

**DATATUDE, INC.**  
**Service User Agreement**

This Service User Agreement ("Agreement") is entered into by and between Datatude, Inc. ("Datatude"), a Texas corporation, and County of Mendocino ("User").

NOW THEREFORE, it is agreed that User does hereby retain Datatude to provide the services described, and Datatude accepts such engagement, on General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, Exhibit A, Exhibit B, and Attachment 1, all of which are incorporated into this Agreement.

The term of this Agreement shall be from August 1, 2020 to June 30, 2023.

The compensation payable to Datatude hereunder shall not exceed Thirty Thousand Two Hundred Fifty-Six Dollars (\$30,256) for the term of this Agreement.

Datatude shall comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA) regulations, State and Federal laws, and other User requirements for client confidentiality and record security as outlined in the Business Associate Agreement (Attachment 1).

BY USING DATATUDE'S ONLINE SERVICE, THE USER REPRESENTS THAT USER UNDERSTANDS AND AGREES WITH THE FOLLOWING TERMS AND CONDITIONS GOVERNING THE USE OF THE SERVICE.

USER UNDERSTANDS THAT BY ACCEPTING THESE TERMS AND CONDITIONS BY CLICKING "I Agree", USER REPRESENTS THAT USER HAS THE AUTHORITY FROM THE CUSTOMER FOR WHOM USER WORKS, TO ENTER INTO THIS AGREEMENT.

FOR valuable consideration, receipt of which is hereby acknowledged, the parties agree as follows:

1. Definitions.

1.1 "Account" means the login identification and password assigned to one individual User (which is not shared with another individual) which allows access to or use of the Service.

1.2 "Confidential Information" means the User Data and any trade secret, proprietary or confidential information concerning the organization, business or finances of the Customer or User.



1.3 "Customer" means the individual, entity, group, or organization who is a party to a Subscription Agreement with Datatude regarding the Service and has authorized User to access and/or use the Service.

1.4 "Datatude" means Datatude, Inc., a Texas corporation.

1.5 "Datatude Technology" means the software, including the source code and database technology that provides the browser interface and the platform for the Service.

1.6 "Designated Customer Contact" means one individual, designated by Customer, that may contact Datatude during regular business hours regarding questions and technical support of the Service. All other Users of the Customer must contact the Designated Customer Contact regarding questions and technical support of the Service

1.7 "Documentation" means all user manuals and other written material created by Datatude to describe the functionality or assist in the use of the Service.

1.8 "HFA" means Healthy Families America, an evidence-based model home visiting program started in 1992 by Prevent Child Abuse America, or any program that replaces Healthy Families America if the Healthy Families America program is discontinued.

1.9 "Home Visitor" means each and every individual who is in the role of providing direct service, through home visits, to families enrolled in an HFA program. Home Visitors carry a limited caseload, as defined through the accreditation standards of HFA. Each Home Visitor must have an Account.

1.10 "Intellectual Property" shall mean any copyrights, trademarks, domain names, and any other intellectual property rights related to the Datatude Technology and the Service (the "Intellectual Property").

1.11 "Secured Information" shall mean login identification, user names, password or other access codes provided for use of the Service.

1.12 "Service" means the browser interface to access and store data together with the Documentation, any updates, modification, bug fixes, upgrades, enhancements, or other modifications provided by the Datatude Technology to the Customer. It does not include any version of the Service that constitutes a separate product because of differences in function or features.

1.13 "Subscription Agreement" means the subscription agreement entered into and between Customer and Datatude regarding the Service. The Agreement is conditional on there being an existing and effective Subscription Agreement.

1.14 "User" means YOU.



1.15 "User Data" means any data, information or material that User or any other user of the Customer submits through the Service in the course of using the Service.

## 2. User Access.

2.1 Grant. Subject to the terms and conditions set forth in this Agreement, Datatude conditionally grants to User the right to access and use the Service, and use the Documentation, solely in connection with Customer's internal business purposes, for as long as Customer has an effective Subscription Agreement and is not delinquent or in breach of the terms of the Subscription Agreement.

