

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“**BAA**”) is made and entered into by and between Zoom Video Communications, Inc., located at 55 Almaden Blvd, Suite 600, San Jose, CA 95113 (“**Zoom**” herein) and COUNTY OF MONTEREY, located at 168 West Alisal Street, Salinas, California 93906, United States (“**Company**” herein). The effective date of this BAA shall be the date of Company’s signature below.

RECITALS

Company is a Covered Entity or Business Associate as described under HIPAA Laws. Company and Zoom will engage in a business relationship in which Zoom provides certain Services (defined below) to Company pursuant to the Master Subscription Agreement dated July 1, 2019 (the Master Subscription Agreement along with all exhibits and order forms are collectively referred to herein as “**Agreement**”). Zoom may receive, Use, maintain, make Disclosures of, or otherwise process PHI as a Business Associate for or on behalf of Company in the course of performing such Services.

The parties to this BAA hereby agree as follows:

1. **Definitions** All capitalized terms used but not otherwise defined in this BAA will have the meaning ascribed to them by HIPAA Laws.

“**Affiliate**” means, with respect to a party, any entity that directly or indirectly controls, is controlled by or is under common control with that party. For purposes of this BAA, “control” means an economic or voting interest of at least fifty percent (50%) or, in the absence of such economic or voting interest, the power to direct or cause the direction of the management and set the policies of such entity.

“**Breach**” shall have the same meaning as “breach” as defined in 45 C.F.R. § 164.402; however, the term “Breach” as used in this BAA shall also mean the unlawful or unauthorized access to, Use or Disclosure of certain “medical information” as defined under Cal. Civil Code § 56.05(j), for which notification is required pursuant to Cal. Health & Safety Code 1280.15, or a “breach of the security of the system” under Cal. Civil Code § 1798.29.

“**California Confidentiality Laws**” shall mean the applicable laws of the State of California governing the confidentiality, privacy, or security of PHI or other personally identifiable information (“**PII**”), including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code § 56 *et seq.*), the patient access law (Cal. Health & Safety Code § 123100 *et seq.*), the HIV test result confidentiality law (Cal. Health & Safety Code § 120975 *et seq.*), the Lanterman-Petris-Short Act (Cal. Welf. & Inst. Code § 5328 *et seq.*), and California’s data breach law (Cal. Civil Code § 1798.29).

“**HIPAA Laws**” collectively mean the Health Insurance Portability and Accountability Act and the Health Information Technology for Economic and Clinical Health (“**HITECH**”) Act, including, without limitation, the Standards for Privacy of Individually Identifiable Health Information, C.F.R. at Title 45, Parts 160 and 164 (the “**Privacy Rule**”), and the Standards for the Security of Electronic PHI, C.F.R. at Title 45, Parts 160 and 164 (the “**Security Rule**”) as modified, supplemented, and amended from time to time.

“**PHI**” has the meaning specified in 45 C.F.R. § 160.103, limited to such protected health information that is received by Zoom from, or created, received, maintained, or transmitted by Zoom on behalf of, Company through Company’s use of the Services. All references to PHI in this BAA will include Electronic PHI, as applicable under HIPAA Laws.

“**Security**” or “**Security Measures**” mean the administrative, physical, and technical safeguards and documentation requirements specified in the Security Rule.

“**Services**” mean the unified communications services or other services provided by Zoom to Company pursuant to the Agreement whereby Zoom is creating, receiving, maintaining, or transmitting PHI.

“**Unsuccessful Security Incidents**” mean, without limitation, pings and other broadcast attacks on Zoom’s firewall, port scans, unsuccessful log-on attempts, denial of service attacks, and any combination of the above, as long as no such

incident results in unauthorized access, acquisition, Use, or Disclosure of PHI.

