

AGREEMENT

FOR SERVICES OF INDEPENDENT CONTRACTOR

BC _____

THIS AGREEMENT (hereafter Agreement) is made by and between the County of Santa Barbara, a political subdivision of the State of California (hereafter County) and **National Toxicology Laboratories** with an address at 1120 California Avenue, Bakersfield, California 93304 (hereafter Contractor) wherein Contractor agrees to provide and County agrees to accept the services specified herein.

WHEREAS, Contractor represents that it is specially trained, skilled, experienced, and competent to perform the special services required by County and County desires to retain the services of Contractor pursuant to the terms, covenants, and conditions herein set forth;

WHEREAS, County executed a Purchase Agreement CN221355 with Contractor in the amount of \$80,000 for the period of July 1, 2017 through June 30, 2018 for alcohol and drug testing services. During the term of the Purchase Agreement, County now anticipates that Contractor will provide, at the request of the County, a greater number of services than originally contemplated by the Purchase Agreement, and will incur total expenses beyond the value of the Purchase Agreement and in excess of \$100,000. This Agreement is intended to cancel, nullify, and supersede Purchase Agreement CN221355 and provides a total contract amount not to exceed \$116,000 for Fiscal Year 2017-2018.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

1. **DESIGNATED REPRESENTATIVE**

Director at phone number 805-681-5220 is the representative of County and will administer this Agreement for and on behalf of County. Janice Rivera at phone number 661-283-3411 is the authorized representative for Contractor. Changes in designated representatives shall be made only after advance written notice to the other party.

2. **NOTICES**

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

To County: Director
Santa Barbara County
Department of Behavioral Wellness
300 N. San Antonio Road
Santa Barbara, CA 93110
FAX: 805-681-5262

To Contractor: Janice Rivera, Sales Representative
National Toxicology
1120 California Avenue
Bakersfield, California 93304
Phone: 661-282-3411
Fax: 661-283-4028

AGREEMENT

or at such other address or to such other person that the parties may from time to time designate in accordance with this Notices section. If sent by first class mail, notices and consents under this section shall be deemed to be received five (5) days following their deposit in the U.S. mail. This Notices section shall not be construed as meaning that either party agrees to service of process except as required by applicable law.

3. SCOPE OF SERVICES

Contractor agrees to provide services to County in accordance with EXHIBIT A attached hereto and incorporated herein by reference.

4. TERM

Contractor shall commence performance on July 1, 2017 and end performance upon completion, but no later than June 30, 2018 unless otherwise directed by County or unless earlier terminated.

5. COMPENSATION OF CONTRACTOR

In full consideration for Contractor's services, Contractor shall be paid for performance under this Agreement in accordance with the terms of EXHIBIT B attached hereto and incorporated herein by reference.

6. INDEPENDENT CONTRACTOR

It is mutually understood and agreed that Contractor (including any and all of its officers, agents, and employees), shall perform all of its services under this Agreement as an independent Contractor as to County and not as an officer, agent, servant, employee, joint venturer, partner, or associate of County. Furthermore, County shall have no right to control, supervise, or direct the manner or method by which Contractor shall perform its work and function. However, County shall retain the right to administer this Agreement so as to verify that Contractor is performing its obligations in accordance with the terms and conditions hereof. Contractor understands and acknowledges that it shall not be entitled to any of the benefits of a County employee, including but not limited to vacation, sick leave, administrative leave, health insurance, disability insurance, retirement, unemployment insurance, workers' compensation and protection of tenure. Contractor shall be solely liable and responsible for providing to, or on behalf of, its employees all legally-required employee benefits. In addition, Contractor shall be solely responsible and save County harmless from all matters relating to payment of Contractor's employees, including compliance with Social Security withholding and all other regulations governing such matters. It is acknowledged that during the term of this Agreement, Contractor may be providing services to others unrelated to the County or to this Agreement.

7. STANDARD OF PERFORMANCE

Contractor represents that it has the skills, expertise, and licenses/permits necessary to perform the services required under this Agreement. Accordingly, Contractor shall perform all such services in the manner and according to the standards observed by a competent practitioner of the same profession in which Contractor is engaged. All products of whatsoever nature, which Contractor delivers to County pursuant to this Agreement, shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in Contractor's profession. Contractor shall correct or revise any errors or omissions, at County's request without additional compensation. Permits and/or licenses shall be obtained and maintained by Contractor without additional compensation.

AGREEMENT

8. DEBARMENT AND SUSPENSION

Contractor certifies to County that it and its employees and principals are not debarred, suspended, or otherwise excluded from or ineligible for, participation in federal, state, or county government contracts. Contractor certifies that it shall not contract with a subcontractor that is so debarred or suspended.

9. TAXES

Contractor shall pay all taxes, levies, duties, and assessments of every nature due in connection with any work under this Agreement and shall make any and all payroll deductions required by law. County shall not be responsible for paying any taxes on Contractor's behalf, and should County be required to do so by state, federal, or local taxing agencies, Contractor agrees to promptly reimburse County for the full value of such paid taxes plus interest and penalty, if any. These taxes shall include, but not be limited to, the following: FICA (Social Security), unemployment insurance contributions, income tax, disability insurance, and workers' compensation insurance.

10. CONFLICT OF INTEREST

Contractor covenants that Contractor presently has no employment or interest and shall not acquire any employment or interest, direct or indirect, including any interest in any business, property, or source of income, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. Contractor must promptly disclose to the County, in writing, any potential conflict of interest. County retains the right to waive a conflict of interest disclosed by Contractor if County determines it to be immaterial, and such waiver is only effective if provided by County to Contractor in writing.

11. OWNERSHIP OF DOCUMENTS AND INTELLECTUAL PROPERTY

County shall be the owner of the following items incidental to this Agreement upon production, whether or not completed: all data collected, all documents of any type whatsoever, all photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials, and any material necessary for the practical use of such items, from the time of collection and/or production whether or not performance under this Agreement is completed or terminated prior to completion. Contractor shall not release any of such items to other parties except after prior written approval of County. Contractor shall be the legal owner and Custodian of Records for all County client files generated pursuant to this Agreement, and shall comply with all Federal and State confidentiality laws, including Welfare and Institutions Code (WIC) §5328; 42 United States Code (U.S.C.) §290dd-2; and 45 CFR, Parts 160 – 164 setting forth the Health Insurance Portability and Accountability Act of 1996 (HIPAA). Contractor shall inform all of its officers, employees, and agents of the confidentiality provision of said laws. Contractor further agrees to provide County with copies of all County client file documents resulting from this Agreement without requiring any further written release of information. Within HIPAA guidelines, County shall have the unrestricted authority to publish, disclose, distribute, and/or otherwise use in whole or in part, any reports, data, documents or other materials prepared under this Agreement.

