

HIPAA Business Associate Agreement #4279

RECITALS

WHEREAS, El Dorado County (EDC) Health and Human Services Agency (hereinafter referred to as HHS) has requested that Unite USA, Inc., doing business as Unite Us, a Delaware corporation with offices located at 65 North Moore Street, New York, New York 10013, (hereinafter referred to as Business Associate (“BA”)) enter into a Health Insurance Portability and Accountability Act (“HIPAA”) Business Associate Agreement; and

WHEREAS, BA owns and operates a proprietary case management or network care coordination software tool (“Service Software”) that enables organizations to provide and manage services, collaborate, and transfer specific data either intra-organizationally or across a network of organizations; and

WHEREAS, in conjunction with accessing the software tool, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations; and

WHEREAS, HHS and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA in compliance with the HIPAA Pub. L. No. 104-191 of 1996 the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

WHEREAS, HHS is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 Code of Federal Regulations (CFR) Section 160.103 ; and

WHEREAS, BA, when a recipient of PHI from HHS, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 United States Code (USC) Section 17938 and 45 CFR Section 160.103; and

WHEREAS, “Individual” shall have the same meaning as the term “individual” in 45 CFR Section 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.202(g);

WHEREAS, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

WHEREAS, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement (“BAA”), capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.
2. Scope of Use and Disclosure by BA of HHS Disclosed PHI
 - A. BA shall not disclose PHI and/or EPHI except for the purposes of performing BA’s obligations under the BAA. Further, BA shall not use PHI and/or EPHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
 - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this BAA or required by law, BA may:
 - (1) use the PHI and EPHI in its possession for its proper management and administration and to fulfill any legal obligations.
 - (2) disclose the PHI and EPHI in its possession to a third party for the purpose of BA’s proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
 - (3) disclose PHI and EPHI as necessary for BA’s operations only if:
 - (a) prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
 - (i) to hold such PHI and EPHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
 - (ii) the third party will immediately notify BA of any breaches of confidentiality of PHI and EPHI to extent it has obtained knowledge of such breach.
 - (4) aggregate the PHI and EPHI and/or aggregate the PHI and EPHI with that of other data for the purpose of providing HHS with data analyses related to the BAA, or any other purpose, financial or otherwise, as requested by HHS.
 - (5) not disclose PHI and EPHI disclosed to BA by HHS not authorized by the this BAA without patient authorization or de-identification of the PHI as authorized in writing by HHS.
 - (6) de-identify any and all PHI and EPHI of HHS received by BA under this BAA Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.

- C. BA agrees that it will neither use nor disclose PHI and EPHI it receives from HHS, or from another business associate of HHS, except as permitted or required by this BAA or as required by law, or as otherwise permitted by law.
3. Obligations of BA. In connection with its use of PHI and EPHI disclosed by HHS to BA, BA agrees to:
- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI and EPHI other than as permitted by the BAA that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI and EPHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
 - B. Report to HHS within twenty-four (24) hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI or EPHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to HHS in writing of any access, use or disclosure of PHI and/or EPHI not permitted by this BAA, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of HHS, BA may be required to reimburse HHS for notifications required under 45 CFR 164.404 and CFR 164.406.
 - D. BA shall not use or disclose PHI or EPHI for fundraising or marketing purposes. BA shall not disclose PHI or EPHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI and EPHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI and/or EPHI, except with the prior written consent of HHS and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by HHS to BA for services provided pursuant to the BAA.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of HHS, within five (5) days, to PHI and EPHI in a Designated Record Set, to HHS, or to an Individual as directed by the HHS. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable HHS to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
 - B. Within ten (10) days of receipt of a request from HHS, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in

the event that the PHI and/or EPHI in BA's possession constitutes a Designated Record Set.

- C. To assist HHS in meeting its disclosure accounting under HIPAA:
 - (1) 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. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and EPHI, and, if known, the address of the entity or person; (iii) a brief description of PHI and EPHI 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.
 - (2) Within in thirty (30) days of notice by HHS, BA agrees to provide to HHS information collected in accordance with this section to permit HHS to respond to a request by an Individual for an accounting of disclosures of PHI and EPHI.
- D. Make available to HHS, or to the Secretary of Health and Human Services (the "Secretary"), BA's internal practices, books and records relating to the use of and disclosure of PHI and EPHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide HHS a copy of any PHI and EPHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of HHS.

