

BUSINESS ASSOCIATE AGREEMENT

THIS BUSINESS ASSOCIATE AGREEMENT (the "Business Associate Agreement") is made and entered into as of the date of the Agreement (as defined below) by and between The Kepra Trust dba KEP partners , having an office at 78049 Nestle Ave. Reseda CA 91335 ("Business Associate") and _____, having an office at _____ (the "Covered Entity").

Business Associate and Covered Entity have entered into a certain Agreement (the "Agreement") under which Business Associate performs or assists Covered Entity with a function or activity involving the use or disclosure of individually identifiable health information. In connection with the foregoing, Covered Entity and Business Associate desire to comply with the requirements of regulations promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), which privacy regulations are codified at 45 C.F.R. Parts 160 and 164 and which security regulations are codified at 45 C.F.R. Parts 160, 162 and 164, as amended by the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), and as such regulations may be further amended from time to time (collectively, the "HIPAA Standards"). The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Standards: breach; designated record set; disclosure; electronic protected health information; individual; individually identifiable health information; minimum necessary; protected health information; required by law; Secretary; security incident; subcontractor; unsecured protected health information; and use. Any other terms used, but not otherwise defined, herein are as defined in the HIPAA Standards. In consideration of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt of which is hereby acknowledged by parties, the parties hereto agree as follows:

1. Obligations and Activities of Business Associate Business Associate agrees to:

- a. Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;
- b. Use appropriate safeguards, and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- c. Report to Covered Entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including but not limited to breaches of unsecured protected health information as required at 45 C.F.R. §164.410, and any security incident of which it becomes aware, which breaches and security incidents shall be reported in accordance with Section 3 of this Business Associate Agreement;
- d. In accordance with 45 C.F.R. §164.502(e)(1)(ii) and §164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of Business Associate agree to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information;
- e. If Business Associate maintains information in a designated record set, Business Associate shall:
 - i. make available protected health information in a designated record set to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.524; and
 - ii. make any amendment(s) to protected health information in a designated record set as directed or agreed to by Covered Entity pursuant to 45 C.F.R. §164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.526;

- f. Maintain and make available the information required to provide an accounting of disclosures to Covered Entity as necessary to satisfy Covered Entity's obligations under 45 C.F.R. §164.528;
- g. To the extent feasible, adopt a technology or methodology specified by the Secretary pursuant to 42 U.S.C. § 17932(h) that renders health information unusable, unreadable, or indecipherable to unauthorized individuals.
- h. That Business Associate does not and will not have any ownership rights in any of the protected health information.
- i. To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s); and
- j. Make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.

2. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may only use or disclose protected health information as necessary to perform the services set forth in the Agreement, provided such disclosures would not violate the HIPAA Standards if done by Covered Entity.
- b. Business Associate may use or disclose protected health information as required by law.
- c. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.
- d. Business Associate may use protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate.
- e. Business Associate may disclose protected health information for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies Business Associate of any instances in which it is aware in which the confidentiality of the information has been breached.

3. Reporting and Mitigating the Effect of Unauthorized Uses and Disclosures.

Business Associate shall report, in writing, to Covered Entity's Privacy Officer any security incident or breach after Business Associate discovers the breach and without unreasonable delay. Further, Business Associate shall investigate the breach and provide to Covered Entity as soon as possible, all information Covered Entity may require to make notifications of the breach to individuals, or other persons or entities. Business Associate shall cooperate with Covered Entity in addressing the breach.

4. Covered Entity Liability.

Business Associate is not liable for Covered Entities HIPAA compliance or non-compliance. We do offer assistance in understanding and complying with all the new regulations affecting Personal Health Information, but since we are not able to make business decisions for you we cannot accept liability for Covered Entities compliance to HIPAA and HiTech Act regulations.

5. **Term and Termination.**

- a. Term. Subject to Section 4(b), this Business Associate Agreement shall be effective as of the date of the Agreement, and shall continue in effect while the Agreement remains in force, and thereafter with respect to those obligations intended to survive the termination of the Agreement and this Business Associate Agreement.
- b. Termination for Cause. Business Associate authorizes termination of this Business Associate Agreement by Covered Entity if Covered Entity determines that Business Associate has violated a material term of this Business Associate Agreement and Business Associate has not cured the violation within thirty (30) days after notice of such violation from Covered Entity or, if such violation cannot reasonably be cured within said thirty (30) day period, if Business Associate has not taken steps to cure the violation within such thirty (30) day period.
- c. Obligations of Business Associate Upon Termination. Upon termination of this Business Associate Agreement for any reason, Business Associate with respect to protected health information received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity or, if agreed to by Covered Entity, destroy the remaining protected health information that Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 C.F.R. Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
 - iv. Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at Sections 2(d) and 2(e) which applied prior to termination; and
 - v. Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. Survival. The obligations of Business Associate under this Section 4 shall survive the termination of this Business Associate Agreement.

6. **Miscellaneous.**

- a. Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Standards.
- b. No Private Cause of Action. This Business Associate Agreement is not intended to and does not create a private cause of action by any individual, other than the parties to this Business Associate Agreement, as a result of any claim arising out of the breach of this Business Associate Agreement, the HIPAA Standards or other state or federal law or regulation relating to privacy or confidentiality.
- c. Amendment. This Business Associate Agreement shall only be amended or modified upon written consent of the parties. The parties agree to take such action as is necessary

to amend this Agreement from time to time as necessary for compliance with the requirements of the HIPAA Standards and any other applicable law.

- d. Severability. If any provision of this Business Associate Agreement shall be declared invalid or illegal for any reason whatsoever, then notwithstanding such invalidity or illegality, the remaining terms and provisions of this Business Associate Agreement shall remain in full force and effect in the same manner as if the invalid or illegal provision had not been contained herein, and such invalid, unenforceable or illegal provision shall be valid, enforceable and legal to the maximum extent permitted by law.
- e. Governing Law. This Business Associate Agreement shall be interpreted, construed and governed according to the laws of the state in which the Covered Entity maintains its principal place of business (the "State"). The parties agree that venue shall lie in Federal and State courts in the State, without regard to its conflicts of law principles, regarding any and all disputes arising from this Business Associate Agreement.
- f. Application of State Law. Where any applicable provision of State law relates to the privacy of health information and is not preempted by HIPAA, as determined by application of the HIPAA Standards, the parties shall comply with the applicable provisions of State law.
- g. Notices. Any notice or other communication given pursuant to this Business Associate Agreement must be in writing and (i) delivered personally, (ii) delivered by overnight express, or (iii) sent by registered or certified mail, postage prepaid, to the address set forth above and shall be considered given upon delivery.

IN WITNESS WHEREOF, the parties hereto have executed this Business Associate Agreement as of the effective date of the Agreement.

[COVERED ENTITY]

The Kepra Trust dba KEP Partners

Signature:

Signature:

Print Name:

Print Name:

Title:

Title: