

**PARTICIPATION AGREEMENT FOR THE MENTAL HEALTH SERVICES ACT  
INNOVATION PROGRAM**

**CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY – COUNTY OF SANTA BARBARA**

1. **THIS PARTICIPATION AGREEMENT** is entered into on July 1, 2019 by and between the California Mental Health Services Authority (“CalMHSA”) and the County of Santa Barbara, a political subdivision of the State of California, through its Santa Barbara Department of Behavioral Wellness (“Participant”) for participation in the Mental Health Services Authority Innovation Program (“Program”).
  
2. CalMHSA and Participant acknowledge that the Program will be governed by CalMHSA’s Joint Powers Agreement and its Bylaws, and by this Participation Agreement. The following exhibits are intended to clarify how the provisions of those documents will be applied to this Program.
  - Exhibit A Program Description
  - Exhibit B General Terms and Conditions
  - Exhibit C County-Specific Scope and Funding
  - Exhibit D Business Associates Agreement
  
3. The term of the Program is **July 1, 2019** through **June 30, 2024**.

SIGNATURE PAGE

AGREEMENT FOR SERVICES OF INDEPENDENT CONTRACTOR BETWEEN THE COUNTY OF SANTA BARBARA AND CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT TO BE EFFECTIVE ON JULY 1, 2019.

**COUNTY OF SANTA BARBARA:**

By: \_\_\_\_\_  
STEVE LAVAGNINO, CHAIR  
BOARD OF SUPERVISORS

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

**ATTEST:**

MONA MIYASATO  
COUNTY EXECUTIVE OFFICER  
CLERK OF THE BOARD

By: \_\_\_\_\_  
Deputy Clerk

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

**CONTRACTOR:**

California Mental Health Services Authority

By: \_\_\_\_\_  
Authorized Representative

Name: \_\_\_\_\_

Title: \_\_\_\_\_

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

**APPROVED AS TO FORM:**

MICHAEL C. GHIZZONI  
COUNTY COUNSEL

By: \_\_\_\_\_  
Deputy County Counsel

**APPROVED AS TO ACCOUNTING FORM:**

BETSY M. SCHAFFER, CPA  
AUDITOR-CONTROLLER

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

**APPROVED AS TO INSURANCE FORM:**

RAY AROMATORIO  
RISK MANAGEMENT

**RECOMMENDED FOR APPROVAL:**

ALICE GLEGHORN, PH.D.,  
DIRECTOR  
DEPARTMENT OF BEHAVIORAL  
WELLNESS

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

By: \_\_\_\_\_  
Risk Management

## EXHIBIT A

### PROGRAM DESCRIPTION

- I. **Name of Program** – Mental Health Services Act Innovation Program
- II. **Program Overview**

CalMHSA will assist participating counties to act jointly or in coordination to introduce new mental health practices, make changes to existing practices in the mental health field, or apply promising community-driven practices that have been successful in other fields. These efforts will be directed to increasing access to mental health services by underserved populations and the overall population, increasing quality of services, or promoting collaboration among agencies and communities. See Exhibit C for detailed description of needs and services to be provided.

## EXHIBIT B

### GENERAL TERMS AND CONDITIONS

#### I. Definitions

The following words, as used throughout this Participation Agreement, shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

- A. CalMHSA – California Mental Health Services Authority, a Joint Powers Authority (JPA) created by counties in 2009 at the instigation of the California Mental Health Directors Association to jointly develop and fund mental health services and education programs.
- B. Mental Health Services Division (MHSD) – The Division of the California Department of Health Care Services responsible for mental health functions.
- C. Member – A County (or JPA of two or more Counties) that has joined CalMHSA and executed the CalMHSA Joint Powers Agreement.
- D. Mental Health Services Act (MHSA) – A law initially known as Proposition 63 in the November 2004 election that added sections to the Welfare and Institutions Code providing for, among other things, Prevention and Early Intervention (PEI) Programs.
- E. Participant – Any County participating in the Program either as Member of CalMHSA or under a Memorandum of Understanding with CalMHSA.
- F. Program – The program summary in Exhibit A and program detail in Exhibit C. Also referred to as Innovative Program.

