

Business Associate Agreement

MX, a California mutual benefit corporation (“**Business Associate**”) and Participant (“**Covered Entity**”) hereby agree to this Business Associate Agreement (this “**BAA**”).

Recitals

A. Covered Entity and Business Associate have entered into an agreement (the “Participation Agreement”) pursuant to which Business Associate provides to Covered Entity certain services that now or in the future shall include the creation, receipt, maintenance and/or transmission of “protected health information” (as defined in HIPAA), on behalf of Covered Entity, for a function or activity regulated by HIPAA.

Agreement

In consideration of the foregoing recitals and the promises set forth herein, the Parties agree as follows:

1. Definitions. All terms used in this BAA not specifically defined otherwise below shall have the meaning set forth in Exhibit 1.1 or the same definitions as given to them under HIPAA.

(a) “PHI” or “Protected Health Information” is defined as these terms are defined at 45 C.F.R. § 164.103, except that as used herein, the term shall refer only to Protected Health Information that Business Associate creates, receives, maintains or transmits on behalf of or from Covered Entity. For purposes of this BAA, PHI shall include Personal Information as defined in the California Civil Code when and as applicable.

2. Obligations of Business Associate.

(a) Compliance with Regulatory Obligations of Business Associate. Business Associate shall perform and comply with all the applicable obligations and requirements imposed upon business associates pursuant to HIPAA.

(b) Permitted Use and Disclosure of PHI. Business Associate shall use and disclose PHI only as necessary to perform Business Associate’s obligations, functions, activities and/or services under the Participation Agreement, and, subject to the limitations of the Participation Agreement, as otherwise permitted or required by this BAA, or by HIPAA or required by Law. Business Associate shall not use or disclose PHI in any manner that would violate the requirements of HIPAA if done by Covered Entity.

(c) Specified Permitted Uses of PHI. Without limiting the generality of Section 2(b) (Permitted Use and Disclosure of PHI), but subject to the limitations of the Participation Agreement, Business Associate may use PHI as follows, if necessary:

- (i) For the proper management and administration of Business Associate.
- (ii) To carry out the legal responsibilities of Business Associate.
- (iii) To provide data aggregation services relating to the health care operations of Covered Entity if and to the extent provided by the Participation Agreement.
- (iv) To perform services related to the creation of De-Identified Data.

(d) Specified Permitted Disclosures of PHI. Without limiting the generality of Section 2(b) (Permitted Use and Disclosure of PHI), Business Associate may disclose PHI as follows:

(i) For the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate if:

(A) If the disclosure is required by Law; or

(B) If Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and used or further disclosed only as required by Law or for the purposes for which it was disclosed to the person, and if the person promptly notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(e) Safeguards. Business Associate shall use appropriate safeguards and comply, where applicable, with 45 C.F.R. §§ 164.302 through 164.316 with respect to electronic PHI, and will apply appropriate safeguards to prevent use or disclosure of the PHI in any form, including electronic form other than as provided for by this BAA

(f) Reporting Unauthorized Uses and Disclosures. Business Associate shall report to Covered Entity, without unreasonable delay, and in accordance with the deadlines provided below, any use or disclosure of PHI not permitted by this BAA of which Business Associate becomes aware, including any use or disclosure involving PHI and any Breach of Privacy or Security as defined herein. Without limiting the generality of the foregoing:

(i) Reporting of Breaches of Privacy or Security.

(A) Following the discovery of (I) any access to, use or disclosure of PHI which is not permitted by the Participation Agreement (including any Breach of Privacy or Security) or (II) any Security Incident, Business Associate shall notify Covered Entity by contacting Covered Entity's designated privacy contact person without unreasonable delay, and in no case later than forty eight (48) hours after discovery of the Breach of Privacy or Security of the Security Incident; 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 unauthorized access, use or disclosure of PHI. Covered Entity will advise Business Associate of any subsequent changes to the privacy contact person's contact information.

(B) In the event of a Breach of Privacy or Security, Business Associate shall without unreasonable delay carry out an investigation and shall provide reasonably frequent updates to Covered Entity as to the results of the investigation, including, as soon as reasonably possible, the identification of each Patient whose PHI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during any Breach of Privacy or Security.

(C) Business Associate shall cooperate with Covered Entity and shall provide that assistance as Covered Entity may reasonably request so that Covered Entity may comply with any obligations it may have to investigate, remediate, mitigate, report, and or otherwise notify third parties of that Breach of Privacy or Security.

(g) Arrangements with Subcontractors. Business Associate shall enter into a BAA with any subcontractor of Business Associate that creates, receives, maintains, or transmits PHI on behalf of Business Associate, pursuant to which the subcontractor shall agree to comply with the applicable requirements of HIPAA and the same (or more stringent) restrictions and conditions that apply to Business Associate with respect to that PHI pursuant to this BAA, and pursuant to which Business Associate shall obtain satisfactory assurances that the subcontractor shall appropriately safeguard that PHI

(h) Individuals' Access to PHI. If Business Associate receives a Patient's request for access to PHI, Business Associate shall, within five (5) business days of its receipt of the request, notify the Covered Entity responsible for making the determination regarding the granting or denial of a Patient's request. In the event that Business Associate identifies multiple covered entities to which the Patient could make the request, then Business Associate shall coordinate discussion amongst the covered entities to determine the appropriate course of action. Business Associate shall not make any that determinations or provide the requested access unless requested by the Covered Entity or covered entities. If and to the extent that a Covered Entity requests Business Associate's assistance in fulfilling a request made by a Patient for access to PHI, Business Associate shall make that PHI available to Covered Entity within ten (10) business days of the Covered Entity's request as and to the extent required for Covered Entity's compliance with its obligations to provide Patients with access to and copies of PHI pursuant to 45 C.F.R. § 164.524. .

(i) Amendments to PHI. If Business Associate receives a Patient request for an amendment to PHI, Business Associate shall, within five (5) business days of its receipt of the request, notify the Covered Entity responsible for making the determination regarding the granting or denial of a Patient's request. Covered Entity shall be responsible for making all determinations regarding the granting or denial of a Patient's request for amendment, and for notifying Patients thereof, and Business Associate shall not make any that determinations or make any that amendments. In the event that Business Associate identifies multiple covered entities to which the Patient could make the request, then Business Associate shall coordinate discussion amongst the covered entities to determine the appropriate course of action. If and to the extent that Covered Entity requests Business Associate's assistance or directs Business Associate to incorporate an amendment to PHI, Business Associate shall, within ten (10) days of the Covered Entity's request, cooperate with the Covered Entity, including incorporating any amendments to PHI directed by Covered Entity, as and to the extent required for Covered Entity's compliance with 45 C.F.R. § 164.526..

(j) Accountings of Disclosures. If Business Associate receives a Patient's request for an accounting of disclosures of PHI, Business Associate shall, within five (5) business days of its receipt of the request, notify the Covered Entity responsible for complying with the request. In the event that Business Associate identifies multiple covered entities to which the Patient could make the request, then Business Associate shall coordinate discussion amongst the covered entities to determine the appropriate course of action. Business Associate shall document disclosures of PHI as required to provide Covered Entity with information sufficient to respond to any request by a Patient for an accounting of disclosures in compliance with 45 C.F.R. § 164.528, and shall provide that information to Covered Entity upon request within ten (10) business days. Covered Entity shall be responsible for providing all accountings of disclosures to Patients, and Business Associate shall not provide any accountings to Patients directly.

(k) Other Obligations. To the extent that Business Associate is, pursuant to the Participation Agreement or this BAA, responsible to carry out an obligation of Covered Entity under HIPAA, Business Associate shall comply with the requirements of HIPAA that apply to Covered Entity in the performance of that obligation.

(l) Books and Records. Business Associate shall make its internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity, available to the Secretary for purposes of determining Covered Entity's or Business Associate's compliance under HIPAA.

