

## KAWEAH DELTA HEALTH CARE DISTRICT

### SYSTEM ACCESS AGREEMENT

This Systems Access Agreement ("AGREEMENT") made and entered into effective \_\_\_\_\_ ("Effective Date"), is by and between **Kaweah Delta Health Care District** ("KAWEAH DELTA"), a local health care district organized and existing under the laws of the State of California, Health and Safety Code §§ 32000 et seq., and \_\_\_\_\_, ("AUTHORIZED ENTITY").

If and to the extent, KAWEAH DELTA and AUTHORIZED ENTITY hereby agree to the following with respect to Protected Health Information (PHI), obtained by AUTHORIZED ENTITY in connection with its performance of services for KAWEAH DELTA pursuant to any AGREEMENT for services ("AGREEMENT") the parties may enter into from time to time.

#### RECITALS

- (A) KAWEAH DELTA wishes to provide AUTHORIZED ENTITY and its employees/agents, electronic systems access to KAWEAH DELTA electronic health information records pursuant to the terms of this AGREEMENT, some of which may constitute Protected Health Information ("PHI") (defined below).
- (B) KAWEAH DELTA and AUTHORIZED ENTITY intend to protect the privacy and provide for the security of PHI disclosed to AUTHORIZED ENTITY pursuant to this AGREEMENT in compliance with the Health Insurance Portability and Accountability ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act ("the HITECH Act"), and applicable California State laws.

In consideration of the mutual promises below and the exchange of information pursuant to this AGREEMENT, the parties agree as follows:

#### 1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act, HIPAA Regulations, and the California Health and Safety Code.
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D and the California Health and Safety Code.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Electronic Protected Health Information** means PHI that is maintained in, or transmitted by, electronic media.
- e. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- f. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- g. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- h. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; (ii) the provision of health care to an individual; (iii) the past, present, or future payment for the provision of health care to an individual; or (iv) 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 under the Privacy Rule. Protected Health Information includes Electronic Protected Health Information as defined above.
- i. **Protected Information** shall mean PHI provided by KAWEAH DELTA to AUTHORIZED ENTITY or created, maintained, received, or transmitted by AUTHORIZED ENTITY on KAWEAH DELTA's behalf.
- j. **Security Incident** shall have the meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- k. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- l. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.
- m. **Unauthorized Access** shall have the meaning given to such term under the California Health and Safety Code Section 130201 and any other applicable guidance issued. Generally, this shall have the meaning inappropriate access, review, or viewing of patient medical information without a direct need for medical diagnosis, treatment, or other lawful use as permitted by any statute or regulation governing the lawful access, use, or disclosure of medical information.

## 2. **Obligations of AUTHORIZED ENTITY**

- a. **Permitted Uses.** AUTHORIZED ENTITY shall not use Protected Information except for the purpose of performing AUTHORIZED ENTITY's obligations under this AGREEMENT and as permitted under this AGREEMENT. Further, AUTHORIZED ENTITY shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule, the HITECH Act, or California law if so used by KAWEAH DELTA. However, AUTHORIZED ENTITY may use Protected Information (i) for the proper management and administration of AUTHORIZED ENTITY; or (ii) to carry out the legal responsibilities of AUTHORIZED ENTITY.
- b. **Permitted Disclosures.** AUTHORIZED ENTITY shall not disclose Protected Information except for the purpose of performing AUTHORIZED ENTITY's obligations under this AGREEMENT and as permitted under this AGREEMENT. AUTHORIZED ENTITY shall not disclose Protected Information in any manner that

would constitute a violation of the Privacy Rule, the HITECH Act, or California law if so disclosed by KAWEAH DELTA. However, AUTHORIZED ENTITY may disclose Protected Information (i) for the proper management and administration of AUTHORIZED ENTITY; (ii) to carry out the legal responsibilities of AUTHORIZED ENTITY; or (iii) as required by law.

