

**MEMORANDUM OF UNDERSTANDING
Between**

**County of San Bernardino Department of Behavioral Health
and
Housing Authority of the County of San Bernardino
for
No Child Left Unsheltered Program**

July 1, 2020 – June 30, 2025

WHEREAS, The County of San Bernardino Department of Behavioral Health, hereinafter referred to as DBH, provides mental health services to consumers and their families in need of permanent housing in San Bernardino County; and

WHEREAS, The Housing Authority of the County of San Bernardino, hereinafter referred to as HACSB provides permanent housing subsidies to homeless families through the No Child Left Unsheltered Program who are in need of supportive services; and

WHEREAS, HACSB agrees to work with DBH in identifying eligible families to access subsidized units within the No Child Left Unsheltered Program, and in return DBH agrees to provide case management services to participants in the No Child Left Unsheltered Program; and

WHEREAS, HACSB and DBH desire an agreement for the purpose of defining their respective roles in both providing housing units and case management services to participants in the No Child Left Unsheltered Program in order to achieve and maintain an enriched quality of life; and

WHEREAS, DBH finds HACSB qualified to provide housing services; and

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

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

TABLE OF CONTENTS

I.	PURPOSE	3
II.	DEFINITIONS	3
III.	HACSB SERVICE RESPONSIBILITIES	5
IV.	HACSB GENERAL RESPONSIBILITIES	6
V.	DBH RESPONSIBILITIES	7
VI.	MUTUAL RESPONSIBILITIES	9
VII.	FISCAL PROVISIONS	10
VIII.	RIGHT TO MONITOR AND AUDIT	10
IX.	TERM	11
X.	EARLY TERMINATION.....	11
XI.	INDEMNIFICATION	11
XII.	GENERAL PROVISIONS.....	12
XIII.	CONCLUSION	13

ATTACHMENT A – BUSINESS ASSOCIATE AGREEMENT

I. PURPOSE

The No Child Left Unsheltered Program, administered by the Housing Authority of the County of San Bernardino (HACSB) provides permanent housing subsidies with supportive services to homeless unsheltered children and their families who are residents of San Bernardino County. Forty permanent housing units are available through the No Child Left Unsheltered Program. HACSB will work with County of San Bernardino Department of Behavioral Health (DBH) to assist families within the No Child Left Unsheltered Program. DBH will provide supportive services to program participants through intensive case management. Referrals to the No Child Left Unsheltered Program will be made by the County of San Bernardino's Coordinated Entry System (CES) where families with children are unsheltered at the time of application but do not otherwise qualify as chronically homeless under the Housing and Urban Development (HUD) definition. No Child Left Unsheltered is a local program developed by HACSB; therefore HACSB will make the final determination in regard to homelessness eligibility.

II. DEFINITIONS

- A. Administrative Plan: policy manual that details rules and policies that govern the voucher programs under the Housing Authority of the County of San Bernardino.
- B. 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.

For general activities performed under this agreement, including referral for treatment or coordination of care of mental health services (45 CFR §160 and §164 – HIPAA), claim for receipt of aid [Welfare and Institutions Code (WIC) §5328], and/or audit or evaluation activities by TAD as the local governmental agency providing financial assistance for services rendered (42 CFR §2.53) - an Authorization for Release of PHI form is not required if PHI is disclosed for purposes allowed under HIPAA, WIC 5328 or 42 CFR Part 2.53. For all other third party disclosures, DBH staff must utilize the DBH Authorization form per DBH Information Notice 18-02.

- C. Barriers: Temporary or long-term personal or other problems/issues that interfere with participation, employment, or job search.
- D. Case Plan: A comprehensive plan developed by DBH staff with the consumer to assist the family in resolving the identified situation, barriers or crisis involving behavioral health, employment, education and housing stability needs.
- E. Counseling: Advice and support that is given to people to help them experience relief from emotional distress and assist them in reaching their goals for a happier life.
 - 1. Individual Counseling: Face-to-face meeting with a therapist or counselor with one (1) individual. Individual counseling sessions are for treatment and shall be claimed using

fifteen (15) minute increments. One session may include multiple units of service. Time spent documenting shall not be included within the individual counseling session.

2. Group Counseling: Face-to-face contacts in which one or more therapists or counselors treat two (2) or more clients at the same time with a maximum of twelve (12) in the group, lasting 90 minutes. Group counseling sessions are for treatment. Charting the group session is not included in the 90-minute group counseling session. Counseling in a group setting that offers opportunities to work on necessary issues.
- F. 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.
- G. Episode: The period that a case is open. If a consumer exits treatment, the case is closed, and that episode ends. When a consumer returns, a new episode of treatment occurs with a new opening date. Episode tracking is a state data requirement.
- H. Family: Is used interchangeably with “applicant”, “participant” or “consumer.”
- I. Family Obligations Agreement: Contract between the eligible applicant and the HACSB that details the requirements, rules, policies, and responsibilities for participation in the program. A contract signed by the eligible applicant with HACSB does not preclude or override any requirements made by DBH, or contained in the landlord/tenant lease.
- J. 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.
- K. Landlord: An individual, firm, corporation, partnership, HACSB or similar entity; or a designated property manager that holds title to the housing that receives funding through rental subsidies on behalf of this program.
- L. Mental Health Treatment Services: Services include timely and consistent assessment; defined and time-limited treatment that removes mental health as a barrier to employment; effective communication regarding participation in treatment; quality assurance monitoring to ensure the appropriate level and timeliness of care and quality of services; ongoing support for continued employment and electronic tracking of all services.
1. Behavioral Health Assessment: An evaluation to identify the level of an individual’s behavioral health needs or conditions that limit ability to work and the appropriate level of treatment and/or rehabilitation for the individual. It may include a clinical analysis of the history and current status of the individual’s mental, emotional, or behavioral disorder.

2. Outpatient Services: Customer is provided group counseling sessions weekly and ongoing individual counseling sessions. Customer is provided case management services to access and monitor needed behavioral health and/or community services.
 3. Crisis Intervention: A rapid response service enabling the individual to cope with a crisis, while maintaining his/her status as a functioning community member to the greatest extent possible.
- M. MOU: Memorandum of Understanding is a document describing an agreement between parties.
 - N. No Child Left Unsheltered Program: Provides permanent housing subsidies to homeless unsheltered children and their families who are residents of San Bernardino County. The No Child Left Unsheltered program aims to end homelessness of unsheltered families with children. The program will help resolve extremely critical needs of unsheltered families in the county by offering rental subsidies to families who are identified as eligible unsheltered homeless families with children. Families with children must be unsheltered at time of application, and may not otherwise qualify as chronically homeless under the HUD definition, but who meet the criteria contained within HACSB's Housing Services Administrative Plan.
 - O. 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.).
 - P. 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.
 - Q. Supportive Housing: Permanent housing programs in which participants receive subsidized affordable housing services, through either DBH or HACSB, and other case management, self-sufficiency and career development support to help consumers maintain their residency and improve self-sufficiency.
 - R. Unsubsidized Employment: Direct employment without a subsidy wherein the wage is paid entirely by the employer.
 - S. Target Population: Eligible unsheltered, homeless children and their families.

III. HACSB SERVICE RESPONSIBILITIES

HACSB shall have the following responsibilities when providing services:

- A. Provide housing services to qualified applicants who are County residents. Services will be provided through the HACSB offices located in San Bernardino, Upland, and Victorville.
- B. Refer all families participating in the No Child Left Unsheltered Program to DBH for case management services.
- C. Maintain releases of information for each participant in the program to ensure open communication between DBH and HACSB.
- D. Provide housing services that include: screening eligibility and verification of applications, criminal background checks, orientation screenings, issuance of Family Obligations Agreement, initial and regular housing inspections, determination of rents, and payments to the landlord.
- E. Screen applicants and ensure individuals meet the qualifications as outlined in the Housing Services Program Administrative Plan.
- F. Notify the applicant of acceptance into the program and coordinate initial contact with DBH. Conduct orientation meetings to provide instructions to applicants on policies, the Family Obligations Agreement, and to outline applicant's rental responsibilities.
- G. To the extent permitted by law, facilitate monthly and/or as needed case conference meetings with DBH and service providers to discuss identification of barriers to productive treatment, mutual problem solving, and future planning.
- H. Immediately notify DBH Office of Compliance of any suspected or actual breach of confidential information at the address below:

DBH Office of Compliance

303 East Vanderbilt Way

San Bernardino, CA 92415-0026

- I. Inform applicants of the requirement to participate in No Child Left Unsheltered Program activities. Consumers that do not participate fully will be held to the standard Housing Authority requirements.
- J. Provide work space and a phone line, as needed, for the DBH Case Managers at agreed upon HACSB office locations.
- K. Independent of this MOU, HACSB will continue to provide services to eligible families.

IV. HACSB GENERAL RESPONSIBILITIES

- A. Without the prior written consent of DBH, this MOU is not assignable by HACSB either in whole or in part.
- B. HACSB shall adhere to the Housing Services Administrative Plan.
- C. HACSB shall protect from unauthorized use or disclosure names and other identifying information concerning persons receiving services pursuant to this MOU, except for statistical information not identifying any participant. HACSB shall not use or disclose any identifying information for any other purpose other than carrying out HACSB 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.

- D. HACSB shall obtain and complete required documents as well as maintain satisfactory performance as outlined herein for the period of this MOU defined in Section IX.
- E. HACSB agrees not to enter into any subcontracting agreements for work contemplated under the MOU without first obtaining written approval from the DBH Director. Any subcontractor shall be subject to the same provisions HACSB in addition to all contract provision as required by County.
 - 1. If HACSB intends to subcontract any part of the services provided under this agreement to a separate and independent agency or agencies, it must submit a written Memorandum of Understanding (MOU) with that agency or agencies to DBH. The MOU must clearly define the following:
 - a. The name of the subcontracting agency.
 - b. The amount (units, minutes, etc.) and types of services to be rendered under the MOU.
 - c. The amount of funding to be paid to the subcontracting agency.
 - d. The subcontracting agency's role and responsibilities as it relates to this MOU.
 - e. A detailed description of the methods by which the HACSB will insure that all subcontracting agencies meet the monitoring requirements associated with funding regulations.
 - 2. Any subcontracting agency must be approved by DBH and shall be subject to all applicable provisions of this agreement. The HACSB will be fully responsible for any performance of a subcontracting agency. DBH will not reimburse HACSB or Subcontractor for any expenses rendered by a subcontractor **NOT** approved by DBH.
- F. HACSB agrees to resolve complaints based on the agencies policies.

V. DBH RESPONSIBILITIES

DBH shall have the following responsibilities:

- A. Pursuant to HIPAA, DBH has implemented administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability PHI transmitted or maintained in any form or medium.
- B. Provide 2.0 FTE case managers to provide intensive case management services to No Child Left Unsheltered Program families that are experiencing an identified situation or crisis that may include:
 - 1. Homelessness
 - 2. An unsafe living environment due to domestic violence
 - 3. Untreated or undertreated behavioral needs, including mental health or substance use disorder related needs
- C. Based on the need, DBH will provide case management services per family unit to assist in identifying and removing barriers to families successfully becoming employed, housed or

educated to the level needed to achieve self-sufficiency. The length of case management services depends on which service, or the number of services the consumer needs. Consumers will continue to have access to the case manager after their episode is closed should they require further assistance.

- D. Ensure families receive appropriate behavioral health services and other services as needed either by direct service from a County clinic/program, referral to a contracted community based organization or through linkages to other social services. Services shall include, but are not limited to:
 - 1. Mental Health Services and/or Treatment
 - 2. Substance Use Disorder Services and/or Treatment
 - 3. Domestic Violence Shelters
- E. Ensure consumers who are homeless receive counseling for any underlying issues related to homelessness as determined on a case-by-case basis by DBH staff.
- F. Develop a case plan for all program participants.
- G. Obtain a valid Authorization for Release of PHI from DBH client prior to sharing any PHI with HACSB and in the performance of required services.
- H. Provide transportation on a case-by-case basis for consumers to attend appointments and utilize resources as outlined in the consumers' case plan.
- I. Provide case management services to all referred consumers. The referrals for case management services include the provision of services for all members of the family unit. Services include on-going assessments, referrals for services, the development of a plan and timeline that documents the consumer's progress. Case management duties are as follows:
 - 1. Frequent and on-going contact with each family, ranging from **daily to weekly**, depending on level of need and progress, **via phone and/or in-person**, to determine the effectiveness of services provided to participating consumers and family members, as determined by DBH staff.
 - 2. Assess the stability of the family's living situation, physical and emotional health and safety.
 - 3. Assess weekly progress toward Case Plan goals and make necessary changes to improve the family's success in meeting these goals.
 - 4. Provide appropriate referrals for services needed to assist the family.
 - 5. Monitor each family's progress toward making the necessary changes to improve the situation or crisis.
 - 6. Participate in case coordination meetings with the HACSB and provide updates on case plan goals.
 - 7. Provide training to HACSB tenants regarding tenant responsibilities, good neighbor policy and household budgeting.
 - 8. Provide group in house meetings and workshop activities.

- 9. Make every effort, including home visits, to engage families who are not making adequate progress.
- J. Ensure case management of all participants is maintained with all required forms and documentation. DBH shall maintain individual customer case folders in a secured file cabinet for a period of three years from the close of the consumer's services.
- K. Maintain participant case folders and utilize established DBH forms for program participants served through DBH.
- L. Maintain a quality assurance process to ensure timely and appropriate assessment and treatment of customers.
- M. Provide quarterly reports for the No Child Left Unsheltered Program to HACSB that include the following:
 - 1. The total number of NCLU participants served by DBH,
 - 2. Updates on the successes of participants served,
 - 3. The total number of NCLU participants who declined to receive DBH services,
 - 4. Updates on case plan goals.
- N. Provide direct supervision of case manager, a DBH employee, co-located at the HACSB facility.
- O. Provide the necessary equipment for the case manager, including a laptop in order to complete job functions.
- P. Independent of this MOU, DBH will continue to provide services to eligible families.
- Q. Agrees to resolve grievances based on the agencies policies.

VI. MUTUAL RESPONSIBILITIES

- A. DBH and HACSB agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each party may perform its duties and functions under this MOU; and appropriate procedures to ensure all information is safeguarded from improper disclosure in accordance with applicable State and Federal laws and regulations.
- B. DBH and HACSB agree they will establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through DBH and HACSB's mutual chain of command, as deemed necessary.
- C. DBH and HACSB agree to develop and implement procedures and forms necessary to administer and document program referral, participation, compliance and effectiveness.
- D. DBH and HACSB will establish measurable benchmarks to determine customers' progress and ability to participate in additional supportive and enrichment activities.
- E. DBH and HACSB agree they will collaborate in providing In-Service Training to staff about the No Child Left Unsheltered Program and services offered under this MOU.
- F. DBH shall cooperate with HACSB in the implementation, monitoring and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.

- G. DBH and HACSB shall observe all federal, state and county requirements, and applicable law concerning the confidentiality of behavioral health records. DBH and HACSB, as required by applicable law, shall strictly maintain confidentiality of behavioral health records of clients.
- H. DBH and HACSB will collaborate to assist customers with landlord issues, and when necessary refer the customer to the Inland Fair Housing and Mediation Board.
- I. DBH and HACSB agree to collaborate with Loma Linda University on research efforts, such as data collection of families served.
- J. Privacy and Security
 - 1. 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).
 - 2. 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.
 - 3. 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. Contractor shall cooperate and provide information to DBH to assist with appropriate reporting requirements to the DBH Office of Compliance.
 - 4. 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. This is a non-financial MOU.

VIII. RIGHT TO MONITOR AND AUDIT PERFORMANCE AND RECORDS

- 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, financial records, staff information, patient records and other pertinent items as requested, and shall have absolute right to monitor the performance of HACSB in the delivery of services provided under this MOU. Full cooperation shall be given by HACSB in any auditing or monitoring conducted according to this agreement and per 42 C.F.R. § 2.53 Audit and Evaluation.

- B. HACSB and DBH shall cooperate in the implementation, monitoring, and evaluation of this MOU and comply with any and all reporting requirements established by this MOU.
- C. HACSB 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 HACSB.
- D. HACSB shall permit DBH and the State access and inspection of electronic or print books and records, access to physical facilities, and access and ability to interview employees. Failure to permit access for inspection and/or ability to interview is a breach of this MOU and sufficient basis to terminate for cause or default.
- E. All records shall be complete, current and comply with all MOU requirements.
- F. HACSB shall maintain client and community service records in compliance with all regulations set forth by local, State, and Federal requirements, laws and regulations, and provide access to clinical records by DBH staff.
- G. HACSB shall agree to maintain and retain all appropriate client records for a period of at least ten (10) years from the date of service or until audit findings are resolved, whichever is later.

IX. TERM

This Memorandum of Understanding (MOU) is effective as of July 1, 2020 and expires June 30, 2025 but may be terminated earlier in accordance with provisions of Section X of this MOU.

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 HACSB Director, or his/her appointed designee, has authority to terminate this MOU on behalf of HACSB.
- B. If, during the term of this MOU, State and/or Federal funds appropriated for the purposes of this MOU are reduced or eliminated, DBH may immediately terminate this MOU upon written notice to HACSB.

XI. INDEMNIFICATION

The HACSB agrees to indemnify, defend (with counsel reasonably approved by the County DBH) and hold harmless the County DBH 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 the HACSB, including the acts, errors or omissions of the HACSB and for any costs or expenses incurred by the County DBH on account of any claim resulting from the acts or negligence of the HACSB or its authorized officers, employees, agents, and volunteers, except where such indemnification is prohibited by law.

The County DBH agrees to indemnify, defend (with counsel reasonably approved by the HACSB) and hold harmless the 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 the County DBH, including the acts, errors or omissions of the County DBH and for any costs or expenses incurred by the HACSB on account of any claim resulting from the acts or negligence of the County

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

XII. 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. HACSB shall comply with the terms and conditions as set forth in the attached ***Business Associate Agreement***, hereby incorporated by this reference as **Attachment A**.

XIII. CONCLUSION

- A. This MOU, consisting of fifteen (15) pages, Attachments A and B, is the full and complete document describing services to be rendered by HACSB to DBH including all covenants, conditions and benefits.
- B. 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 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

HOUSING AUTHORITY OF THE COUNTY OF
SAN BERNARDINO

By ►
(Authorized signature - sign in blue ink)

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

Title Executive Director
(Print or Type)

Dated: _____

Address 715 E. Brier Drive
San Bernardino, CA

Approved as to Legal Form

►
Dawn Martin, Deputy County Counsel

Date _____

Reviewed by Contract Compliance

►
Natalie Kessee, Contracts Manager

Date _____

Presented to BOS for Signature

►
Veronica Kelley, Director

Date _____

BUSINESS ASSOCIATE AGREEMENT

Except as otherwise provided in this Agreement, Housing Authority of the County of San Bernardino, 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 County of San Bernardino 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

ATTACHMENT A

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

ATTACHMENT A

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. 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)].

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

ATTACHMENT A

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. Destruction of Protected Health Information

Upon termination of this Agreement, Business Associate shall return all PHI required to be retained by the Business Associate or its subcontractors, employees or agents on behalf of the Covered Entity. In the event the Business Associate determines that returning the PHI is not feasible, the Business Associate shall provide the Covered Entity with written notification of the conditions that make return not feasible. Additionally, the Business Associate 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 Covered Entity a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed, as well as 42 CFR Part 2.16 (a)(2)(ii) if applicable. Business Associate further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by Business Associate or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

J. 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.

K. 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.

L. 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.

M. 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.

N. 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.

O. 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.

P. 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.

ATTACHMENT A

- 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.