3. Covered Entity's Obligations.

(a) Notice of Change in Privacy Practices. Covered Entity shall notify Business Associate of any limitation(s) in Covered Entity's notice of privacy practices in accordance with 45 C.F.R. §164.520, to the extent that that limitation may affect Business Associate's use or disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the change to the notice of privacy practices containing such limitation.

(b) Notice of Change in Permissions. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that that change may affect Business Associate's use or disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the date when Covered Entity learns of the change in permissions. Business Associate shall abide by each change in, or revocation of, permission described above in this clause (b).

(c) Notice of Change in Use. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. §164.522, to the extent that that restriction may affect Business Associate's use or disclosure of PHI, as soon as reasonably practicable, and in no case more than ten (10) business days after the date when Covered Entity learns of the restriction. Business Associate shall abide by each restriction described above in this clause (c).

(d) Appropriate Requests. Covered Entity shall not request that Business Associate use or disclose PHI in any manner that would not be permissible under HIPAA if done by Covered Entity.

4. Term and Termination.

(a) Term. Subject to the other provisions of this Section 4 (Term and Termination), the term of this BAA shall be coextensive with that of the Participation Agreement.

(b) Breach Pattern of Practice. If party knows of a pattern of activity or practice by the other party that constitutes a material breach or violation of its obligations under HIPAA or this BAA, such party shall notify the other party of that breach. If such other party is unsuccessful in curing that breach within a reasonable time period specified by the notifying party, the notifying party may terminate this BAA and the Participation Agreement, if feasible, upon written notice to the other party.

(c) Conduct Upon Termination. Upon termination or expiration of this BAA, Business Associate and Covered Entity acknowledge that return or destruction of PHI is not feasible. Accordingly, Business Associate shall extend the protections of this BAA, including Section 2(e) (Safeguards), to any that PHI for so long as it is not destroyed, and limit further uses and disclosures of that PHI to those purposes that make the return or destruction not feasible, for as long as Business Associate or any subcontractor of Business Associate maintains that PHI. Upon the expiration of this period of infeasibility, if any, Business Associate shall destroy all PHI that it has retained. If PHI is to be destroyed pursuant to this Section 4(d) (Conduct Upon Termination) or pursuant to the Participation Agreement, Business Associate shall certify in writing to Covered Entity that that PHI has been destroyed.

5. Relationship to Participation Agreement. In the event that a provision of this BAA is contrary to a provision of the Participation Agreement pertaining to Business Associate's performance of its obligations as a business associate, the provisions of this BAA shall control.

6. Cooperation in Investigations. The Parties acknowledge that certain breaches or violations of this BAA may result in litigation or investigations pursued by federal or state governmental authorities of the United States resulting in civil liability or criminal penalties. Each Party shall cooperate in good faith in all respects with the other Party in connection with any request by a federal or state governmental authority for additional information and documents or any governmental investigation, complaint, action or other inquiry.

7. Amendment. The Parties agree to take that action from time to time as is necessary to amend this BAA for Covered Entity and Business Associate to comply with HIPAA or other applicable law. The Parties agree that this BAA may only be modified by mutual written amendment, signed by both Parties, effective on the date set forth in the amendment.

8. Interpretation. Any ambiguity in this BAA shall be interpreted to permit compliance with HIPAA.

9. Waiver. Any failure of a Party to insist upon strict compliance with any term, undertaking or condition of this BAA shall not be deemed to be a waiver of that term, undertaking or condition. To be effective, a waiver must be in writing, signed and dated by the Parties to this BAA.

10. Counterparts. This BAA may be executed in multiple counterparts, each of which shall be deemed an original and all of which together shall be deemed one and the same instrument. Any photocopy of this executed Agreement may be used as if it were the original.

11. Governing Law. Notwithstanding any other provision to the contrary, this BAA shall be governed and construed in accordance with the laws of the State of California.

In witness whereof, Covered Entity and Business Associate have entered into this BAA as of the Effective Date of the Participation Agreement.

Covered Entity

By: _____
Name: _____
Title: _____

Business Associate

By: _____
Name: _____
Title: _____