

BUSINESS ASSOCIATE/CHAIN OF TRUST AGREEMENT

THIS BUSINESS ASSOCIATE/CHAIN OF TRUST AGREEMENT (the "Agreement") is effective this ___ day of _____, 20___, (the "Effective Date") by and between, _____, (hereinafter "COVERED ENTITY"), and STRATEGIC HEALTHCARE PROGRAMS, a limited liability corporation with its operating office at 121 East Mason Street, Santa Barbara, California 93101, hereinafter referred to as the "BUSINESS ASSOCIATE".

RECITALS

WHEREAS, COVERED ENTITY and Business Associate are parties to an agreement (the "Underlying Agreement") pursuant to which Business Associate provides certain services to COVERED ENTITY and, in connection with those services, COVERED ENTITY discloses to Business Associate certain individually identifiable protected health information ("PHI") that is subject to protection under the Health Insurance Portability and Accountability Act of 1996, as amended from time to time ("HIPAA");

WHEREAS, the parties desire to comply with the HIPAA standards for the privacy of PHI of patients of COVERED ENTITY;

NOW THEREFORE, for and in consideration of the recitals above and the mutual covenants and conditions herein contained, COVERED ENTITY and Business Associate enter into this Agreement to provide a full statement of their respective responsibilities.

ARTICLE I – DEFINITIONS

1.1 Definitions. Unless otherwise provided herein or on Exhibit 1.1 attached hereto, capitalized terms shall have the same meaning as set forth in the HIPAA regulations, 45 CFR parts 142 and 160-164.

ARTICLE II – SCOPE OF USE OF PHI

2.1 Performance of Agreement. Business Associate, its agents and employees (collectively referred to as "Business Associate") may use PHI solely to perform its duties under the Underlying Agreement and only as allowed by the terms of the Underlying Agreement and this Agreement. Business Associate agrees that it will not use or disclose PHI in a manner that violates or would violate the HIPAA regulations.

2.2 Safeguards for the protection of PHI. Business Associate agrees that it (a) will protect and safeguard from any oral and written disclosure all confidential information regardless of the type of media on which it is stored (e.g., paper, fiche, etc.) with which it may come into contact in accordance with applicable statutes and regulations, including, but not limited to HIPAA; (b) implement and maintain appropriate policies and procedures to protect and safeguard the PHI; and (c) use appropriate safeguards to prevent use or disclosure of PHI other than as permitted by this Agreement or required by law. Business Associate acknowledges that COVERED ENTITY is relying on the security safeguards of Business Associate in selecting Business Associate as a business partner. Business Associate shall promptly notify COVERED ENTITY of any material change to any aspect of its security safeguards.

2.3 Reporting of Unauthorized Use. Business Associate will promptly report to COVERED ENTITY any unauthorized use or disclosure immediately upon becoming aware of it; and will indemnify and hold COVERED ENTITY harmless from all liabilities, costs and damages arising out of or in any manner connected with the disclosure by Business Associate of any PHI. Business Associate shall permit COVERED ENTITY to investigate any such report and to examine Business Associate's premises, records and practices.

2.4 Use of Subcontractors. To the extent Business Associate uses one or more sub contractors to provide services under the Underlying Agreement, and such subcontractors or agents receive or have access to PHI, Business Associate agrees that it will ensure that each such subcontractor or agent shall agree to all of the same restrictions and conditions to which Business Associate is bound. Each such subcontractor or agent shall sign an agreement with Vendor containing substantially the same provisions as this Agreement.

2.5 Breach or Misuse of PHI. Business Associate recognizes that any breach of confidentiality or misuse of information found in and/or obtained from records may result the termination of this Agreement and/or legal action. Unauthorized disclosure may give rise to irreparable injury to the patient or to the owner of such information and accordingly the patient or owner of such information may seek legal remedies against Business Associate.

SECTION III – AMENDMENT OF PHI

3.1 Amendments by Business Associate. Business Associate acknowledges that the HIPAA regulations require COVERED ENTITY to provide access to PHI to the subject of that information, if and when Business Associate makes any Material Alteration to such information. Business Associate shall provide COVERED ENTITY with notice of each Material Alteration in any PHI and shall cooperate promptly with COVERED ENTITY in responding to any request made by any subject of such information to COVERED ENTITY to inspect and/or copy such information. Business Associate may not deny COVERED ENTITY access to any such information if, in COVERED ENTITY' sole discretion, such information must be made available to the subject seeking access to it.