2.2 Restrictions. Datatude owns and retains all right, title, and interest in the Service, the software that forms the platform for the Service, Documentation, and any and all related materials. This Agreement does not transfer ownership rights of any type in the Service, Documentation, or any related materials to User or any third party. User shall not modify, reverse engineer, or decompile the Service, or create derivative works based on the Service. User shall not license, sub-license, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make accessible to a third party the Service, modify or make derivative works based upon the Service, create links, frame or mirror server or access the Service in other to build a competitive product or service using similar ideas, features, functions or graphics. User shall not distribute the Service to any persons or entities. User may not sell the Service to any person or make any other commercial use of the Service. User shall retain all copyright and trademark notices on the Service and Documentation and shall take other necessary steps to protect Datatude's intellectual property rights. All rights not granted to User are reserved by Datatude.

2.3 User Responsibilities. User is responsible for activity occurring under its Account and should comply with all applicable local, state, federal and foreign laws and treaties and regulations in connection with the use of the Service including those related to data privacy, international communications and the transmission of technical or personal data. User shall notify Datatude and Customer immediately if User knows of, or suspects, any unauthorized use of any password or any other break in security, and User will use reasonable effort to stop immediately any copying or distribution of information that is known by any user.

Customer will designate its Designated Customer Contact. Only the Designated Customer Contact for the Customer may ask questions and receive technical support regarding the Service from Datatude. User may ask questions and seek technical support regarding the Service from the Customer's Designated Customer Contact.

User is responsible to assist the Customer in calculating and confirming the correct number of Home Visitors within the Customer that are using the Service. User must provide accurate information to Customer in regards to Home Visitors.



As a condition for User to use the Service, User agrees not to post or transmit any unlawful, harmful, threatening, fraudulent, libelous, defamatory, racially or ethnically offensive, obscene, pornographic, hateful, offensive or otherwise objectionable information or content of any kind, including (without limitation) any materials which may violate the rights of others, any United States or foreign law or give rise to civil or criminal liability. User will be responsible for the contents and statements made by User during use of the Service.

2.4 User Data. Datatude does not own User Data. DATATUDE MAKES NO EXPRESS OR IMPLIED WARRANTY REGARDING THE ACCURACY, CONTENT, COMPLETENESS, RELIABILITY, OPERABILITY, OR LEGALITY OF THE USER DATA PROVIDED OR POSTED BY CUSTOMER. Datatude shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any User Data.

User represents that the User Data provided by User to be posted through the Service shall not burden or pose a risk in any way to the regular operation of the Service or shall not be used as a channel to provide any other unauthorized or unwanted use of the Service. User represents that the User Data posted in the Service does not encourage or instruct in any way the performance of criminal conduct, does not pose a risk to any other user, and does not violate in any way the rights of third parties including but not limited to the intellectual property rights, proprietary rights, rights of privacy or confidential information.

2.5 Confidentiality of User Data. User understands and agrees that the User Data provided by any user of the Service to Datatude is Confidential Information as defined herein.

2.6 Secured Information. User agrees to safeguard, at all times, the Secured Information including, without limitation, not allowing third parties to use in anyway the Secured Information. User agrees to abstain from registering the Service on behalf of a third party or any group of individuals or any entity other than Customer and from collecting, transmitting, sharing or storing the Secured Information with any other user for any purpose, including, but not limited to, commercial use or any unlawful use.

### 3. Term and Termination.

3.1 Term and Termination of Agreement. This Agreement becomes effective on User's acceptance of this Agreement. This Agreement is effective for as long as User is authorized by Customer to access and use the Service, but will terminate automatically or otherwise cease to be effective without notice from Datatude if 1) User fails to comply with any term(s) of this Agreement or 2) the Subscription Agreement is terminated.

3.2 Rights on Termination. Datatude has and reserves all rights and remedies that it has by operation of law or otherwise to enjoin the unlawful or unauthorized use of Service or Documentation. On termination, (a) all rights granted to User under this Agreement cease and User will promptly cease all use of the Service and



Documentation and (b) User will promptly return all copies of the Documentation to Datatude or destroy all of User's copies of the Documentation and so certify to Datatude in writing within fourteen (14) days of termination. Section 2.1 and Sections 4, 5, 6, and 7 will survive termination of this Agreement as will any cause of action or claim of either party, whether in law or in equity, arising out of any breach or default.

