

**PROFESSIONAL SERVICES AGREEMENT BETWEEN THE COUNTY OF LAKE AND EXAMWORKS LLC FOR INDEPENDENT MEDICAL EXAMINATION AND PEER REVIEW SERVICES**

This Professional Services Agreement (the "Agreement") dated as of October 1, 2023 (the "Effective Date"), is made by and between the County of Lake, hereinafter referred to as "County", and ExamWorks, LLC, a Delaware limited liability company, hereinafter referred to as "Contractor", collectively referred to as the ("Parties") and each, individually, a ("Party").

WHEREAS, ExamWorks is in the business of arranging and facilitating medical assessment services, including independent medical examination and peer review services (together, the "Services"); and

WHEREAS, Customer desires to retain ExamWorks as its provider of Services, and ExamWorks desires to provide Services to Customer pursuant to the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereto intending to be bound, and for good and valuable consideration the receipt of which is acknowledged, and in respect of the mutual promises and covenants contained herein, agree as follows:

1. Services. ExamWorks agrees to perform for Customer Services to be provided on a case by case basis as requested by Customer from time to time. The parameters of each case shall be mutually agreed to between the Parties orally or in writing.
  - a. Service rendered will not exceed \$25,000 per fiscal year.
2. Term and Termination. This Agreement shall be effective on the Effective Date and shall continue in effect for five (5) years from the Effective Date (the "Initial Term"). Following the Initial Term, this Agreement shall automatically renew for additional one (1)-year terms. Either Party may terminate this Agreement upon ninety (90) days prior written notice to the other party prior to the end of the then-current term. Any work already performed by ExamWorks prior to such termination shall be paid by Customer as invoiced.
3. Rates. ExamWorks will submit electronic billing statements of charges using the mutually agreed rates. Customer shall pay amounts due within thirty (30) days of the billing statement date. ExamWorks may withhold reports for any pending or future Services until payment is made on past due invoices.
4. Personnel. ExamWorks agrees to perform administrative services to arrange and facilitate Services using appropriately trained Personnel. "Personnel" includes employees and contractors of ExamWorks performing the Services pursuant to this Agreement, other than Medical Professionals. ExamWorks shall conduct criminal background checks on any Personnel performing Services on Customer's premises and will ensure that all Personnel used to perform the Services will adhere to high professional standards used in the marketplace for such Services.
5. HIPAA. To the extent ExamWorks is considered a "Business Associate" of the Customer under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA"), the Parties agree to comply with HIPAA in connection with the assignment and performance of the Services, and the Parties agree to the terms of the Business Associate Agreement attached as Exhibit A, the terms of which are incorporated by reference herein.
6. Medical Professionals. Customer acknowledges that ExamWorks may contract with physicians and other medical professionals and providers ("Medical Professionals") who will perform all or a portion of the Services for Customer. ExamWorks shall provide Customer with access to a national network of Medical Professionals to perform Services. ExamWorks agrees to credential each Medical Professional and to use only Medical Professionals who have been so credentialed to perform the Services. Customer acknowledges that any medical action or determination will be performed or made by a Medical Professional using his or

her independent professional medical training, judgment and expertise and that, ExamWorks, which is not a medical professional and acts in an administrative capacity, does not control and shall not be responsible or liable for the actions or determinations of Medical Professionals.

7. Relationship of Parties. ExamWorks is an independent contractor with respect to Customer. Nothing contained in this Agreement shall be construed as creating a relationship between Customer and ExamWorks, other than that of an independent contractor. ExamWorks further agrees that ExamWorks is solely responsible for the payment of all salaries, wages, and employee benefits for its Personnel.
8. Claim Determinations. Customer acknowledges that ExamWorks' Services are advisory in nature and accordingly ExamWorks shall not have authority or responsibility for, or liability relating to, determining who is eligible to receive any type of benefit, the amount of any benefit to be paid under any insurance policy or plan, eligibility determinations, bill payment or denial determinations, claims processing determinations, employee payment determinations, treatment determinations or other similar determinations. All such authority and responsibility shall remain with Customer and Customer shall indemnify and hold ExamWorks harmless against any third party action against ExamWorks arising from any such determination. Nothing in this Agreement shall prevent ExamWorks from providing Services to other customers.
9. Limited Liability. Except in the case of fraud or willful misconduct of either Party, in no event shall ExamWorks be liable under any claim, demand or action (whether arising in contract, tort or otherwise) arising out of or relating to this Agreement for (i) any special, indirect, incidental, exemplary or consequential damages (including, but not limited to, loss of profits, loss of use or loss from business disruption), under this Agreement, or (ii) any amounts in excess of the aggregate fees paid under this Agreement.
10. Confidentiality. During the Term of this Agreement, and for a period of two (2) years after the end of the Term, and except as required to be disclosed by law, each Party shall safeguard the other Party's Confidential Information (as hereinafter defined), and shall use its best efforts and all commercially reasonable means to prevent the disclosure of any Confidential Information to any third party. Confidential Information of either or both Parties shall include any and all confidential or proprietary information including, but not limited to any processes, services, customers, transactions, suppliers, practices and trade secrets, in each case to the extent (a) such information is marked confidential or (b) based upon the nature of the information and the circumstances surrounding its disclosure, the other Party should reasonably be expected to understand that such information is confidential or proprietary. Confidential Information shall not include (i) any information that is known or becomes known to the general public, other than as a result of a disclosure in violation of this Agreement; (ii) any information known by a Party prior to its disclosure by the other Party, or (iii) any information that becomes available to a Party on a non-confidential basis from a source other than the other Party, provided that such source, to the knowledge of the first Party, is not prohibited from disclosing such information to the first Party by a legal, contractual or fiduciary obligation to the second Party. ExamWorks shall retain ownership and all rights in and to any web portal or other proprietary software ExamWorks uses to perform the Services.
11. Force Majeure. Neither Party shall be in default or otherwise liable for any delay in or failure of its performance under this Agreement where such delay or failure arises by reason of any natural disaster or any government or any governmental body, acts of the common enemy, the elements, strikes or labor disputes, or other cause beyond the reasonable control of such Party.
12. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and supersedes all prior agreements and understandings, oral or written, between the Parties hereto with respect to the subject matter hereof.
13. Governing Law. The validity, interpretation, construction and performance of this Agreement shall be governed by the laws of California.

- 14. Headings. The sections heading herein are for convenience and do not define or govern the substance any section hereof.
- 15. Counterparts; Facsimile or .PDF Signature. This Agreement may be executed in counterparts, each of which shall be deemed to be an original and all of which together shall constitute one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or by a copy of a manually-executed signature delivered by .pdf file will be effective as delivery of a manually executed counterpart of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the Effective Date.

**County of Lake**

**EXAMWORKS, LLC**

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

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

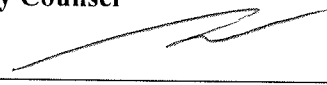
Name: Jessica Pyska

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

Title: CHAIR, Board of Supervisors

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

**County Counsel**

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

Name: Lloyd Guintivano

Title: Deputy County Counsel  
← CC

## EXHIBIT A

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“BAA”) is made and entered into as of the date of the Agreement by and between ExamWorks (“Business Associate”) and The County of Lake, the Customer (“Covered Entity”). This BAA is drafted in accordance with Covered Entity’s and Business Associate’s obligations under Title II of the Health Insurance Portability and Accountability Act of 1996, as amended (including by the Health Information Technology for Economic and Clinical Health, the “HITECH Act”), and the regulations issued and effective thereunder (collectively, “HIPAA”) to ensure the integrity and confidentiality of Protected Health Information (“PHI”) that the Business Associate may create for or receive from the Covered Entity.

#### 1. DEFINITIONS

Capitalized terms used but not otherwise defined in this BAA or the Agreement shall have the same meaning as set forth in HIPAA.

#### 2. OBLIGATIONS AND ACTIVITIES OF BUSINESS ASSOCIATE

- 2.1. Business Associate agrees not to use or further disclose PHI other than as permitted or required by the Agreement, this BAA or as Required By Law.
- 2.2. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this BAA.
- 2.3. Business Associate agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect confidentiality, integrity, and availability of Electronic PHI that it creates, receives, maintains, or transmits on behalf of Covered Entity.
- 2.4. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of, Covered Entity agrees in writing to the same restrictions and conditions that apply through this BAA to Business Associate with respect to such information.
- 2.5. To the extent that Business Associate maintains PHI in a Designated Record Set, as defined at 45 C.F.R. § 164.501, Business Associate agrees to provide Covered Entity, upon request, in a reasonable time and manner, PHI maintained or created by Business Associate, so Covered Entity can respond to a request by an Individual for access to inspect and obtain a copy of PHI in accordance with 45 C.F.R. 164.524.
- 2.6. To the extent that Business Associate maintains PHI in a Designated Record Set, as defined at 45 C.F.R. § 164.501, Business Associate agrees to provide Covered Entity, upon request, in a reasonable time and manner, PHI maintained or created by Business Associate, so Covered Entity can respond to a request by an Individual for amendment to the PHI and if requested by Covered Entity to incorporate any amendments to the PHI maintained by the Business Associate in accordance with 45 C.F.R. 164.526.
- 2.7. Business Associate agrees to make its internal practices, books, and records, including policies and procedures and PHI, related to the use and disclosure of PHI received from, or created or received by Business Associate available to HHS within a reasonable time or as designated by HHS, for purposes of the Secretary determining Covered Entity’s and/or Business Associate’s compliance with HIPAA.
- 2.8. 45 C.F.R. 164.308, 164.310, 164.312, and 164.316 shall apply to Business Associate in the same manner that such sections apply to Covered Entity.

- 2.9. Business Associate agrees to document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528.
- 2.10. Business Associate agrees to provide to Covered Entity or an Individual within a reasonable time, information collected in accordance with Section 2.9 of this BAA, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. 164.528. Effective as of the date specified by HHS, with respect to disclosures related to an Electronic Health Record, Business Associate shall provide the accounting directly to an Individual, in an electronic format, if a direct response is requested by the Individual.
- 2.11. Business Associate will comply with any restriction request under Section 4.3 below if: (1) except as otherwise required by law, the disclosure is to a health plan for purposes of carrying out payment or health care operations (and is not for purposes of carrying out treatment); and (2) the PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full.
- 2.12. Business Associate agrees to report to Covered Entity any use or disclosure of PHI not provided for by this BAA or any Security Incident of which it becomes aware. In addition, Business Associate shall notify Covered Entity within a reasonable amount of time of the discovery of a Breach of Unsecured PHI, as defined by 45 C.F.R. § 164.402. Business Associate will treat the Breach as being discovered, and provide any required notification to Covered Entity in accordance with 45 C.F.R. § 164.410. If a delay is requested by a law enforcement official in accordance with 45 C.F.R. § 164.412, Business Associate may delay notifying Covered Entity for the applicable time period.

### **3. PERMITTED USES AND DISCLOSURES BY BUSINESS ASSOCIATE**

- 3.1. Except as otherwise limited in this BAA, Business Associate may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.
- 3.2. Except as otherwise limited in this BAA, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- 3.3. Except as otherwise limited in this BAA, Business Associate may disclose PHI for the proper management and administration of the Business Associate provided that disclosures are either:
  - Required by Law; or
  - Business Associate obtains reasonable assurance from any person or entity to which Business Associate will disclose Covered Entity's PHI that the person or entity will: (1) hold Covered Entity's PHI in confidence and use or further disclose Covered Entity's PHI only for the purpose for which Business Associate disclosed Covered Entity's PHI to the person or entity or as Required by Law; and (2) promptly notify Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of Covered Entity's PHI was breached.
- 3.4. Except as otherwise limited in this BAA, Business Associate may use PHI to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. 164.504(e)(2)(i)(B).
- 3.5. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. 164.502(j)(1).
- 3.6. Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Covered

Entity's PHI reasonably necessary to accomplish the intended purposes of the use, disclosure or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure or request to the minimum necessary. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act, and government guidance on the definition.

- 3.7. Except as otherwise allowed under the HITECH Act, Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless the Covered Entity or Business Associate obtained from the Individual, in accordance with 45 C.F.R. 164.508, a valid authorization that includes a specification of whether the PHI can be further exchanged for remuneration by the entity receiving PHI of that Individual.

#### 4. OBLIGATIONS OF COVERED ENTITY

- 4.1. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices in accordance with 45 C.F.R. 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.2. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.3. Covered Entity shall notify Business Associate of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. 164.522, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- 4.4. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity with the exception of any uses or disclosures as allowed by Section 3 above.

#### 5. TERM AND TERMINATION

- 5.1. **Term.** The term of this BAA shall be effective as of the Effective Date of the Agreement, and shall terminate when all of the PHI provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 5.2. **Termination for Cause.** Upon Covered Entity's knowledge of a material breach by Business Associate of this BAA, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation and terminate this BAA and the Agreement. If Business Associate does not cure the breach or end the violation within a reasonable time period, or if Business Associate has breached a material term of this BAA and cure is not possible, then Covered Entity may immediately terminate this BAA and the Agreement. If termination is not feasible, Covered Entity shall report the problem to the Secretary.

#### 6. EFFECT OF TERMINATION

- 6.1. Except as provided in section 6.2, upon termination of this BAA, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate and its subcontractors or agents shall retain no copies of the PHI.

- 6.2. In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall extend the protections of this BAA to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

## 7. MISCELLANEOUS

- 7.1. **Regulatory References.** A reference in this BAA to a section in the Privacy or Security Rule means the section as in effect or as amended, and for which compliance is required.
- 7.2. **Amendment.** The Parties agree to take such action as is necessary to amend this BAA from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy and Security Rules and the Health Insurance Portability and Accountability Act, Public Law 104-191, including the HITECH Act, and any guidance and regulations promulgated thereunder.
- 7.3. **Survival.** The rights and obligations of Business Associate under section 6 of this BAA shall survive the termination of this BAA.
- 7.4. **Interpretation.** Any ambiguity in this BAA shall be resolved in favor of a meaning that permits Covered Entity and Business Associate to comply with HIPAA.
- 7.5. **Authorizations.** To the extent any specific disclosure of PHI is made by Covered Entity to Business Associate pursuant to and in accordance with a valid authorization under 45 C.F.R. 164.508, the terms of such authorization will apply rather than the terms of this Business Associate Agreement.