2. Permitted Uses and Disclosures of PHI

- 2.1. Performance of Zoom Services** Zoom shall not Use or make a Disclosure of PHI other than as permitted or required by this BAA or as Required by Law. Zoom may Use or make a Disclosure of PHI to perform the Services for or on behalf of Company including, without limitation, the provision of maintenance and support services provided under the Agreement, provided such Use or Disclosure would not violate HIPAA Laws, this BAA or California Confidentiality Laws if done by Company, unless expressly permitted as set forth below in Section 2.2 (“Management, Administration, and Legal Responsibilities”). Zoom is not permitted to Use PHI to create de-identified information except for or on behalf of Company, for Company’s benefit. For purposes of clarity Zoom may not de-identify or use any PHI created, received, maintained, or transmitted by Zoom under this BAA or the Agreement for its own or a third parties benefit or use, or for any commercialized purposes.
- 2.2. Management, Administration, and Legal Responsibilities** Except as otherwise limited in this BAA, Zoom may Use and make Disclosures of PHI for the proper management and administration of Zoom, or to carry out the legal responsibilities of Zoom, or both, provided that any Disclosure may occur only if: (a) Required by Law; or (b) Zoom obtains reasonable assurances from the third party to whom the Disclosure or Use of the PHI is made that it will be held confidentially and subject to additional Disclosures only as Required by Law or for the purpose for which the Disclosure of PHI was made to the third party, and the third party notifies Zoom of any instances of which it becomes aware in which the confidentiality of the PHI has been breached.

3. Responsibilities with Respect to PHI

3.1. Zoom’s Responsibilities Zoom agrees to the following:

3.1.1. Limitations on Use, Disclosure, and Sale Zoom will only Use, Disclose, and request the minimum necessary PHI to provide the Services, for the proper management and administration of Zoom business specific purposes to the extent otherwise permitted in this BAA, to report violations of law to appropriate federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1), or both. Zoom shall not engage in the sale of PHI.

3.1.2. Safeguards Zoom shall: (a) use reasonable and appropriate safeguards to prevent inappropriate Use and Disclosure of PHI other than as provided for in this BAA; and (b) comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C of the Security Rule and industry best practices to prevent Use or Disclosure of electronic PHI other than as permitted in this BAA.

3.1.3. Subcontractors Zoom may use Subcontractors to fulfill its obligations under this BAA. In accordance with 45 C.F.R. §§ 164.502(e)(1)(ii) and 164.308(b)(2), Zoom shall require its Subcontractors who create, receive, maintain, or transmit PHI on behalf of Zoom to agree in writing to:

- (a) substantively the same or more stringent restrictions and conditions that apply to Zoom with respect to such PHI;
- (b) appropriately safeguard the PHI; and
- (c) comply with the applicable requirements of 45 C.F.R. Part 164 Subpart C of the Security Rule.

3.1.4. Reporting to Company Zoom shall report to Company:

- (a) any Use or Disclosure of PHI that is not permitted or required by this BAA, of which Zoom becomes aware;

(b) any Security Incident that affects, or otherwise involves an unauthorized access, acquisition, Use, or Disclosure of, PHI and of which Zoom becomes aware, provided that notice is hereby deemed given for Unsuccessful Security Incidents and no further notice of such Unsuccessful Security Incidents will be given. For the avoidance of doubt, a ransomware attack shall not be considered an Unsuccessful Security Incident and shall be reported to Company, irrespective of whether such Security Incident results in a Breach, provided that such ransomware attack affects, or otherwise involves an unauthorized access, acquisition, Use, or Disclosure of, PHI of which Zoom becomes aware of ; and

(c) any Breach of Company's Unsecured PHI that Zoom may discover (in accordance with 45 C.F.R. § 164.410 of the Breach Notification Rule and California Confidentiality Laws).

3.1.5. Notification Notifications under Section 3.1.4 ("Reporting to Company") will be provided in writing by Zoom as follows:

- (a) for any unauthorized Use or Disclosure of PHI, notification will be made without unreasonable delay, but in no event more than fifteen (15) business days after Zoom's discovery thereof;
- (b) for a Security Incident that affects, or otherwise involves an unauthorized access, acquisition, Use, or Disclosure of, PHI, other than an Unsuccessful Security Incident, notification will be made without unreasonable delay, but in no event more than ten (10) business days after Zoom's discovery thereof;
- (c) for a Breach, notification will be made without unreasonable delay, but in no event more than ten (10) business days after Zoom's discovery of a Breach;
- (d) Zoom shall provide a written report, which shall include, to the extent known to Zoom, the identification of each individual whose PHI has been, or is reasonably believed by the Zoom to have been, accessed, acquired, Used or Disclosed and all other information listed in 45 C.F.R. § 164.410(c) or reasonably requested by Company, to Company without unreasonable delay, but no later than ten (10) business days after such a written report is requested by Company;
- (e) Zoom shall promptly mitigate, to the extent practicable, any harmful effect that is known to Zoom of such improper access, acquisition, Use, or Disclosure, Security Incident that affects, or otherwise involves an unauthorized access, acquisition, Use, or Disclosure of, PHI, or Breach and
- (f) Unless provided otherwise by Law, Company shall have sole control over the timing and method of providing notification of such Breach to the affected individual(s), the appropriate government agencies, and other persons required by law to be notified. Zoom shall provide reasonable assistance with any notifications, as requested by Company. Where Breach is caused, in whole or in part, by Zoom's failure of its obligations under the BAA, Zoom shall reimburse Company for its reasonable direct costs associated with investigating and remediating the Breach, the reasonable direct costs of providing notifications (which may include remedies provided to Individuals affected by the Breach that are legally required or consistent with industry practice), and other mitigation costs, fines, or penalties directly resulting from the Breach. Reimbursement for all such costs under this section is subject to the limitation of liability set forth in this BAA.

3.1.6. Disclosures to the Secretary Zoom shall make its internal practices, books, and records relating to the Use and Disclosure of PHI available to Company or the Secretary in a time and manner designated by Company or the Secretary, for the purposes of the Secretary determining Company's or Zoom's compliance with HIPAA Laws or the California Confidentiality Laws. Nothing in this Section 3.1.6 ("Disclosures to the Secretary") waives any applicable attorney client privilege, work product, confidentiality, or other proprietary right or legal protection. Zoom shall to the extent reasonably practical, promptly notify Company of any such requests by the Secretary to the extent such requests pertain to Company, Company's PHI, or this BAA and, upon Company's request, provide Company with copies of documents relevant to Company that were provided to the Secretary. The fact that Company has the right

to inspect, inspect, or fails to inspect Zoom's internal practices, records, books, agreements, policies and procedures does not relieve Zoom of its responsibility to comply with this BAA, regardless of whether Company detects or fails to detect a violation by Zoom, nor does it constitute Company's acceptance of such practices or waiver of Company's rights under this BAA.

3.1.7. Access and Amendment The Services do not include the ability to create or maintain a Designated Record Set. Zoom does not maintain PHI in a Designated Record Set. If Company requires access to or amendment of a Designated Record Set, Company shall directly perform such actions, without the assistance of Zoom.

3.1.8. Accounting of Disclosures Zoom, at the request of Company, shall make available to Company, and in the time and manner designated as reasonably requested by Company, such information relating to Disclosures made by Zoom as required for Company to make any requested accounting of Disclosures in accordance with 45 C.F.R. § 164.528. In the event the request for an accounting is delivered directly to Zoom, Zoom shall, within ten (10) business days, forward such request to Company. Zoom shall implement reasonable and appropriate recordkeeping process to enable it to comply with the requirements of this Section.

3.1.9. Privacy Rule and Security Rule Compliance Zoom shall comply with the Privacy Rule in the performance of its obligations under this BAA with respect to the Services, to the extent the Privacy Rule applies to Zoom under this BAA or as prescribed by law, or to the extent that Zoom carries out one or more of Customer's obligations under the Privacy Rule, Zoom shall comply with the requirements of the Privacy Rule that apply to Company in the performance of such obligations. Zoom shall comply with the Security Rule with respect to PHI. Zoom shall comply with all California Confidentiality Laws, to the extent that such state laws are not preempted by HIPAA.

3.2. Company's Responsibilities

3.2.1. No Impermissible Requests Company shall not request Zoom to Use or make any Disclosures of PHI in any manner that would not be permissible under HIPAA Laws if done by Company (unless permitted by HIPAA Laws for a Business Associate).

3.2.2. Contact Information for Notices Company hereby agrees that any legal notices notice by Zoom pursuant to this BAA will be made in accordance with Section 7 (Notices) of this BAA. Any other reports, notifications or notice shall be made electronically to the Company contact specified on record in Company's account information. Company shall ensure that such contact information remains up to date during the term of this BAA.