3.2 Amendments Requested by COVERED ENTITY. Business Associate shall promptly incorporate all amendments or corrections to PHI when notified by COVERED ENTITY that such information is inaccurate or incomplete.

SECTION IV – AVAILABILITY, AUDITS AND INSPECTIONS

4.1 Availability of PHI. Business Associate agrees that it will (a) make available PHI in accordance with 45 CFR § 164.254; (b) make available the information required to provide an accounting of disclosures in accordance with 45 CFR § 528. Business Associate will provide such accounting to COVERED ENTITY as soon as possible, but at least twenty (20) days from request by COVERED ENTITY. Each accounting shall provide (i) the date of each disclosure; (ii) the name and address of the organization or person who received the PHI; (iii) a brief description of the information disclosed; and (iv) for disclosures other than those made at the request of the subject, the purpose for which the information was disclosed and a copy of the request or authorization for disclosure. Business Associate shall maintain a process to provide this accounting of disclosures for as long as Business Associate maintains PHI received from or on behalf of COVERED ENTITY.

4.2 Access to DHHS. 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 one party on behalf of the other available to the Secretary of Health and Human Services, governmental officers and agencies for purposes of determining compliance with 45 CFR §§ 164.500 – 534.

4.3 Access to COVERED ENTITY. Upon reasonable notice, Business Associate shall make its facilities, systems and records available to COVERED ENTITY to monitor compliance with this Agreement.

SECTION V – TERM/TERMINATION

5.1 Term and Termination. This Agreement is on the Effective Date and remain effective for the entire term of the Underlying Agreement, or until terminated as set forth herein.

5.2 Termination for Improper Use. COVERED ENTITY may terminate this Agreement and the Underlying Agreement if COVERED ENTITY, in its sole discretion, reasonably suspects that the Business Associate has improperly used or disclosed PHI in breach of this Agreement.

5.3 Termination for Inadequate Safeguards. COVERED ENTITY may terminate this Agreement without penalty if it determines, in its sole discretion, that any such changes or any diminution of Business Associate's reported security procedures or safeguards render any or all of Business Associate's safeguards unsatisfactory to COVERED ENTITY.

5.4 Termination After Repeated Violations. COVERED ENTITY may terminate the Underlying Agreement without penalty if Business Associate repeatedly violates this Agreement or any provision hereof, irrespective of whether, or how promptly, Business Associate may remedy such violation after being notified of the same. In the event of such termination, COVERED ENTITY shall not be liable for the payment of any services performed by Business Associate after the effective date of termination.

5.5 Return/Destruction of PHI. Business Associate agrees that, upon termination of the Underlying Agreement, for whatever reason, it will return or destroy all PHI, if feasible, received from, or created or received by it on behalf of COVERED ENTITY which Business Associate maintains in any form, and retain no copies of such information. An authorized representative of Business Associate shall certify in writing to COVERED ENTITY, within five (5) days from the date of termination or other expiration of the Underlying Agreement, that all PHI has been returned or disposed of as provided above and that Business Associate no longer retains any such PHI in any form.

5.6 No Feasible Return/Destruction of PHI. To the extent such return or destruction of PHI is not feasible, Business Associate shall extend the precautions of this Agreement to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information unfeasible. Business Associate shall remain bound by the provisions of this Agreement, even after termination of the Underlying Agreement, until such time as all PHI has returned or otherwise destroyed as provided in this section.

5.7 Effect of Termination. All rights, duties and obligations established in this Agreement shall survive termination of this Agreement.

SECTION VI – INDEMNIFICATION/INSURANCE

6.1 Indemnification. Business Associate shall indemnify and hold COVERED ENTITY harmless from and against all claims, liabilities, judgments, fines, assessments, penalties, awards or other expenses, of any kind or nature whatsoever, including, without limitation, attorney's fees, expert witness fees, and costs of investigation, litigation or dispute resolution, relating to or arising out of any breach or alleged breach of this Agreement by Business Associate.

