

MEMORANDUM OF UNDERSTANDING
between
THE HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO
and
SAN BERNARDINO COUNTY DEPARTMENT OF BEHAVIORAL HEALTH
for
IN-KIND SERVICE MATCH RELATED TO PROJECT GATEWAY

March 1, 2024 – February 28, 2025

WHEREAS, The Housing Authority of the County of San Bernardino, Continuum of Care grantee, hereinafter referred to as HACSB, provides rental assistance to chronically homeless families who are in need of case management and supportive services through Continuum of Care (CoC) grant CA0878L9D092309 and

WHEREAS, The San Bernardino County Department of Behavioral Health, hereinafter referred to as DBH, provides case management and supportive services to chronically homeless clients and their families in need of permanent housing in San Bernardino County; and

WHEREAS, HACSB agrees to work with DBH in assisting eligible families to access housing, and in return DBH agrees to provide in-kind case management services to participants in the Project Gateway Program; and

WHEREAS, HACSB and DBH desire an agreement for the purpose of defining their respective roles in both providing housing assistance and supportive services to participants in the Project Gateway (Program) in order to achieve and maintain an enriched quality of life; and

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

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ATTACHMENT I – BUSINESS ASSOCIATE AGREEMENT

I. PURPOSE

This Memorandum of Understanding (“MOU”) outlines the collaborative efforts between HACSB and DBH regarding the Project Gateway Continuum of Care (CoC) grant CA0878L9D092309. This grant is to provide housing and supportive services to the most vulnerable chronically homeless individuals and families. The value of the supportive services will be used to satisfy the match requirement of the U.S. Department of Housing and Urban Development’s CoC Program.

The primary goal of this grant is to assist the chronically homeless individual/family to successfully transition into and maintain permanent housing.

Rental Assistance for 12 families is available. The Coordinated Entry System (CES) will identify and refer chronically homeless individuals and families as defined in Section II. HACSB will administer the rental assistance while DBH will provide case management and supportive services.

The rental assistance is funded by the Department of Housing and Urban Development (HUD) and HACSB is the grantee. As such it is HACSB’s responsibility to determine if the household meets Program eligibility.

II. DEFINITIONS

1. Authorization for Release of Protected Health Information - A Health Insurance Portability and Accountability Act 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.
2. Chronically Homeless - Refers to a homeless individual who has experienced homelessness for a year or longer, or who has experienced at least four episodes of homelessness in the last three years and has a disability.
3. Clients / Participants - Refers to persons enrolled into the Program. The Housing Authority considers those enrolled in the Program as “participants” or “tenants” while DBH staff refers to them as “clients.”
4. Coordinated Entry System (CES) - A County-wide, centralized and streamlined process of identifying those who are homeless and triaging the housing search and match for those who are chronically homeless.
5. Department of Behavioral Health (DBH) - DBH is responsible for providing specialty mental health services and/or substance use disorder services to County residents who are experiencing mental illness and/or substance use disorders. DBH provides treatment services and education for communities and residents of San Bernardino County through contracts with community based organizations and County operated

clinics with the goal of promoting prevention, intervention, recovery, and resiliency for individuals and families.

6. Family - Used interchangeably with “applicant” or “participant” and indicates household constellations that consist of adults and/or adults with children.
7. 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.
8. Moving On Program - A program that assists tenants who are ready and wish to leave Permanent Supportive Housing (PSH) by connecting them with affordable housing, financial assistance, and transition supports (services to help tenants prepare for, navigate, and adjust to their transition out of PSH).
9. 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, County’s billing and transactional database system number /medical record number, etc.).
10. 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. PHI excludes individually identifiable health information in education records covered by the Family Educational Rights and Privacy Act, as amended, 20 U.S.C. 1232g; in records described at 20 U.S.C. 1232g(a)(4)(B)(iv); in employment records held by a covered entity in its role as employer; and regarding a person who has been deceased for more than fifty (50) years.
11. Program or Continuum of Care Program - Refers broadly to the provision of U.S. Department of Housing and Urban Development’s CoC Program to provide housing and supportive services to the most vulnerable chronically homeless individuals and families.
12. Supportive Housing - Refers to permanent housing programs in which participants receive subsidized affordable housing, referral to mainstream services, as well as

clinical and social support to assist a client to maintain their residency, psychiatric stability, and to attain a level of independence.

13. Tenant - Used to refer to participants in terms of their relation to landlords.
14. Landlord - Refers to an individual, firm, corporation, partnership, or similar entity that holds title to the housing that receives funding through rental subsidies on behalf of this Program.

III. HACSB RESPONSIBILITIES

HACSB Shall:

1. Accept referrals from CES and screen applicants to ensure individuals meet HUD determined guidelines governing the Program, including chronically homeless criteria.
2. HACSB follows Housing First principles with its CoC programs. If a deniable criminal offense is identified for an applicant, it will be documented and HACSB will request DBH staff assist applicant to address outstanding issues such as warrants, fines, etc.
3. Notify the applicant of acceptance into the Program and informing the applicant about attending an orientation meeting to provide instructions to applicants on policies and to outline applicant's rental responsibilities.
4. Conduct initial and periodic unit inspections to assure that housing is decent, safe, and sanitary and in compliance with HUD's Housing Quality Standards or applicable HUD standard.
5. Determine if the contract rent for each approved unit meets rent reasonableness.
6. Approve payment of the difference between the rent approved by HACSB and Tenant rent amount.
7. Ensure that Landlords understand their rights and responsibilities under the Program and respond to complaints and appeals regarding housing services.
8. Administer the rental assistance in accordance with applicable Program regulations and requirements.
9. Provide training to DBH staff on HACSB's procedures and Program requirements.
10. Maintain a consent to release of information relevant to the Program and its requirements signed by each applicant in the Program to ensure open communication between DBH and HACSB to support housing retention efforts.
11. Have staff complete all required Homeless Management Information System (HMIS) trainings and ensure that data entry into HMIS meets quality standards.
12. Submit the Annual Performance Report in Sage.
13. Document at least 25% in-kind match for the amount of funding received.

14. Conduct regular monthly meetings with DBH.
15. Comply with all provisions of this MOU and ATTACHMENT I – Business Associate Agreement.

IV. DBH RESPONSIBILITIES

DBH Shall:

1. Agrees to provide the following services:
 - a. Assessment of Service Needs
 - b. Case Management
 - c. Employment Assistance
 - d. Housing/Counseling Services
 - e. Life Skills
 - f. Mental Health Services
 - g. Outreach Services
 - h. Substance Abuse Treatment Services
 - i. Transportation
2. Commit to an in-kind service value match of \$69,866.
3. Verify an applicant's mental health disability according to HUD regulations and comply with the relevant grant eligibility requirements of the HUD funded Continuum of Care program for permanent supportive housing.
4. If there is drug-related criminal activity pertaining to possession or being under the influence, DBH will work with client-family member with enrollment, attendance, and participation in treatment related activities.
5. Work with client-family to address any outstanding criminal issues that might create future barriers to successfully sustain their housing over time and enhance opportunities for personal and economic growth where appropriate.
6. Provide adequate staff resources to provide case management to eligible families.
7. Provide transitional support to clients identified as candidates for the Moving On Program, which includes educating clients on changes to the housing program, providing community resources, and assisting with resources and housing stabilization for clients who are relocated.
8. Provide aftercare services for clients who are transitioning to the Moving On Program for at least 24 months following the client's transition from the CoC program. Services may include but are not limited to a variety of supports around health care engagement, medication assistance, connection to social services, independent

living skills coaching, housing stabilization, and assistance with housing program compliance.

9. Attend regular meetings with HACSB.
10. Comply with all requirements of the Project Gateway Continuum of Care (CoC) grant CA0878L9D092309.
11. Comply with the provisions of this MOU.

V. DBH GENERAL RESPONSIBILITIES

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

1. DBH and HACSB enter into this MOU to provide supportive services and rental assistance for qualified chronically homeless individuals and families.
2. Comply with the relevant grant eligibility requirements of the Continuum of Care Program.
3. Agree to ensure the coordination and collaboration between staff in each agency to the benefit of county residents experiencing homelessness and entering the county's system of care.
4. Ensure the appropriate data sharing and releases of information are in place.
5. Monitor and ensure compliance with service delivery, rental subsidies, fiscal tracking, and program expenditures.
6. On a monthly basis, meet to ensure routine collaboration between agencies for the benefit of participants.
7. Adherence to all State and Federal privacy laws in the processing and inter-agency collaboration.
8. On a routine basis will exchange data regarding rental subsidies, client data, client outcome measures and any data required by State Department of Mental Health or discretionary reports requested by each agency.
9. Collaboration between HACSB and DBH staff will be maintained to ensure that all services are consistent with Federal and State Fair Housing guidelines, regulations from the State Department of Mental Health and/or each agencies' standard policies and procedures.
10. Applications must be evaluated and meet the criteria established by each agency prior to admittance into the Program. Each agency will be responsible to complete an independent screening of applicants, based on the agency's guidelines and qualifications. DBH will evaluate applications to ensure compliance with mental

health disability-related requirements while HACSB will evaluate applications to ensure clearance of eligibility standards of the related rental assistance grant.

11. Agree to collaborate on future Notice of Funding Availability (NOFA) for the Program and provide information requested in the NOFA to HACSB in a timely manner.
12. 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 HACSB 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 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. 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, HACSB agrees to report to DBH no later than one (1) business day upon the discovery of a potential breach. HACSB shall cooperate and provide information to DBH to assist with appropriate reporting requirements to the DBH Office of Compliance.
13. 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

This is a coordination of services agreement, there is no payment of costs or fiscal obligations between the agencies. HACSB and DBH are individually responsible for any costs incurred by their respective organizations due to commitments described in this MOU. Staffing will be maintained by each agency per the department budgets and staffing required to operate the services required under this MOU.

As part of the Project Gateway CoC grant CA0878L9D092309, HACSB is required to document at least 25% in-kind match for the amount of funding received. The value of the services provided by DBH will meet the required annual match. As required by HUD regulations, rates for services must be consistent with those ordinarily paid by other employers for similar work. This value is based on the County Interim Rates established

by the State of California Department of Health Care Services for each Medi-Cal mode and service function that DBH is certified to provide based on the most recently filed cost report, trended forward using a cost of living index, and DBH's negotiated rates with contracted provider(s)/community based organization(s) based on their usual and customary charge for the specialty mental health services. This best represents how services are delivered and can be quantified to an applicable cost that includes both the salaries and benefits for staff as well as the applicable operating services those staff would incur, which collectively represents the cost of service to support the in-kind match requirement.

VIII. RIGHT TO MONITOR AND AUDIT

HACSB and DBH shall cooperate in the implementation, monitoring and evaluation of this MOU and comply with all reporting requirements as established by HUD to administer the Program.

HACSB and DBH further agree to cooperate with HUD, maintain, and provide requested data to HUD and follow all evaluation protocols established by HUD.

IX. TERM

The MOU is effective as of March 1, 2024 and expires February 28, 2025.

X. DESIGNATED PROGRAM LIAISONS

The following individuals will serve as the lead liaison for the program.

HACSB's liaison is as follows:

Name and Title: Mayra Small

Address: 672 S. Waterman Ave. San Bernardino, CA 92408

E-mail Address: msmall@hacsb.com

Telephone Number: 909-890-5341

Fax Number: 909-890-5341

DBH liaison is as follows:

Name and Title: Edith Lockerman, Senior Program Manager

Address: 303 East Vanderbilt Way, San Bernardino, CA 92408

E-mail Address: Edith.Lockerman@dbh.sbcounty.gov

Telephone Number: 909-501-0773

Fax Number: 909-890-0868

XI. INDEMNIFICATION

1. HACSB agrees to indemnify, defend and hold harmless DBH, its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and or liability arising out of this MOU from the negligence of HACSB, including the acts, errors or omissions of HACSB and for any costs or expenses incurred by DBH on account of any claim resulting from the acts or negligence of

HACSB or its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

2. DBH agrees to indemnify, defend and hold harmless HACSB and its authorized officers, employees, agents, and volunteers from any and all claims, actions, losses, damages, and or liability arising out of this MOU from the negligence of DBH, including the acts, errors or omissions of DBH and for any costs or expenses incurred by HACSB on account of any claim resulting from the acts or negligence of DBH or its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

XII. GENERAL PROVISIONS

1. 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.
2. 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.
3. This MOU shall be governed by and construed according to the laws of the State of California. The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this MOU is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.
4. Either party reserves the right to terminate the Contract, for cause or lack of funding, with a thirty (30) day written notice of termination to the other party.
5. Both parties represent they are each self-insured under the laws of the State of California, and have adequate coverage for performing services covered under this MOU.

XIII. CONCLUSION

1. This MOU, consisting of eleven (11) pages is the full and complete document describing services to be rendered by DBH and HACSB including all covenants, conditions, and benefits.
2. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.

This MOU 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 MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (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 MOU upon request.

SAN BERNARDINO COUNTY

HOUSING AUTHORITY OF THE COUNTY OF SAN BERNARDINO

► _____
Dawn Rowe, Chair, Board of Supervisors

By ► _____
(Authorized signature - sign in blue ink)

Dated: _____

Name Maria Razo
(Print or type name of person signing contract)

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

Title Executive Director
(Print or Type)

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

Dated: _____

By _____
Deputy

Address 715 E. Brier Drive
 San Bernardino, CA

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

Reviewed by Contract Compliance
► _____
Ellayna Hoatson, Contracts Supervisor
Date _____

Presented to BOS for Signature
► _____
Dr. Georgina Yoshioka, Director
Date _____

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Department of Behavioral Health (hereinafter Covered Entity) and Housing Authority of the County of San Bernardino (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

RECITALS

WHEREAS, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

WHEREAS, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

WHEREAS, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement; and

WHEREAS, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.

4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
7. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
8. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
9. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
10. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; or (v) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA 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 BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 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)]

2. Prohibited Uses and Disclosures

i. BA 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, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.

ii. BA shall not use or disclose PHI for fundraising or marketing purposes.

- iii. BA 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).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

3. Appropriate Safeguards

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316. [45 C.F.R. sections 164.504(e)(2)(ii)(b) and 164.308(b).]
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

4. Subcontractors

BA shall enter into written agreements with agents and subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such agents and subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

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

Every suspected and actual Breach shall be reported immediately, but no later than one (1) business day upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE'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 names and titles of each person allegedly involved;

- d) Number of potentially affected Individual(s) with contact information; and
 - e) Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable 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 had access to the PHI;
 - c) Whether the PHI was actually acquired or viewed; and
 - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
- a) If BA and CE agree that 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 BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE 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 CE reserve the right to conduct its own investigation and analysis.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or

created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

12. Breach by the CE

Pursuant to 42 U.S.C. section 17934, subdivision (b), if the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

13. Mitigation

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

14. Costs Associated to Breach

BA 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 CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and
- Credit monitoring services.

15. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

16. Indemnification

BA agrees to indemnify, defend and hold harmless CE 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 BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA 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 BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA 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 BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, 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 BA or its subcontractor, employee or agent is a named adverse party.

C. Obligations of CE

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
 - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
 - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
 - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.

D. General Provisions

1. Remedies

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

2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

3. Regulatory References

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

4. 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 CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. 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 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 BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE 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")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

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