3.2.3. Safeguards and Appropriate Use of PHI Company shall take reasonable steps to limit the PHI made available through the use of the Services to the minimum necessary. Without limiting any of Zoom's obligations under this BAA or the Agreement, Company is responsible for implementing appropriate privacy and security safeguards to protect its PHI in compliance with HIPAA Laws. Without limitation, it is Company's obligation to exclude PHI from information Company submits to technical support personnel through a technical support request. Company is solely responsible for ensuring the PHI it transmits via Zoom may be legally disclosed to the communications recipient(s).

3.2.4. Permission from Individuals To the extent consent is legally required, Company shall obtain consent for the sharing of PHI from each Individual whose PHI is to be transmitted, created, maintained, or otherwise made available to Zoom and/or its Subcontractors through the use of a particular Service (e.g., SMS texts or email). Company shall not permit an Individual's PHI to be used with any Service for which consent is required until such consent has been granted and documented appropriately in Company records, in accordance with applicable legal requirements. Company shall provide written documentation confirming receipt of such legally required consent as contemplated in this Section 3.2.4 ("Permission from Individuals") if reasonably requested by Zoom in connection with a regulatory audit or other legal process.

3.2.5. Communicating Changes to Zoom Company shall notify Zoom of any changes in, or revocation of, permission by an Individual to Use or make a Disclosure of PHI, to the extent that such changes may affect Zoom's

Use or Disclosure of PHI.

3.2.6. Communicating Restrictions to Zoom Company shall notify Zoom of any restriction to the Use or Disclosure of PHI that Company has agreed to in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Zoom's Use or Disclosure of PHI.

3.2.7. Communicating Restrictions in Notices of Privacy Practices to Zoom Company shall notify Zoom of any limitation(s) in any applicable notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Zoom's Use or Disclosure of PHI.

3.2.8. Use and Disclosure of PHI using Beta Services Company acknowledges that beta services may not have undergone testing to determine the suitability of the beta services for PHI. Company shall not submit, transmit, or make any PHI available through the use of beta services unless Zoom first expressly authorizes such use in writing.

4. Term and Termination

4.1. Term The term of this BAA begins when signed by both parties and shall continue in effect until all of the PHI provided by Company to Zoom, or created or received by Zoom on behalf of Company, is destroyed or returned to Company, or if it is infeasible to return or destroy PHI, protections are extended to such PHI, in accordance with the termination provisions in Section 5.2.

4.2. Termination for Breach

4.2.1. Termination by Company for Breach Upon Company's knowledge of a material breach of this BAA by Zoom, Company shall either:

- (a) Provide an opportunity for Zoom to cure the breach or end the violation within thirty (30) days of Zoom's receipt of written notice of such breach, if Zoom does not cure the breach or end the violation timely, terminate this BAA and the associated Services; or
- (b) Immediately terminate this BAA and the associated Services if Zoom has breached a material term of this BAA and cure is not possible.

4.2.2. Termination by Zoom for Breach If Zoom knows of a pattern of activity or practice of Company that constitutes a material breach or violation of Company's obligations under this BAA, Zoom must take reasonable steps to notify Company to cure the material breach or end the violation. If the steps are unsuccessful, Zoom may terminate this BAA.

5. Post-Termination Obligations

5.1. Return, Destruction, or Retention of PHI Upon Termination Except as provided in Section 5.2 ("Notice When Return or Destruction is Infeasible") below, upon any termination or expiration of this BAA, Zoom shall return or destroy all PHI received from Company, or created or received by Zoom on behalf of Company. The parties intend for this provision to apply to PHI that is in the possession of Subcontractors or agents of Zoom. Zoom shall retain no copies of the PHI, including backup copies except as provided in Section 5.2. Zoom shall certify in writing that all PHI has been returned or securely destroyed, and no copies retained, upon Company's request.

