

vii) Authorize termination of the contract by the Covered Entity if the Covered Entity determines that the Business Associate has violated a material term of the contract.

Term and Termination

(a) The Term of this Agreement shall be effective as of the effective date herein and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.

(b) Upon Covered Entity's knowledge of a material Breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement. If the Business Associate does not cure the breach or end the violation within the time specified by Covered Entity; Covered Entity shall have the right to immediately terminate this Agreement. Such termination shall not abrogate any rights which Covered Entity has against Business Associate for violation of this Agreement.

(c) Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, shall:

i) Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;

ii) Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that the Business Associate still maintains in any form;

iii) Continue to use appropriate safeguards and comply with the HIPAA Rules regarding the use and disclosure of the PHI, for as long as Business Associate retains the PHI;

iv) Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions which applied prior to termination; and

v) Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

Miscellaneous

(a) A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) No modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party to be charged. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Business Associate and Covered Entity to comply with the requirements of the HIPAA Rules.

(c) Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits both parties to comply with the HIPAA Rules and/or other applicable law.

(d) Notices:

(i) All reports or notices to Covered Entity pursuant to this Agreement shall be sent to the names and addresses listed on the signature page, or to such other individuals and/or addresses as a party may later designate in writing. Unless expressly prohibited under the HIPAA Rules, such notices and reports may also be sent via email.

(ii) All such reports or notices shall be sent by First Class Mail or express courier service, and shall be deemed effective when delivered, or if refused, when delivery is attempted.

(e) Nothing expressed or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Sponsor, Covered Entity, Business Associate, and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

(f) This Agreement constitutes the complete agreement of the parties relating to the access, use, disclosure and security of PHI and, except as otherwise provided herein, supersedes all prior representations or agreements, whether oral or written, with respect to the confidentiality and security of PHI.

(g) The parties hereby agree and affirm that the subject matter of this Agreement is unique, and that it may be impossible to measure the damages which would result to Covered Entity from violations by Business Associate of the agreements set forth herein. Accordingly, in addition to any other remedies which Covered Entity may have at law or in equity, the parties hereby agree that either party shall have the right to have all obligations and other provisions of this Agreement specifically performed by the other party, as applicable, and that either party shall have the right to seek preliminary and permanent injunctive relief to secure specific performance, and to prevent a breach or contemplated breach, of this Agreement, without, in any case, proof of actual damages.

(h) Disputes arising out of or relating to this Agreement which cannot be resolved by negotiation between the parties shall be submitted to non-binding mediation. If the dispute is not resolved through mediation, it shall be resolved by final and binding arbitration administered by JAMS dispute resolution service pursuant to its Streamlined Arbitration Rules and Procedures, or such other arbitration procedures as agreed to in writing by the Parties. Negotiation, mediation, and arbitration shall be the exclusive means of dispute resolution between Client and Keenan and their respective agents, employees

and officers. The site of the arbitration shall be in the County of San Benito, California. A judgment of any court having jurisdiction may be entered upon the award.

IN WITNESS WHEREOF, the parties hereto hereby set their hands as of the date first above written.

County of San Benito, as Sponsor and Representative of the Plan(s)		Keenan & Associates	
Signature:		Signature:	
By:	Ray Espinosa	By:	Stephen Gedestad
Title:	County Administrative Officer	Title:	Municipality Practice Leader
Address:	481 4th Street	Address:	2355 Crenshaw Blvd., Ste. 200
	Hollister, CA 95023		Torrance, CA 90501
Telephone:	831-636-4000	Telephone:	310 212-0363
Attention:	Steve Coffee	Attention:	Privacy Officer