

**TELECARE AGREEMENT NO. _____
HIPAA BUSINESS ASSOCIATE AGREEMENT**

THIS AGREEMENT is made and entered into as of this 21st day of May, 2019 by and between the **TELECARE CORPORATION**, hereinafter referred to as “**COVERED ENTITY**”, and Chabot Las Positas Community College District whose mailing [or business] address is 7600 Dublin Blvd. 3rd Floor, Dublin, CA 94568, hereinafter referred to as “**BUSINESS ASSOCIATE**”.

RECITALS

WHEREAS, the Health Insurance and Portability Act of 1996 (Public Law 104-191) and its implementing regulations, including the “Privacy Rule” (collectively referred to as “HIPAA”), and other applicable law require that individually identifiable health information be safeguarded to protect an individual's privacy; and

WHEREAS, HIPAA requires Business Associate Agreements between Covered Entities and Business Associates defining how such individually identifiable health information shall be used and protected; and

WHEREAS, the parties wish to enter into an agreement defining their respective roles and responsibilities regarding the use and protection of individually identifiable health information in accordance with HIPAA;

WITNESSETH

NOW, THEREFORE, in consideration of the mutual promises herein and the exchange of information pursuant to this Agreement, the parties agree to the Terms attached hereto and incorporated by reference herein.

IN WITNESS WHEREOF, this Agreement was executed by the parties hereto as of the date first above written.

COVERED ENTITY	BUSINESS ASSOCIATE
<p>TELECARE CORPORATION</p> <p>By: _____</p> <p>Print/Type Name: <u>Doug Roberts</u></p> <p>Print/Type Title: <u>Interim Vice Chancellor - Business Services</u></p>	<p>_____ (Name of Business Associate)</p> <p>Authorizing Signature(s):</p> <p>By: _____</p> <p>Print/Type Name: _____</p> <p>Print/Type Title: _____</p>

HIPAA BUSINESS ASSOCIATE AGREEMENT

TERMS

1. **Term.** This Agreement shall commence as of the date first written above or on April 14, 2003, whichever occurs later in time, and shall terminate in accordance with the termination provisions specified in Paragraph 10 of this Agreement; except that the obligations of the parties under Paragraphs 10 (Termination), 15 (Access to Records/Retention), and 16 (Indemnification) shall continue in full force and effect after termination in relation to acts or omissions occurring during the term of the Agreement.
2. **Scope.** This Agreement shall apply to any relationship, existing now or arising in the future, between BUSINESS ASSOCIATE and COVERED ENTITY, involving protected health information, whether from an authorized agreement for goods or services, purchase order, claim form, or other authorized means (hereinafter referred to as "Other Agreement").
3. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Agreement are to Title 45 of the Code of Federal Regulations and HITECH Act as in effect or as amended, and for which compliance is required, unless otherwise specified.
4. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in Sections 160.103 and 164.501.
 - (a) **Business Associate.** "Business Associate" shall mean that person(s), business contractor/vendor/entity who is not a part of the CE's workforce and to whom the covered entity discloses protected health information so the person(s) can carry out, assist with the performance of, or perform a function or activity on behalf of the covered entity. Identified above as "Business Associate"
 - (b) **Covered Entity.** "Covered Entity" shall mean the Telecare Corporation and its designated covered components, which are subject to the Standards for Privacy of Individually Identifiable Health Information set forth in Part 160 and Part 164, Subparts A and E.
 - (c) **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
 - (d) **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
 - (e) **Other Agreements.** "Other Agreements" shall mean any written contract(s) or other agreement(s) that may be in effect from time to time between Covered Entity and Business Associate (or their respective affiliates, including any entity that is owned directly or indirectly, by such party or controlling, controlled by, or under common control with such party) pursuant to which Protected Health Information may be shared by Covered Entity.
 - (f) **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.
 - (g) **Protected Health Information.** "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.
 - (h) **Unsecured Protected Health Information: PHI that is not secured through the use of a technology or methodology that renders PHI "unusable, unreadable, or indecipherable to unauthorized individuals" as defined in HITECH Act.**
 - (i) **Breach:** The unauthorized acquisition, access, use, or disclosure of unsecured protected health information which compromises the security or privacy of the protected health

information, except where an unauthorized person to whom such information is disclosed would not reasonably have been able to retain such information

(j) Required By Law. “Required by law” shall have the same meaning as the term “required by law” in Section 164.501.

(k) Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.

5. **Obligations and Activities of Business Associate.**

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by this Agreement or as Required by Law, and to only use the minimum necessary to carry out business activities.

(b) Business Associate covenants, represents, and warrants that it will safeguard and protect all Protected Health Information in compliance with all applicable federal and state laws, regulations, and requirements of Covered Entity concerning the confidentiality, privacy, and security thereof.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information by Business Associate not provided for by this Agreement of which it becomes aware, as soon as possible, but within at least seven (7) days of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of Protected Health Information,

(e) Business associate agrees to notify covered entity of a breach of unsecured protected health information as specified in the HITECH Act as soon as a breach is discovered, without reasonable delay and in no case later than 60 days following the discovery of the breach, to allow the CE to provide the required notifications to affected individuals under §164.404(a) A breach shall be treated as discovered by a BA as of the first day on which such breach is known to the business associate or, by exercising reasonable diligence, would have been known to the business associate. Business associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence, would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the business associate.

