

Santa Barbara County Public Health Department
OUTSIDE ORGANIZATION OCHINLINK DATA ACCESS AGREEMENT

This **OCHINLINK DATA ACCESS AGREEMENT** hereinafter “Data Access Agreement” is entered into by and among OCHIN, Inc. (“OCHIN”), Santa Barbara County Public Health Department, a member of OCHIN (hereinafter “Member”) and Santa Barbara San Luis Regional Health Authority, dba CenCal Health (hereinafter “Outside Entity”), individually referred to as “Party”, or collectively referred to as “Parties.”

Outside Entity must comply with all requirements for maintaining the privacy and security of Patient Information (“PI”), as defined herein, and as may be additionally required under federal and California State law. The PI disclosed and provided to Outside Entity is required by law to be protected against unauthorized use, disclosure, modification or loss. In order to comply with applicable legal requirements for the protection of information, the parties agree as follows:

Section 1 Definitions. Capitalized terms used in this Data Access Agreement, to the extent not otherwise defined herein shall have the same meanings set forth in the Master System Agreement.

- A. “EPIC Agreement” is an agreement between EPIC Systems Corporation and OCHIN providing OCHIN certain rights to practice management and electronic medical records software as subject to change from time to time.
- B. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996 and the regulations promulgated thereunder at Title 45, Code of Federal Regulations (C.F.R.) Parts 160 and 164 and as amended.
- C. “HITECH” means the Health Information Technology for Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (commonly known as “ARRA”), Pub. L. No. 111-5 (February 17, 2009), and the regulations promulgated thereunder at 45 C.F.R. Part 164 and as amended.
- D. “HIPAA Regulations” broadly includes HIPAA, HITECH, and the Social Security Act.
- E. “Master System Agreement” is this Exhibit AC and the entirety of the agreement between OCHIN and Member providing Member certain rights to practice management and electronic medical records software as subject to change from time to time.
- F. “OCHINLINK” is an electronic access system whereby at Member’s sole discretion an Outside Entity may be given access to Member Patient Information in order to provide patient care and treatment or to verify care and treatment. EPIC Link for the purposes of this Data Access Agreement is synonymous with OCHINLINK a portal for affiliate providers.
- G. “Patient(s)” means both Member and Outside Entity have a treatment relationship with the individual.
- H. “Patient Information” (“PI”) is defined as Protected Health Information, and Protected Identifying Information, whether in electronic or hardcopy form, and subject to the application of civil and criminal penalties under sections 1176 and 1177 of the Social Security Act, HITECH Act and/or HIPAA.
- I. “Permitted Use(s)” means providing treatment to a Patient(s) or obtaining payment for treatment provided to patients and for no other purposes, including research.

OCHINLINK

Section 2 Purpose of Activities.

- A. Member is committed to providing high quality patient care. In furtherance of its mission, Member agrees to provide electronic access of PI to Outside Entity as necessary to perform care coordination, care planning, and chart review duties as permitted by HIPAA regulations or as required by law. Disclosure of PI will only occur through electronic access to OCHINLINK. Outside Entity understands that electronic access to OCHINLINK is a privilege offered at the sole

discretion of Member as approved by OCHIN. Outside Entity understands and acknowledges that at Member's sole discretion, Member may terminate access to OCHINLINK at any time for any reason.

- B. Outside Entity's access to OCHINLINK shall be limited to information regarding Patients and only for Permitted Uses. Outside Entity shall restrict use by staff of its workforce to these purposes.

OBLIGATIONS OF OUTSIDE ENTITY

Section 3. Use or Disclosure of PI

- A. Qualifications: The Outside Entity represents that it is a health care provider or provider organization. Outside Entity shall ensure that, at all times, during the term of this Data Access Agreement:
 - (i) It is a health care provider or provider organization;
 - (ii) Its workforce that have access to OCHINLINK is duly licensed or otherwise qualified to provide the health care services for which such person has access to OCHINLINK or is acting in an administrative capacity in support of such a health care providers.
 - (iii) Neither Member nor Outside Entity's workforce shall at any time be excluded or suspended from participating in, or otherwise ineligible to participate in the Medicare or Medicaid programs, or any other federal health care program as defined in 42 U.S.C §1320(a)-7(b)f);

In the event any of the foregoing representations ceases to be true with respect to Outside Entity or any member of Outside Entity's workforce, Outside Entity shall promptly notify Member in writing, and shall ensure that any such person ceases immediately to have access to OCHINLINK.

- B. Outside Entity will comply with all policies and procedures of Member for the use of OCHINLINK. Any system updates will be noted, in writing, and provided to Outside Entity contact as defined in this Data Access Agreement.
- C. Only the minimum necessary PI to accomplish the intended purpose of this Data Access Agreement can be used or disclosed. Outside Entity shall not use or disclose PI received from Member in any manner that would constitute a violation of federal or applicable state law, including but not limited to HIPAA. Outside Entity shall ensure that its directors, officers, employees, contractors, and agents use or disclose PI received from, or created or received on behalf of Member only in accordance with the provisions of this Data Access Agreement and federal and state law. Outside Entity shall not disclose PI in any manner other than that permitted by this Data Access Agreement. Outside Entity further agrees that all information accessed through OCHINLINK will be maintained in the strictest confidentiality and in the same manner as Outside Entity safeguards the confidentiality of other PI and as required by state and federal law and HIPAA regulations.
- D. If a patient requests access to their own PI, if Party has incorporated Member PI into its own records for treatment purposes or other permitted uses, Party will not permit access by patient to Member-created PI unless it first notifies Member of the request for access in order to permit Member to limit or refuse access to parts of its record that patient is not entitled to access, or if Member provider(s) believe that access will cause serious physical harm or death to the patient or some other person. Notification of the request for patient access to PI shall be made immediately upon receiving the request so that required time frames may be met.

Section 4. Process for Requesting OCHINLINK Access.

- A. Outside Entity designates a liaison to coordinate user access. The liaison is responsible for managing the modification and termination for accounts provided to Outside Entity.
- B. Outside Entity will have each provider or medical professional ("Professional") sign, complete and submit a separate user access agreement (the "User Access Agreement"), attached hereto as Exhibit AC-1. The liaison will provide the completed forms to Member's User Access Administrator.

Member's IT Services will coordinate with OCHIN for access requests. Outside Entity warrants, represents, and ensures that each Professional approved for access under this Data Access Agreement adheres to the requirements of this Data Access Agreement and the User Access Agreement.

- C. For purposes of this Data Access Agreement, access to OCHINLINK shall only be permitted for Professionals who have executed the User Access Agreement attached hereto as Exhibit AC-1.

Section 5. Safeguarding Information.

- A. Outside Entity shall only use, store, disclose, or access PI:
 - (i) In accordance with HIPAA regulations and only to the minimum necessary as permissible under this Data Access Agreement; and
 - (ii) In full compliance with any and all applicable laws, regulations, rules or standards.
- B. Outside Entity shall have in place policies and procedures to implement and maintain all safeguards necessary to ensure the confidentiality, availability, and integrity of all Member data. Such safeguards shall include as appropriate, and without limitation, use of: policies and procedures to prevent any unauthorized use or disclosure of, or access to, PI; restrictions on administrative access to PI; system firewalls, secure network and transfer protocols such as Secure Socket Shell (SSH), Secure Copy Protocol (SCP), Hyper-Text Transfer Protocol over Secure Sockets Layer (HTTPS), or Internet Protocol Security (IPSec); industry compliant network authentication protocols such as Kerberos or Lightweight Directory Access Protocol (LDAP); encryption; regular and timely system upgrades, including implementation of security patches; disk quotas to ensure system availability; logging in accordance with Member specifications, maintenance of logs on centralized servers; and Outside Entity backup systems for disaster recovery, security, and forensics purposes.
- C. Outside Entity shall not download PI to any personal device including but not limited to a flash drive, cell phone, iPad, or tablet.

Section 6. Data Ownership.

- A. **NO WARRANTIES; LIMITATION ON LIABILITY.** The outside entity acknowledges that access to the OCHINLINK and the information contained in the OCHINLINK is provided "as is" and "as available" without any warranty of any kind, expressed or implied, including but not limited to the implied warranties of merchantability, fitness for a particular purpose, and no infringement. Member does not warrant that the OCHINLINK will be available continuously or at all, or that information in the OCHINLINK will be available, accurate or complete. The outside entity is solely responsible for the care of its patients, and for any and all acts or omissions taken or made in reliance on the OCHINLINK or the information in the OCHINLINK, including inaccurate or incomplete information. In no event shall member or its affiliates be liable for any special, indirect, consequential, or exemplary damages, including but not limited to, loss of profits or revenues, loss of use, breaches of the privacy or security of the OCHINLINK or data in the OCHINLINK, or loss of information or data, whether a claim for any such liability or damages is premised upon breach of contract, breach of warranty, negligence, strict liability, or any other theory of liability, even if member has been apprised of the possibility or likelihood of such damages. Notwithstanding anything in this Data Access Agreement to the contrary.
- B. Outside Entity acknowledges and agrees that Member owns all rights, interests and title in and to its data and that such rights, interests and title shall remain vested in Member at all times. Outside Entity shall not compile or distribute analyses to third parties utilizing any data received from, or created or received on behalf of Member without express written permission from Member, unless specifically authorized by federal or state law in furtherance of its public health functions.

Section 7. Reporting of Unauthorized Use or Disclosure of PI.

Outside Entity shall immediately report, or within 72 hours after discovery, any unauthorized use or disclosure of PI by Outside Entity, its officers, directors, employees, contractors, agents or by a third party to which Outside Entity disclosed PI, to Member and OCHIN. Such notice shall be made to the following:

Member's User Access Administration: Laura Lui, PHDGROUPEHRSupportTeam@sbcphd.org, 805-450-6747

OCHIN Corporate Counsel: James Maldonado, maldonadoj@ochin.org, 503-943-2500

Section 8. Potential Breach of PI.

- A. If Outside Entity has reason to believe that personal information or PI transmitted pursuant to this Data Access Agreement may have been accessed, disclosed, or acquired without proper authorization, Outside Entity will, immediately upon discovery, give Member and OCHIN notice and take actions as may be necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the breach. A breach shall be treated as discovered by the Outside Entity as of the first day on which such breach is known to the Outside Entity (including any person, other than the individual committing the breach, that is an employee, officer, or other agent of the Outside Entity) or should reasonably have been known to the Outside Entity to have occurred. Outside Entity shall give highest priority to immediately mitigate and remediate any unauthorized access and shall devote such resources as may be required to accomplish that goal. The Outside Entity shall cooperate with all Member and OCHIN efforts, including providing any and all information necessary to enable Member to fully understand the nature and scope of the unauthorized access, including but not limited to identification of each individual whose unsecured PI has been, or is reasonably believed to have been, accessed, acquired, or disclosed during the breach.
- B. At the sole discretion of Member, OCHIN, or both, Member or OCHIN may provide notice or may require Outside Entity to provide notice to any or all individuals affected by any unauthorized access, whose personal and/or PI may have been improperly accessed or disclosed that was not protected according to the Secretary of the U.S. Department of Health and Human Services' annual guidance on the most effective and appropriate technical safeguards for use in carrying out security standards. In such case, Outside Entity shall provide the notice and consult with Member and OCHIN regarding appropriate steps required to notify third parties. In the event that the Outside Entity's assistance is required to reinstall software, such assistance shall be provided at no cost to Member or OCHIN and in accordance with the Member's and OCHIN's policies and standards. Outside Entity must coordinate with Member and OCHIN any public notification to any individual, media outlet, or the Secretary of Health and Human Services.
- C. If Member or OCHIN determine that notification is required, the Outside Entity shall pay the full costs of notice to impacted individuals, which may include, but are not limited to, the costs to retain an outside consulting firm to undertake the notification effort, offer and provision of credit monitoring services and will supply Member and OCHIN with the following information to make such notification:
- (i) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known.
 - (ii) A description of the types of unsecured protected health information that were involved in the breach (such as full name, Social Security number, date of birth, home address, account number, or disability code).
 - (iii) A brief description of what the Outside Entity is doing to investigate the breach, to mitigate losses, and to protect against any further breaches.
- D. Outside Entity shall indemnify, hold harmless, and defend Member and OCHIN from and against any penalties, claims, actions, loss, liability, damages, costs, or expenses, including but not limited to reasonable attorneys' fees, system remediation, or forensic analysis, arising from or pertaining to a breach of this Data Access Agreement by Outside Entity. The indemnification provided hereunder includes the full costs of notice to impacted individuals, including the costs to retain an outside consulting firm to undertake the notification effort and other costs.

- E. Member has the right, at any time, to monitor, audit, and review activities and methods in implementing this Data Access Agreement in order to assure compliance therewith, within the limits of Outside Entity's technical capabilities.

Section 9. Accounting for Disclosures.

Title 45, C.F.R., Section 164.528 requires Member to account for all disclosures of PI when requested to do so by a patient unless an exception applies. For access to PI by Outside Entity (that is) a disclosure and subject to an Accounting of Disclosures, Member and Outside Entity agree to account for disclosures as follows:

The parties intend this section to comply with Title 45, C.F.R., Section 164.528 and informal guidance issued by the U.S. Department of Health and Human Services, Office of Civil Rights. If at any time regulatory guidance changes, the parties agree to re-negotiate the accounting for disclosures process to bring the process into conformance with regulatory guidance and Title 45, C.F.R., Section 164.528.

Section 10. Availability of Books and Records.

Outside Entity agrees to make its internal practices, books and records relating to the use and disclosure of PI received from Member, or created or received on behalf of Member, available to the Secretary of the U.S. Department of Health and Human Services for purposes of determining Member's and Outside Entity's compliance with the HIPAA regulations. Within five (5) business days Outside Entity shall provide to Member a copy of any documentation that Outside Entity provides to the Secretary.

Section 11. Immediate Termination.

- A. For Cause. If Member or OCHIN determine that Outside Entity, or Outside Entity's directors, officers, employees, contractors or agents have violated a material provision of this Data Access Agreement, Member may terminate its participation in this Data Access Agreement immediately without liability for termination.
- B. For Convenience. Any Party may terminate this Data Access Agreement in whole or in part upon thirty (30) days written notice without liability for termination.

Section 12. Entire Data Access Agreement.

This Data Access Agreement constitutes the entire Data Access Agreement between the Parties regarding access to OCHINLINK, and supersedes all prior verbal or written agreements, commitments, or understandings concerning the matters provided for herein.

Section 13. Amendment.

In conjunction with the matters considered herein, this Data Access Agreement contains the entire understanding and agreement of the parties for access to OCHINLINK and there have been no promises, representations, agreements, warranties or undertakings by any of the parties, either oral or written, of any character or nature hereafter binding except as set forth herein. This Data Access Agreement may be altered, amended or modified only by an instrument in writing, executed by the parties to this Data Access Agreement and by no other means. Each Party waives their future right to claim, contest or assert that this Data Access Agreement was modified, canceled, superseded, or changed by any oral agreements, course of conduct, waiver or estoppel.

Section 14. Governing Law and Jurisdiction.

This Data Access Agreement shall be governed by the laws of the State of California. Any litigation regarding this Data Access Agreement or its contents shall be filed in the County of Santa Barbara, if in state court, or in the federal district court nearest to Santa Barbara County, if in federal court.

Section 15. Waiver.

No delay or omission of any Party to exercise any right or power arising upon the occurrence of any event of default shall impair any such right or power or shall be construed to be a waiver of any such default or an acquiescence therein; and every power and remedy given by this Data Access Agreement to Party shall be exercised from time to time and as often as may be deemed expedient in the sole discretion of each Party.

Section 16. Third Party Beneficiaries.

Nothing in this Data Access Agreement is intended to create any third party beneficiaries.

Section 17. Term of Data Access Agreement.

This Data Access Agreement is effective beginning January 26, 2021, and will continue until March 31, 2022, or until terminated, whichever is sooner. Upon mutual agreement of the Member and Outside Entity the term may be automatically extended up to three (3) times with each extended term being two (2) years. The Member and Outside Entity agree to review and, if needed, to update this Data Access Agreement at any automatic term extension.

Section 18. Severability.

The provisions of this Data Access Agreement shall be deemed severable and if any portion shall be held invalid, illegal or unenforceable for any reason, the remainder of this Data Access Agreement shall be effective and binding upon the Parties and shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

Section 19. Survival.

All provisions of this Data Access Agreement which by their nature are intended to survive the termination or expiration of this Data Access Agreement shall survive such termination or expiration.

Section 20. Notice.

Any notice or consent required or permitted to be given under this Data Access Agreement shall be given to the respective Parties in writing, by personal delivery, or with postage prepaid by first class mail, registered or certified mail, or express courier service, as follows:

TO MEMBER:

Santa Barbara County
Public Health Department
300 N. San Antonio Road
Santa Barbara, CA 93110
Attn: Laura Lui

TO OUTSIDE ENTITY

CenCal Health
4050 Calle Real
Santa Barbara, CA 93110
Attn: Carlos Hernandez

TO OCHIN:

1881 S.W. Naito Parkway
Portland, Oregon 97201
Attn: Lynne Shoemaker

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received three (3) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

Section 21. Counterparts.

Data Access Agreement may be executed in any number of counterparts, each of which shall be deemed an original, but all such counterparts together shall constitute one and the same instrument.

Section 22. Authority.

Each of the individuals executing this Data Access Agreement on behalf of Member, OCHIN and Outside Entity warrant that they are an authorized signatory of the entity for which they are signing, and have sufficient corporate authority to execute this Data Access Agreement.

Section 23. Binding on Successors and Assigns.

This Data Access Agreement shall inure to the benefit of and shall be binding upon the parties hereto, their successors and assigns.

Section 24. Certifications.

By signing this Data Access Agreement, Outside Entity certifies Member has made available to Outside Entity the sections applicable to Outside Entity as found herein of the EPIC Agreement and Master System Agreement (“referred to in this section as “applicable sections”). Outside Entity certifies it has read, understands, and agrees to comply with all applicable sections. Outside Entity agrees to comply with the applicable sections as each may be reasonably amended and changed from time to time.

Section 25. Limitations.

Outside Entity shall exercise medical judgment free of any direction or control by Member or by OCHIN. The access to data described herein shall not be construed to constitute a partnership, joint venture, or other common undertaking of any kind whatsoever, or allow any party to create or assume any obligation on behalf of any Party or Parties.

Section 26. Records, Audit, and Review.

Outside Entity shall retain a record of the data it collects as evidence of services provided to Medi-Cal eligible individuals common to both the Outside Entity and Member, and will make available such record to Member and OCHIN upon their request. Such record will be maintained by Outside Entity consistent with Outside Entity’s record retention policies. The record includes images of services documented in Member’s electronic medical record and electronically collected by Outside Entity for Permitted Uses, including but not limited to HEDIS compliance audit quality measures review.

Section 27. Nondiscrimination.

Member hereby notifies Outside Entity that the County of Santa Barbara’s Unlawful Discrimination Ordinance (Article XIII of Chapter 2 of the Santa Barbara County Code) applies to this Data Access Agreement and is incorporated herein by this reference with the same force and effect as if the ordinance were specifically set out herein and Outside Entity agrees to comply with said ordinance.

Section 28. Non-Assignment.

Outside Entity shall not assign, transfer or subcontract this Data Access Agreement or any of its rights or obligations under this Data Access Agreement without the prior written consent of Member and any attempt to so assign, subcontract or transfer without such consent shall be void and without legal effect and shall constitute grounds for termination.

Section 29. Headings.

The headings of the several sections, and any Table of Contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

(Signatures on following pages)

IN WITNESS WHEREOF, the Parties hereto have executed this Data Access Agreement as described herein in Section 17, Term of Data Access Agreement.

COUNTY OF SANTA BARBARA

ATTEST:

Mona Miyasato
COUNTY Executive Officer
Clerk of the Board

By: 
Deputy Clerk

COUNTY OF SANTA BARBARA:

Bob Nelson

By: 
Chair, Board of Supervisors

Date: 02/02/2021

RECOMMENDED FOR APPROVAL:

Van Do-Reynoso, MPH, PhD
Public Health Department
Director

By: 
Department Head

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

APPROVED AS TO FORM:

Risk Management

By: _____
Risk Management

IN WITNESS WHEREOF, the Parties hereto have executed this Data Access Agreement as described herein in Section 17, Term of Data Access Agreement.

COUNTY OF SANTA BARBARA

ATTEST:

Mona Miyasato
COUNTY Executive Officer
Clerk of the Board

COUNTY OF SANTA BARBARA:

Bob Nelson

By: _____
Deputy Clerk

By: _____
Chair, Board of Supervisors

Date: _____


RECOMMENDED FOR APPROVAL:

Van Do-Reynoso, MPH, PhD
Public Health Department
Director

APPROVED AS TO ACCOUNTING FORM:

Betsy M. Schaffer, CPA
Auditor-Controller

By: _____
Department Head


By: 
[Robert Geis \(Jan 21, 2021 08:21 PST\)](#)
Deputy

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

APPROVED AS TO FORM:

Risk Management

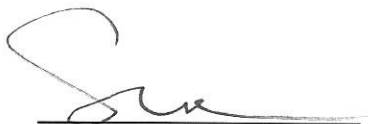
By: 
[Susan McKenzie \(Jan 21, 2021 08:21 PST\)](#)
Deputy County Counsel

By: 
Risk Management

IN WITNESS WHEREOF, the Parties hereto have executed this Data Access Agreement as described herein in Section 17, Term of Data Access Agreement.

OCHIN, INC:

By:

A handwritten signature in black ink, appearing to read 'Sean', written over a horizontal line.

Sean Whitely-Ross
Chief Financial Officer

IN WITNESS WHEREOF, the Parties hereto have executed this Data Access Agreement as described herein in Section 17, Term of Data Access Agreement.

OUTSIDE ENTITY:

CenCal Health

By: Robert S. Freeman
Authorized Representative
Name: Robert Freeman
Title: CEO