- b. **Prohibited Uses and Disclosures.** AUTHORIZED ENTITY shall not use or disclose Protected Information for fundraising or marketing purposes. AUTHORIZED ENTITY shall not disclose Protected Information 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 solely relates.
- a. Access shall be limited to patient information that pertains to a past or current medical condition for which the patient is under current treatment of the AUTHORIZED ENTITY.
- NOTE:** PRIOR approval by the office manager or Physician is required when accessing a family member or friend's record that is a patient of record; office manager/Physician must validate the business purpose and confirm the patient is under active treatment by the physician office.
- b. Users/employees of the AUTHORIZED ENTITY shall not access their own medical record.
- c. Users/employees of the AUTHORIZED ENTITY shall maintain unique user credentials. Sharing user credentials may result in termination of this AGREEMENT and systems access for the AUTHORIZED ENTITY.
- d. **Appropriate Safeguards.** AUTHORIZED ENTITY shall implement appropriate safeguards as are necessary to prevent the access, use or disclosure of Protected Information otherwise than as permitted by this AGREEMENT, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information.
- j. **Minimum Necessary.** AUTHORIZED ENTITY shall access, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure.
- k. **Data Ownership.** AUTHORIZED ENTITY acknowledges that AUTHORIZED ENTITY has no ownership rights with respect to the Protected Information.
- l. **Notification of Possible Breach.** AUTHORIZED ENTITY shall notify KAWEAH DELTA **within twenty-four (24) hours** of any suspected or actual breach or UNAUTHORIZED ACCESS of Protected Information. AUTHORIZED ENTITY shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws.

### 3. Indemnification

Each party shall defend, indemnify and hold the other party, its officers, directors, partners, employees, agents and subcontractors harmless from and against any and all liability, loss, expense, attorneys' fees or claims for injury or damages arising out of its own performance of this AGREEMENT but only in proportion to and to the extent such liability, loss, expense, attorneys' fees or claims for injury or damages are caused by or result from the acts or omissions of itself, its officers, partners, directors, employees, or agents. This section shall survive the expiration of the term of this AGREEMENT.

AUTHORIZED ENTITY agrees to reimburse KAWEAH DELTA for all fines, penalties, legal expenses, damages, and other costs or expenses incurred by KAWEAH DELTA arising from or caused by a breach of PHI by the AUTHORIZED ENTITY, its employees, or its agents.

### 4. Disclaimer

KAWEAH DELTA makes no warranty or representation that compliance by AUTHORIZED ENTITY with this AGREEMENT, HIPAA, the HITECH Act, the HIPAA Regulations or California security or privacy laws will be adequate or satisfactory for AUTHORIZED ENTITY's own purposes. AUTHORIZED ENTITY is solely responsible for all decisions made by AUTHORIZED ENTITY regarding the safeguarding of PHI.

### 5. Amendment to Comply with Law

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of this AGREEMENT may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that KAWEAH DELTA must receive satisfactory written assurance from AUTHORIZED ENTITY that AUTHORIZED ENTITY will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this AGREEMENT embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. KAWEAH DELTA may terminate this AGREEMENT upon **thirty (30) calendar days written notice** in the event (i) AUTHORIZED ENTITY does not promptly enter into negotiations to amend this AGREEMENT when requested by KAWEAH DELTA pursuant to this section; or (ii) AUTHORIZED ENTITY does not enter into an amendment to this AGREEMENT providing assurances regarding the safeguarding of PHI that KAWEAH DELTA, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

### 6. Interpretation

This AGREEMENT shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy. The parties agree that any ambiguity in this AGREEMENT shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the HIPAA regulations, and other state and federal laws related to security and privacy.

7. **Termination**

Violation of this AGREEMENT may result in the immediate and indefinite termination of the KAWEAH DELTA systems access for the user. Repeated violations by AUTHORIZED ENTITY may result in a suspension or immediate termination of system access AUTHORIZED ENTITY and all of its employees. Unauthorized use or release of confidential information may also subject the violator to personal, civil, and/or criminal liability and legal penalties.

Kaweah Delta reserves the right to approve, deny, or revoke user access based on the need for system access.

IN WITNESS WHEREOF, the parties hereto have duly executed this AGREEMENT as of the Effective Date.

COVERED ENTITY

AUTHORIZED ENTITY

Kaweah Delta Health Care District

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

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

Print Name: Benjamin Cripps

Print Name: \_\_\_\_\_

Title: Compliance and Privacy Officer

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

APPROVE AS TO FORM:  
COUNTY COUNSEL  
BY [Signature] 6/15/18  
DEPUTY  
2018999