(f) Notifications of breach by a BA shall at a minimum, to the extent possible, include the identity of each individual whose unsecured protected health information has been, or is reasonably believed to have been breached.

(g) Business Associate agrees to ensure that any staff member, consultant, office staff, or other associated employee, agent or subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same use and disclosure restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(h) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.

(i) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity.

(j) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by

Business Associate on behalf of, Covered Entity, available to the Covered Entity or to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

(k) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(l) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 5(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

6. General Provision for Use and Disclosures by Business Associate. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified in Exhibit A, which if completed and attached hereto is incorporated by reference, or as otherwise specified in Other Agreement(s) authorizing functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

7. Specific Provisions for Use and Disclosures by Business Associate.

(a) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(b) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 Code of Federal Regulations 164.504(e)(2)(i)(B).

(d) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j)(1).

8. Obligations of Covered Entity.

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

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(d) Covered Entity will communicate to the BA any restrictions requested by the resident/patient and accepted. The BA will honor the restrictions.

9. **Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

10. **Termination.**

(a) Termination for Convenience. This Agreement may be terminated by either party for any reason and at any time by giving no less than thirty (30) days written notice of such termination to the other party and specifying the effective date thereof; provided, however, that no such termination may be effected if any Other Agreement(s) shall remain operative.

(b) Termination for Cause. Upon Covered Entity's knowledge of a material breach by Business Associate of this Agreement or the HIPAA-related provisions contained in any Other Agreement, Covered Entity may, upon written notice to Business Associate, terminate this Agreement and any and all Other Agreements at the sole discretion of Covered Entity if Business Associate does not cure such breach or correct the violation within fifteen (15) days after Covered Entity serves written notice of the default on Business Associate; provided, however, that if Business Associate does not immediately commence such cure or correction and diligently pursue the same to completion, Covered Entity may, upon written notice to Business Associate immediately terminate this Agreement and any Other Agreement(s). If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) Effect of Termination.

(1) Except as provided in subparagraph (2) immediately below and Paragraph 15, upon termination of this Agreement or Other Agreement(s) for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

11. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of HIPAA.

12. **Interpretation/Venue.**

(a) Interpretation. Any ambiguity in this Agreement or Other Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with HIPAA.

(b) Venue. This Agreement is made in Alameda County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Alameda, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Alameda County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

13. **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

14. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval or communication that Covered Entity desires to give to Business Associate shall be addressed to Business Associate at the mailing address set forth on page 1 of this Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that Business Associate desires to give to Covered Entity shall be addressed to Covered Entity at the following address:

Telecare Privacy Officer
Telecare Corporation
1080 Marina Village Pkwy, Suite 100
Alameda, Ca 94501

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

15. **Access to Records/Retention.** Covered Entity, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of Business Associate which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions, except where longer retention is required by any federal or state law. Business Associate shall maintain all required records and documentation of its compliance for no less than six (6) years from the encounter, transaction, event or creation of the record, and shall maintain such documentation for a longer period if required by applicable laws or Covered Entity's compliance with HIPAA.

16. **Indemnification.** Business Associate shall indemnify, defend 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, but not limited to, attorneys fees, expert witness fees, and costs of investigation, litigation, or dispute resolution, arising from or related to any breach by Business Associate of its covenants and obligations under this Agreement; provided, however, that the indemnity provisions in this Section shall not be operative to the extent that were they operative they would result in denial of coverage by any insurer or under any insurance policy that denies coverage for contractually assumed liability. The provisions of this Section shall survive the termination or expiration of this Agreement.

17. **Authority to Contract.** Business Associate and Covered Entity each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement.

18. **Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

19. **Attorney's Fees.** If any legal action or arbitration or other proceeding is commenced by either party, concerning this Agreement, the prevailing party shall recover from the losing party reasonable attorneys' fees and costs and expenses, including, without limitation, those of appeal, expert witnesses, and enforcement of judgment, incurred by the prevailing party, in addition to all other remedies to which the prevailing party may be entitled. If a claim or claims asserted by a third party against either party, or any of them arise from an action or omission by the other, the party responsible for the action or omission shall be the losing party, and the other party shall be the prevailing party, for purposes of the foregoing sentence.
20. **Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.
21. **Assignment.** No rights or obligations of Business Associate hereunder may be assigned, transferred or set over under any other person, firm or corporation.
22. **Successors and Assigns.** Without limiting the foregoing, this Agreement shall be binding upon and shall inure to the benefit of the parties to the Agreement and their respective heirs, legal representatives, successors and assigns.
23. **Entirety of Agreement.** This Agreement constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

HIPAA BUSINESS ASSOCIATE AGREEMENT

EXHIBIT A

As provided in Paragraph 6 of this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified below, or as otherwise specified in Other Agreement(s) authorizing functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

Authorized Purposes:

None