6.2 Insurance. If COVERED ENTITY requires, Business Associate shall obtain and maintain insurance coverage against improper uses and disclosures of PHI by Business Associate, naming COVERED ENTITY as an additional named insured. Promptly following a request by COVERED ENTITY for the maintenance of such insurance coverage, Business Associate shall provide a certificate evidencing such insurance coverage.

SECTION VII – DISCLAIMER

7.1 Disclaimer. COVERED ENTITY MAKES NO WARRANTY OR REPRESENTATION THAT COMPLIANCE BY BUSINESS ASSOCIATE WITH THIS AGREEMENT OR THE HIPAA REGULATIONS WILL BE ADEQUATE OR SATISFACTORY FOR BUSINESS ASSOCIATE'S OWN PURPOSES OR THAT ANY INFORMATION IN THE POSSESSION OF BUSINESS ASSOCIATE OR CONTROL, OR TRANSMITTED OR RECEIVED BY BUSINESS ASSOCIATE, IS OR WILL BE SECURE FROM UNAUTHORIZED USE OR DISCLOSURE, NOR SHALL COVERED ENTITY BE LIABLE TO BUSINESS ASSOCIATE FOR ANY CLAIM, LOSS OR DAMAGE RELATING TO THE UNAUTHORIZED USE OR DISCLOSURE OF ANY INFORMATION RECEIVED BY BUSINESS ASSOCIATE FROM HOSPITAL OR FROM ANY OTHER SOURCE. BUSINESS ASSOCIATE IS SOLELY RESPONSIBLE FOR ALL DECISIONS MADE BY BUSINESS ASSOCIATE REGARDING THE SAFEGUARD OF PHI.

SECTION VIII – MISCELLANEOUS

8.1 Construction. This Agreement shall be construed as broadly as necessary to implement and comply with HIPAA and the HIPAA regulations. The parties agree that any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

8.2 Notice. All notices and other communications required or permitted pursuant to this Agreement shall be in writing, addressed to the party at the address set forth at the end of this Agreement, or to such other address as either party may designate from time to time. All notices and other communications shall be mailed by registered or certified mail, return receipt requested, postage pre-paid, or transmitted by hand delivery or telegram. All notices shall be effective as of the date of delivery of personal notice or on the date of receipt, whichever is applicable.

8.3 Modification of Agreement. The parties recognize that this agreement may need to be modified from time to time to ensure consistence with amendments to and changes in applicable federal and state laws and regulations, including, but not limited to, HIPAA. This Agreement shall not be waived or altered, in whole or in part, except in writing signed by the parties.

8.4 Transferability. COVERED ENTITY has entered into this Agreement in specific reliance on the expertise and qualifications of Business Associate. Consequently, Business Associate's interest under this Agreement may not be transferred or assigned or assumed by any other person, in whole or in part, without the prior written consent of COVERED ENTITY.

8.5 Governing Law and Venue. This Agreement shall be governed by, and interpreted in accordance with, the internal laws of the State of California, without giving effect to its conflict of law provisions. Santa Barbara County, California, shall be the sole and exclusive venue for any arbitration, litigation, special proceeding or other proceeding as between the parties that may be brought under, or arise out of this Agreement.

8.6 Binding Effect. This Agreement shall be binding upon, and shall ensure to the benefit of, the parties hereto and their respective permitted successors and assigns.

8.7 Execution. This Agreement may be executed in multiple counterparts, each of which shall constitute an original and all of which shall constitute but one Agreement.

8.8 Gender and Number. The use of the masculine, feminine or neuter genders, and the use of the singular and plural, shall not be given an effect of any exclusion or limitation herein. The use of the word “person” or “party” shall mean and include any individual, trust, corporation, partnership or other entity.

8.9 Priority of Agreement. If any portion of this Agreement is inconsistent with the terms of the Underlying Agreement, the terms of this Amendment shall prevail. Except as set forth above, the remaining provisions of the Underlying Agreement are ratified in their entirety.

IN WITNESS WHEREOF, the parties have hereunto set their hands effective the day and year first above written.

STRATEGIC HEALTHCARE PROGRAMS:

STRATEGIC HEALTHCARE PROGRAMS, LLC.
121 East Mason Street
Santa Barbara, CA 93101

By:

Barbara Rosenblum
President and CEO

COVERED ENTITY:

By: _____

Name: _____

Title: _____

Address for Notice:

