



## HIPAA: Business Associate Agreement

This HIPAA Business Associate Agreement ("**BAA**"), is entered into by and between Infoline of San Diego County, dba, 2-1-1 San Diego, ("**Business Associate**") and the Covered Entity or Business Associate named on the signature page hereto ("**Covered Entity**"), each a "Party" and collectively, the "Parties." This BAA shall be effective on the date indicated at the signature page hereto, or the date commensurate with the effective date of the Participation Agreement or other agreement entered into by the Parties ("Agreement") pursuant to which Business Associate will be granted access to protected healthcare information, (whichever effective date is earlier). *This BAA applies to the parties only to the extent that a business associate relationship exists within the meaning of 45 CFR 160.03.*

### RECITALS

**Whereas**, at times, 2-1-1 San Diego, may serve as a Business Associate that creates, receives, maintains, stores, aggregates, transmits or facilitates the exchange of protected health information ("PHI") for, on behalf of and between "Covered Entities" or other Business Associates for Permitted Purposes.

**Whereas**, at various times, Business Associate may provide Services for, or on behalf of a Covered Entity, that requires Business Associate to collect, store, transmit, retrieve, use or disclose an Individual's protected health information, orally, or in paper or electronic form. In doing so, it is the intent of each of the Parties to this Agreement to observe and faithfully perform the duties and obligations of a Business Associate, and Covered Entity, as the context may require, in accordance with the "Privacy Laws" and the following Terms and Conditions.

**Now therefore**, in light of the foregoing Recitals and for valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto hereby agree as follows:

### TERMS AND CONDITIONS

#### **ARTICLE I** **DEFINITIONS:**

**1.1. Definition of Capitalized Terms.** Unless otherwise defined in this BAA, capitalized terms shall have the meaning set forth in the Privacy Laws.

"**Agreement**" means and refers to collectively, the Participation Agreement and each statement of work, if any, and this BAA, or if there is no Participation Agreement, then Agreement means this BAA.

"**Privacy Laws**" means and refers to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the regulations promulgated thereunder by the U.S. Department of Health and Human Services (45 CFR Parts 160, 162 and Subparts A, C, D and E of Part 164, the "HIPAA Regulations"), and the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act") Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5 (February 17, 2009).

"**Breach**" as defined by 45 CFR §164.402 means the unauthorized acquisition, access, use, or disclosure of PHI or any activity that compromises the security or privacy of such information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information.

"**Business Associate**" as defined by 45 C.F.R. 160.13, includes any entity that creates, receives, maintains, or transmits protected healthcare information ("PHI") on behalf of a Covered Entity.

"**Business Associate Subcontractor**" or "**Subcontractor**" means a contractor to Business Associate that performs services as a Business Associate as that term is defined in 45 CFR §160.103.

"**Covered Entity**" refers to a Health Plan, Health Care Clearinghouse, or Health Care Provider that transmits any protected healthcare information in electronic form in connection with a transaction covered by HIPAA and shall have the same meaning as the term "Covered Entity" as stated at 45 CFR §160.103.



**“Permitted Purpose”** means and refers to the purposes for which PHI may be used and disclosed under the Privacy Laws, including, without limitation, treatment, payment, healthcare operations, healthcare oversight, public health, emergency medical services and the determination of eligibility for and the delivery of government benefits to the Individual that is the subject of the PHI.

**“Protected Healthcare Information”** or **“PHI”** means any information, whether oral or recorded in any form or medium, including electronic PHI or “ePHI”: (i) that relates to the past, present, or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual, and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term at 45 CFR § 160.103.

**“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, and shall have the meaning given to such term at 45 CFR § 164.304.

**“Services”** shall mean, to the extent and only to the extent they involve the creation, use, storage, transmission, encryption, destruction or disclosure of PHI for a Permitted Use by a Business Associate or Business Associate Subcontractor under the Participation Agreement.

**“Participation Agreement”** means and refers to the agreement between Business Associate and Covered Entity and each statement of work pursuant to which Business Associate agrees to perform Services that involve the use or disclosure of PHI.

**ARTICLE II**

**COMPLIANCE WITH THE PRIVACY LAWS**

**2.1. Parties Mutual Obligation to Comply with Privacy Laws.** The Parties to this BAA shall observe and comply with the Privacy Laws and faithfully perform the duties and obligations of a Business Associate, or Covered Entity, respectively as such terms may pertain to them from time to time under the Privacy Laws, at all times during the Term of this Agreement and for such period of time following termination as may be required by the Privacy Laws.