- A. HHS agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI and EPHI agreed to by HHS that may affect BA's ability to perform its obligations under this BAA.
- B. HHS agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI and EPHI, if such changes or revocation may affect BA's ability to perform its obligations under this BAA.
- C. HHS agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI and EPHI.
- D. HHS shall not request BA to use or disclose PHI or EPHI in any manner that would not be permissible under the Privacy Rule if done by HHS, except as may be expressly permitted by the Privacy Rule.

- E. HHSa will obtain any authorizations necessary for the use or disclosure of PHI and EPHI, so that BA can perform its obligations under this BAA.

6. Term and Termination.

- A. Term. This BAA shall commence upon the execution of this BAA and terminate upon completion of the agreed upon work, as provided therein when all PHI and EPHI provided by HHSa to BA, or created or received by BA on behalf of HHSa, is destroyed or returned to HHSa, or, or if it is infeasible to return or destroy PHI and EPHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the HHSa's knowledge of a material breach by the BA, HHSa shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this BAA if the BA does not cure the breach or end the violation within the time specified by HHSa.
 - (2) Immediately terminate this BAA if the BA has breached a material term of this BAA and cure is not possible; or
 - (3) If neither termination nor cures are feasible, HHSa shall report the violation to the Secretary.
- C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this BAA, for any reason, the BA shall, at the option of HHSa, return or destroy all PHI and EPHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI and EPHI.
 - (2) In the event that HHSa determines that returning or destroying the PHI and EPHI is infeasible, BA shall provide to HHSa notification of the conditions that make return or destruction infeasible, and. BA shall extend the protections of this BAA to such PHI and EPHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If HHSa elects destruction of the PHI and EPHI, BA shall certify in writing to HHSa that such PHI and EPHI has been destroyed.

7. Indemnity

- A. Each of BA and HHSa (each "Indemnifying Party") shall indemnify and hold harmless one another and, in the case of HHSa all Agencies, Districts, Special Districts and Departments of HHSa, and its and their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives ("Representatives, and collectively "Indemnified Party") from any liability whatsoever, based or asserted upon either party, or its Representatives, arising out of or in any way relating to the use or performance of the Service Software under this BAA, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs including attorney fees, cost of investigation, defense and settlement of awards based upon or resulting from any reason whatsoever to the extent

arising from the use or performance of the Service Software or the acts or omissions of either party or its officers, agents, employees, subcontractors, agents or representatives under this BAA.

- B. With respect to any action or claim subject to indemnification herein the Indemnifying Party shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of the Indemnified Party, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of the Indemnified Party; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes the Indemnifying Party's indemnification of the Indemnified Party as set forth herein. The Indemnifying Party's obligation to defend, indemnify and hold harmless the Indemnified Party shall be subject to the Indemnified Party having given the Indemnified Party written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at the Indemnifying Party's expense, for the defense or settlement thereof. The Indemnifying Party's obligation hereunder shall be satisfied when the Indemnifying Party has provided to the Indemnified Party the appropriate form of dismissal relieving the Indemnified Party from any liability for the action or claim involved.
- C. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve an Indemnifying Party's obligations to indemnify to the fullest extent allowed by law.

- 8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for HHS to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
- 9. Survival The respective rights and obligations of this BAA shall survive the termination or expiration of this Business Associate Agreement.
- 10. Regulatory References A reference in this BAA to a section in the Privacy Rule means the section as in effect or as amended.
- 11. Conflicts Any ambiguity in this BAA shall be resolved to permit HHS to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
- 12. Counterparts: This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement.

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Entire Agreement: This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

Requesting Contract Administrator Concurrence:

By: _____
Jamie Samboceti, Deputy Director
Behavioral Health Division
Health and Human Services Agency

Dated: _____

Requesting Department Head Concurrence:

By: _____
Donald Semon
Director
Health and Human Services Agency

Dated: _____

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IN WITNESS WHEREOF, the parties hereto have executed this Business Associate Agreement #4279 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Sue Novasel, Chair
Board of Supervisors
"County"

ATTEST:
Kim Dawson
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- CONTRACTOR --

UNITE USA
A Delaware Corporation

By: _____
Daniel Brillman
Chief Executive Director
"Contractor"

Dated: _____

By: _____
Corporate Secretary

Dated: _____

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