4. Warranties, Disclaimer and Limitations. DATATUDE AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY AS TO THE RELIABILITY, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. DATATUDE AND ITS LICENSORS DO NOT REPRESENT THAT THE USE OF THE SERVICE WILL BE SECURE, UNINTERRUPTED OR ERROR FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE OR SOFTWARE; THAT THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS; AND THAT ANY STORED DATA WILL BE ACCURATE OR RELIABLE.

DATATUDE SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. DATATUDE IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

THIS AGREEMENT EXPRESSLY EXCLUDES ALL WARRANTIES, EXPRESS OR IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, (a) ANY WARRANTY THAT THE SERVICE IS ERROR FREE, WILL OPERATE WITHOUT INTERRUPTION, OR IS COMPATIBLE WITH ALL EQUIPMENT AND SERVICE CONFIGURATIONS; (b) ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY; AND (c) ANY AND ALL WARRANTIES OF FITNESS FOR A PARTICULAR PURPOSE.

DATATUDE IS NOT LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, OR CONSEQUENTIAL DAMAGES, INCLUDING THE LOSS OF PROFITS, REVENUE, DATA, OR USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS INCURRED BY USER OR ANY THIRD PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT OR BASED ON A WARRANTY, EVEN IF DATATUDE OR ANY OTHER PERSON HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. DATATUDE'S LIABILITY FOR DAMAGES UNDER THIS AGREEMENT SHALL NOT EXCEED THE AMOUNT OF \$100.

5. Intellectual Property Ownership. Except as for the User Data, all right, title and interest in and to the Datatude Technology, and the Service, to all of the contents of the site, its selection, arrangement and compilation including but not limited to text, documents, graphics, designs, logos, pictures, page headers, button icons, videos, music, sound, files, software, hardware, their application, fictitious names, and any other trademarked or copyrightable material (the "Content"), any Intellectual Property, and any suggestions, ideas, enhancement request, feedback, recommendation or other



information provided by User or any other party relating the Service, are owned exclusively by Datatude and are protected to the full extent of the United States laws and international copyright and trademarks laws. The Content may not be modified, stored in permanent form, copied, distributed, framed, reproduced, published, downloaded, displayed, posted, transmitted, used to create derivative works, or sold in any form or by any means, in whole or in part, without Datatude's prior written consent. The Content of the website and Service may be changed or modified by Datatude at its sole discretion at anytime without notice to User.

User expressly agrees not to use, sell, transfer, distribute, lease, loan, the Intellectual Property rights related to the Content and Service in part or as a whole or not to reproduce, distribute, perform, display, prepare derivative works, duplicate, modify, alter, and/or dispose of in any way such proprietary information.

No wording of the website and Service may be construed as granting User any right to license, or transfer any or all of the Intellectual Property rights owned by Datatude or third parties.

The Intellectual Property shall not be used in part or in whole without the previous written consent of Datatude.

## 6. Indemnity.

6.1 Infringement Indemnity. Datatude indemnifies, defends, and holds User harmless from and against any claims, actions, or demands alleging that the Service infringes any patent, copyright, or other intellectual property right of a third party. If use of the Service is permanently enjoined for any reason, Datatude, at Datatude's option, and in its sole discretion, may (a) modify the Service so as to avoid infringement; (b) procure the right for User to continue to use and reproduce the Service and Documentation; or (c) terminate this Agreement. Datatude shall have no obligation under this Section 6.2 for or with respect to claims, actions, or demands alleging infringement that arise as a result of (a) the combination of noninfringing items supplied by Datatude with any items not supplied by Datatude; (b) modification of the Service or Documentation by Datatude in compliance with Customer's or User's designs, specifications, or instructions; (c) the direct or contributory infringement of any process patent by Customer or User through the use of the Service; and (d) continued allegedly infringing activity by User after User has been notified of the possible infringement.

## 7. Confidentiality.

7.1 Confidentiality. User acknowledges that the Service, and all information relating to the business and operations of Datatude or Datatude's customers that User learns or has learned during or prior to the term of this Agreement, shall be valuable, confidential, and proprietary information of Datatude. During the period this Agreement is in effect, and at all times afterwards, User, and its employees, contractors, consultants, and agents, will (a) safeguard the confidential information with the same degree of care that



it uses to protect its own confidential information; (b) maintain the confidentiality of this information; (c) not use the information except as permitted under this Agreement; and (d) not disseminate, disclose, sell, publish, or otherwise make available the information to any third party without the prior written consent of Datatude.

**7.2 Limitations on Confidentiality Restrictions.** Section 7.1 does not apply to any information that (a) is already lawfully in the receiving party's possession (unless received pursuant to a non-disclosure agreement); (b) is or becomes generally available to the public through no fault of the receiving party; (c) is disclosed to the receiving party by a third party who may transfer or disclose such information without restriction; (d) is required to be disclosed by the receiving party as a matter of law (provided that the receiving party will use all reasonable efforts to provide the disclosing party with prior notice of such disclosure in order for disclosing party to obtain a protective order therefor); (e) is disclosed by the receiving party with the disclosing party's approval; and (f) is independently developed by the receiving party without any use of confidential information. In all cases, the receiving party will use all reasonable efforts to give the disclosing party 30 days' prior written notice of any disclosure of information under this agreement. The parties will maintain the confidentiality of all confidential and proprietary information learned pursuant to this Agreement for a period of three years from the date of termination of this Agreement.

**7.3 Injunctive Relief for Breach.** Datatude and User acknowledge that any breach of Section 7.1 by a receiving party will irreparably harm the disclosing party. Accordingly, in the event of a breach, the disclosing party is entitled to promptly seek injunctive relief in addition to any other remedies that the disclosing party may have at law or in equity.

## **8. Export Controls and Restricted Rights.**

**8.1 Export Controls.** The Service, the Documentation, and all underlying information or technology may not be exported or re-exported into any country to which the U.S. has embargoed goods, or to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. User shall not export the Service or Documentation or any underlying information or technology to any facility in violation of these or other applicable laws and regulations. User represents and warrants that it is not a national or resident of, or located in or under the control of, any country subject to such export controls.

**8.2 Restricted Rights.** The Service and Documentation are provided with Restricted Rights. Use, duplication, or disclosure by the U.S. Government is subject to restrictions as set forth in subparagraph (c)(1) of the Commercial Computer Service - Restricted Rights clause at FAR 52.227-19, subparagraph (c)(1)(ii) of The Rights in Technical Data and Computer Service clause at DFARS 252.227-7013, or subparagraph (d) of the Commercial Computer Service - Licensing at NASA FAR supplement 16-52.227-86, or their equivalent, as applicable.

## **9. General.**

9.1 Assignment. User may not assign, sublicense, or transfer User's rights or delegate its obligations under this Agreement without Datatude's prior written consent.

9.2 Entire Agreement. This Agreement, along with the terms and conditions contained in the Subscription Agreement, constitutes the final and complete understanding between the parties, and replaces and supersedes all previous oral or written agreements, understandings, or arrangements between the parties with respect to the subject matter contained in this Agreement.

9.3 Waiver. This Agreement may not be modified or amended except in a writing signed by an authorized officer of each party. The failure of either party to enforce any provision of this Agreement shall not be deemed a waiver of the provisions or of the right of such party thereafter to enforce that or any other provision.

9.4 Independent Contractor. Nothing in this Agreement shall be deemed to create an employer/employee, principal/agent, or joint venture relationship. Neither party shall have the authority to enter into any contracts on behalf of the other party.

9.5 Governing Law and Jurisdiction. This Agreement shall be governed by and construed in accordance with the laws of the State of Texas, excluding its conflict of law principles.

9.6 Severability. In case any provision of this Agreement is held to be invalid, unenforceable, or illegal, the provision will be severed from this Agreement, and such invalidity, unenforceability, or illegality will not affect any other provisions of this Agreement.



IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

By: [Signature]  
Anne Molgaard, Public Health Director

Date: 8/8/21

Budgeted: ☒ Yes ☐ No

Budget Unit: 4013

Line Item: 86-2189

Org/Object Code: PNMCH

Grant: ☐ Yes ☐ No

Grant No.:

COUNTY OF MENDOCINO

By: [Signature]  
DAN GJERDE, Chair  
BOARD OF SUPERVISORS

Date: AUG 31 2021

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: [Signature]  
Deputy

AUG 31 2021

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: [Signature]  
Deputy

AUG 31 2021

INSURANCE REVIEW:

By: [Signature]  
Risk Management

Date: 08/05/2021

CONTRACTOR/COMPANY NAME

By: [Signature]  
Kristin Cotter Mena, President

Date: 8/10/2021

NAME AND ADDRESS OF CONTRACTOR:

Datatude, Inc.  
4910 Willowbend Blvd, Suite B  
Houston, TX 77035  
713-440-7976  
Kristin@datatudeinc.com

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

CHRISTIAN M. CURTIS,  
County Counsel

By: [Signature]  
Deputy 08/05/2021

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

EXECUTIVE OFFICE/FISCAL REVIEW:

By: [Signature]  
Deputy CEO

Date: 08/05/2021

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed ☐ N/A

Mendocino County Business License: Valid ☐

Exempt Pursuant to MCC Section: Located outside Mendocino County \_\_\_\_\_



## EXHIBIT A

### DEFINITION OF SERVICES

CONTRACTOR shall provide the following services:

1. Ongoing Services, based on monthly subscription:

- a. Access to on-line system for Case-Management and Administrative Software for Healthy Families America (HFA) Program to all Datatude users designated by COUNTY.
- b. Server Provision & Management:
  - 1) Secure and reliable server co-location.
  - 2) Bandwidth for high quality use experience.
  - 3) Infrastructure hardware.
  - 4) Operating system and database license.
  - 5) Server management, security and back-ups.
- c. Data Management:
  - 1) Provide database management for data that is inputted and owned by COUNTY.
  - 2) Monitor changes in Healthy Families America Best Practice Standards, including updates effective January 1, 2018 and before, and update system as needed to meet tracking and reporting requirements.
  - 3) Provide standard exportable reports.
- d. Data Quality Checks:

Conduct Regional Data Quality Analysis checks and produce reports for COUNTY two (2x) times per year, at six (6) month intervals, to assist in identifying datagaps and error patterns.
- e. Training and Technical Assistance:
  - 1) Provide electronic software user manual and updates.
  - 2) Provide ongoing access to technical assistance through telephone support.
  - 3) Provide access to Beginning and Advanced User Webinars for COUNTY Datatude users on a monthly basis.
  - 4) Maintain archive of webinars that are accessible to COUNTY's Datatude users at any time.

[END OF DEFINITION OF SERVICES]



## EXHIBIT B

### PAYMENT TERMS

COUNTY will pay CONTRACTOR as per the following instructions:

FY 20-21	4 @ \$119/mo	11 mos	\$ 5,236
FY 21-22	4 @ \$139/mo	3 mos	\$ 1,668
FY 21-22	8 @ \$139/mo	9 mos	\$10,008
FY 22-23	8 @ \$139/mo	12 mos	\$13,344
		35 mos	\$30,256

1. Monthly Invoices for services from CONTRACTOR to COUNTY will be based on the chart above at One Hundred Nineteen Dollars (\$119) per user through December 31, 2021, and One Hundred Thirty-Nine Dollars (\$139) after January 1, 2022. For any month in which the actual number of COUNTY users exceeds eight (8), Datatude's service charges will increase by an amount not to exceed One Hundred Nineteen Dollars (\$119) through December 31, 2021, and One Hundred Thirty-Nine Dollars (\$139) after January 1, 2022 per additional user for that month.