#### II. Responsibilities

- A. Responsibilities of CalMHSA:
  - 1. Act as fiscal and administrative agent for Program.
  - 2. Manage funds received under this Agreement consistent with the requirements of any applicable laws, regulations, guidelines, and/or contractual obligations.
  - 3. Provide regular fiscal reports to Participant and/or other public agencies with a right to such reports.
  - 4. Submit plans, updates, and/or work plans for review and approval by Participant representative.
  - 5. Comply with CalMHSA's Joint Powers Agreement and Bylaws.
  - 6. Perform the services as stated in Exhibits A and C.

- B. Responsibilities of Participant:
1. Transfer funds for the Program as specified in Exhibit C at the beginning of each fiscal year identified in Exhibit C, County-Specific Scope and Funding.
  2. Identify a representative authorized to act for Participant and receive notices on behalf of Participant with regard to the Program.
  3. Cooperate by providing CalMHSA with requested information and assistance in order to fulfill the purpose of the Program.
  4. Provide feedback on Program performance.
  5. Comply with applicable laws, regulations, guidelines, contractual agreements, JPAs, and bylaws.

### **III. Duration, Term, and Amendment**

- A. The intention of the Program is to continue as long as Participant and other participants wish to act together to conduct Innovation projects under the MHSA. However, the obligation of Participant to pay funds is limited to the periods and amounts stated in Exhibit C, County-Specific Scope and Funding.
- B. This Agreement may be supplemented, amended, or modified only by the mutual agreement of CalMHSA and Participant, expressed in writing and signed by authorized representatives of both parties.
- C. Participant may withdraw from the Program and terminate the Participation Agreement upon six (6) months' written notice. Notice shall be deemed served on the date of mailing.

### **IV. Withdrawal, Cancellation, and Termination**

- A. Upon cancellation, termination, or other conclusion of the Program, any funds remaining undisbursed shall be returned to Participant. Unused funds paid for a joint effort will be returned pro rata to Participant in proportion to payments made. Adjustments may be made if disproportionate benefit was conveyed on particular participant. Excess funds at the conclusion of county-specific efforts will be returned to the particular county that paid them.

### **VI. Fiscal Provisions**

- A. Funding required from Participant will not exceed the amount stated in Exhibit C, "County-Specific Scope and Funding," attached hereto.
- B. CalMHSA shall invoice Participant on an annual basis in accordance with the amounts stated in Exhibit C. Each invoice must be signed by a designated official of Participant for the Program.
- C. Participant shall remit payment to CalMHSA within thirty (30) days of the beginning of each fiscal year (July 1).

**V. Mutual Indemnification**

To the fullest extent permitted by law, each party shall hold harmless, defend and indemnify the other party, including its governing board, employees and agents from and against any and all claims, losses, damages, liabilities, disallowances, recoupments, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from the indemnifying party's negligence in the performance of its obligations under this Agreement, including the performance of its employees, agents, or subcontractors, except that each party shall have no obligation to indemnify the other for damages to the extent resulting from the negligence or willful misconduct of any indemnitee or the indemnitee's employees, agents or subcontractors. Each party may participate in the defense of any such claim without relieving the other of any obligation hereunder.

## EXHIBIT C

### COUNTY-SPECIFIC SCOPE AND FUNDING

#### **MHSA Innovation 3 Program – Increasing Access to Mental Health Services and Supports Utilizing a Suite of Technology-Based Mental Health Solutions**

CalMHSA will be contracted to provide overall administrative oversight and contract procurement for a multi-county collaborative innovative program to be active for five years (FY 2019/20–2023/24). Procurement will include contract agreements with existing private sector companies providing a variety of technology-based mental health services and supports. Additionally, these services will include a mechanism for access and linkage to traditional behavioral health care within the Santa Barbara County system.