**2.2. Effect of BAA.** This BAA amends, supplements, and is made a part of any and all Agreements between 2-1-1 San Diego and the Covered Entity, to the extent 2-1-1 San Diego is to perform Services as a Business Associate. To the extent the terms and conditions of the Participation Agreement are inconsistent or conflict with the terms of this BAA, this BAA shall govern.

**ARTICLE III**

**USE AND DISCLOSURE OF PHI**

**3.1. Permitted Uses and Disclosures:** Business Associate may use or disclose PHI if necessary and consistent with 42 U.S.C Section 17935(b) only to the extent necessary to perform functions, activities or services specified in this BAA, or the

Participation Agreement on behalf of Covered Entity, provided such use or disclosure would not violate the Privacy Laws, if done by Covered Entity.

**3.2. Management and Administration.** Except at otherwise indicated in this BAA, Business Associate may use and disclose PHI (a) to properly manage and administer Business Associate’s business, and carry out Business Associate’s legal responsibilities.

**3.3. Data Aggregation.** Business Associate may use and disclose PHI to provide Data Aggregation services relating to the Health Care Operations of the Covered Entity.

**3.4. De-Identified.** Business Associate may use PHI to de-identify the information in accordance with 42 CFR 164.514(a)-(c) for any lawful purpose.

**3.5. Limited Data Set.** Business Associate may request PHI in the form of a Limited Data Set, to be used for research, public health or health care operations.

**3.6. Minimum Necessary.** Business Associate shall limit access to PHI within its own workforce and place the same requirements upon its Business Associate Subcontractor’s to those knowledgeable of the Privacy Laws and only on a need to know basis.

**ARTICLE IV**

**OBLIGATIONS OF BUSINESS ASSOCIATE:**

**4.1. Nondisclosure.** Business Associate shall not use, access or disclose PHI other than as permitted or required by the Participation Agreement, this BAA or by the Privacy Laws.

**4.2. Safeguards.** Business Associate shall adopt, implement and update administrative, physical and technological safeguards that reasonably and appropriately protect the privacy, integrity, and security of PHI and to comply with the applicable standards of Subpart C of 45 CFR Part 164. Covered Entity shall have the right to audit these security controls and review Business Associates’ written information privacy and security policies and procedures, from time to time upon not less than five (5) business days notice to Business Associate. Business Associate will implement technology or methodology specified by the Secretary pursuant to 42 USC Section 17932(h) that renders PHI unusable, unreadable, or indecipherable to unauthorized individuals.

**4.3. Report Unauthorized Use or Disclosures to Covered Entity.** Business Associate shall report to Covered Entity any use or disclosure of PHI not provided for by the Agreement that is not otherwise permitted by Law. In this regard, Business Associate will report Breaches of Unsecured ePHI as required at 45 CFR 164.410,

**4.4. Business Associate Subcontractors.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, Business Associate will take reasonable steps to ensure those of its subcontractors, (and their employees or agents) that create, receive, maintain, or transmit PHI on behalf of Business Associate agree to substantially the same restrictions, conditions, and requirements, including requirements for reporting any Breaches or Security Incidents as apply to Business Associate herein,



**4.5. Accounting to Individual of Disclosures.** Business Associate shall maintain, and within twenty (20) days of a written request, provide the information required or reasonably necessary to permit Covered Entity to satisfy its obligations under 45 CFR 164.528 to provide an accounting of disclosures to an Individual. Unless otherwise agreed, Business Associate shall not be required to provide an accounting of disclosures directly to the Individual, but shall forward such requests to Covered Entity.

**4.6. Amendments to PHI.** To the extent Business Associate maintains PHI in a central database on behalf of Covered Entity, Business Associate will make such amendments to PHI in a Designated Record Set as directed or agreed to by Covered Entity pursuant to 45 CFR 64.526.

**4.7. Compliance Audit.** Business Associate shall make its internal practices, books, and records available to the Secretary and/or Covered Entity upon request, for purposes of determining compliance with the Privacy Laws, and to investigate any Breach or Security Incident.

**4.8. Marketing or Sale of PHI.** Subject to the limitations set forth in Section 13405(d)(2) of the HITECH Act, and in compliance with 45 CFR Section 164.502(a)(5), except for compensation for services provided under the Participation Agreement, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI from a third party.

