

GATEWAY LICENSE AGREEMENT

This Gateway License Agreement (together with its Exhibits and Attachments, the “Agreement”) is entered into as of the latest of the latest of dates below (“Effective Date”) by and between Bamboo Health, Inc., a Delaware corporation with offices at 9901 Linn Station Road, Suite 500, Louisville, Kentucky 40223 (“Bamboo Health”), and San Mateo County, on behalf of itself and its Affiliates (the “County” or “Licensee”).

County and Bamboo Health agree as follows:

1. DEFINITIONS.

“**Affiliate**” means any entity that directly, or indirectly, is controlled by, is under common control with, or controls, a party. “Control” means the ownership of or exercise of voting control or direction over shares, securities or other voting instruments of such entity carrying fifty percent (50%) or more of the unrestricted voting rights, or ownership or exercise of other rights or powers entitling the holder thereof to direct, cause the direction of, or to manage the business of such entity.

“**Analytics**” means information and analysis services provided by Bamboo Health via the Gateway Service or other designated transmission service based, in whole or in part, on the PMP Data or other information. For clarity, Analytics does not include the PMP Data itself.

“**Authorized Entities**” means County or appropriate County Employees who do not provide patient care but who meet all applicable Requirements and who properly authenticate to the applicable PMP, as required, to facilitate the provision of PMP Data to Authorized Users, or perform administrative or technical functions in connection with the Gateway Service or PMP Data, all in accordance with the terms of this Agreement, the Requirements, and applicable law.

“**Authorized Users**” means pharmacists or health care practitioners within County’s organization or health care entities that have a member or client relationship with County, which is described in a valid agreement between such practitioners or entities and County, and that, in accordance with the terms of this Agreement:

1. Comply with applicable Requirements;
2. Are validly licensed;
3. Are validly authorized by the County to access PMP Data in accordance with applicable law;
4. Are authorized by their current patient, as applicable, to access or use PMP Data;
5. Access or use PMP Data for health care decision-making related to such patient, in accordance with applicable law; and
6. Properly authenticate to the applicable PMP, as required, when seeking to query one or more state's PMPs.

“**Confidential Information**” means non-public information concerning the operation of the Gateway Service, all software provided with or utilized by the Gateway Service, the Analytics, and all algorithms, methods, techniques and processes related thereto. Confidential Information does not include information that: (a) was in the possession of, or was rightfully known by, the recipient without an obligation to maintain its confidentiality prior to receipt; (b) is or becomes generally known to the public without violation of this Agreement; (c) is obtained by the recipient from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by the recipient without reliance in any way on the Confidential Information; (e) under the Health Insurance Portability and Accountability

Act (HIPAA) as may be amended from time to time, is protected health information (PHI), in which case the parties agree to handle such health information in accordance with the terms of the Business Associate Agreement (BAA) which is attached to and incorporated into this Agreement as Exhibit A; or (f) is not protected health information, as defined herein, but is defined under applicable law as personal data or personally identifiable information or the like, such as an individual's name and the corresponding social security number, driver's license number, or financial account number, in which case the receiving party agrees to securely maintain such personal data during the term of this Agreement and following its termination if such data is permitted to be retained, to not use or disclose such personal data except as permitted under the terms of this Agreement or as specifically authorized by the individual about whom such data pertains, and to comply with laws applicable to such personal data including but not limited to breach notification and disposal requirements.

"Customer Data" means data and other material supplied directly to Bamboo Health by or on behalf of County in the course of receiving or using the Gateway Service. Customer Data includes, personally identifiable information or protected health information about County's patients and includes without limitation, full and unfiltered HL7 Admit, Discharge, and Transfer feeds delivered to Bamboo Health.

"Documentation" means the user, installation, technical, and training publications delivered by Bamboo Health as available in conjunction with the Gateway Service.

"Employee" means an employee of each party, including contractors engaged to augment staff and/or perform duties traditionally performed by employees under such party's direct supervision.

"Gateway Service" means the Gateway application programming interface (API), which is a data communication service that is owned by Bamboo Health and, in conjunction with Third Party Material(s), facilitates the transmission of requests for, and retrieval of, controlled substance prescription related services and information, including, as applicable, PMP Data from participating PMPs and/or certain Analytics as specified in Exhibit C, for Authorized Users. The Gateway Service includes Third Party Material(s) that Bamboo Health utilizes in connection with providing the Gateway Service. For purposes of clarity the Gateway Service shall include NarxCare where specified on the applicable Order Form.

"Health Network Entity" means any person or entity who has a treatment, health care operations or payment-related purpose to receive information on a patient.

"Home State PMP" means the PMP of the state in which the Authorized Entity or the Authorized User is physically located.

"NABP" means the National Association of Boards of Pharmacy.

"NarxCare" means: (i) the web-based substance use disorder management software product consisting of advanced risk Analytics, data, and related resources that is expressly marketed and sold by Bamboo Health under the NarxCare brand (including any applicable fixes, updates, or upgrades) as specifically identified in Exhibit C (collectively, the "NarxCare Software"); (ii) any materials generated or provided through use of the NarxCare Software relating to prescription medication history or monitoring, substance use disorder clinical decision support and patient support, or other PDMP Data (including, without limitation, the NARx Score and NARx Report); and (iii) any Documentation that Bamboo Health makes generally available for the NarxCare Software (the "Documentation").

“Order Form” means the document executed by both parties by which County orders Gateway Service and Service Information provided by Bamboo Health. The Order Form is attached to and incorporated into this Agreement as Exhibit C.

“PMP” or “PMPs” means one or more state prescription monitoring programs that collect prescription drug dispensing and other information from entities such as pharmacies, providers, and first responders and permit users who meet applicable state-designated requirements to access such information.

“PMP Data” means any data maintained by PMPs, including but not limited to, prescription history information.

“Requirements” means applicable laws and/or rules established, from time to time, by a state related to its PMP including, but not limited to, PMP access or permitted use(s) of PMP Data, by the federal government, and/or rules issued by Bamboo Health related to the Gateway Service. “Requirements” may relate to one or more state PMPs, as the context requires.

“Service Information” means data that is input, transmitted, or output via the Gateway Service, including but not limited to user data, search criteria, PMP Data, and Analytics reports, and any other PMP and substance use disorder related data provided by Bamboo Health.

“Third-Party Material(s)” means any information, services, software, or goods provided, manufactured or created by a party other than Bamboo Health and that Bamboo Health licenses or utilizes with permission.

2. LICENSE AND USE RESTRICTIONS.

2.1 **License Grant.** Subject to the terms, conditions and restrictions set forth in this Agreement, Bamboo Health grants to County a limited, non-exclusive, non-transferable license to use the Gateway Service and solely for internal use by County and its Authorized Entities or Authorized Users. Any rights not expressly granted in this Agreement are expressly reserved. Use of the Gateway Service or Service Information constitutes the County’s agreement to be bound by the terms of this Agreement. County shall only use the Service Information to assist an Authorized Entity or Authorized User in his or her professional health care decision-making with respect to a specific patient encounter at the site(s), if any, listed in Exhibit C; provided, however, that County agrees and acknowledges that under no circumstance shall the Service Information replace an Authorized Entity’s or Authorized User’s professional judgment.

2.2 **Restrictions.** Except as otherwise expressly set forth in Exhibit C, County shall not, or permit any third party to, directly or indirectly: (a) reverse engineer, disassemble, or decompile the Gateway Service, NarxCare, or any portion thereof; (b) disable or alter any functionality present in the Gateway Service or NarxCare; (c) sublicense, rent, lease or otherwise transfer the Gateway Service, NarxCare, or any portion thereof; (d) use the Gateway Service or NarxCare for any third-party use including, but not limited to, training of third parties, facilities management, time-sharing, service bureau use, or data processing; (e) publish any results of benchmark tests run on the Gateway Service or NarxCare; (f) attempt to circumvent or render inoperative any usage restriction features contained in the Gateway Service or NarxCare (g) remove, obscure, alter, or move Bamboo Health’s and its licensors’ proprietary notices or other notices on the Gateway Service, NarxCare or Documentation; or (h) to modify or alter any scores, reports, or information provided via Analytics products, including NarxCare.

2.3 State Determinations. County acknowledges that each state may determine whether Authorized Entities or Authorized Users can access or utilize the state's PMP Data through the Gateway Service. If, required under this Section and Agreement, County agrees to provide the required information, affirmations, and agreements to Bamboo Health and/or the applicable state(s). Bamboo Health may provide any information it receives under this Section 2.3 to the applicable state(s). Further, the authorization granted by Bamboo Health when directed by a state PMP to enable Authorized Entities or Authorized Users to access or use the Gateway Service or Service Information does not constitute an endorsement by Bamboo Health or its licensors of such Entities or Users, or the services or products provided by such Entities or Users including, but not limited to, medical services, pharmacy services, or quality of care.

2.4 Access and Use Policies. County will maintain and enforce policies and procedures to limit access and use of the Gateway Service and Service Information as follows:

- (i) Only Authorized Entities or Authorized Users may access or use the Gateway Service;
- (ii) Authorized Entities may only access or use the Gateway Service and Service Information in accordance with the terms and conditions of this Agreement;
- (iii) Authorized Users may only access or use the Gateway Service and patient-related Service Information in accordance with the terms and conditions of this Agreement;
- (iv) County shall provide proper training to its Authorized Entities and Authorized Users on accessing and using the Gateway Service and Service Information;
- (v) County shall ensure that Gateway Service and Service Information, and its systems used in connection therewith, are accessed and used in a secure manner in accordance with applicable law and the terms of this Agreement; and
- (vi) Copies of said policies and procedures shall be provided upon request of a state or Bamboo Health.

2.5 Use of Service Information. County shall not, either directly or indirectly, itself or through any agents or third party: (a) request, compile, store, maintain or use the Service Information to build or enhance its own database or for any other purpose except as permitted under this Agreement; or (b) copy or otherwise reproduce the Service Information.

2.6 Credentialing and Validation. County shall ensure that its credentialing and identity validation processes adhere to all applicable state and federal laws and rules and Requirements for credentialing and validation of the pharmacists or health care practitioners, their delegates, and entities or users who seek to access or use the Gateway Service or Service Information, and Employees and contractors who do not provide patient care but who seek to access or use the Gateway Service. If state law prohibits health care practitioners' delegates from accessing the PMP or PMP Data, then the credentialing and identity validation processes of County must prevent delegates from accessing the Gateway Service and Service Information.

2.7 Responsibility for Use. County shall be responsible if use of or access to the Gateway Service is improper or illegal or otherwise does not conform to the terms of this Agreement. Bamboo Health is not responsible for any access or use of the Gateway Service or Service Information by County, Authorized Entities, Authorized Users, or any of County's users, pharmacists, practitioners, Employees, patients, affiliates, agents or contractors, or any state employees, agents, affiliates, or contractors.

2.8 Processes. County is responsible for adopting and enforcing reasonable processes designed to confirm Authorized Entities, Authorized Users, and others comply with applicable law and Requirements to access, use, and maintain the security of the Gateway Service and Service Information. County shall be

responsible for its and its Employees', staff's, contractors', and affiliates' compliance with the terms of this Agreement.

2.9 Complaints. County agrees to promptly investigate all complaints and claims that a County Employee, agent, contractor, or affiliate failed to comply with laws or rules applicable to Service Information or failed to comply with any Requirement for access or use of the Gateway Service or Service Information. County agrees to promptly report the results of its investigation to Bamboo Health, its Home State PMP, and any requesting state.

2.10 Investigations. County is responsible for investigating all complaints and claims that an Authorized User or Authorized Entity failed to comply with laws or rules applicable to the Gateway Service or Service Information or any Requirement for access or use of Service Information. County acknowledges that states may have the authority to investigate, take action, sanction, or discipline those who improperly access or use the Gateway Service or Service Information, including but not limited to Authorized Entities or Authorized Users. County agrees to promptly report the results of its investigation to Bamboo Health, its Home State PMP, and any requesting state.

2.11 Point of Contact. County is responsible for designating a contact person(s) to assist Bamboo Health or a state if there are questions about use of the Gateway Service.

2.12 Compliance with Law. County is responsible for compliance with all local, state, and federal laws and rules applicable to PMP Data, personally identifiable information, and health information organizations including, but not limited to, confidentiality, security, registration and licensure requirements.

2.13 Notification of Termination by PMP. County agrees to notify Bamboo Health within five days of a state terminating County's, access to a PMP, or any Authorized Entities' or Authorized Users' access to a PMP, to the extent that County has knowledge of it. Failure to so notify Bamboo Health is considered a material breach of this Agreement. County warrants that it is not currently under formal investigation, indictment, or prosecution, and has not been convicted, disciplined, or sanctioned over the last five years by any governmental entity or self-regulation program for violation of any government statutes, rules, or regulations under or related to health care, drugs, or criminal acts. County agrees to inform Bamboo Health and the state PMPs if it becomes the subject of an investigation, indictment, prosecution, conviction, or disciplinary or sanction order, within 10 days of learning of such investigation, indictment, prosecution, conviction, or order.

2.14 Certificate of Authority. Upon Bamboo Health or state request, County agrees to provide a copy of its state-issued certificate of authority to operate as a County, whether temporary or full, if County is required to obtain such a certificate or authorization. If such a certificate is not yet available, County agrees to provide a copy of its application upon request.

2.15 Conduct. County shall not, and shall ensure County Employees, agents, contractors, affiliates, Authorized Entities, and Authorized Users do not engage in unlawful, objectionable, or malicious conduct or activities related to the Gateway Service, the Gateway Service servers, or Service Information including, but not limited to, the transmission or distribution of viruses, computer worms, Trojan horses, malicious code, denial of service attacks, unsolicited commercial e-mail, or the like; the unauthorized entry to any other machine accessible via the Gateway Service; the unauthorized submission or transmission of data or material protected by a proprietary right of a third party; or the submission of otherwise objectionable information, material, or communications.

2.16 Documentation. County shall comply with all requirements specified in the Documentation concerning access to the Service Information and use or display of Service Information.

2.17 Certification. On Bamboo Health's request, but not more than once per year, County shall furnish Bamboo Health with a signed certification verifying that County's use of the Gateway Service is in accordance with the terms and conditions of this Agreement.

2.18 Usage Restrictions Regarding Matters of Privacy. With as much notice to County as reasonably possible, Bamboo Health may suspend or decline to provide to County any PMP Data or Services Information to comply with any requirements imposed by any applicable national, federal, provincial, state and local laws, regulations, rules, and judicial and administrative decision, or industry self-regulatory guideline, or in the event County's use of the Services Information or PMP Data is, or is reasonably likely to be, the subject to a substantial, adverse consumer or regulator reaction related to consumer privacy issues. The Parties shall work together to amend any the Agreement to reflect such requirements, including adjusting the financial terms of the Agreement in the event such amendment would materially impair the commercial value of the rights granted to County under the Agreement.

3. SERVICE LEVEL STANDARDS

The Service Level Standards attached to and incorporated into this Agreement as Exhibit B shall apply to Bamboo Health's provision of the Gateway Service. Support for the Gateway Service will be provided by Bamboo Health using commercially reasonable efforts subject to the terms of this Agreement and as modified by Bamboo Health from time to time following prior written notification to County.

4. PAYMENT

4.1 Fees. Except in instances of Gateway Service downtime in excess of thirty (30) consecutive days, County shall pay to Bamboo Health the fees set forth in Exhibit C without offset or withholding. County may withhold payment during any period of Gateway Service downtime exceeding thirty consecutive (30) days until Gateway Service is restored so long as downtime is not attributable to County's management of its information technology infrastructure. Unless otherwise provided in Exhibit C, all fees are due upon the Effective Date, and are payable to Bamboo Health within sixty-five (65) days of the date set forth on each invoice issued by Bamboo Health. Any fees payable by County hereunder that are not paid when due shall accrue interest at a rate equal to the lesser of (a) 1% per month. If any invoice is not paid when due, Bamboo Health may upon thirty (30) days prior written notice disable County's ability to use the Gateway Service until payment is made in full. During the first twelve months of the Agreement (each twelve month period a "Contract Year"), Bamboo Health shall issue a single invoice to County for the first Contract Year in accordance with Exhibit C. For each subsequent Contract Year, Bamboo Health shall invoice County on a quarterly basis for such time as the Gateway Service is maintained outside of downtime as described above.

All invoices must be approved by the Health CIO or their designee. Invoices must be sent to: hs_hit_accountspayable@smcgov.org Processing time may be delayed if invoices are not submitted electronically.

4.2 Taxes. County is liable for any and all sales, use, excise, value added, GST (goods and services tax), customs fees, or other similar taxes to be paid by either party in connection with this Agreement,

including withholding taxes arising from international transactions Bamboo Health must pay. If County is exempt from the payment of any such taxes, County must provide Bamboo Health with a valid tax exemption certificate; otherwise, absent proof of County's direct payment of such taxes to the applicable taxing authority, Bamboo Health will invoice County for and County will pay to Bamboo Health all such taxes. Subject to the foregoing, Bamboo Health shall be solely responsible for all taxes based on its income.

4.3 License Fee Increase. Except as otherwise provided in Exhibit C, commencing with the second year of the Initial Term and continuing thereafter, the annual license fees set forth in Exhibit C shall automatically increase by five percent (5%).

4.4 Alternative Funding. County acknowledges and agrees that certain states provide alternative funding for the fees set forth in Exhibit C. If, at any point during the Term, alternative funding by a state is no longer provided to Bamboo Health, Bamboo Health will notify County that such alternative funding has ceased, and County shall assume responsibility for the payment obligations of its prescribers going forward if County elects to continue receiving such services.

5. PROPRIETARY RIGHTS.

5.1 Ownership.

- a) "Bamboo Health Property" means all of the following: (i) the Gateway Service, the Analytics, NarxCare and the Documentation related thereto (but excluding the PMP Data); (ii) any deliverables and/or work product developed while providing the Gateway Service, NarxCare or the Analytics; and (iii) enhancements, modifications or derivative works to the Gateway Service, the Documentation, NarxCare or the Analytics. Subject only to the licenses expressly granted in this Agreement, as between Bamboo Health and County, Bamboo Health shall be the sole owner of all intellectual property rights in and to the Bamboo Health Property, regardless of whether perfected or recognized under applicable law. Third-Party Materials, including any enhancements, modifications, or derivative works, are and shall remain the exclusive property of Bamboo Health's suppliers or licensors. Bamboo Health may utilize all ideas, suggestions and feedback, or the like that County provides to Bamboo Health or otherwise makes with respect to the Bamboo Health Property without any obligation to County. To the extent that County has or later obtains any intellectual property rights in and to the Bamboo Health Property, or any future enhancement or modification thereto or any part thereof, by operation of law or otherwise, County hereby disclaims such rights, and assigns and transfers such rights exclusively to Bamboo Health, and agrees to provide reasonable assistance to Bamboo Health to give effect to such assignment and to protect, enforce and maintain such rights.
- b) As between County and Bamboo Health, the Customer Data will be owned by County. County hereby grants to Bamboo Health and its wholly owned subsidiaries a non-exclusive, royalty-free, fully paid up, and worldwide license to copy, modify (including the right to create derivative works of), display, distribute and use Customer Data in connection with developing and performing services for County and Health Network Entities. County acknowledges that Bamboo Health or its wholly owned subsidiaries will share Customer Data and information derived from Customer Data with Health Network Entities. Such information may be presented on an individual basis or in an aggregated form.

5.2 Protection of Confidential Information. Each party may furnish the other party with Confidential Information. Neither party shall (a) directly or indirectly disclose or cause to be disclosed, or otherwise transfer any Confidential Information of the other party to any third party; or (b) utilize Confidential Information for any purpose, except as expressly contemplated by this Agreement, or otherwise authorized in writing by the other party. Each party will limit the disclosure of the other party's Confidential Information, to Affiliates and Employees with a need-to-know and who have been advised of and have agreed in writing to maintain the confidential nature thereof, or third party consultants with a need-to-know and who have been contractually obligated to maintain such confidentiality through signature of a written nondisclosure agreement acknowledging the non-disclosure obligations of this Agreement; provided, however, that County will obtain Bamboo Health's prior written consent before disclosing any Bamboo Health Confidential Information to any third party. Each party shall provide the other party with copies of any such nondisclosure agreements upon written request. Each party shall be liable for any breach by any Employee, Affiliate, or third party consultant of the confidentiality obligations contained herein.

5.3 Required Disclosures. In the event a party is required under applicable law, rule, regulation, court or administrative order to disclose Confidential Information of the other party, the first party shall use commercially reasonable efforts to: (a) give at least ten (10) days prior written notice of such disclosure to the other party; (b) limit such disclosure to the extent possible; and (c) make such disclosure only to the extent so required. If County receives a request for public records under the California Public Records Act (Cal. Gov. Code §§ 7920.000 et seq., and hereafter, the "PRA"), County shall immediately notify Bamboo Health of the request and afford Bamboo Health ten (10) calendar days to initiate and/or maintain at its sole expense and without contribution legal action it deems necessary to prevent disclosure of any record that it considers non-disclosable Confidential Information under the PRA (hereafter, a "PRA Action"). Bamboo Health shall indemnify and hold County harmless against the costs, damages, fees of any kind and nature (including but not limited to expert and attorney's fees) from Bamboo Health's PRA Action.

5.4 Return of Information. With the exception of data submitted to the Gateway Service by users, Internet Protocol addresses, and other user-related information, which Bamboo Health will securely retain for System administration and legal purposes following termination of the Agreement, upon termination of this Agreement, the receiving party agrees to promptly deliver to the disclosing party, in a secure and confidential manner, all written materials that are derived from, contain, or reflect any and all Confidential Information (including all copies and reproductions). The disclosing party may elect to authorize receiving party to destroy such written materials, and/or any electronic materials containing Confidential Information, in a secure and confidential manner, in which case the receiving party agrees to provide written confirmation to the disclosing party of its compliance herein.

5.5 De-Identified Data. Upon a reasonable request by Bamboo Health, County agrees to provide aggregated or de-identified data, as defined by the Health Insurance Portability and Accountability Act and its rules, in connection with County or one or more Authorized Users' use of the Gateway Service or Service Information, to the extent such data is tracked or collected by County, in order for Bamboo Health to provide such information to a state, enhance its services, and/or for Bamboo Health's and/or NABP's use for research purposes. For example, County may provide data regarding the number of patients who visited an Authorized User, such as a hospital, practice, prescriber, and/or pharmacy, whose PMP Data was accessed through the Gateway Service, whether County requires prescribers or dispensers to access the Gateway Service, and/or whether a controlled substance prescription was issued or dispensed to such patients.

6. DISCLAIMER OF WARRANTIES.

BAMBOO HEALTH MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, WITH RESPECT TO THE GATEWAY SERVICE OR THE SERVICE INFORMATION, OR ANY SUPPORT OR OTHER SERVICES PROVIDED BY BAMBOO HEALTH INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR NONINFRINGEMENT, AND BAMBOO HEALTH EXPRESSLY DISCLAIMS ANY SUCH WARRANTIES. BAMBOO HEALTH DOES NOT WARRANT THAT: (a) THE GATEWAY SERVICE WILL OPERATE UNINTERRUPTED; (b) ALL GATEWAY SERVICE ERRORS CAN BE CORRECTED; (c) THE GATEWAY SERVICE MEETS ALL OF COUNTY'S BUSINESS REQUIREMENTS; OR (d) THE PMP DATA OR ANALYTICS ARE COMPLETE, ACCURATE OR ERROR-FREE. COUNTY ACKNOWLEDGES THAT IT HAS ASSESSED FOR ITSELF THE SUITABILITY OF THE GATEWAY SERVICE FOR ITS REQUIREMENTS. COUNTY ACKNOWLEDGES AND AGREES THAT PMP DATA IS PROVIDED BY THE PMPs. NEITHER BAMBOO HEALTH NOR ITS LICENSORS SHALL HAVE ANY LIABILITY IN THE EVENT THAT A PMP DENIES COUNTY'S REQUEST TO ACCESS PMP DATA OR REVOKES COUNTY'S ACCESS TO PMP DATA, OR IF PMP DATA IS UNAVAILABLE FOR ANY REASON. COUNTY ACCEPTS THE PMP DATA AND ANY PRESCRIPTION HISTORY SERVICES BASED ON THE PMP DATA ON AN "AS IS" "AS AVAILABLE" BASIS.

7. INDEMNIFICATION

7.1 Indemnification by County. Except for Bamboo Health's obligations to indemnify County against any PRA Action, County shall indemnify and defend Bamboo Health and NABP, and each of their respective officers, directors, employees, members, contractors, parents, subsidiaries, and affiliates, (the "Bamboo Health Parties") against any third party claim, including costs and reasonable attorneys' fees, in which any of the Bamboo Health Parties are named as a result of: (a) reserved; (b) the breach of any material term or condition of this Agreement by County, County employees, agents, contractors, or affiliates, Authorized Entities, or Authorized Users; (a) any unauthorized access or use of the Gateway Service or Service Information by County, any user of County, County Employees, agents, contractors, or affiliates, Authorized Entities, or Authorized Users; (b) any medical services, products or medication offered or sold by County, County Employees, agents, contractors, or affiliates, Authorized Entities, or Authorized Users; (c) any act or omission of negligence or willful misconduct of County or its affiliates in the performance of this Agreement; or (d) violations of applicable law or the Requirements by County, Authorized Entities, or Authorized Users, in connection with the performance of this Agreement, including illegal or unauthorized access or use of PMP Data.

7.2 Indemnification by Bamboo Health. Bamboo Health shall indemnify and defend County against any claim brought against County by third parties alleging the use of the Gateway Service: (a) infringes a patent, copyright or trademark registered to the extent County's use of the Gateway Service is consistent with the terms herein; or (b) misappropriates any third party trade secret (collectively, an "Infringement Claim"); provided that (i) County gives Bamboo Health prompt notification in writing of any such Infringement Claim and reasonable assistance, at Bamboo Health's expense, in the defense of such Infringement Claim; and (ii) Bamboo Health has the sole authority to defend or settle such Infringement Claim as long as such settlement shall not include a financial obligation on County. If an Infringement Claim is or, in Bamboo Health's reasonable belief, is likely to be asserted, (a) Bamboo Health may require County to discontinue use of the applicable Gateway Service immediately; and (b) Bamboo Health will, at its sole option, either (i) procure for County the right to use and exercise its rights with respect to the

Gateway Service; (ii) modify the Gateway Service to make it not infringing while retaining substantially similar functionality; or (c) if the remedies set forth in clauses (b)(i) and (b)(ii) are not commercially feasible, as determined by Bamboo Health in its sole discretion, terminate this Agreement or any Order Form, in whole or in part, and pay to County a pro rata refund of any unearned, prepaid fees for the Gateway Service covering the period of time remaining in the Term of the license during which County was, as a result of Bamboo Health's termination, unable to use the Gateway Service ("Unearned Fees"). THE PROVISIONS OF THIS SECTION STATE THE SOLE, EXCLUSIVE, AND ENTIRE LIABILITY OF BAMBOO HEALTH TO COUNTY, AND ARE COUNTY'S SOLE REMEDY WITH RESPECT TO, ANY CLAIM OR ALLEGATION OF INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHT.

8. LIMITATIONS OF LIABILITY.

8.1 EXCEPT WITH RESPECT TO THE INDEMNIFICATION PROVISIONS SET FORTH IN SECTION 7 OR ANY VIOLATION OF BAMBOO HEALTH'S INTELLECTUAL PROPERTY RIGHTS BY COUNTY, NEITHER PARTY SHALL BE LIABLE IN ANY AMOUNT FOR SPECIAL, INCIDENTAL, OR INDIRECT DAMAGES, LOSS OF GOODWILL OR BUSINESS PROFITS, WORK STOPPAGE, COMPUTER FAILURE OR MALFUNCTION, OR EXEMPLARY OR PUNITIVE DAMAGES.

8.2 EXCEPT FOR CLAIMS ARISING OUT OF (a) DATA THEFT, DATA LOSS, OR MISAPPROPRIATION OF CUSTOMER DATA, (b) BAMBOO HEALTH'S BREACH OF ITS BUSINESS ASSOCIATE AGREEMENT WITH THE COUNTY, (c) BREACH OF CONFIDENTIALITY; (d) BREACH OF BAMBOO HEALTH INTELLECTUAL PROPERTY RIGHTS; (e) GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (f) THE PARTIES' INDEMNIFICATION OBLIGATIONS; OR (g) VIOLATIONS OF APPLICABLE LAW OR THE REQUIREMENTS, UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE FOR AN AMOUNT OF DAMAGES IN EXCESS OF THE FEES PAID OR PAYABLE BY COUNTY UNDER THIS AGREEMENT. NOTWITHSTANDING THE FOREGOING, THE AGGREGATE LIABILITY OF BAMBOO HEALTH AND EACH OF ITS AFFILIATES, IN EACH CASE UNDER THIS AGREEMENT (AND WHETHER SUCH LIABILITY ARISES FROM ANY CLAIM BASED ON INDEMNITY, BREACH OR REPUDIATION OF CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE OR BREACH OF STATUTORY DUTY, OR OTHERWISE) SHALL NOT EXCEED FIVE MILLION U.S. DOLLARS (\$5,000,000).

8.3 EACH PARTY ACKNOWLEDGES THAT THE FEES REFLECT THE ALLOCATION OF RISK BETWEEN THE PARTIES AND THAT BAMBOO HEALTH WOULD NOT ENTER INTO THIS AGREEMENT WITHOUT THESE LIMITATIONS ON ITS LIABILITY. NOTWITHSTANDING THE FOREGOING, SECTIONS 8.1 AND 8.2 SHALL NOT APPLY TO LIABILITIES THAT CANNOT BE LIMITED BY LAW.

9. TERM AND TERMINATION.

9.1 Term. In no event shall total payment for services under this License Agreement exceed **THREE HUNDRED SIXTY-TWO THOUSAND THREE HUNDRED FIFTY-FOUR DOLLARS \$362,354.00**, in the term of this Agreement shall be from April 23, 2024, through April 22, 2029. County's license to use the Gateway Service will commence on the Effective Date and shall remain in effect for the service term set forth in Exhibit C (the "Initial Term").

9.2 Termination. In addition to any other remedy available to Bamboo Health under this Agreement, either party may terminate this Agreement if the other party commits a material breach and fails to cure such breach within thirty (30) days of receiving written notice from the non-breaching party. This Agreement will automatically terminate in the event that either party becomes insolvent, admits its inability to pay its debts in writing, or ceases to carry on its business. Termination of a contract between Licensee and a state related to the state PMP or termination of Licensee's access to state PMP Data automatically results in termination of this Agreement without notice and without any penalty to Bamboo Health or obligation of Bamboo Health to refund any fees paid by Licensee.

9.3 Early Termination by Bamboo Health. County acknowledges that the functionality of the Gateway Service depends on Bamboo Health's ability to sufficiently access PMP Data or Third Party Materials. Bamboo Health reserves the right to terminate this Agreement at any time upon 30 days advance notice to County if Third Party Materials needed to provide the Gateway Service become unavailable to Bamboo Health or, in its sole discretion, Bamboo Health determines that the functionality of the Gateway Service is materially impaired due to insufficient availability or unavailability of PMP Data. In the event of such termination by Bamboo Health, Bamboo Health shall refund any Unearned Fees to County.

Subject to availability of funding, Bamboo Health shall receive payment for work/services provided.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Bamboo Health as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Bamboo Health notice of the alleged breach. Bamboo Health shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Bamboo Health fails to cure the breach within this period, County may immediately terminate this Agreement without further action. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

9.4 Effect of Termination. Upon termination of this Agreement, during the first Contract Year, all amounts due and owing by County to Bamboo Health under Exhibit C will be immediately payable, and Bamboo Health shall be entitled to retain any and all fees paid by County; (b) use of the Gateway Service will immediately cease; and (c) all of Bamboo Health's obligations concerning such Gateway Service will cease. For each Contract Year after the first, upon termination of this Agreement (1) all amounts due and owing by County to Bamboo Health for the fiscal quarter in which the Agreement is terminated under Exhibit C will be immediately payable and Bamboo Health shall be entitled to retain any and all fees paid by County during that quarter, (2) use of the Gateway Service will immediately cease; and (3) all of Bamboo Health's obligations concerning such Gateway Service will immediately cease. Within thirty (30) days of the expiration of the Agreement, County shall destroy all copies of the applicable Documentation, any other Confidential Information, whether such Confidential Information is Bamboo Health's or a third party's, and will certify to Bamboo Health that all copies have been destroyed.

9.5 Survival. The terms of this Agreement that, by their nature should survive termination, shall survive termination, including, without limitation, the provisions concerning protection of Confidential Information, Proprietary Rights, Disclaimer of Warranties, Indemnification and Limitations of Liability.

10. GENERAL PROVISIONS.

10.1 Assignment. Neither this Agreement, nor any rights, duties or obligations set forth herein, may be assigned, sublicensed, or otherwise transferred by County, in whole or in part, whether directly or by operation of law, including by way of sale of assets, merger or consolidation, without the prior written consent of Bamboo Health, and any attempt to do so without the express prior written consent of Bamboo Health shall be deemed void. Bamboo Health's consent may be conditioned upon payment by County of a transfer, assignment or other fee, and such condition shall not be deemed unreasonable.

10.2 Right to Injunctive Relief. County acknowledges that County's breach of its obligations with respect to Bamboo Health's proprietary rights will cause irreparable injury to Bamboo Health and will entitle Bamboo Health to seek injunctive or other equitable relief.

10.3 Dispute Resolution Process. Except for claims arising out of the confidentiality obligations hereunder or Bamboo Health's intellectual property rights and Bamboo Health's initiation and/or maintenance of a PRA Action, the Parties may informally attempt to resolve their differences in accordance with this Section. Any party may give the other party written notice of any dispute not resolved in the normal course of business. Within ten (10) calendar days after delivery of such notice, executives of the parties who have authority to resolve the dispute will meet to attempt to resolve the dispute. If the matter has not been resolved within ten (10) days after the disputing party's notice, or if the executives fail to meet within the ten (10) day period, either party may then seek legal remedies. All negotiations pursuant to this Section will be deemed Confidential Information and treated as compromise and settlement negotiations.

10.4 Third Party Beneficiary. NABP shall be a third party beneficiary to this Agreement and shall have the right to enforce obligations under this Agreement directly against Licensee.

10.5 Independent Contractors. Nothing in this Agreement or in the course of dealing between Bamboo Health and County shall be deemed to create between Bamboo Health and County a partnership, joint venture, association, employment relationship co-ownership or any other relationship other than an independent contractor relationship. Nothing in this Agreement or in the course of dealing between Bamboo Health and County shall be deemed to empower either party to act for, bind or otherwise create or assume any obligation on behalf of the other, and neither party shall hold itself out as entitled to do the same.

10.6 Severability. If any provision of this Agreement is held invalid or unenforceable, the provision shall be deemed modified only to the extent necessary to render it valid or eliminated, as the case may be, and the remainder shall be enforced and construed as if the provision had been included as modified or as if it had not been included, as the case may be.

10.7 Waiver. All waivers must be in writing. Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver on any other occasion or of any other provision.

10.8 Counterparts. This Agreement may be signed in counterparts, each of which shall be deemed an original and which shall together constitute one instrument.

10.9 Insurance. Each party shall maintain, during the term of this Agreement, the following insurance: (a) workers' compensation insurance as required by applicable law; (b) employer's liability insurance with a limit of \$1,000,000 per occurrence; (c) general liability insurance, which insurance shall include bodily injury, personal injury, property damage, contractual liability and completed operations/products liability coverage, and shall be written on an occurrence basis with a combined single limit of \$1,000,000 per occurrence and in the aggregate; and (d) technology errors and omissions insurance inclusive of cyber liability and privacy and network security coverage with a combined single limit of \$5,000,000 in the aggregate. Each party shall provide for the other party additional insured status under the general liability insurance required hereunder, to the extent of each party's indemnification obligations hereunder, and such general liability insurance shall be primary to any insurance which each party maintains, but only to the extent of the additional insured status. Each party shall cause the insurance required hereunder to include a waiver of subrogation in favor of the other party. Upon the written request, each party shall provide the other party with a certificate of insurance evidencing the insurance required hereunder. Each party shall maintain the insurance required hereunder at their own cost and expense and shall maintain such insurance in full force and effect during the term of this Agreement and for one (1) year after the expiration or termination of this Agreement.

10.10 Publicity. Bamboo Health shall not have the right to identify County as a customer of Bamboo Health as part of Bamboo Health's marketing efforts, including customer lists and press releases.

10.11 Governing Law, Forum, and Jurisdiction. Except for any action brought under or in response to a request for public records under the California Public Records Act (Cal. Gov. Code §§ 7920.000 et seq.), this Agreement will be governed and interpreted under the laws of the Jurisdictional State, without reference to its conflicts of laws principles, and any action arising out of or relating to this Agreement will be brought exclusively in the Jurisdictional State. If Bamboo Health institutes the applicable legal action, then the "Jurisdictional State" for such action and all counter claims to such action will be California and San Mateo County or the Federal District Court for the Northern District of California if federal action is jurisdictionally appropriate. If County institutes the applicable legal action, then the "Jurisdictional State" for such action and all counterclaims to such action will be within the Commonwealth of Kentucky and Jefferson County or the Federal District Court for the Eastern District of Kentucky if federal action is jurisdictionally appropriate. Provided the action is brought in accordance with this subsection, each party consents to the personal jurisdiction and venue of the state and federal courts located in the Jurisdictional State. Any action brought under or in response to a request for public records under the California Public Records Act shall be governed by the laws of the State of California and brought in the Superior Court of California for the County of San Mateo. The parties hereby acknowledge and agree that the United Nation Convention on Contracts for the International Sale of Goods shall not apply to this Agreement.

10.12 Restricted Rights. The Gateway Service and any accompanying documentation has been developed at private expense and are deemed to be a "commercial item," as that term is defined in 48 C.F.R. 2.101, consisting of "commercial computer software" and "commercial computer software documentation," as such terms are used in 48 C.F.R. 12.212. Use, duplication, and disclosure by civilian agencies of the U.S. Government shall be in accordance with FAR 52.227-19(c) or other agency data rights provisions, as may be applicable. Use, duplication, and disclosure by DOD agencies are subject solely to the terms of this Agreement as stated in DFAR 227.7202. All U.S. Government Users license the Gateway Service with only those rights set forth herein, including, without limitation, the following: with the exception of Third Party Materials, which require the prior written consent of an authorized officer of the individual respective owners, Gateway Service may be transferred to the U.S. government only with the prior written consent of an officer of Bamboo Health and solely as restricted computer

software as provided in FAR 52.227-19 or subsequent citation (or DFAR 227-7202 or subsequent citation if the transfer is to a defense-related agency).

10.13 Export Control Notice. County agrees not to disclose, use, export or re-export, directly or indirectly, the Gateway Service, any information provided by Bamboo Health, or the “direct product” thereof as defined in the Export Control Regulations of the United States Department of Commerce, except in compliance with such regulations with a limit of \$1,000,000 per occurrence. County acknowledges its obligation to comply with all applicable export control laws in its use, export or re-export of the Gateway Service. County shall defend, indemnify, and hold Bamboo Health and its licensors harmless from and against any and all claims, judgments, awards, and costs (including reasonable legal, including attorneys’ fees) arising out of County’s noncompliance with applicable export laws.

10.14 Audit Rights. In addition to County’s obligations under Section 2.7 above, County shall maintain books and records applicable to compliance with the terms of this Agreement for at least three years following the end of the calendar year to which they pertain. Bamboo Health shall have the right during the term of this Agreement and for up to one (1) year after the termination of this Agreement, upon reasonable written notice and during normal business hours, to audit and inspect such books and records of County in order to verify compliance with the terms of this Agreement. If an audit reveals County is utilizing the Gateway Service in a manner not permitted by this Agreement, County agrees to take, at County’s expense, all reasonable corrective action requested by Bamboo Health.

10.15 Notices. All notices or other communications must be in writing and will be deemed to have been duly given (a) when delivered by hand (with written confirmation of receipt); or (b) two (2) calendar days after being deposited for delivery with a nationally recognized overnight delivery service and addressed to the appropriate address set forth on the first page of this Agreement (or to such other address as a party may designate by written notice to the other party). All notices to Bamboo Health shall be addressed to the attention of Bamboo Health’s Chief Financial Officer with a copy delivered to Bamboo Health’s General Counsel.

10.16 Force Majeure. Other than for payments due, neither party will be liable to the other for any failure or delay in performance due to circumstances beyond the reasonable control of the party seeking protection under the terms of this Force Majeure Section including, without limitation, acts of God, labor disruption, war, terrorist threat, unavailability of PMP Data, unavailability of Third Party Materials, equipment or software malfunction or failure of a general nature (e.g., failure of Windows® Operating System or software, the Internet, or similar type of failure), electrical or communications outages, or government action (“Force Majeure Events”); provided that if either party is unable to perform its obligations for one of the foregoing reasons it shall give prompt written notice thereof to the other party and the time for performance, if any, shall be deemed to be extended for a period equal to the duration of the conditions preventing performance.

10.17 Entire Agreement. This Agreement shall be the complete agreement and understanding between the parties and replace any prior oral or written communications between the parties related thereto, including but not limited to, any additional, conflicting, or inconsistent terms and conditions which may appear on any purchase order or other document furnished by County to Bamboo Health regardless of any statement to the contrary contained in any such purchase order or document.

11.0 [Intentionally Omitted]

12.0 Equal Benefits Ordinance. Bamboo Health shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the provision of such benefits on the basis that the spouse or domestic partner of the Bamboo Health's employee is of the same or opposite sex as the employee.

13.0 Employee Jury Service. Bamboo Health shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Bamboo Health shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Bamboo Health, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Bamboo Health or that the Bamboo Health may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Bamboo Health certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Bamboo Health has no employees in San Mateo County, it is sufficient for Bamboo Health to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Bamboo Health certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Bamboo Health shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Bamboo Health acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14.0 History of Discrimination. Bamboo Health certifies that no finding of discrimination has been issued in the past 365 days against Bamboo Health by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Bamboo Health within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Bamboo Health shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

15.0 Living Wage. As required by Chapter 2.88 of the San Mateo County Ordinance Code, Bamboo Health certifies all Bamboo Health(s) and subBamboo Health(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and SubBamboo Healths as required under the Ordinance.

16.0 Reimbursable Travel Expenses. No Reimbursable Travel Expenses are allowed under this agreement.


17.0 Access to Books and Records. Upon written request of the Secretary of Health and Human Services, the Comptroller General, or any of their duly authorized representatives, Bamboo Health shall make available those contracts, books, documents, and records necessary to verify the nature and extent of the costs of providing services under this Agreement. Such inspection shall be available for up to four (4) years after the rendering of such services. If Bamboo Health carries out any of the duties of this Agreement through a subcontract with a value of \$10,000 or more over a twelve (12) month period with

a related individual or organization, Bamboo Health agrees to include this requirement in any such subcontract. This section is included pursuant to and is governed by the Social Security Act's requirements pertaining to "reasonable costs" set forth in 42 U.S.C. Section 1395x(v)(1)(I) and related regulations. No attorney-client, accountant-client, or other legal privilege will be deemed to have been waived by County, Bamboo Health, or any Bamboo Health's representative by virtue of this Agreement.

[Signature Page to Follow]

In witness of and in agreement with this Agreement’s terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Bamboo Health: Bamboo Health, Inc.

<div>DocuSigned by:  690708AF6741419...</div>	March 20, 2024	Andrew Boynton RevOps Manager
_____ Bamboo Health Signature	_____ Date	_____ Bamboo Health Name (please print)

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

Exhibit A

Health Insurance Portability and Accountability Act (HIPAA)

Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Bamboo Health.
- b. **Covered Entity.** "Covered entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement shall mean County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **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).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 160.103 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.103.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:
 - 1. Nature and extent of PHI included, identifiers and likelihood of re-identification;

2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
 - m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
 - n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.
 - o. **Underlying Agreement.** "Underlying Agreement" shall mean the separate agreement(s) between the parties in which Business Associate performs functions or activities on behalf of County.

OBLIGATIONS AND ACTIVITIES OF BAMBOO HEALTH AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Underlying Agreement, this Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. 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.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to substantially similar restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County in order to meet the requirements under Section 164.524.
- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.

- 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 County, available to the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County'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 County 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 County in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY BAMBOO HEALTH AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Underlying Agreement or this Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County 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. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County 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 so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. 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.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall upon request, provide to County notification of the conditions that make return or destruction infeasible. Business Associate shall extend the protections of the 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.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.
- f. **Limitation of Liability.** Notwithstanding the foregoing or anything herein to the contrary, the limitation of liability provision contained in the Underlying Agreement shall apply to this Agreement.

Exhibit B Service Level Standards

This Exhibit describes the service levels offered by Bamboo Health for the Gateway Service.

I. AVAILABILITY

Availability Target. Bamboo Health will target an availability metric of ninety-nine and five tenths percent (99.5%) of uptime in a calendar month, as measured by the number of actual hours available (excluding agreed upon or excused downtime) as a percentage of total hours (the “Availability Target”). Bamboo Health uses the following formula to determine availability:

$$100 - (\text{Aggregated Unpermitted Downtime} \div \text{Aggregate Monthly Minutes}) = \text{Availability}$$

“Aggregated Unpermitted Downtime” is the number of minutes of downtime during the month other than Excluded Downtime.

“Aggregate Monthly Minutes” means the aggregate number of minutes within the month.

“Excluded Downtime” means downtime caused by any of the following:

- (a) Bamboo Health scheduled maintenance, when County is provided with advanced notice of no less than one business day;
- (b) Bamboo Health’s standard weekly maintenance window from 4:00am to 6:00am Eastern Time each Wednesday (Bamboo Health reserves the right to change its standard weekly maintenance window at any time upon reasonable advance notice to County);
- (c) any County circuits or equipment;
- (d) County's applications or equipment, (including, but not limited to HTML, JAVA, JAVA SCRIPT, Active Server Pages, Perl, CGI, or Coldfusion);
- (e) acts or omissions of County;
- (f) Force Majeure Events; or
- (g) Unavailability of state PMPs or PMP Data or systems used to access PMP Data, or Third Party Materials.

II. REQUESTS FOR SUPPORT

Support Requests. Bamboo Health will provide support to County’s users. Support will be provided on a 24 hours, 7 days a week, 365 days a year basis through the Bamboo Health Customer First Center (CFC). Support may be requested by County’s users via <https://narx.appriss.com/hc/en-us/requests/new>. Bamboo Health will target to respond to each request for support based on the priority level assigned to the matter as described in the following table:

Priority Level	Description	Response Time* Target (Business Hours from creation of service ticket by CFC)
1	The Gateway Service is non-operational or users cannot access the system, or the functionality is significantly decreased or back up or other security of data can no longer be performed. The defect affects mission-critical functions or information in the production environment and may include, but not be limited to, data loss or corruption, system crash or missing major functionality. This may include any defect related to system availability, overall data integrity, or ability to serve the County.	1
	The Gateway Service is operational with functional limitations or restrictions but there is minimal business impact. Under a Priority 2, the defect will have a large impact on the functionality of the application, but does not require immediate release into the production environment. This defect allows continued use of the application, but there is a known compatibility or operability disruptions with no known County acceptable work-around or missing minor functionality.	2
3	The Gateway Service is operational with functional limitations or restrictions that are not critical to the overall system operation, and the defect has a moderate impact on the functionality of the application. However, the application remains usable by all groups. A functional error exists for which there is a County acceptable workaround. Failures assigned this priority level cause no delays in production.	8
4	The Gateway Service is operational with problems or errors, which have little impact on system operations. Priority 4 shall include, but are not be limited to, documentation errors. Priority 4 defects have a minor or cosmetic error in the functionality of the application in a production environment. Defect has no impact on the ability to execute a production application however. Failures assigned this priority level cause no delays in production.	24

***Response Time means acknowledgment by Bamboo Health of receipt of the reported issue.**

Exhibit C ORDER FORM

COUNTY INFORMATION	
Name: San Mateo County	E-Mail: sdean@smcgov.org
Address: 801 Gateway Blvd, 2nd Floor (HLT416) South San Francisco, CA 94080	
Contact Name and Title: Stephen Dean, Chief Information Officer - Health	

COUNTY ACCOUNTS PAYABLE INFORMATION
E-Mail: hs_hit_accountspayable@smcgov.org

Product	Initial License Fee Per Prescriber Per Year	Number of Units Licensed	Total Annual Fee
Gateway w/ NarxCare - Pharmacy	\$600	1	\$600
Gateway w/ NarxCare - Providers	\$300	200	\$60,000
Total Annual Fee			\$60,600
Gateway Implementation Fee	One-time fee of \$7,500		
Term	Term is for 5 Years		
Payment Schedule	Year 1 (At Signing): Gateway Implementation and Annual fee for Gateway w/ NarxCare-Pharmacy & Gateway w/ NarzCare-Providers Years 2-5: Gateway w/ NarxCare-Pharmacy & Gateway w/ NarzCare-Providers will be billed quarterly.		