The goal of the collaborative innovative program is to determine whether utilization of a suite of technology-based mental health services and supports through multiple platforms, including mobile devices and computers, provides a greater opportunity for potential new and existing clients to receive necessary supportive services and/or care. Participating counties will have the opportunity to choose all or portions of the suite as their Innovative program. Santa Barbara County will be taking part in the following suite component(s) as its Innovative Program:

- Virtual Peer Chat and Digital Therapeutics
- Virtual Evidence Based Therapy
- Digital Phenotyping using Passive Data
- Community Engagement and Outreach
- Outcomes Evaluation

The goal of the Program is to provide greater access and linkage to technology-based and traditional mental health care and supportive services and better determine mental health care needs through use of technology-based services not previously utilized in the public mental health system. The intended outcomes of providing these supports and services are as follows:

- Initiate and sustain peer-to-peer digital communications with members of each of the three at-risk and/or underserved Target Populations, as defined below;
- Decrease isolation and feelings of hopelessness among individuals in each of the three Target Populations; and
- Reduce negative life events, such as hospitalization, visits to Emergency Rooms and incarceration among members of each of the three Target Populations.

This will be a five (5) year Program.

## **Innovation Primary Purpose**

Overall, the primary purpose of the Program is to increase access to mental health care and support and to promote early detection of mental health symptoms, or even predict the onset of mental illness.

This Program anticipates increasing access to unserved and underserved populations actively utilizing or who have ability to utilize technology-based services. These potential clients may not be able to seek traditional care due to fear, stigma or physical limitations. The Program will serve to reduce stigma associated with mental health care using virtual innovative engagement strategies including social media, care pathways and bidirectional feedback.

## **Target Population**

The free, voluntary mobile Peer to Peer Chat and Digital Therapeutics will be available to interested members of the Target Populations residing in Santa Barbara County. Specifically, the Participant emphasizes the promotion of its adoption and sustained use among three Target Populations:

1. Adults discharged from psychiatric hospitals and/or recipients of crisis services;
2. Transition-age youth who are adults at colleges and universities; and
3. Individuals age 16 and over living in geographically isolated communities.

(Collectively referred to as “Target Populations”.) It is estimated that the number of individuals to be served across the Target Populations is 6,688 individuals over the term of the contract.

## **Technology-Based Mental Health Solutions**

The components of this Program are as follows:

- *Technology Investment in Peer Chat and Digital Therapeutics:* CalMHSA will coordinate Technology-Based Mental Health Solutions to Intervene and Offer Support to the Target Populations in Participant’s County. CalMHSA will establish peer chat and digital therapeutics solutions including start-up for technology vendors, development of the technological solutions with vendors, local customization at Participant’s request, and licensing/annual fees.
- *Community Engagement and Outreach:* Engaging Users and Promoting Use of Technology-Based Mental Health Solutions. CalMHSA will establish the community engagement and outreach activities including start-up for vendors, development of the community engagement and outreach plan with vendor, local customization at Participant’s request, and licensing/annual fees.
- *Outcome Evaluation* – CalMHSA will establish the evaluation including start-up for evaluation vendor, development of the evaluation with vendor, local customization at Participant’s request, and licensing/annual fees.



- *CalMHSA Experts* – CalMHSA will act as the program manager including coordinating the program state-wide activities and development of the technology, community engagement and outreach, and outcome evaluation with vendors.

**Funding /Budget**

Described on the following page.