5.2. Notice When Return or Destruction is Infeasible In the event that Zoom determines that returning or destroying PHI is infeasible, Zoom shall notify Company of the conditions that make return or destruction infeasible. If Company agrees that return or destruction of the PHI is infeasible, as determined in its sole discretion, Zoom shall (i) retain only that PHI which it is infeasible to return or destroy; (ii) return to Company the remaining PHI that Zoom maintains in any form; (iii) extend the protections of this BAA to such PHI; (iv) limit any further Use and Disclosure of such PHI to those purposes that make the return or destruction infeasible, for so long as Zoom maintains such PHI; and (v) return to

Company the PHI retained by Zoom when such return is no longer infeasible.

6. Limitation of Liability ZOOM'S TOTAL AND AGGREGATE LIABILITY TO COMPANY FOR ALL DAMAGES ARISING OUT OF OR IN CONNECTION WITH A BREACH OF THIS BAA CAUSED BY ZOOM WILL NOT EXCEED THREE TIMES THE TOTAL PAYMENTS RECEIVED BY ZOOM FROM COMPANY IN THE TWELVE (12) MONTHS PRECEDING THE CLAIM. THIS LIMITATION APPLIES TO ALL CAUSES OF ACTION IN THE AGGREGATE, INCLUDING, WITHOUT LIMITATION, BREACH OF CONTRACT, MISREPRESENTATIONS, NEGLIGENCE, STRICT LIABILITY AND OTHER TORTS. THESE LIMITATIONS APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY REMEDY. ZOOM SHALL NOT BE LIABLE FOR ANY LOSS OF USE OF DATA OR DESTRUCTION OF DATA, OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES.

7. Notices For legal notices under this BAA to be effective, including without limitation any Breach notification, the party providing notice must do so in writing and deliver the notice via electronic mail to the following addresses:

(a) If to Zoom, to privacy@zoom.us; Attention: Privacy Officer. A copy of all notices must be sent to legal@zoom.us; and

(b) If to Company, to:
County of Monterey Health Department
Attn: Compliance/Privacy Officer
1270 Natividad Road
Salinas, CA 93906
Phone: 831-755-4018
Fax: 831-755-4797
Email: sumeshwarsd@co.monterey.ca.us and EntinA@natividad.com

8. Miscellaneous

8.2. No Agency Relationship The parties do not intend for this BAA to create an express or implicit agency relationship in accordance with federal or state common law of agency. Each party is intended to be an independent contractor and no agency relationship is created under this BAA.

8.3. No Third-Party Rights or Remedies This BAA does not and is not intended to confer any enforceable rights or remedies upon any person other than Zoom and Company.

8.4. References A reference in this BAA to a section in the Privacy Rule or Security Rule or California Confidentiality Laws means the section that is currently in effect or as amended in the future.

8.5. Assignment No party may assign its rights or delegate any of its obligations under this BAA without the prior written consent of the other party, except that all rights and obligations may be assigned and transferred without such consent to an Affiliate, to a successor by merger, or to the acquirer of all or substantially all of the assets of the assigning party. Any purported assignment or transfer in violation of this Section 8.4 ("Assignment") is null and void. No party may unreasonably withhold, condition, or delay consent to an assignment. This BAA is binding upon, and inures to the benefit of, the parties and their respective permitted successors and assigns.

8.6. Amendments; Waiver Without undue delay, the parties shall take such action as is necessary to amend this BAA from time to time to allow for Company and Zoom to comply with the requirements of HIPAA Laws or California Confidentiality Laws. No amendment or modification of this BAA will be deemed binding unless set forth in a written instrument, duly executed by the parties. No provision in this agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

8.7. Ambiguity The parties intend that any ambiguity in this BAA will be resolved and interpreted as closely as possible to meet the intent of the parties and to permit Company and Zoom to comply with HIPAA Laws and California

Confidentiality Laws.

8.8. Merger; Conflicts The parties intend for this BAA to constitute the final agreement between the parties, and that it is the complete and exclusive expression of the parties' agreement on the matters contained in this BAA. All prior or contemporaneous writings, negotiations, and discussions between the parties with respect to its subject matter are expressly merged and superseded by this BAA. In entering into this BAA, neither party has relied upon any statement, representation, warranty, or agreement of the other party except for those expressly contained in this BAA. In the event of a conflict or inconsistency between this and the Agreement between the parties with respect to the subject matter of this BAA, the terms of this BAA will control to the extent necessary to resolve the conflict or inconsistency. For the avoidance of doubt, any limitation of liability as specified in the Agreement shall not apply to this BAA. For clarity, this BAA is subject to the limitation of liability as specified in Section 6.

8.9. Severability If any provision of this BAA is determined to be invalid, illegal, or unenforceable, the parties do not intend for this determination to affect or impair the validity, legality, and enforceability of the remaining provisions of this BAA in any way.

8.10. Counterparts; Signatures This BAA may be executed in one or more counterparts. Each counterpart will be an original, but all such counterparts will constitute a single instrument. The signatures to this BAA may be shared by fax or scanned PDF attachment via email or completed electronically or digitally, and any fax or scan of an original signature or an electronic or digital signature appearing on this BAA are the same as an original, wet handwritten signature for the purposes of validity, enforceability, and admissibility.

8.11. Governing Law The laws of the State of California, without giving effect to its conflict of laws principles, govern all matters arising out of or relating to this BAA, including, without limitation, its validity, interpretation, construction, performance, and enforcement.

8.12. Survival All sections of this BAA which, by their nature, should survive termination will survive termination, including, without limitation, 3.1.4 (Reporting to Company), 3.1.5 (Notification), 3.1.8 (Accounting of Disclosures), Section 5.1 ("Return, Destruction, or Retention of PHI Upon Termination"), Section 5.2 ("Notice When Return or Destruction is Infeasible"), Section 6 ("Limitations of Liability and Exclusion of Consequential Damages"), 8.10 (Governing Law), and 8.15 (Assistance in Litigation or Administrative Proceeding).

8.13. Relationship of Parties Notwithstanding anything to the contrary in the Agreement, Zoom is an independent contractor and not an agent of Company under this BAA. Zoom has the sole right and obligation to supervise, manage, contract, direct, procure, perform, or cause to be performed all Zoom obligations under this BAA.

8.14. Legal Actions Unless prohibited by law, Zoom shall notify Company promptly after the Zoom's receipt of any request or subpoena for PHI. To the extent that Company decides to assume responsibility for challenging the validity of such request, Zoom shall make reasonable efforts to cooperate with Company in such challenge.

8.15. Assistance in Litigation or Administrative Proceeding Zoom shall make itself, and any employees or agents assisting Zoom in the performance of its obligations under any Services Agreements, available to Company to testify in any claim commenced against Company, its directors, officers, employees, successors, and assigns based upon violation by Zoom or its agents or subcontractors of HIPAA or other applicable law, except where Zoom or its employee or agent is a named adverse party.

8.16. Insurance In addition to any general and/or professional liability insurance required of Zoom under the Agreement, Zoom shall, at all times during the Term of the BAA, maintain, at its own cost, the following insurance coverages with carriers who have an AM Best rating of A-/VII or above: Errors and Omissions/Cyber Liability with coverage of \$10,000,000 in the aggregate for the policy period. Upon request by Customer, Zoom shall provide, a current certificate evidencing the insurance required to be maintained by this BAA is in full force and effect.

8.17. Information Blocking Rules Zoom shall not take any action, or refuse to take any action, with regard to

Company's electronic health information that would result in "information blocking" as prohibited by 42 U.S.C. § 300jj-52 and 45 C.F.R. Part 171 (collectively, "Information Blocking Rules"). Zoom and Company shall cooperate in good faith to ensure Company's electronic health information is accessed, exchanged, and used in compliance with the Information Blocking Rules.

Each party, either individually or as a duly authorized representative, accepts the terms in this BAA by affixing a signature below.

COMPANY: COUNTY OF MONTEREY

ZOOM VIDEO COMMUNICATIONS, INC.

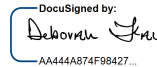
Signature:

Name: Eric Chatham

Title: Chief Information Officer

Date:

Signature:



Name:

Title:

Date:

Signature:

Name: Elsa M. Jimenez, MPH

Title: Director of Health Services

Date:



Signature:

Name: Charles R. Harris, MD

Title: CEO, Natividad Medical Center

Date: