

**MEMORANDUM OF UNDERSTANDING
Between**

**County of San Bernardino
and
O'Connell Research, Inc.
for
Data Sharing and Analysis**

May 19, 2020

WHEREAS, The County of San Bernardino, through the Department of Behavioral Health, hereinafter referred to as DBH, and O'Connell Research Inc., hereinafter referred to as Contractor, and

WHEREAS, DBH desires to establish a non-financial agreement for the purposes of outlining service provisions with Contractor for the San Bernardino County Data Driven Recovery Project (DDRP); and

WHEREAS, DBH finds Contractor qualified to provide research and data analysis services; and

WHEREAS, DBH desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

NOW THEREFORE, DBH and Contractor mutually agree to the following terms and conditions:

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I. PURPOSE

The purpose of this MOU is to establish a non-financial agreement with Contractor to extract, analyze and report on data for the San Bernardino County Data Driven Recovery Project (DDRP). The DDRP will support the goal of behavioral health delivery innovation by blending approaches and tools to help better understand the unique challenges faced by those with behavior health needs in the criminal justice system. Statewide, Counties are struggling with an increased number of individuals in contact with the criminal justice system as a direct result of their behavioral health conditions. Through statewide ballot initiatives, local polls, and stakeholders, Californians have spoken and indicated that they want these individuals to receive treatment, not incarceration.

II. DEFINITIONS

- A. Authorization for Release of Protected Health Information (PHI): A HIPAA compliant authorization signed by the client or client's legal representative, authorizing DBH to release the client's information to a designated recipient. This form must be completed thoroughly with specified records to be shared, a designated time frame and expiration date, as well as a signature by the DBH client or his/her legal representative. If the form is signed by a legal representative, proof from the court system designating legal representation must accompany the request.
- B. Department of Behavioral Health (DBH): The County of San Bernardino Department of Behavioral Health, under state law, provides mental health and substance use disorder treatment services to County residents. In order to maintain a continuum of care, DBH operates or contracts for the provision of prevention and early intervention services, 24-hour care, day treatment outpatient services, case management, and crisis and referral services. Community services are provided in all major County metropolitan areas and are readily accessible to County residents.
- C. Health Insurance Portability and Accountability Act (HIPAA): A federal law designed to improve portability and continuity of health insurance coverage in the group and individual markets, to combat waste, fraud, and abuse in health insurance and health care delivery, to promote the use of medical savings accounts, to improve access to long-term care services and coverage, to simplify the administration of health insurance, and for other purposes.
- D. MOU: Memorandum of Understanding is a document describing an agreement between parties.
- E. Personally Identifiable Information (PII): PII is information that can be used alone or in conjunction with other personal or identifying information, which is linked or linkable to a specific individual. This includes: name, social security number, date of birth, address, driver's license, photo identification, other identifying number (case number, client index number, SIMON number/medical record number, etc.).
- F. Protected Health Information (PHI): PHI is individually identifiable health information held or transmitted by a covered entity or its business associate, in any form or media, whether electronic, paper or oral. Individually identifiable information is information, including demographic data, that relates to the individual's past, present or future physical or mental health or condition; the provision of health care to the individual; or the past, present, or

future payment for the provision of health care to the individual, and identifies the individual or for which there is reasonable basis to believe it can be used to identify the individual.

- G. Stepping Up Initiative: A state and county adopted initiative and national movement to develop cross-systems of care, data-driven strategies that lead to the measurable deduction in the number of people with mental illnesses and co-occurring disorders in jails.

III. CONTRACTOR SERVICE RESPONSIBILITIES

Contractor's services will be in the area of County Level Assistance Tools, and may include any or all the activities below:

- A. Consultation and meeting with leadership and staff from DBH, jail, courts and other County staff as needed to manage implementation, facilitate decisions on definitional or operational issues, and the development of priority activities.
- B. Develop logic models that link system and client outcomes to program design. These metrics would include the Stepping Up Initiative metrics as well as approaches that get at quality/speed/efficiency/cost of servicing behavioral health issues in the justice system.
- C. Facilitate creation of a County Sequential Intercept Model to better inform the cross-functional opportunities and challenges for meeting behavioral health needs across the continuum of care. This would then serve as menu of options for stakeholders to develop data driven responses to behavioral health issues in the criminal justice system.
- D. Create process maps to inform areas for system improvement, client connections, and efficiency gains from multiple stakeholder perspectives in step by step, client focused flow charts. These maps can be augmented with data and workload information to better understand the operational implications, then move to prioritize areas of improvement or process re-engineering, as well as programmatic intervention.
- E. Develop data dictionaries and programming code for reporting and analyzing trends, outcomes, and analytics from behavioral health services, jail booking, court processing, and probation with the goal of looking across data holders. Create a basic set of dashboards and views to facilitate County level ongoing management, as well as automation and scaling of data workflows to be implemented by county IT.
- F. Develop a public data strategy to help stakeholders and providers in the Stepping Up Initiative share de-identified information through strategies and best practices of open data.
- G. Conduct quantitative and qualitative analysis based on processes or strategies prioritized in step C and D. The deliverable will be a PowerPoint presentation, and depending on scope, a memo of key findings covering current engagement and outcomes for those with behavioral health needs.
- H. Develop one new program design or grant applications that will serve as a training for staff in how to leverage the work in the project, design. These can be for sub- populations, specific geographies, responses to legislation, or grant opportunities, but the idea is to use build experience and "use" of these approaches.

IV. CONTRACTOR GENERAL RESPONSIBILITIES

- A. Without the prior written consent of DBH, this MOU is not assignable by Contractor either in whole or in part.
- B. Contractor agrees not to enter into any subcontracting agreements for work contemplated under this MOU.
- C. Contractor will maintain all records and books pertaining to the delivery of services under this MOU and demonstrate accountability for MOU performance. Said records shall be kept and maintained within Contractor. DBH shall have the right upon reasonable notice and at reasonable hours of business to examine and inspect such records and books.
- D. Contractor shall not use or disclose any identifying information for any other purpose other than carrying out Contractor obligations under this MOU, except as may be otherwise required by law. This provision will remain in force even after the termination of the MOU.

V. DBH RESPONSIBILITIES

- A. DBH Leadership will provide project oversight and management through the term of this MOU.
- B. DBH will facilitate collaborative meetings with Contractor, Law and Justice Partners and community stakeholders for purposes of data gathering, sequential intercept map model and program improvement processes.
- C. DBH will engage in frequent consultation with Contractor, actively providing and developing required project plans for the DDRP with Yolo County. Define operational challenges and noticeable improvement measures related to San Bernardino County behavioral health and criminal justice systems.
- D. DBH will provide available data resources, delineate required data for such project. Align project outcome requirements with behavioral health and justice related needs within the current data systems. Provide collaborative support for the purposes of data analysis and strategic planning outcomes. Provide data governance support for DBH supplied data.
- E. DBH will provide program support in the development of improvement measures identified within data analysis and performance outcomes in relation to the Sequential Intercept Model.
- F. DBH will obtain a valid Authorization for Release of PHI from DBH client prior to sharing any PHI with O'Connell Research, Inc. and in the performance of required services.
- G. Pursuant to HIPAA, DBH has implemented administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI transmitted or maintained in any form or medium.

VI. MUTUAL RESPONSIBILITIES

Privacy and Security

- A. Both parties shall adhere to any County applicable privacy-related policies pertaining to PII. DBH has a specific responsibility to comply with all applicable State and Federal regulations pertaining to privacy and security of client PHI and strictly maintain the confidentiality of behavioral health records, and Contractor shall assist DBH in upholding said confidentiality by

applying safeguards as discussed herein. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) PHI or electronic Protected Health Information (ePHI).

- B. In addition to the aforementioned protection of IIHI, PHI and e-PHI, both parties shall adhere to the protection of personally identifiable information (PII) and Medi-Cal PII. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in the course of performing an administrative function on behalf of Medi-Cal, such as determining eligibility that can be used alone in conjunction with any other information to identify an individual.
- C. Reporting Improper Access, Use, or Disclosure of Unsecure PHI and PII
Upon discovery of any unauthorized use, access or disclosure of PHI or any other security incident with regards to PHI or PII, Contractor agrees to report to DBH no later than one (1) business day upon the discovery of a potential breach. Contractor shall cooperate and provide information to DBH to assist with appropriate reporting requirements to the DBH Office of Compliance.
- D. Both parties shall ensure any DBH client PHI that is stored on its premises will be locked and secure in adherence to IIHI and PHI privacy requirements.

VII. FISCAL PROVISIONS

- A. Contractor is paid through a separate contract with Yolo County, and DBH has no financial obligation under this contract.

VIII. RIGHT TO MONITOR AND AUDIT

- A. DBH staff or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this MOU. Full cooperation shall be given by Contractor in any auditing or monitoring conducted.
- B. Contractor shall cooperate with DBH in the implementation, monitoring, and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.
- C. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by DBH Fiscal Services staff for DBH , Federal and State representatives for a period of ten years after final payment under the MOU or until all pending County, State and Federal audits are completed, whichever is later. Records of Contractor which do not pertain to the services under this MOU shall not be subject to review or audit unless otherwise provided in this MOU. Technical program data shall be retained locally and made available upon DBH's reasonable advance written notice or turned over to DBH.

- D. Contractor shall provide all reasonable facilities and assistance for the safety and convenience of DBH 's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of Contractor.

IX. TERM

This Memorandum of Understanding (MOU) is effective as of May 19, 2020 and expires June 30, 2021 but may be terminated earlier in accordance with provisions of Section X of this MOU. This MOU may be extended for one-year periods upon written agreement of both parties, unless terminated earlier under the provisions of Section X.

X. EARLY TERMINATION

- A. This MOU may be terminated without cause upon thirty (30) days written notice by either party. DBH's Director is authorized to exercise DBH's rights with respect to any termination of this MOU. The Contractor, or his/her appointed designee, has authority to terminate this MOU on behalf of Contractor.

XI. GENERAL PROVISIONS

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right.
- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall be binding on any of the Parties hereto.
- C. Indemnification - The Contractor agrees to indemnify, defend (with counsel reasonably approved by DBH) and hold harmless DBH and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this contract from any cause whatsoever, including the acts, errors or omissions of any person and for any costs or expenses incurred by the County on account of any claim except where such indemnification is prohibited by law. This indemnification provision shall apply regardless of the existence or degree of fault of indemnitees. The Contractor's indemnification obligation applies to the DBH's "active" as well as "passive" negligence but does not apply to the DBH's "sole negligence" or "willful misconduct" within the meaning of Civil Code Section 2782.
- D. Additional Insured - All policies, except for the Workers' Compensation, Errors and Omissions and Professional Liability policies, shall contain endorsements naming DBH and its officers, employees, agents and volunteers as additional insureds with respect to liabilities arising out of the performance of services hereunder. The additional insured endorsements shall not limit the

scope of coverage for DBH to vicarious liability but shall allow coverage for DBH to the full extent provided by the policy. Such additional insured coverage shall be at least as broad as Additional Insured (Form B) endorsement form ISO, CG 2010.

- E. Waiver of Subrogation Rights - Contractor shall require the carriers of required coverages to waive all rights of subrogation against DBH, its officers, employees, agents, volunteers, contractors and subcontractors. All general or auto liability insurance coverage provided shall not prohibit Contractor and Contractor's employees or agents from waiving the right of subrogation prior to a loss or claim. Contractor hereby waives all rights of subrogation against DBH.
- F. Policies Primary and Non-Contributory - All policies required above are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by DBH.
- G. Severability of Interests – Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between Contractor and the County or between DBH and any other insured or additional insured under the policy.
- H. Proof of Coverage - The Contractor shall furnish Certificates of Insurance to DBH evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to DBH, and Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services. Within fifteen (15) days of the commencement of this contract, the Contractor shall furnish a copy of the Declaration page for all applicable policies and will provide complete certified copies of the policies and endorsements immediately upon request.
- I. Acceptability of Insurance Carrier – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".
- J. Deductibles and Self-Insured Retention - Any and all deductibles or self-insured retentions in excess of \$10,000 shall be declared to and approved by Risk Management.
- K. Failure to Procure Coverage – In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, DBH has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by DBH will be promptly reimbursed by Contractor or DBH payments to Contractor will be reduced to pay for DBH purchased insurance.
- L. Insurance Review - Insurance requirements are subject to periodic review by DBH. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the DBH. In addition, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage

or higher coverage limits, provided that any such change is reasonable in light of past claims against DBH, inflation, or any other item reasonably related to DBH's risk.

Any change requiring additional types of insurance coverage or higher coverage limits must be made by amendment to this contract. Contractor agrees to execute any such amendment within thirty (30) days of receipt.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of DBH.

M. Insurance Specifications

Contractor agrees to provide insurance set forth in accordance with the requirements herein. If Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Contractor agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as show:

1. Workers' Compensation/Employers Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$250,000 limits covering all persons including volunteers providing services on behalf of Contractor and all risks to such persons under this contract.

If Contractor has no employees, it may certify or warrant to DBH that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

2. Commercial/General Liability Insurance – Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars **(\$1,000,000), per occurrence**. The policy coverage shall include:
 - a. Premises operation and mobile equipment.
 - b. Products and completed operations.
 - c. Broad form property damage (including completed operations).
 - d. Explosion, collapse and underground hazards.

- e. Personal injury.
 - f. Contractual liability.
 - g. **\$2,000,000 general aggregate** limit.
3. Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.
- If Contractor is transporting one or more non-employee passengers, in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.
- If Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.
4. Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a “dropdown” provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.
- N. Contractor agrees to provide information on former County of San Bernardino administrative officials (as defined below) who are employed by or represent Contractor. The information shall include former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, “County administrative official” is defined as a member of the Board of Supervisors or such officer’s staff, Chief Executive Officer or member of such officer’s staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.
- O. Contractor shall comply with the terms and conditions as set forth in the attached Business Associate Agreement, hereby incorporated by this reference as Attachment I.

XII. CONCLUSION

- A. This MOU, consisting of eleven (11) pages and Attachment I, is the full and complete document describing services to be rendered by Contractor to DBH including all covenants, conditions and benefits.
- B. The Parties have each caused this MOU to be subscribed by its respective duly authorized officers on its behalf.
- C. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

COUNTY OF SAN BERNARDINO

▶ _____
Curt Hagman, Chairman, Board of Supervisors

Dated: _____
SIGNED AND CERTIFIED THAT A COPY OF THIS DOCUMENT HAS BEEN DELIVERED TO THE CHAIRMAN OF THE BOARD

Lynna Monell
Clerk of the Board of Supervisors
of the County of San Bernardino

By _____
Deputy

O'Connell Research Inc.
(Print or type name of corporation, company, contractor, etc.)

By _____
(Authorized signature - sign in blue ink)

Name _____ Kevin O'Connell
(Print or type name of person signing contract)

Title _____ President
(Print or Type)

Dated: _____

Address _____ 1600 Dwight Way, Berkley, CA 94703

FOR COUNTY USE ONLY

Approved as to Legal Form
▶ _____
Dawn Martin, Deputy County Counsel
Date _____

Reviewed for Contract Compliance
▶ _____
Natalie Kessee, Contracts Manager
Date _____

Reviewed/Approved by Department
▶ _____
Veronica Kelley, Director
Date _____

BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, O'Connell Research Inc., hereinafter referred to as Business Associate, may use, access, maintain or disclose Protected Health Information to perform functions, activities or services for or on behalf of the Department of Behavior Health, hereinafter referred to as the Covered Entity, as specified in this Agreement and the attached **CONTRACT**, provided such use, access, maintenance or disclosure does not violate the Health Insurance Portability and Accountability Act (HIPAA), 42 United States Code (USC) 1320d et seq., and its implementing regulations, including but not limited to, 45 Code of Federal Regulations (CFR) Parts 160, 162, and 164, hereinafter referred to as the "Privacy and Security Rules" and patient confidentiality regulations, including but not limited to, Welfare and Institutions Code (WIC) 5328, 42 CFR Part 2 and the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in Title XIII of the American Recovery and Reinvestment Act of 2009 (ARRA), Public Law 111-5 (HITECH) and any regulations adopted or to be adopted pursuant to HITECH that relate to the obligations of business associates. Business Associate recognizes and agrees it is obligated by law to meet the applicable provisions of HITECH.

I. Definitions

- A. "Breach" means the acquisition, access, use or disclosure of Protected Health Information (PHI) in a manner not permitted under HIPAA (45 CFR Part 164, Subpart E), WIC 5328 or 42 CFR Part 2, which compromises the security or privacy of the PHI. An impermissible use or disclosure of PHI is presumed to be a Breach unless the Covered Entity or Business Associate demonstrates that there is a low probability that the PHI has been compromised. A Breach shall not include:
1. Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of Covered Entity or the Business Associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule; or
 2. Any inadvertent disclosure by a person who is authorized to access PHI at Covered Entity or Business Associate to another person authorized to access PHI at Covered Entity or Business Associate, respectively, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted under the Privacy Rule; or
 3. A disclosure of PHI where Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
- B. "Business Associate" means with respect to a Covered Entity, a person who:
1. On behalf of such Covered Entity, but other than in the capacity of a member of the workforce of such Covered Entity creates, receives, maintains or transmits PHI for a function or activity involving the use or disclosure of Personally Identifiable Health Information, including claims processing or administration, data analysis, data storage, utilization review, quality assurance, billing, benefit management, practice management, and repricing; or
 2. Provides, other than in the capacity of a member of the workforce of such Covered Entity, legal, actuarial, accounting, consulting, data aggregation, management, administrative, accreditation or financial services to or for Covered Entity where the provision of the service involves the disclosure of PHI from such Covered Entity to the person.

- A Covered Entity may be the Business Associate of another Covered Entity.
- C. “Covered Entity” means a health plan, a health care clearinghouse or a health care provider who transmits any health information in electronic form in connection with a transaction covered by the Privacy and Security Rules.
- D. “Data Aggregation” means, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- E. “Designated Record Set” means:
1. A group of records maintained by or for a covered entity that is:
 - (a) The medical records and billing records about individuals maintained by or for a covered health care provider;
 - (b) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
 - (c) Used, in whole or in part, by or for the covered entity to make decisions about individuals.
 2. For purposes of this paragraph, the term record means any item, collection, or grouping of information that includes protected health information and is maintained, collected, used, or disseminated by or for a covered entity.
- F. “Discovered” means a Breach shall be treated as discovered by Covered Entity or Business Associate as of the first day on which such Breach is known to such Covered Entity or Business Associate, respectively, (including any person, other than the individual committing the Breach, that is an employee, officer or other agent of such entity or associate, respectively) or should reasonably have been known to such Covered Entity or Business Associate (or person) to have occurred.
- G. “Electronic Protected Health Information” or “Electronic PHI” means PHI that is transmitted by or maintained in electronic media as defined in the Security Rule.
- H. “HIPAA” means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- I. “HITECH” means the privacy and security Breach notification provisions applicable to Business Associate under Title XIII of ARRA.
- J. “Individual” means the person who is the subject of PHI, and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).
- K. “Individually Identifiable Health Information” means information that is a subset of health information, including demographic information collected from an individual, and;
1. is created or received by a health care provider, health plan, employer or health care clearinghouse; and
 2. relates to the past, present or future physical or mental health condition of an individual; the provision of health care to an individual; or the past,

present or future payment for the provision of health care to an individual;
and

- (a) that identifies the individual; or
- (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

- L. “Privacy Rule” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the privacy of Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart E.
 - M. “Protected Health Information” or “PHI” means Individually Identifiable Health Information transmitted or maintained in any form or medium that (i) is received by Business Associate from Covered Entity, (ii) Business Associate creates for its own purposes from Individually Identifiable Health Information that Business Associate received from Covered Entity, or (iii) is created, received, transmitted or maintained by Business Associate on behalf of Covered Entity. Protected Health Information excludes Individually Identifiable Health Information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. Section 1232(g), records described at 20 U.S.C. Section 1232g(a)(4)(B)(iv), and employment records held by the Covered Entity in its role as employer.
 - N. “Security Rule” means the regulations promulgated under HIPAA by the United States Department of Health and Human Services to protect the security of the Electronic Protected Health Information, including, but not limited to, 45 CFR Part 160 and 45 CFR Part 164, Subpart A and Subpart C.
 - O. “Unsecured PHI” means PHI that is not secured through the use of a technology or methodology specified by the Secretary of the U.S. Department of Health and Human Services.
 - P. Any terms capitalized, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA, the Privacy Rule, the Security Rule and HITECH.
- II. Obligations and Activities of Business Associate
- A. Prohibited Uses and Disclosures

Business Associate shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached **CONTRACT** or as required by law. Further, Business Associate shall not use PHI in any manner that would constitute a violation of the Privacy Rule or HITECH, WIC 5328 or 42 CFR Part 2. Business Associate shall disclose to its employees, subcontractors, agents, or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

Business Associate shall not use or disclose PHI for fundraising or marketing purposes. Business Associate shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; 42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(1)(i)(A). Business Associate shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of Covered Entity and as permitted by HITECH, 42 U.S.C. Section 17935(d)(2); and 45 C.F.R. Section 164.508 however, this prohibition shall not affect payment by

Covered Entity to Business Associate for services provided pursuant to this Agreement.

B. Permitted Uses and Disclosures

1. Except as otherwise limited in this Agreement, 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. Business Associate must ensure disclosure of SUD Part 2 records/information is in alignment with 42 CFR Part 2 restrictions and requirements.
2. Except as otherwise limited in this Agreement, Business Associate may use PHI to provide Data Aggregation service to Covered Entity as permitted by 45 CFR Section 164.504(e)(2)(i)(B), WIC 5328 (25), or 42 Part 2.52 and/or 2.53.
3. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities, consistent with 45 CFR Section 164.502(j)(1), WIC 5328 (7) or (18) or (20) or 42 CFR Part 2.12 (5) or (6).
4. If Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify Business Associate of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. ssection 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

C. Appropriate Safeguards

Business Associate shall implement the following administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of PHI that Business Associate creates, receives, maintains or transmits on behalf of Covered Entity; and to ensure that any agent or subcontractor to whom Business Associate provides such information agrees to implement reasonable and appropriate safeguards to protect PHI in accordance with the Security Rule under 45 C.F.R., Sections 164.308, 164.310, 164.312, 164.314 and 164.316:

1. Implement policies and procedures to prevent, detect, contain and correct security violations; identify the security official who is responsible for the development and implementation of the policies and procedures required by this subpart for the Business Associate; implement a security awareness and training program for all members of its workforce; implement policies and procedures to prevent those workforce members who should not have access from obtaining access to Covered Entity's Electronic PHI; implement policy and procedures to address security incidents; establish policies and procedures for responding to an emergency or other occurrence that damages systems that contain Electronic PHI; and perform a periodic technical and nontechnical evaluation in response to environmental or operational changes affecting the security of Electronic PHI, including conducting accurate and thorough assessments of the potential risks and vulnerabilities to the confidentiality, integrity and availability of Electronic PHI, that establishes

the extent to which an entity's security policies and procedures meet the requirements of this subpart. If SUD Part 2 records/information are part of Business Associate's operations, formal policies and procedures must address 1) paper records and 2) electronic records, as specified in 42 CFR Part 2.16.

2. Implement policies and procedures to limit physical access to Business Associate's electronic information systems and the facility or facilities in which they are housed, while ensuring that properly authorized access is allowed; implement policies and procedures that specify the proper functions to be performed, and the physical attributes of the surroundings of a specific workstation or class of workstations that can access Electronic PHI; implement physical safeguards for all workstations that access Electronic PHI; restrict access to authorized users; implement policies and procedures that govern the receipt and removal of hardware and electronic media that contain Electronic PHI into and out of a facility and the movement of these items within the facility.
3. Implement technical policies and procedures for electronic information systems that maintain Electronic PHI to allow access only to those persons or software programs that have been granted access rights as specified in 45 C.F.R., Section 164.308 implement hardware, software and/or procedural mechanisms that record and examine activity in information systems that contain or use Electronic PHI; implement policies and procedures to protect Electronic PHI from improper alteration, destruction, unauthorized access or loss of integrity or availability; including but not limited to, encryption of all workstations, laptops and flash drives that store PHI.
4. Enter into written agreements with agents and subcontractors to whom Business Associate provides Covered Entity's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to Business Associate with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

D. Mitigation

Business Associate shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, access or disclosure of PHI by Business Associate, its agents or subcontractors in violation of the requirements of this Agreement.

E. Reporting of Improper Access, Use or Disclosure or Breach

Business Associate shall report to Covered Entity's Office of Compliance any unauthorized use, access or disclosure of Unsecured PHI or any other security incident with respect to PHI no later than one (1) business day upon the discovery of a Breach or suspected Breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services, 45 CFR Part 164, Subpart D, as well as 42 CFR Part 2. Upon discovery of a Breach or suspected Breach, the Business Associate shall complete the following actions:

1. Provide Covered Entity's Office of Compliance with the following information to include but not limited to:
 - (a) Date the Breach or suspected Breach occurred;
 - (b) Date the Breach or suspected Breach was discovered;

- (c) Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved;
 - (d) Number of potentially affected Patients/Clients; and
 - (e) Description of how the Breach or suspected Breach allegedly occurred.
2. Conduct and document a risk assessment by investigating without reasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 - (a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - (b) The unauthorized person who used PHI or to whom it was made;
 - (c) Whether the PHI was actually acquired or viewed; and
 - (d) The extent to which the risk to PHI has been mitigated.
 3. Provide a completed risk assessment and investigation documentation to Covered Entity's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with decision whether a Breach has occurred.
 - (a) If a Breach has not occurred, notification to Individual(s) is not required.
 - (b) If a Breach has occurred, notification to the Individual(s) is required and Business Associate must provide Covered Entity with affected Individual(s) name and contact information so that Covered Entity can provide notification.
 4. Make available to Covered Entity and governing State and Federal agencies in a time and manner designated by Covered Entity or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the Covered Entity reserve the right to conduct its own investigation and analysis.

F. Access to Protected Health Information

Business Associate shall provide access to PHI in a Designated Record Set to Covered Entity or to an Individual, at the request or direction of Covered Entity and in the time and manner designated by the Covered Entity. If Business Associate maintains PHI in an electronic format, and an individual requests a copy of such information in electronic form, Business Associate shall provide such information in electronic form as required by 45 CFR Section 164.524 and 42 CFR Part 2.53, as applicable.

To the extent Business Associate maintains a Designated Record Set on behalf of Covered Entity, Business Associate shall make PHI maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within ten (10) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under the Privacy Rule and 42 CFR Part 2.53. If Business Associate maintains ePHI, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act. If Business Associate receives a request from an Individual or Entity (e.g., Public Records Act request, litigation-related requests, etc.) for access to PHI, Business Associate shall immediately forward such request to Covered Entity.

G. Amendment of Protected Health Information

If Business Associate maintains a Designated Record Set on behalf of the Covered Entity, Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to, pursuant to 45 CFR Section 164.526, in the time and manner designated by the Covered Entity.

H. Access to Records

Business Associate shall make internal practices, books, and records, including policies and procedures and PHI, relating to the use, access and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity available to the Secretary of the U.S. Department of Health and Human Services, in a time and manner designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy and Security Rules and patient confidentiality regulations. Anything provided to the Secretary shall also be provided to the Covered Entity upon Covered Entity's request.

I. Breach Pattern or Practice by Covered Entity

Pursuant to 42 U.S.C. Section 17934(b), if the Business Associate knows of a pattern of activity or practice of the Covered Entity that constitutes a material Breach or violation of the Covered Entity's obligations under this Agreement, the Business Associate must take reasonable steps to cure the Breach or end the violation. If the steps are unsuccessful, the Business Associate must terminate the Agreement if feasible, or if termination is not feasible, report the problem to the Secretary of DHHS.

J. Costs Associated to Breach

Business Associate shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the Covered Entity and shall not be reimbursable under the Agreement at any time. Covered Entity shall determine the method to invoice the Business Associate for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

1. Postage;
2. Alternative means of notice;
3. Media notification; and
4. Credit monitoring services.

K. Direct Liability

Business Associate may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to Covered Entity; failure to provide access to a copy of Electronic PHI to covered entity or individual; failure to disclose PHI to the Secretary of the U.S. Department of Health and Human Services when investigating Business Associate's compliance with HIPAA; failure to provide an accounting of disclosures and failure to enter into a business associate agreement with subcontractors.

L. Termination for Cause

Covered Entity may, upon written notice to Business Associate, immediately terminate this agreement, and any related agreements, if Covered Entity determines that Business Associate has breached a material term of this agreement. Covered Entity may, upon written notice to Business Associate, allow Business Associate five (5) business days to cure such breach.

M. Judicial or Administrative Proceedings

Covered Entity may terminate the Contract, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the Business Associate has been joined that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

N. Insurance

In addition to any general and/or professional liability insurance coverage required of Business Associate under the Contract for services, Business Associate shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of Business Associate, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

O. Assistance in Litigation or Administrative Proceedings

Business Associate shall make itself, and any subcontractors, employees, or agents assisting Business Associate in the performance of its obligations under the Agreement, available to Covered Entity, at no cost to Covered Entity, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against Covered Entity, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where Business Associate or its subcontractor, employee or agent is a named adverse party

III. Obligations of Covered Entity

- A. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR Section 164.520, to the extent that such limitation may affect Business Associate's use, access or disclosure of PHI.
- B. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by an individual to use, access or disclose PHI, to the extent that such changes may affect Business Associate's use, access, maintenance or disclosure of PHI.
- C. Covered Entity shall notify Business Associate of any restriction to the use, access or disclosure of PHI that Covered Entity has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect Business Associate's use, access, maintenance or disclosure of PHI.

IV. General Provisions

A. Remedies

Business Associate agrees that Covered Entity shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which Covered Entity may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by Business Associate or any agent or subcontractor of Business Associate that received PHI from Business Associate.

B. Ownership

The PHI shall be and remain the property of the Covered Entity. Business Associate agrees that it acquires no title or rights to the PHI.

C. Regulatory References

A reference in this Agreement to a section in the Privacy and Security Rules and patient confidentiality regulations means the section as in effect or as amended.

D. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Covered Entity, Business Associate and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

E. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within thirty (30) days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by Business Associate and Covered Entity.

F. Interpretation

Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with pertinent Privacy and Security Rules and patient confidentiality regulations.

G. Indemnification

Business Associate agrees to indemnify, defend and hold harmless Covered Entity and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of Business Associate, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of Covered Entity's PHI, including without limitation, any Breach of PHI or any expenses incurred by Covered Entity in providing required Breach notifications.

H. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, Business Associate acknowledges that Business Associate and Covered Entity may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act [Cal. Civil Code §56, et seq. ("CMIA")] and WIC 5328. If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or WIC section 5328 or any other California State law regarding the degree of protection provided for PHI and patient medical records, then Business Associate shall comply with the more restrictive requirements.

I. Survival

The respective rights and obligations and rights of Covered Entity and Business Associate relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

IN WITNESS WHEREOF, the Parties have executed this Agreement to be effective as of the Effective Date.

COVERED ENTITY
County of San Bernardino

BUSINESS ASSOCIATE
Entity

Signature

Signature

Dated

Dated

Curt Hagman

Name

Name

Chairman, Board of Supervisors

Title

Title