## Funding / Budget

Santa Barbara Innovation Project Budget	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	Innovation Total	% of Tech Suite
<b>CAL MHSA BUDGET</b>							
<b>7 Cups: Apps</b>							
Start-Up Fee						\$ -	
Development Fund	\$ 56,511					\$ 56,511	
Licensure/Annual Fees						\$ -	
Local Customization						\$ -	
<b>7 Cups - Apps Subtotal</b>	<b>\$ 56,511</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ 56,511</b>	<b>3.72%</b>
<b>7 Cups: Paid Peers</b>							
Start-Up Fee						\$ -	
Development Fund						\$ -	
Licensure/Annual Fees						\$ -	
Local Customization						\$ -	
<b>7 Cups - Apps Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>
<b>Mindstrong: Apps</b>							
Start-Up Fee						\$ -	
Development Fund						\$ -	
Licensure/Annual Fees						\$ -	
Local Customization						\$ -	
<b>7 Cups - Apps Subtotal</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>\$ -</b>	<b>0.00%</b>
<b>Future Apps/Vendors</b>							
Start-Up Fee	\$ 45,208					\$ 45,208	
Development Fund	\$ 65,208					\$ 65,208	
Licensure/Annual Fees	\$ 79,115	\$ 79,115	\$ 79,115	\$ 79,115	\$ 79,115	\$ 395,575	
Local Customization	\$ 33,906					\$ 33,906	
<b>Future Apps Subtotal</b>	<b>\$ 223,437</b>	<b>\$ 79,115</b>	<b>\$ 79,115</b>	<b>\$ 79,115</b>	<b>\$ 79,115</b>	<b>\$ 539,897</b>	<b>35.50%</b>
<b>Evaluator</b>							
Start-Up Fee	\$ 79,115					\$ 79,115	
Development Fund						\$ -	
Licensure/Annual Fees	\$ 33,906	\$ 33,906	\$ 33,906	\$ 33,906	\$ 33,906	\$ 169,530	
Local Customization	\$ 15,000					\$ 15,000	
<b>Evaluator Subtotal</b>	<b>\$ 128,021</b>	<b>\$ 33,906</b>	<b>\$ 33,906</b>	<b>\$ 33,906</b>	<b>\$ 33,906</b>	<b>\$ 263,645</b>	<b>17.34%</b>
<b>Outreach &amp; Marketing</b>							
Start-Up Fee	\$ 22,604					\$ 22,604	
Development Fund	\$ 33,906					\$ 33,906	
Licensure/Annual Fees	\$ 22,604	\$ 22,604	\$ 22,604	\$ 22,604	\$ 22,604	\$ 113,020	
<b>Outreach &amp; Marketing Subtotal</b>	<b>\$ 79,114</b>	<b>\$ 22,604</b>	<b>\$ 22,604</b>	<b>\$ 22,604</b>	<b>\$ 22,604</b>	<b>\$ 169,530</b>	<b>11.15%</b>
<b>CalMHSA Project Management Experts and Overhead</b>	<b>\$ 98,258</b>	<b>\$ 98,258</b>	<b>\$ 98,258</b>	<b>\$ 98,258</b>	<b>\$ 98,258</b>	<b>\$ 491,290</b>	<b>32.30%</b>
<b>TOTAL TECH SUITE BUDGET - CAL MHSA</b>	<b>\$ 585,341</b>	<b>\$ 233,883</b>	<b>\$ 233,883</b>	<b>\$ 233,883</b>	<b>\$ 233,883</b>	<b>\$ 1,520,873</b>	<b>100%</b>

Local Funds	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	Total	% of Local
Peer Project Coordinator - County Staff	\$ 120,000	\$ 123,600	\$ 127,308	\$ 131,127	\$ 135,061	\$ 637,096	18.8%
Peer Outreach Worker- County Staff	\$ 59,000	\$ 60,180	\$ 61,384	\$ 62,611	\$ 63,863	\$ 307,038	9.1%
Peer Specialist - 6 Contract Staff and 1-2 County Staff	\$ 320,000	\$ 326,400	\$ 332,928	\$ 339,587	\$ 346,378	\$ 1,665,293	49.1%
Research Associate (.1 County Staff)	\$ 15,000	\$ 15,450	\$ 15,914	\$ 16,391	\$ 16,883	\$ 79,637	2.3%
Material Translation Services	\$ 8,111		\$ -	\$ -	\$ -	\$ 8,111	0.2%
Supplies	\$ 20,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 15,000	\$ 80,000	2.4%
Travel	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 5,000	\$ 25,000	0.7%
Technology Equipment for Participants	\$ 24,474	\$ -	\$ -	\$ -	\$ -	\$ 24,474	0.7%
County Admin Cost (20% of local funds program costs)	\$ 114,317	\$ 109,126	\$ 111,507	\$ 113,943	\$ 116,437	\$ 565,330	16.7%
<b>TOTAL LOCAL EXPENSES</b>	<b>\$ 685,902</b>	<b>\$ 654,756</b>	<b>\$ 669,040</b>	<b>\$ 683,659</b>	<b>\$ 698,623</b>	<b>\$ 3,391,979</b>	<b>100%</b>

Combined Total	YEAR 1	YEAR 2	YEAR 3	YEAR 4	YEAR 5	Total	% of Total
Total Cal MHSA Tech Suite	\$ 585,341	\$ 233,883	\$ 233,883	\$ 233,883	\$ 233,883	\$ 1,520,873	30.96%
Total Local Funds	\$ 685,902	\$ 654,756	\$ 669,040	\$ 683,659	\$ 698,623	\$ 3,391,979	69.04%
Contingency Fund		\$ -	\$ -	\$ -	\$ -	\$ -	0.00%
<b>TOTAL PROJECT BUDGET</b>	<b>\$ 1,271,243</b>	<b>\$ 888,639</b>	<b>\$ 902,923</b>	<b>\$ 917,542</b>	<b>\$ 932,506</b>	<b>\$ 4,912,852</b>	<b>100%</b>

Total Funding/Budget for CalMHSA is \$1,520,873.

**EXHIBIT BAA**  
**HIPAA BUSINESS ASSOCIATE AGREEMENT (BAA)**

This Business Associate Agreement (“BAA”) supplements and is made a part of the Agreement between COUNTY (referred to herein as “Covered Entity”) and California Mental Health Services Authority (“CalMHSA” or “CONTRACTOR”) (referred to herein as “Business Associate”).

**RECITALS**

Covered Entity wishes to disclose certain information to Business Associate pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).

Covered Entity and Business Associate intend to protect the privacy and provide for the security of PHI disclosed to Business Associate pursuant to the Agreement 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”), and 45 CFR Parts 160 and 164, Subpart C (the “Security Rule”), Subpart D (the “Data Breach Notification Rule”) and Subpart E (the “Privacy Rule”) (collectively, the “HIPAA Regulations”).

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require Covered Entity to enter into a contract containing specific requirements with Business Associate prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations (C.F.R.) and contained in this BAA.

In consideration of the mutual promises below and the exchange of information pursuant to this BAA, the parties agree as follows:

**1. Definitions**

- a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].
- b. **Business Associate** shall have the 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 17938 and 45 C.F.R. Section 160.103.
- c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by Covered Entity to Business Associate or created or received by Business Associate on Covered Entity's behalf.
- l. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- m. **Unsecured PHI** shall have the 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(h).

## 2. Obligations of Business Associate

- a. **Permitted Uses.** Business Associate shall not use Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Further, Business Associate shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by Covered Entity. However, Business Associate may use Protected Information (i) for the proper management and administration of Business Associate, (ii) to carry out the legal responsibilities of Business Associate, or (iii) for Data Aggregation purposes for the Health Care Operations of Covered Entity [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** Business Associate shall not disclose Protected Information except for the purpose of performing Business Associate's obligations under the Agreement and as permitted under the Agreement and this BAA. Business Associate shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by Covered Entity. However, Business Associate may disclose Protected Information (i) for the proper management and administration of Business Associate; (ii) to carry out the legal responsibilities of Business Associate; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of Covered Entity. If Business Associate discloses Protected Information to a third party, Business Associate must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA 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 Protected Information, to the extent the third party 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. **Prohibited Uses and Disclosures.** Business Associate shall not use or disclose Protected Information for fundraising or marketing purposes. Business Associate shall not disclose Protected Information 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)]. Business Associate shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of Covered Entity and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by Covered Entity to Business Associate for services provided pursuant to the Agreement. Business Associate shall mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of this Agreement, the BAA, or the HIPAA Regulations.

- d. **Appropriate Safeguards.** Business Associate shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement or this BAA, including, but not limited to, administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. Business Associate shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316 [42 U.S.C. Section 17931].
- e. **Reporting of Improper Access, Use or Disclosure.** Business Associate shall report to Covered Entity in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this BAA, and any Breach of Unsecured PHI, as required by the Data Breach Notification Rule, of which it becomes aware without unreasonable delay and in no case later than five (5) business days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- f. **Business Associate's Subcontractors and Agents.** Business Associate shall ensure that any agents and subcontractors to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to Business Associate with respect to such PHI and implement the safeguards required by paragraph (c) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. Business Associate shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- g. **Access to Protected Information.** To the extent that the Covered Entity keeps a designated record set then Business Associate shall make Protected Information maintained by Business Associate or its agents or subcontractors in Designated Record Sets available to Covered Entity for inspection and copying within five (5) days of a request by Covered Entity to enable Covered Entity to fulfill its obligations under state law [Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(E)]. If Business Associate maintains an Electronic Health Record, Business Associate shall provide such information in electronic format to enable Covered Entity to fulfill its obligations under the HITECH Act, including, but not limited to, 42 U.S.C. Section 17935(e).
- h. **Amendment of PHI for Business Associate who is Required to Maintain a Record Set.** If Business Associate is required to maintain a designated record set on behalf of the Covered Entity the Business Associate shall within ten (10) days of receipt of a request from Covered Entity for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, Business Associate or its agents or subcontractors shall make such Protected Information available to Covered Entity for

amendment and incorporate any such amendment to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any individual requests an amendment of Protected Information directly from Business Associate or its agents or subcontractors, Business Associate must notify Covered Entity in writing within five (5) days of the request. Any approval or denial of amendment of Protected Information maintained by Business Associate or its agents or subcontractors shall be the responsibility of Covered Entity [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

- i. **Accounting Rights.** Within ten (10) days of notice by Covered Entity of a request for an accounting of disclosures of Protected Information, Business Associate and its agents or subcontractors shall make available to Covered Entity the information required to provide an accounting of disclosures to enable Covered Entity to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by Covered Entity. Business Associate agrees to implement a process that allows for an accounting to be collected and maintained by Business Associate and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that Business Associate maintains an electronic health record and is subject to this requirement. 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 Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information 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. In the event that the request for an accounting is delivered directly to Business Associate or its agents or subcontractors, Business Associate shall within five (5) days of a request forward it to Covered Entity in writing. It shall be Covered Entity's responsibility to prepare and deliver any such accounting requested. Business Associate shall not disclose any Protected Information except as set forth in Sections 2.b. of this BAA [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528]. The provisions of this subparagraph shall survive the termination of this Agreement.
- j. **Governmental Access to Records.** Business Associate shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to Covered Entity and to the Secretary of the U.S. Department of Health and Human Services (Secretary) for purposes of determining Business Associate's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. Business Associate shall provide to Covered Entity a copy of any Protected Information that Business Associate provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- k. **Minimum Necessary.** Business Associate (and its agents or subcontractors) shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)]. Business Associate understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- l. **Data Ownership.** Business Associate acknowledges that Business Associate has no ownership rights with respect to the Protected Information.

- m. **Business Associate's Insurance.** Business Associate represents and warrants that it purchases commercial insurance to cover its exposure for any claims, damages or losses arising as a result of a breach of the terms of this BAA.
- n. **Notification of Possible Breach.** During the term of the Agreement, Business Associate shall notify Covered Entity within twenty-four (24) hours of any suspected or actual breach of security, or any access, use or disclosure of Protected Information not permitted by the Agreement or this BAA or unauthorized use or disclosure of PHI of which Business Associate becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Business Associate shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]
- o. **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 the Agreement or this BAA or other arrangement, 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 or other arrangement if feasible, or if termination is not feasible, report the problem to the Secretary. Business Associate shall provide written notice to Covered Entity of any pattern of activity or practice of the Covered Entity that Business Associate believes constitutes a material breach or violation of the Covered Entity's obligations under the Agreement or this BAA or other arrangement within five (5) days of discovery and shall meet with Covered Entity to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- p. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by Covered Entity, Business Associate and its agents or subcontractors shall allow Covered Entity to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this BAA for the purpose of determining whether Business Associate has complied with this BAA; provided, however, that (i) Business Associate and Covered Entity shall mutually agree in advance upon the scope, timing and location of such an inspection, (ii) Covered Entity shall protect the confidentiality of all confidential and proprietary information of Business Associate to which Covered Entity has access during the course of such inspection; and (iii) Covered Entity shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by Business Associate. The fact that Covered Entity inspects, or fails to inspect, or has the right to inspect, Business Associate's facilities, systems, books, records, agreements, policies and procedures does not relieve Business Associate of its responsibility to comply with this BAA, nor does Covered Entity's (i) failure to detect or (ii) detection, but failure to notify Business Associate or require Business Associate's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under the Agreement or this BAA, Business Associate shall notify Covered Entity within ten (10) days of learning that Business Associate has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.
- q. **Compliance with HIPAA Workforce Training.** As set forth in section 164.530 of 45 CFR Business Associate is expected to adhere to the Health Insurance Portability and

Accountability Act (HIPAA) regulations to the extent necessary to comply with Covered Entity's legal obligations and to develop and maintain comprehensive consumer confidentiality policies and procedures, provide annual training of all affected staff regarding those policies and procedures including Security and Privacy safeguards, and demonstrate reasonable effort to secure written and/or electronic data to document the provision of such training and agrees to make available to the Covered Entity upon request. The parties should anticipate that this agreement will be modified as necessary for full compliance with HIPAA.

### 3. Termination

- a. **Material Breach.** A breach by Business Associate of any provision of this BAA, as determined by Covered Entity, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Judicial or Administrative Proceedings.** Covered Entity may terminate the Agreement, effective immediately, if (i) Business Associate is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the Business Associate has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.
- c. **Effect of Termination.** Upon termination of the Agreement for any reason, Business Associate shall, at the option of Covered Entity, return or destroy all Protected Information that Business Associate or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by Covered Entity, Business Associate shall continue to extend the protections of Section 2 of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2)(I)]. If Covered Entity elects destruction of the PHI, Business Associate shall certify in writing to Covered Entity that such PHI has been destroyed.

### 4. Indemnification

If Business Associate fails to adhere to any of the privacy, confidentiality, and/or data security provisions set forth in this BAA or if there is a Breach of PHI in Business Associate's possession and, as a result, PHI or any other confidential information is unlawfully accessed, used or disclosed, Business Associate agrees to reimburse Covered Entity for any and all costs, direct or indirect, incurred by Covered Entity associated with any Breach notification obligations. Business Associate also agrees to pay for any and all fines and/or administrative penalties imposed for such unauthorized access, use or disclosure of confidential information or for delayed reporting if it fails to notify the Covered Entity of the Breach as required by this BAA.

### 5. Disclaimer

Covered Entity makes no warranty or representation that compliance by Business Associate with this BAA, HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for Business Associate's own purposes. Business Associate is solely responsible for all decisions made by Business Associate regarding the safeguarding of PHI.

### 6. Certification

To the extent that Covered Entity determines that such examination is necessary to comply with Covered Entity's legal obligations pursuant to HIPAA relating to certification of its security



practices, Covered Entity or its authorized agents or contractors, may, at Covered Entity's expense, examine Business Associate's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to Covered Entity the extent to which Business Associate's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this BAA.

#### **7. Amendment to Comply with Law**

The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that Covered Entity must receive satisfactory written assurance from Business Associate that Business Associate will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this BAA embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. Covered Entity may terminate the Agreement upon thirty (30) days written notice in the event (i) Business Associate does not promptly enter into negotiations to amend the Agreement or this BAA when requested by Covered Entity pursuant to this Section or (ii) Business Associate does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that Covered Entity, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

#### **8. Assistance in Litigation of 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 or this BAA, 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 named adverse party.

#### **9. No Third-Party Beneficiaries**

Nothing express or implied in the Agreement or this BAA 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.

#### **10. Effect on Agreement**

Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

#### **11. Entire Agreement of the Parties**

This BAA supersedes any and all prior and contemporaneous business associate agreements between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Covered Entity and Business Associate acknowledge that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

## **12. Interpretation**

The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this BAA shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.