2. Invoices are to be sent or emailed to:

COUNTY OF MENDOCINO  
Health and Human Services Agency  
Public Health Branch, MCAH  
1120 S. Dora St.  
Ukiah, CA 95482  
Attn: Lisa Fredrickson  
fredricksonl@mendocinocounty.org  
hhsa\_phfiscal@mendocinocounty.org

3. Payments for Fiscal Year (FY) 20-21 under this Agreement will not exceed the sum of Five Thousand Two Hundred Thirty-Six Dollars (\$5,236).
4. Payments for FY 21-22 under this Agreement will not exceed the sum of Nine Thousand Nine Hundred Ninety-Six Dollars (\$11,676).
5. Payments for FY 22-23 under this Agreement will not exceed the sum of Eleven Thousand Four Hundred Twenty-Four Dollars (\$13,344).
6. Total payments under this Agreement shall not exceed Twenty-Six Thousand Six Hundred Fifty-Six Dollars (\$30,256) for the term of this Agreement.

[END OF PAYMENT TERMS]



## Business Associate Agreement

**THIS HIPAA BUSINESS ASSOCIATE AGREEMENT** (the "Agreement") is entered into effective August 1, 2020 (the "Effective Date"), by and between **Datatude, Inc.** ("Business Associate") and **Mendocino County Public Health** (the "Covered Entity").

Business Associate and Covered Entity have a business relationship (the "Relationship" or the "Agreement") in which Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from, or created or received by, Business Associate on behalf of Covered Entity. ("PHI"). Therefore, if Business Associate is functioning as a business associate to Covered Entity, Business Associate agrees to the following terms and conditions set forth in this HIPAA Business Associate Agreement.

1. **Definitions.** For purposes of this Agreement, the terms used herein, unless otherwise defined, shall have the same meanings as used in the Health Insurance Portability and Accountability Act of 1996, and any amendments or implementing regulations ("HIPAA"), or the Health Information Technology for Economic and Clinical Health Act (Title XIII of the American Recovery and Reinvestment Act of 2009), and any amendments or implementing regulations ("HITECH").
2. **Compliance with Applicable Law.** The parties acknowledge and agree that, beginning with the relevant effective dates, Business Associate shall comply with its obligations under this Agreement and with all obligations of a business associate under HIPAA, HITECH and other related laws, as they exist at the time this Agreement is executed and as they are amended, for so long as this Agreement is in place.
3. **Permissible Use and Disclosure of Protected Health Information.** Business Associate may use and disclose PHI to carry out its duties to Covered Entity pursuant to the terms of the Relationship. Business Associate may also use and disclose PHI (i) for its own proper management and administration, and (ii) to carry out its legal responsibilities. If Business Associate discloses Protected Health Information to a third party for either above reason, prior to making any such disclosure, Business Associate must obtain: (i) reasonable assurances from the receiving party that such PHI will be held confidential and be disclosed only as required by law or for the purposes for which it was disclosed to such receiving party; and (ii) an agreement from such receiving party to immediately notify Business Associate of any known breaches of the confidentiality of the PHI.



4. **Limitations on Uses and Disclosures of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, and agents do not, use or disclose PHI in any manner that is not permitted or required by the Relationship, this Agreement, or required by law. All uses and disclosures of, and requests by Business Associate, for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations.
5. **Required Safeguards To Protect PHI.** Business Associate agrees that it will implement appropriate safeguards in accordance with the Privacy Standards to prevent the use or disclosure of PHI other than pursuant to the terms and conditions of this Agreement.
6. **Reporting of Improper Use and Disclosures of PHI.** Business Associate shall report within 24 business hours of Business Associate's actual knowledge and discovery to Covered Entity a use or disclosure of PHI not provided for in this Agreement by Business Associate, its officers, directors, employees, or agents, or by a third party to whom Business Associate disclosed PHI. Business Associate shall also report within 24 business hours to Covered Entity a breach of unsecured PHI, in accordance with 45 C.F.R. §§ 164.400-414, and any security incident of which it becomes aware. Report should be made to:  
  
Lisa Fredrickson 707-972-8454  
Mendocino County Public Health
7. **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements. Business Associate shall cooperate with Covered Entity's breach notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.
8. **Agreements by Third Parties.** Business Associate shall enter into an agreement with any agent or subcontractor of Business Associate that will have access to PHI. Pursuant to such agreement, the agent or subcontractor shall agree to be bound by the same restrictions, terms, and conditions that apply to Business Associate under this Agreement with respect to such PHI.
9. **Access to Information.** Within five (5) days of a request by Covered Entity for access to PHI about an individual contained in a Designated Record Set, Business Associate shall make available to Covered Entity such PHI for so long as such information is maintained by Business Associate in the Designated



Record Set, as required by 45 C.F.R. § 164.524. In the event any individual delivers directly to Business Associate a request for access to PHI, Business Associate shall within two (2) days forward such request to Covered Entity.

10. **Availability of PHI for Amendment.** Within five (5) days of receipt of a request from Covered Entity for the amendment of an individual's PHI or a record regarding an individual contained in a Designated Record Set (for so long as the PHI is maintained in the Designated Record Set), Business Associate shall provide such information to Covered Entity for amendment and incorporate any such amendments in the PHI as required by 45 C.F.R. § 164.526. In the event any individual delivers directly to Business Associate a request for amendment to PHI, Business Associate shall within two (2) days forward such request to Covered Entity.
11. **Documentation of Disclosures.** Business Associate agrees to document 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.
12. **Accounting of Disclosures.** Within five (5) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the date on which the accounting was requested, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an electronic health record maintained or hosted by Business Associate on behalf of Covered Entity, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity.
13. **Electronic PHI.** To the extent that Business Associate creates, receives, maintains or transmits electronic PHI on behalf of Covered Entity, Business Associate shall:
  - (a) Comply with 45 C.F.R. §§164.308, 301, 312, and 316 in the same manner as such sections apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI;
  - (b) Ensure that any agent to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and



(c) Report to Covered Entity any security incident of which Business Associate becomes aware.

14. **Judicial and Administrative Proceedings.** In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate's response to such request. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days of receipt of such request.
15. **Availability of Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure and privacy protection of PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity, the State of California, and the Secretary of the Department of Health and Human Services, in the time and manner designated by the Covered Entity, State or Secretary, for purposes of determining Covered Entity's compliance with the Privacy Standards. Business Associate shall notify the Covered Entity upon receipt of such a request for access by the State or Secretary, and shall provide the Covered Entity with a copy of the request as well as a copy of all materials disclosed.
16. **Breach of Contract by Business Associate.** Covered Entity may, as its exclusive remedies i) immediately terminate the Relationship if Covered Entity determines that Business Associate has violated a material term of this Agreement, or ii) at Covered Entity's option, permit Business Associate to cure or end any such violation within the time specified by Covered Entity. Covered Entity's option to have cured a breach of this Agreement shall not be construed as a waiver of its rights under 16.i).
17. **Effect of Termination of Relationship.** Upon the termination of the Relationship or this Agreement for any reason, Business Associate shall return to Covered Entity or, at Covered Entity's direction, destroy all PHI received from Covered Entity that Business Associate maintains in any form, recorded on any medium, or stored in any storage system, unless said information has been de-identified and is no longer PHI. This provision shall apply to PHI that is in the possession of Business Associates or agents of Business Associate. Business Associate shall retain no copies of the PHI. Business Associate shall remain bound by the provisions of this Agreement, even after termination of the Relationship or the Agreement, until such time as all PHI has been returned, de-identified or otherwise destroyed as provided in this Section.
18. **Injunctive Relief.** Business Associate stipulates that its unauthorized use or disclosure of PHI while performing services pursuant to this Agreement would cause irreparable harm to Covered Entity, and in such event, Covered Entity



shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

19. **Owner of PHI.** Under no circumstances shall Business Associate be deemed in any respect to be the owner of any PHI used or disclosed by or to Business Associate by Covered Entity.
20. **Third Party Rights.** The terms of this Agreement do not grant any rights to any parties other than Business Associate and Covered Entity.
21. **Independent Contractor Status.** For the purposed of this Agreement, Business Associate is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.
22. **Changes in the Law.** The parties shall amend this Agreement to conform to any new or revised legislation, rules and regulations to which Covered Entity is subject now or in the future including, without limitation, HIPAA, HITECH, the Privacy Standards, Security Standards or Transactions Standards.

IN WITNESS WHEREOF, each Party hereby executes this Agreement as of the Effective Date.

Datatude, Inc.

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

Name: Kristin Cotter Mena  
Title: President

Mendocino County

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

Name: Anne Molgaard  
Title: Public Health Director