**4.9. Indecipherable or Lost PHI.** Business Associate shall take reasonable steps, at its sole cost and expense, to trace lost PHI or translate and recreate indecipherable transmissions of ePHI where such loss or corruption is the result of or related to a disruption or malfunction of Business Associate's internet connection, hardware, software or a breach of or defect in its security system.

**4.10. Designated Record Set.** Within ten (10) day of receiving a request, and to the extent Data is maintained by Business Associate, Business Associate shall make PHI available to Covered Entity in a Designated Record Set to permit Covered Entity to satisfy its obligations under 45 CFR 164.524.

**4.11. Standard Transactions.** To the extent Business Associate conducts Standard Transactions, Business Associate shall comply with the Privacy Laws and specifically the Administrative Requirements set forth at 45 CFR Part 162.

**4.12. Covered Entity's Obligations.** To the extent Business Associate is to carry out Covered Entity's obligations under 45 CFR Part 164, Subpart E, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligations.

**4.13. Export of PHI.** Business Associate, its agents or Subcontractors not perform any services that require the export of PHI outside the United States of America without the prior written consent of the Covered Entity.

**4.14. Notice and Opportunity to Oppose Disclosure.** In the event Business Associate is required by law to disclose PHI pursuant to a court order or other legal proceeding or investigation, Business Associate shall promptly Notify Covered

Entity of such requirement so as to afford Covered Entity sufficient time to take appropriate action to oppose the disclosure.

#### ARTICLE V

##### COVERED ENTITY OBLIGATIONS

**5.1. Restriction on Use or Disclosure.** Covered Entity will immediately 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 CFR §164.522, to the extent that such restriction may affect Business Associate's (or that of its Subcontractor) use or disclosure of PHI.

**5.2. Consent or Authorization.** Covered Entity will not disclose or provide Business Associate or its Subcontractors access to PHI except to the extent Covered Entity is permitted or required to do so under the Privacy Laws or pursuant to the consent or authorization of the Individual (or his or her representatives) that is the subject of the PHI.

**5.3. Notice of Privacy Practices.** Covered Entity shall provide Business Associate with a copy of its most current Notice of Privacy Practices, and updates as and when made.

#### ARTICLE VI

##### BREACH OR SECURITY INCIDENT

**6.1. Breach or Security Incidents.** Business Associate shall promptly notify Covered Entity as required by 45 CFR 164.410, but no later than five (5) business days after Business Associate becomes aware of a Breach or Security Incident. Business Associate shall be deemed to be aware of a Breach or Security Incident as of the first day on which such Breach or Security Incident is actually known or reasonably should have been known by any of its officers, employees, agents or subcontractors.

**6.2. Investigation and Corrective Action.** The Parties will cooperate with each other in good faith in the investigation of the Breach or Security Incident. Business Associate will promptly take such steps as are reasonable to mitigate any harmful effects of such Breach or Security Incident and shall Notify Covered Entity, no later than twenty (20) days after discovery of the Breach or Security Incident of; (i) the identity of each Individual whose Unsecured PHI was accessed, acquired, used or disclosed as a result of the Breach, and (ii) such other information required by the actions taken by Business Associate to mitigate any harmful effect of such Breach or Security Incident, and (iii) the corrective action such Party has taken or shall take to prevent future similar Breaches or Security Incidents, and (iii) any other action required by Applicable Laws pertaining to the Breach or Security Incident.

**6.3 Notification To Individuals.** Unless the parties agree in writing otherwise, Covered Entity shall provide Individuals affected by a Breach or Security Incident such notification required by the Privacy Laws.

**6.4. Notification to Media.** A notification required to be given to the public via the media pursuant to 45 CFR 164.406 shall be provided by Covered Entity, unless the parties agree in writing otherwise. Business Associate will not communicate with the



media concerning a Breach or Security Incident unless directed to do so by Covered Entity in Writing.

## ARTICLE VII TERM AND TERMINATION

**7.1. Term.** The Term of this BAA shall commence on the Effective Date and terminate on the date that is commensurate with the Termination Date of the Participation Agreement, (as the same may be extended or renewed).

**7.2. Termination for Cause.** Either Party may terminate this BAA (and the Participation Agreement) immediately upon Notice for "Cause." "Cause" shall mean and refer to (i) a Party's failure to cure a material breach of this BAA within thirty (30) days of Notice of such breach; (ii) any act or omission of a Party resulting in a Breach or Security Incident, (iii) failure of Business Associate to provide the accounting of disclosures or security audit in a timely manner, (iv) failure of a Party to take reasonable corrective action to prevent Breaches or Security Incidents. In addition, Covered Entity may terminate this BAA for any reason upon one (1) month's Notice.

**7.3. Obligations of a Party Upon Termination.** Upon termination of this BAA for any reason, and with respect to PHI received solely from Covered Entity or created, maintained, or received by Business Associate solely for Covered Entity, Business Associate shall, if feasible, 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 the proper management and administration of its business and legal responsibilities or for the Permitted Purposes for which such PHI was originally used or retained.

## ARTICLE VIII: MISCELLANEOUS PROVISIONS.

**8.1. Contradictory Terms; Construction of Terms.** Any capitalized term or provision of the Agreement that contradicts one or more terms and conditions of this BAA, including the definition of a Capitalized Term shall be superseded by the definitions and term and conditions set forth in this BAA for the purposes of complying with the Privacy Laws.

**8.2. Amendment.** This BAA shall be amended from time to time as is necessary in order for a Party to comply with the requirements of the Privacy Laws. All other amendments must be in writing and executed by both parties to be effective.

**8.3. Interpretation.** This BAA represents the Parties' entire understanding and supersedes any and all prior agreements between the Parties whether written or oral, as they may pertain to the subject matter of this BAA. Any ambiguity in this BAA or the Participation Agreement shall be interpreted to permit or

require compliance with the Privacy Laws. The terms and conditions stated in this BAA shall control over any conflicting or varying terms and conditions in the Participation Agreement.

**8.4. No Agency.** Nothing in this BAA is intended to create or imply an employment relationship, partnership or joint venture between Covered Entity and Business Associate. Nothing express or implied in this BAA is intended to confer, nor shall anything herein confer, upon any person other than the Parties and their respective successors and assigns, any rights, remedies obligations or liabilities.

**8.5. Survival.** Those obligations of a Party which by their meaning are intended to survive termination, including, but not limited to the obligations to protect the privacy and security of PHI from unlawful disclosure, shall continue in effect for a period of seven (7) years following termination.

**8.6. Notice.** Any Notice required to be given to the other Party shall be in writing and shall be sent by first class certified U.S. Mail, return receipt requested, or by overnight courier and delivered to the address provided by such Party below, or to such change of address as a Party may specify by Notice.

**8.7. Severability.** The provisions of this Agreement shall be severable, and the invalidity or unenforceability of any provision (or part thereof) of this Agreement shall in no way affect the validity or enforceability of any other provision (or remaining part thereof.) If any part of any provision contained in this Agreement is determined to be invalid, illegal or incapable of being enforced, the provision shall be interpreted in a manner so as to enforce it to the fullest extent permitted by law.

**8.8. Debarment, Suspension.** Business Associate certifies that neither it, nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from participation in this transaction by any federal, or state agency.

**8.9. Attorneys Fees.** Each party shall bear its own costs in connection with any legal action or proceeding brought to enforce, enjoin or interpret this Agreement or the rights and obligations of a Party hereto.

**8.10. Jurisdiction/Venue.** This BAA shall be governed by California law notwithstanding any conflicts of law provisions to the contrary. Venue for any legal proceeding brought to enforce, enjoin or interpret this BAA shall be conferred on the State or Federal Court situated in San Diego County.

**8.11. Counterparts.** Any number of counterparts of this Agreement may be signed and delivered, each of which shall be considered an original and all of which, together, shall constitute one and the same Agreement.



**IN WITNESS WHEREOF**, the Parties identified below have executed this Business Associate Agreement.

**BUSINESS ASSOCIATE:**

**COVERED ENTITY/BUSINESS ASSOCIATE:**

**INFOLINE OF SAN DIEGO,  
DBA, 2-1-1 SAN DIEGO**

Signature:

Signature:

By: \_\_\_\_\_

Its:

Date:

By: \_\_\_\_\_

Its:

Date:

**Address For Notice:**

**Infoline San Diego, dba**

**2-1-1 San Diego**

3860 Calle Fortunada

San Diego, CA 92123

**Address For Notice:**