Unless otherwise specified in Exhibit A, Contractor hereby assigns to County all copyright, patent, and other intellectual property and proprietary rights to all data, documents, reports, photos, designs, sound or audiovisual recordings, software code, inventions, technologies, and other materials prepared or provided by Contractor pursuant to this Agreement (collectively referred to as "Copyrightable Works and Inventions"). County shall have the unrestricted authority to copy, adapt,

AGREEMENT

perform, display, publish, disclose, distribute, create derivative works from, and otherwise use in whole or in part, any Copyrightable Works and Inventions. Contractor agrees to take such actions and execute and deliver such documents as may be needed to validate, protect and confirm the rights and assignments provided hereunder. Contractor warrants that any Copyrightable Works and Inventions and other items provided under this Agreement will not infringe upon any intellectual property or proprietary rights of any third party. Contractor at its own expense shall defend, indemnify, and hold harmless County against any claim that any Copyrightable Works or Inventions or other items provided by Contractor hereunder infringe upon intellectual or other proprietary rights of a third party, and Contractor shall pay any damages, costs, settlement amounts, and fees (including attorneys' fees) that may be incurred by County in connection with any such claims. This Ownership of Documents and Intellectual Property provision shall survive expiration or termination of this Agreement.

12. NO PUBLICITY OR ENDORSEMENT

Contractor shall not use County's name or logo or any variation of such name or logo in any publicity, advertising or promotional materials. Contractor shall not use County's name or logo in any manner that would give the appearance that the County is endorsing Contractor. Contractor shall not in any way contract on behalf of or in the name of County. Contractor shall not release any informational pamphlets, notices, press releases, research reports, or similar public notices concerning the County or its projects, without obtaining the prior written approval of County.

13. COUNTY PROPERTY AND INFORMATION

All of County's property, documents, and information provided for Contractor's use in connection with the services shall remain County's property, and Contractor shall return any such items whenever requested by County and whenever required according to the Termination section of this Agreement. Contractor may use such items only in connection with providing the services. Contractor shall not disseminate any County property, documents, or information without County's prior written consent.

14. RECORDS, AUDIT, AND REVIEW

Contractor shall keep such business records pursuant to this Agreement as would be kept by a reasonably prudent practitioner of Contractor's profession and shall maintain all records until such time that the State Department of Health Care Services completes all actions associated with the final audit, including appeals, for the fiscal year(s) covered by this Agreement, or not less than four (4) years following the termination of this Agreement. All accounting records shall be kept in accordance with generally accepted accounting principles. County shall have the right to audit and review all such documents and records at any time during Contractor's regular business hours or upon reasonable notice. In addition, if this Agreement exceeds ten thousand dollars (\$10,000.00), Contractor shall be subject to the examination and audit of the California State Auditor, at the request of the County or as part of any audit of the County, for a period of three (3) years after final payment under the Agreement (Cal. Govt. Code Section 8546.7). Contractor shall participate in any audits and reviews, whether by County or the State, at no charge to County.

If federal, state or County audit exceptions are made relating to this Agreement, Contractor shall reimburse all costs incurred by federal, state, and/or County governments associated with defending against the audit exceptions or performing any audits or follow-up audits, including but not limited to: audit fees, court costs, attorneys' fees based upon a reasonable hourly amount for attorneys in the community, travel costs, penalty assessments and all other costs of whatever nature. Immediately upon notification from County, Contractor shall reimburse the amount of the audit exceptions and any other related costs directly to County as specified by County in the notification. The provisions

AGREEMENT

of the Records, Audit, and Review section shall survive any expiration or termination of this Agreement.

15. INDEMNIFICATION AND INSURANCE

Contractor agrees to the indemnification and insurance provisions as set forth in EXHIBIT C attached hereto and incorporated herein by reference.

16. NONDISCRIMINATION

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

17. NONEXCLUSIVE AGREEMENT

Contractor understands that this is not an exclusive Agreement and that County shall have the right to negotiate with and enter into contracts with others providing the same or similar services as those provided by Contractor as the County desires.

18. NON-ASSIGNMENT

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

19. TERMINATION

- A. **By County.** County may, by written notice to Contractor, terminate this Agreement in whole or in part at any time, whether for County's convenience, for nonappropriation of funds, or because of the failure of Contractor to fulfill the obligations herein.
 - 1. **For Convenience.** County may terminate this Agreement in whole or in part upon thirty (30) days written notice. During the thirty (30) day period, Contractor shall, as directed by County, wind down and cease its services as quickly and efficiently as reasonably possible, without performing unnecessary services or activities and by minimizing negative effects on County from such winding down and cessation of services.
 - 2. **For Nonappropriation of Funds.**
 - a. The parties acknowledge and agree that this Agreement is dependent upon the availability of County, State, and/or federal funding. If funding to make payments in accordance with the provisions of this Agreement is not forthcoming from the County, State and/or federal governments for the Agreement, or is not allocated or allotted to County by the County, State and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments after the effective date of such non-allocation or non-funding, as provided in the notice, will cease and terminate.

AGREEMENT

- b. As permitted by applicable State and Federal laws regarding funding sources, if funding to make payments in accordance with the provisions of this Agreement is delayed or is reduced from the County, State, and/or federal governments for the Agreement, or is not allocated or allotted in full to County by the County, State, and/or federal governments for this Agreement for periodic payment in the current or any future fiscal period, then the obligations of County to make payments will be delayed or be reduced accordingly or County shall have the right to terminate the Agreement. If such funding is reduced, County in its sole discretion shall determine which aspects of the Agreement shall proceed and which Services shall be performed. In these situations, County will pay Contractor for Services and Deliverables and certain of its costs. Any obligation to pay by County will not extend beyond the end of County's then-current funding period.
 - c. Contractor expressly agrees that no penalty or damages shall be applied to, or shall accrue to, County in the event that the necessary funding to pay under the terms of this Agreement is not available, not allocated, not allotted, delayed or reduced.
3. **For Cause.** Should Contractor default in the performance of this Agreement or materially breach any of its provisions, County may, at County's sole option, terminate or suspend this Agreement in whole or in part by written notice. Upon receipt of notice, Contractor shall immediately discontinue all services affected (unless the notice directs otherwise) and notify County as to the status of its performance. The date of termination shall be the date the notice is received by Contractor, unless the notice directs otherwise.
- B. **By Contractor.** Should County fail to pay Contractor all or any part of the payment set forth in EXHIBIT B, Contractor may, at Contractor's option terminate this Agreement if such failure is not remedied by County within thirty (30) days of written notice to County of such late payment.
- C. **Upon termination,** Contractor shall deliver to County all data, estimates, graphs, summaries, reports, and all other property, records, documents or papers as may have been accumulated or produced by Contractor in performing this Agreement, whether completed or in process, except such items as County may, by written permission, permit Contractor to retain. Notwithstanding any other payment provision of this Agreement, County shall pay Contractor for satisfactory services performed to the date of termination to include a prorated amount of compensation due hereunder less payments, if any, previously made. In no event shall Contractor be paid an amount in excess of the full price under this Agreement nor for profit on unperformed portions of service. Contractor shall furnish to County such financial information as in the judgment of County is necessary to determine the reasonable value of the services rendered by Contractor. In the event of a dispute as to the reasonable value of the services rendered by Contractor, the decision of County shall be final. The foregoing is cumulative and shall not affect any right or remedy which County may have in law or equity.

20. **SECTION HEADINGS**

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

AGREEMENT

21. SEVERABILITY

If any one or more of the provisions contained herein shall for any reason be held to be invalid, illegal or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

22. REMEDIES NOT EXCLUSIVE

No remedy herein conferred upon or reserved to County is intended to be exclusive of any other remedy or remedies, and each and every such remedy, to the extent permitted by law, shall be cumulative and in addition to any other remedy given hereunder or now or hereafter existing at law or in equity or otherwise.

23. TIME IS OF THE ESSENCE

Time is of the essence in this Agreement and each covenant and term is a condition herein.

24. NO WAIVER OF DEFAULT

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

25. ENTIRE AGREEMENT AND AMENDMENT

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

26. SUCCESSORS AND ASSIGNS

All representations, covenants and warranties set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

27. COMPLIANCE WITH LAW

Contractor shall, at its sole cost and expense, comply with all County, State and Federal ordinances and statutes now in force or which may hereafter be in force with regard to this Agreement. The judgment of any court of competent jurisdiction, or the admission of Contractor in any action or proceeding against Contractor, whether County is a party thereto or not, that Contractor has violated any such ordinance or statute, shall be conclusive of that fact as between Contractor and County.

AGREEMENT

28. CALIFORNIA LAW AND JURISDICTION

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

29. EXECUTION OF COUNTERPARTS

This Agreement may be executed in any number of counterparts and each of such counterparts shall for all purposes be deemed to be an original; and all such counterparts, or as many of them as the parties shall preserve undestroyed, shall together constitute one and the same instrument.

30. AUTHORITY

All signatories and parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, or firms represented or purported to be represented by such entity(s), person(s), or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement have been fully complied with. Furthermore, by entering into this Agreement, Contractor hereby warrants that it shall not have breached the terms or conditions of any other contract or agreement to which Contractor is obligated, which breach would have a material effect hereon.

31. SURVIVAL

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

32. PRECEDENCE

In the event of conflict between the provisions contained in the numbered sections of this Agreement and the provisions contained in the Exhibits, the provisions of the Exhibits shall prevail over those in the numbered sections.

33. COMPLIANCE WITH HIPAA

Contractor is expected to adhere to Health Insurance Portability and Accountability Act (HIPAA) regulations and to develop and maintain comprehensive patient confidentiality policies and procedures, provide annual training of all staff regarding those policies and procedures, and demonstrate reasonable effort to secure written and/or electronic data. The parties should anticipate that this Agreement will be modified as necessary for full compliance with HIPAA.

34. BUSINESS ASSOCIATE

The parties agree to the terms and conditions set forth in Exhibit D - HIPAA Business Associate Agreement (BAA), attached hereto and incorporated herein by reference.

35. PRIOR AGREEMENTS.

Upon the effective date, this Agreement supersedes all prior agreements between County and Contractor related to the scope of work contained in this Agreement.

36. MANDATORY DISCLOSURE.

AGREEMENT

- A. **Violations of Criminal Law** Contractor must disclose, in a timely manner, in writing to the County all violations of Federal criminal law involving fraud, bribery, or gratuity violations potentially affecting this Agreement. Failure to make required disclosures can result in any of the remedies described in 45 C.F.R. Section 75.371, including suspension or debarment. (See also 2 C.F.R. part 180 and 376, and 31 U.S.C. 3321.)
- B. **Ownership or Controlling Interest.** If required by 42 CFR sections 455.101 and 455.104, Contractor will complete a *Disclosure of Ownership or Controlling Interest* form provided by County.

37. UNIFORM ADMINISTRATIVE REQUIREMENTS, COST PRINCIPLES, AND AUDIT REQUIREMENTS FOR FEDERAL AWARDS

Contractor shall comply with the requirements of 45 CFR Part 75 which are hereby incorporated by reference in this Agreement.

38. PROHIBITION OF EXPENDING LOCAL AGENCY STATE OR FEDERAL FUNDS FOR LOBBYING

- A. CONTRACTOR, by signing its offer, hereby certifies to the best of his or her knowledge and belief that:
 - 1. No state, federal or local agency appropriated funds have been paid, or will be paid by or on behalf of CONTRACTOR to any person for influencing or attempting to influence an officer or employee of any state or federal agency; a Member of the State Legislature or United States Congress; an officer or employee of the Legislature or Congress; or any employee of a Member of the Legislature or Congress, in connection with the awarding of any state or federal contract; the making of any state or federal grant; the making of any state or federal loan; the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any state or federal contract, grant, loan, or cooperative agreement.
 - 2. If any funds other than federal appropriated funds have been paid, or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency; a Member of Congress; an officer or employee of Congress, or an employee of a Member of Congress; in connection with this federal contract, grant, loan, or cooperative agreement; CONTRACTOR shall complete and submit California State Standard Form-LLL, "Disclosure Form to Report Lobbying," to the COUNTY and in accordance with the instructions found therein.
- B. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification shall be

AGREEMENT

subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

- C. Contractor also agrees by signing this document that he or she shall require that the language of this certification be included in all lower-tier subcontracts, which exceed \$100,000 and that all such sub recipients shall certify and disclose accordingly.

AGREEMENT

THIS AGREEMENT INCLUDES:

- I. EXHIBIT A
 - A. Exhibit A – Statement of Work
 - B. Exhibit A1 – Drug Court Confirmatory Testing List
- II. EXHIBIT B
 - A. Exhibit B - Payment Arrangements
 - B. Exhibit B1 – Schedule of Rates and Contract Maximum
 - C. Exhibit B2 – Confirmatory Drug Testing Monthly Services Report
- III. EXHIBIT C – Standard Indemnification and Insurance Provisions
- IV. EXHIBIT BAA – HIPAA Business Associate Agreement

AGREEMENT

Agreement for Services of Independent Contractor between the **County of Santa Barbara** and **National Toxicology Laboratories**.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective on the date executed by COUNTY.

County of Santa Barbara:

By: _____
Das WILLIAMS, CHAIR
Board of Supervisors

Date: _____

ATTEST:

Mona Miyasato
County Executive Officer
Clerk of the Board

By: _____
Deputy Clerk

Date: _____

CONTRACTOR:

National Toxicology Laboratories

By: _____
Authorized Representative

Name: _____

Title: _____

Date: _____

APPROVED AS TO FORM:

Michael C. Ghizzoni
County Counsel

By: _____
Deputy County Counsel

RECOMMENDED FOR APPROVAL:

Alice Gleghorn, PH.D., Director
Department of Behavioral Wellness

By: _____
Director

APPROVED AS TO ACCOUNTING FORM:

Theodore A. Fallati, CPA
Auditor-Controller

By: _____
Deputy

APPROVED AS TO INSURANCE FORM:

Ray Aromatorio
Risk Management

By: _____
Risk Management

**EXHIBIT A
STATEMENT OF WORK**

The following terms shall apply to all programs operated under this contract.

- I. **PERFORMANCE.** National Toxicology Laboratories (Contractor), a licensed clinical forensic drug testing laboratory specializing in drug testing program shall provide confirmatory drug testing for Santa Barbara County Department of Behavioral Wellness, Alcohol and Drug Program. Contract shall:
 - A. Have the background, training, work experience, accreditation, licenses, and supervision necessary for the performance of services in a manner of, and according to the standards observed by, a practitioner of the same profession and in keeping with all pertinent Federal, State, and County laws; and
 - B. Warrant that said accreditation and licensing information furnished to County is complete and accurate, and notify County promptly of any changes in this information.
- II. **OBJECTIVES.** Contractor shall provide confirmatory drug testing in accordance in accordance with the following standards:
 - A. California Code or Regulations, Title 9, - Substance Abuse Treatment and Testing Accountability (SATTA) Program.
- III. **SERVICES.** Contractor shall provide the following services:
 - A. **Confirmatory Drug Testing and SATTA – Substance Abuse Testing including SATTA testing (Service Code 85):** This service includes activities or components related to accounting for the number of substance abuse (drug testing) for SACPA and Adult and Juvenile Drug Court clients in Santa Barbara County.
 - B. Services will be performed at National Toxicology Laboratories, 1100 California Avenue, Bakersfield, CA 93304;
 - C. Establish a separate account for each contracted provider (listed on Exhibit A1) that will submit urine samples;
 - D. Shall fax the results to each contracted provider's Program Manager or Coordinator within 24 hours of receipt of the urine sample and mail the hard copy within 72 hours;
 - E. Provide County with a monthly detail of each account using Exhibit B2, Monthly Services Report;
 - F. Notify County immediately in the event of any:
 - i. Known or suspected misuse of funds under Contractor control;
 - ii. Legal suits,
 - iii. Criminal investigation; or
 - iv. Any other action being initiated against Contractor or affects Contractors license or practice, for example, sexual harassment accusations.

EXHIBIT A STATEMENT OF WORK

- G. Agree that the Behavioral Wellness-Director or designee, state or federal agencies may review and investigate books, records, manuals, procedures, or other documents regarding performance of this contract.
- i. County will conduct monitoring and evaluation of Contractor program on a regular ongoing basis, and Contractor agrees to participate fully in that process.
 - ii. Such record reviews conducted during the term of this agreement will be held with or without advance notice during normal business hours.
 - iii. Contractor agrees to participate in quality assurance programs conducted by County.
- H. Participate in periodic review meetings between Contractor staff and County staff shall be held on administrative, fiscal and overall contract monitoring and staff performance activity.
- I. Allow County contract monitoring staff, and/or County Manager, or designee, shall conduct periodic on-site reviews of Contractor program and documentation.

J. STATE CONTRACT COMPLIANCE. [WHEN APPLICABLE]

A. Additional Contract Restrictions

This Contract is subject to any additional restrictions, limitations, or conditions enacted by the Congress, or any statute enacted by the Congress, which may affect the provisions, terms, or funding of this Contract in any manner.

B. Nullification of Drug Medi-Cal (DMC) Treatment Program substance use disorder services (if applicable)

The parties agree that if the Contractor fails to comply with the provisions of Welfare and Institutions Code (W&I) Section 14124.24, all areas related to the DMC Treatment Program substance use disorder services shall be null and void and severed from the remainder of this Contract.

In the event the Drug Medi-Cal Treatment Program Services component of this Contract becomes null and void, an updated Exhibit B-1 will take effect reflecting the removal of federal Medicaid funds and DMC State General Funds from this Contract. All other requirements and conditions of this Contract will remain in effect until amended or terminated.

C. Hatch Act

Contractor agrees to comply with the provisions of the Hatch Act (Title 5 USC, Sections 1501-1508), which limit the political activities of employees whose principal employment activities are funded in whole or in part with federal funds.

EXHIBIT A
STATEMENT OF WORK

D. No Unlawful Use or Unlawful Use Messages Regarding Drugs

Contractor agrees that information produced through these funds, and which pertains to drug and alcohol- related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program. Additionally, no aspect of a drug or alcohol- related program shall include any message on the responsible use, if the use is unlawful, of drugs or alcohol (HSC Section 11999-11999.3). By signing this Contract, Contractor agrees that it will enforce these requirements.

E. Noncompliance with Reporting Requirements

Contractor acknowledges that the State may withhold payments until County has submitted any required data and reports to the State, on behalf of Contractor, and County may withhold payment to Contractor until such reports are submitted in accordance with Exhibit B of the State Contract 14-90100.

F. Limitation on Use of Funds for Promotion of Legalization of Controlled Substances

None of the funds made available through this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in Schedule I of Section 202 of the Controlled Substances Act (21 USC 812).

G. Debarment and Suspension

Contractor shall not subcontract with any party listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp. p. 189) and 12689 (3 CFR part 1989, p. 235), "Debarment and Suspension." SAM exclusions contain the names of the parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

County advises all subcontractors of their obligation to comply with applicable federal debarment and suspensions regulations, in addition to the requirements set forth in 42 CFR Part 1001.

H. Restriction on Distribution of Sterile Needles

No funds made available through this Agreement shall be used to carry out any program that includes the distribution of sterile needles or syringes for the hypodermic injection of any illegal drug unless the State chooses to implement a demonstration syringe services program for injecting drug users with Substance Abuse Prevention and Treatment Block Grant funds.

EXHIBIT A STATEMENT OF WORK

I. Health Insurance Portability and Accountability Act (HIPAA) of 1996

If any of the work performed under this Contract is subject to the HIPAA, then Contractor shall perform the work in compliance with all applicable provisions of HIPAA. The State and County shall cooperate to assure mutual agreement as to those transactions between them, to which this Provision applies.

i. Trading Partner Requirements

- a. **No Changes.** County hereby agrees that for the personal health information (Information), it will not change any definition, data condition or use of a data element or segment as proscribed in the federal HHS Transaction Standard Regulation. (45 CFR Part 162.915 (a))
- b. **No Additions.** County hereby agrees that for the Information, it will not add any data elements or segments to the maximum data set as proscribed in the HHS Transaction Standard Regulation. (45 CFR Part 162.915 (b))
- c. **No Unauthorized Uses.** County hereby agrees that for the Information, it will not use any code or data elements that either are marked "not used" in the HHS Transaction's Implementation specification or are not in the HHS Transaction Standard's implementation specifications. (45 CFR Part 162.915 (c))
- d. **No Changes to Meaning or Intent.** County hereby agrees that for the Information, it will not change the meaning or intent of any of the HHS Transaction Standard's implementation specification. (45 CFR Part 162.915 (d))

ii. Concurrence for Test Modifications to HHS Transaction Standards

County agrees and understands that there exists the possibility that the State or others may request an extension from the uses of a standard in the HHS Transaction Standards. If this occurs, County agrees that it will participate in such test modifications.

iii. Adequate Testing

County is responsible to adequately test all business rules appropriate to their types and specialties. If the County is acting as a clearinghouse for enrolled providers, County has obligations to adequately test all business rules appropriate to each and every provider type and specialty for which they provide clearinghouse services.

iv. Deficiencies

County agrees to cure transactions errors or deficiencies identified by the State, and transactions errors or deficiencies identified by an enrolled provider if the County is acting as a clearinghouse for that provider. When County is a clearinghouse, County agrees to properly communicate deficiencies and other pertinent information regarding electronic transactions to enrolled providers for which they provide clearinghouse services.

EXHIBIT A STATEMENT OF WORK

v. Code Set Retention

Both Parties understand and agree to keep open code sets being processed or used in this Agreement for at least the current billing period or any appeal period, whichever is longer.

vi. Data Transmission Log

Both Parties shall establish and maintain a Data Transmission Log, which shall record any and all Data Transmission taking place between the Parties during the term of this Contract. Each Party will take necessary and reasonable steps to ensure that such Data Transmission Logs constitute a current, accurate, complete, and unaltered record of any and all Data Transmissions between the Parties, and shall be retained by each Party for no less than twenty-four (24) months following the date of the Data Transmission. The Data Transmission Log may be maintained on computer media or other suitable means provided that, if it is necessary to do so, the information contained in the Data Transmission Log may be retrieved in a timely manner and presented in readable form.

J. Nondiscrimination and Institutional Safeguards for Religious Providers

In order to comply with the provisions of Title 42, USC, Section 300x-65 and Title 42 CFR Part 54, Contractor is required to submit to the County ADP Program Manager, the "Survey on Ensuring Equal Opportunity for Applicants" form, available from ADP Program Director, to identify if the organization is a religious provider. Contractor shall not use funds provided through this contract for inherently religious activities, such as worship, religious instruction, or proselytization. If Contractor conducts such activities, it must offer them separately, in time or location, from the programs or services for which it receives funds from the Department. Contractor may not discriminate against a client or prospective client on the basis of religion, a religious belief, a refusal to hold a religious belief, or a refusal to actively participate in a religious practice. Contractors identifying as religious organizations shall establish a referral process to a reasonably accessible alternative program for clients who may object to the religious nature of the Contractor's program. Referrals that were made due to the religious nature of the Contractor's program shall be submitted within three (3) days to the County.

K. Counselor Certification

Any counselor or registrant providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in a DHCS licensed or certified program is required to be certified as defined in Title 9, CCR, Division 4, Chapter 8.

L. Cultural and Linguistic Proficiency

To ensure equal access to quality care by diverse populations, each service provider receiving funds from this contract shall adopt the federal Office of Minority Health Culturally and Linguistically Appropriate Service (CLAS) national standards.

EXHIBIT A STATEMENT OF WORK

M. Intravenous Drug Use (IVDU) Treatment

Contractor shall ensure that individuals in need of IVDU treatment shall be encouraged to undergo alcohol and other drug (AOD) treatment (42 USC 300x-23(96.126(e))).

N. Tuberculosis Treatment

Contractor shall ensure the following related to Tuberculosis (TB):

- i. Routinely make available TB services to each individual receiving treatment for alcohol and other drug use and/or abuse;
- ii. Reduce barriers to patients' accepting TB treatment; and,
- iii. Develop strategies to improve follow-up monitoring, particularly after patients leave treatment, by disseminating information through educational bulletins and technical assistance.

O. Trafficking Victims Protection Act of 2000 (TVPA)

Contractor shall comply with Section 106(g) of the Trafficking Victims Protection Act of 2000 (22 U.S.C. Section 7104(g), as amended by Section 1702). The County has the authority to terminate the agreement without penalty within thirty (30) days or to take any other remedial action authorized under 22 U.S.C. Section 7104b(c), if the Contractor: (a) Engages in severe forms of trafficking in persons during the period of time that the contract is in effect; (b) Procures a commercial sex act during the period of time that the contract is in effect; or (c) Uses forced labor in the performance of the contract or subcontracts under the contract, in accordance with TVPA of 2000 and in accordance with Behavioral Wellness Policy and Procedure found at: <http://www.countyofsb.org/behavioral-wellness/policies>. Contractor must inform County immediately of any information Contractor receives from any source alleging a violation of a prohibition in this paragraph. For full text of the award term, go to: <http://uscode.house.gov/view.xhtml?req=granuleid:USC-prelim-title22-section7104d&num=0&edition=prelim>

P. Tribal Communities and Organizations

County shall regularly assess (e.g. review population information available through Census, compare to information obtained in CalOMS Treatment to determine whether population is being reached, survey Tribal representatives for insight in potential barriers) the substance use service needs of the American Indian/Alaskan Native (AI/AN) population within the County geographic area and shall engage in regular and meaningful consultation and collaboration with elected officials of the tribe, Rancheria, or their designee for the purpose of identifying issues/barriers to service delivery and improvement of the quality, effectiveness and accessibility of services available to AI/NA communities within the County.

EXHIBIT A
STATEMENT OF WORK

Q. Participation of County Alcohol and Drug Program Administrators Association of California.

Pursuant to HSC Section 11801(g), the AOD administrator shall participate and represent the county in meetings of the County Alcohol and Drug Program Administrators Association of California for the purposes of representing the counties in their relationship with the state with respect to policies, standards, and administration for alcohol and other drug abuse services. Pursuant to HSC Section 11811.5(c), the county alcohol and drug program administrator shall attend any special meetings called by the Director of DHCS.

R. Youth Treatment Guidelines.

Contractor will follow the California Youth Treatment Guidelines available at http://www.dhcs.ca.gov/individuals/Documents/Youth_Treatment_Guidelines.pdf and incorporated by this reference, in developing and implementing youth treatment programs funded under this Exhibit, until such time as new Youth Treatment Guidelines are established and adopted. No formal amendment of this contract is required for new guidelines to be incorporated into this contract.

S. Perinatal Services Network Guidelines 2015

Pursuant to 45 CFR 96.124(c)(1)-(3) the County shall expend the specified percentage of SAPT Block Grant funds, as calculated by said regulations, on perinatal services, pregnant women, and women with dependent children each state fiscal year (SFY). The County shall expend these funds either by establishing new programs or expanding the capacity of existing programs. The County shall calculate the appropriate amount by using Generally Accepted Accounting Principles and the composition of the base shall be applied consistently from year to year. (See the County share of SAPT Block Grant Women Services Expenditure Requirement.)

Contractor shall comply with the perinatal program requirements as outlined in the Perinatal Services Network Guidelines 2014, promulgated under 45 CFR 96.137. The "Perinatal Services Network Guidelines 2014" are incorporated by reference. The contractor shall comply with the "Perinatal Services Network Guidelines 2014" (<http://www.dhcs.ca.gov/individuals/Documents/PSNG2014Final21214.pdf>) until new Perinatal Services Network Guidelines are established and adopted. The incorporation of any new Perinatal Services Network Guidelines into this contract shall not require a formal amendment.

All SAPT BG-funded programs providing treatment services designed for pregnant women and women with dependent children will treat the family as a unit and therefore will admit both women and their children into treatment services, if appropriate.

The Contractor must directly provide, or provide a referral for, the following services:

- i. Primary medical care for women, including referral for prenatal care and, while the women are receiving such services, child care;
- ii. Primary pediatric care, including immunization, for their children;

EXHIBIT A STATEMENT OF WORK

- iii. Gender specific substance abuse treatment and other therapeutic interventions for women which may address issues of relationships, sexual and physical abuse and parenting, and child care while the women are receiving these services;
- iv. Therapeutic interventions for children in custody of women in treatment which may, among other things, address their developmental needs, their issues of sexual and physical abuse, and neglect; and
- v. Sufficient case management and transportation to ensure that women and their children have access to services.

T. Restrictions on Grantee Lobbying – Appropriations Act Section 503.

No part of any appropriation contained in this Act shall be used, other than for formal and recognized executive-legislative relationships, for publicity or propaganda purposes, for the preparation, distribution, or use of any kit, pamphlet, booklet, publication, radio, television, or video presentation designed to support defeat legislation pending before the Congress, except in presentation to the Congress itself or any State legislature, except in presentation to the Congress or any State legislative body itself.

No part of any appropriation contained in this Act shall be used to pay the salary or expenses of any grant or contract recipient, or agent during for such recipient, related to any activity designed to influence legislation or appropriations pending before the Congress or any State legislature.

U. Nondiscrimination in Employment and Services.

By signing this Agreement, Contractor certifies that under the laws of the United States and the State of California, incorporated into this Contract by reference and made a part hereof as if set forth in full, Contractor will not unlawfully discriminate against any person.

V. Federal Law Requirements:

- i. Title VI of the Civil Rights Act of 1964, Section 2000d, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
- ii. Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.
- iii. Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 USC Sections 6101 – 6107), which prohibits discrimination on the basis of age.
- iv. Age Discrimination in Employment Act (29 CFR Part 1625).
- v. Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
- vi. Title 11 of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.

EXHIBIT A
STATEMENT OF WORK

- vii. Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
 - viii. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), prohibiting discrimination on the basis of individuals with disabilities.
 - ix. Executive Order 11246 (42 USC 2000(e) et seq. and 41 CFR Part 60) regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance .
 - x. Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
 - xi. The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse.
 - xii. The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.
- W. State Law Requirements:
- i. Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.).
 - ii. Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135.
 - iii. Title 9, Division 4, Chapter 8 of the CCR, commencing with Section 10800.
 - iv. No state or federal funds shall be used by the Contractor for sectarian worship, instruction, or proselytization. No state funds shall be used by the Contractor or to provide direct, immediate, or substantial support to any religious activity.
 - v. Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for state to withhold payments under this Agreement or terminate all, or any type, of funding provided hereunder.
- X. This Contract is subject to any additional restrictions, limitations, or conditions enacted by the federal or state governments that affect the provisions, terms, or funding of this Contract in any manner.
- Y. Contractor shall comply with the following regulations and guidelines:
- i. Title 21, CFR Part 1300, et seq., Title 42, CFR, Part 8;
 - ii. Drug Medi-Cal Certification Standards for Substance Abuse Clinics;

EXHIBIT A
STATEMENT OF WORK

- iii. Title 22, CCR, Sections 51341.1, 51490.1, and 51516.1;
- iv. Standards for Drug Treatment Programs (October 21, 1981);
- v. Title 9, CCR, Division 4, Chapter 4, Subchapter 1, Sections 10000, et. seq; and
- vi. Title 22, CCR, sections 51000 et. seq.

In the event of conflicts, the provisions of Title 22 shall prevail.

EXHIBIT A1

Santa Barbara County Alcohol and Drug Program P36 and Drug Court Confirmatory Testing List – FY 2017-2018

<u>AEGIS - Santa Barbara</u> 4129 State Street, Suite B Santa Barbara, CA 93110 (805) 681-7242/FAX (805) 681-7240 Bonnie Gonzalez, Clinic Mgr. ACCT # 101160	<u>Coast Valley – SATC Santa Maria</u> 1414 S. Miller St, Suite 11 Santa Maria, CA 93454 Matt Hamlin Director. (805) 739-1512/Fax (805) 739-2855 ACCT # 1104101	<u>Good Samaritan - Recovery Point - ODF</u> 245 E. Inger Suite 103B Santa Maria, CA 93454 (805) 322-3647, ext 5/Fax (805) 346-8656 Lyndi Shoaf, Program Manager Acct# 101912
<u>AEGIS - Santa Maria</u> 115 East Fesler Street Santa Maria, CA 93454 (805) 922-6597/Fax (805) 922-5978 Rebecca Brown, Clinic Mgr. ACCT # 101154	<u>Family Service Agency</u> 105 N. Lincoln Street Santa Maria, CA 93454 (805) 928-1707/Fax (805) 922-93454 Michael Fuentes, Coordinator ACCT # 101161	<u>Good Samaritan - Recovery Way Home</u> 608 W. Ocean Ave Lompoc, CA 93436 (805) 736-0357/Fax (800) 969-9350 Linda Brown, Program Manager Acct # 104940
<u>CADA - Daniel Bryant Youth & Family</u> 1111 Garden Street Santa Barbara, CA 93101 (805) 730-7575/Fax (805) 730-7503 Lexi Murray ACCT# 104525	<u>Good Samaritan - Another Road Detox</u> 113 S. M Street Lompoc, CA 93436 (805) 736-0357/Fax (800) 969-9350 Christina Vasquez, Program Manager Acct# 1012715	<u>Good Samaritan - Turning Point</u> 604 W. Ocean Ave Lompoc, CA 93436 (805) 736-0357/Fax (800) 969-9350 Linda Brown, Program Manager Acct# 102714
<u>CADA - Detox & Residential</u> 1020 Placido Place Santa Barbara, CA 93101 (805) 963-1836 Dale Schuck, Program Manager ACCT #104942	<u>Good Samaritan - Casa de Familia</u> 403 W. Morrison Ave, Suite B Santa Maria, CA 93458 (805) 322-3647, ext 5/Fax (805) 653-2634 Bill Hargadon, Program Manager ACCT #104608	<u>LAGS Recovery Center</u> 801 E. Chapel St Santa Maria, CA 93454 (805) 332-4568/Fax (805) 332-3487 Micki Walker, Program Manager ACCT #104746
<u>CADA – Project Recovery</u> 133 East Haley Street Santa Barbara, CA 93101 (805) 564-6057 EXT 111/Fax (805) 963-8849 Marcel Meier, Prop 36 Manager ACCT # 101100	<u>Good Samaritan - Detox</u> 401 W. Morrison Ave Santa Maria, CA (805) 347-3338/Fax (805) 866-7730 Christina Vasquez, Program Manager Acct# 104939	<u>Salvation Army</u> 423 Chapala St Santa Barbara, CA 93101 (805) 962-6281 ext 104/FAX (805) 899-2702 Mark Gisler, Exec Director ACCT# 104941
<u>CADA - Youth Services</u> 526 E. Chapel St Santa Maria, CA 93454 (805) 925-8860/Fax (805) 928-7855 Britt Stanley, Program Manager ACCT #104937	<u>Good Samaritan - Lompoc Recovery Center</u> 104 S. C Street Lompoc, CA 93436 (805) 741-7853/Fax (800) 969-9350 Donna Flores, Program Manager Acct# 104452	<u>Sanctuary House of SB</u> Sanctuary Psychiatric Center 222 W. Valerio Street Santa Barbara, CA. 93101 569-2785 / FAX 563-1977 Prop 36 Program Mgr. ACCT # 101162
<u>Coast Valley – SATC Lompoc</u> 133 N. F Street Lompoc, CA 93436 Chuck Madsen, Program Manager (805) 735-7525/FAX (805) 737-0524 ACCT# 101348	<u>Good Samaritan - Project P.R.E.M.I.E.</u> 412 E. Tunnel Street Santa Maria, CA 93454 (805) 925-0315/Fax (805) 346-1787 Donna Mooneyham, Program Manager. ACCT # 101158	

EXHIBIT B

PAYMENT ARRANGEMENTS

Periodic Compensation (with attached Schedule of Rates [Exhibit B-1])

1. Contract Maximum Value. For services to be rendered under this contract, Contractor shall be paid at the rate specified in the Schedule of Rates (Exhibit B-1), with a maximum value not to exceed **\$116,000**.
2. Payment for Services: Payment for services and/or reimbursement of costs shall be made upon Contractor's satisfactory performance, based upon the scope and methodology contained in EXHIBIT A. Payment for services shall be based upon the expenses and hourly rates for personnel, as defined in EXHIBIT B-1. Invoices submitted for payment that are based upon EXHIBIT B-1 must contain sufficient detail and provide supporting documentation to enable an audit of the charges and payment shall be net thirty (30) days from presentation of invoice.
3. Proper Invoice. Contractor shall submit to County's Designated Representative an invoice or certified claim on the County treasury for the service performed over the period specified. County's representative shall evaluate the quality of the service performed, and if found to be satisfactory, shall initiate processing of payment.
 - A. The invoice must show the Board Contract number, the services performed or detailed statement of purchases with receipts, the rate and authorization form, if applicable.
 - B. County's Designated Representative:

Santa Barbara County
Department of Behavioral Wellness
Attn: Accounts Payable
429 North San Antonio Road
Santa Barbara, CA 93110
ap@sbwell.org
4. Correction of Work. County's failure to discover or object to any unsatisfactory work or billings prior to payment will not constitute a waiver of County's right to require Contractor to correct such work or billings or seek any other legal remedy.

EXHIBIT B1 ADP

PAYMENT ARRANGEMENTS

SCHEDULE OF RATES AND CONTRACT MAXIMUM

<i>TYPE OF SERVICE</i>	Rate	Total Provisional Contract Amount
Drug Testing and Substance Abuse Drug Testing for SACPA clients [in accordance with Substance Abuse Treatment and Testing Accountability (SATTA) Program] (Program Code 6243, Service Code 85) to consist of the following test:		\$116,000
Confirmatory drug test - Gas Chromatography/Mass Spectrometry (GC/MS) drug testing for all samples sent to Contractor by specific contracted providers	\$15 per test	
Special testing for drugs such as Tramadol, Fentanyl, etc.	\$15.00 per drug	
Perform specific gravity and creatinine on sample	\$2.00 per sample	
TOTAL MAXIMUM CONTRACT NOT TO EXCEED:		\$116,000

EXHIBIT B2

County of Santa Barbara Alcohol, Drug Mental Health Services FY 17-18

National Toxicology - Confirmatory Drug Test Monthly Service Report - July 1, 2017 - June 30, 2018															
Account Number	Name of Provider	Location	July	Aug	Sept	Oct	Nov	Dec	Jan	Feb	Mar	Apr	May	Jun	Total
101160	AEGIS - Santa Barbara	Santa Barbara													
101154	AEGIS - Santa Maria	Santa Maria													
104525	CADA - Daniel Bryant Youth & Family	Santa Barbara													
104942	CADA -Detox & Residential	Santa Barbara													
101100	CADA - Project Recovery	Santa Barbara													
104937	CADA - Youth Services	Santa Maria													
101348	Coast Valley - SATC Lompoc	Lompoc													
104101	Coast Valley - SATC Santa Maria	Santa Maria													
101161	Family Service Agency / SMVYF	Santa Maria													
102715	Good Samaritan - Another Road Detox	Lompoc													
104608	Good Samaritan - Casa de Familia	Santa Maria													
104939	Good Samaritan - Detox	Santa Maria													
104452	Good Samaritan - Lompoc Recovery Center	Lompoc													
101158	Good Samaritan - Project P.R.E.M.I.E	Santa Maria													
101912	Good Samaritan - Recovery Point - ODF	Santa Maria													
104940	Good Samaritan - Recovery Way Home	Lompoc													
102714	Good Samaritan - Turning Point	Santa Barbara													
104746	Lags Recovery	Lompoc													
104941	Salvation Army	Santa Barbara													
101162	Sanctuary House of Santa Barbara	Santa Barbara													
Total Monthly Utilization															
Cumulative Utilization															
Average Utilization															

EXHIBIT C
INDEMNIFICATION AND INSURANCE REQUIREMENTS
(FOR PROFESSIONAL CONTRACTS)

1. INDEMNIFICATION

Contractor agrees to indemnify, defend (with counsel reasonably approved by County) and hold harmless County and its officers, officials, employees, agents and volunteers from and against any and all claims, actions, losses, damages, judgments and/or liabilities arising out of this Agreement from any cause whatsoever, including the acts, errors or omissions of any person or entity and for any costs or expenses (including but not limited to attorneys' fees) incurred by County on account of any claim except where such indemnification is prohibited by law. Contractor's indemnification obligation applies to County's active as well as passive negligence but does not apply to County's sole negligence or willful misconduct.

2. NOTIFICATION OF ACCIDENTS AND SURVIVAL OF INDEMNIFICATION PROVISIONS

Contractor shall notify County immediately in the event of any accident or injury arising out of or in connection with this Agreement. The indemnification provisions in this Agreement shall survive any expiration or termination of this Agreement.

3. INSURANCE

Contractor shall procure and maintain for the duration of this Agreement insurance against claims for injuries to persons or damages to property which may arise from or in connection with the performance of the work hereunder and the results of that work by the Contractor, its agents, representatives, employees or subcontractors.

A. Minimum Scope of Insurance

Coverage shall be at least as broad as:

- i. **Commercial General Liability (CGL):** Insurance Services Office (ISO) Form CG 00 01 covering CGL on an "occurrence" basis, including products-completed operations, personal & advertising injury, with limits no less than \$1,000,000 per occurrence and \$2,000,000 in the aggregate.
- ii. **Automobile Liability:** ISO Form Number CA 00 01 covering any auto (Code 1), or if Contractor has no owned autos, hired, (Code 8) and non-owned autos (Code 9), with limit no less than \$1,000,000 per accident for bodily injury and property damage.
- iii. **Workers' Compensation:** as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
- iv. **Professional Liability** (Errors and Omissions) Insurance appropriate to the Contractor's profession, with limit of no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

If the Contractor maintains higher limits than the minimums shown above, the County requires and shall be entitled to coverage for the higher limits maintained by the Contractor. Any available insurance proceeds in excess of the specified minimum limits of insurance and coverage shall be available to the County.

B. Other Insurance Provisions

EXHIBIT C
INDEMNIFICATION AND INSURANCE REQUIREMENTS
(FOR PROFESSIONAL CONTRACTS)

The insurance policies are to contain, or be endorsed to contain, the following provisions:

- i. **Additional Insured** – County, its officers, officials, employees, agents and volunteers are to be covered as additional insureds on the CGL policy with respect to liability arising out of work or operations performed by or on behalf of the Contractor including materials, parts, or equipment furnished in connection with such work or operations. General liability coverage can be provided in the form of an endorsement to the Contractor's insurance at least as broad as ISO Form CG 20 10 11 85 or if not available, through the addition of both CG 20 10 and CG 20 37 if a later edition is used).
- ii. **Primary Coverage** – For any claims related to this Agreement, the Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, agents and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, agents or volunteers shall be excess of the Contractor's insurance and shall not contribute with it.
- iii. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be canceled, except with notice to the County.
- iv. **Waiver of Subrogation Rights** – Contractor hereby grants to County a waiver of any right to subrogation which any insurer of said Contractor may acquire against the County by virtue of the payment of any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to effect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
- v. **Deductibles and Self-Insured Retention** – Any deductibles or self-insured retentions must be declared to and approved by the County. The County may require the Contractor to purchase coverage with a lower deductible or retention or provide proof of ability to pay losses and related investigations, claim administration, and defense expenses within the retention.
- vi. **Acceptability of Insurers** – Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum A.M. Best's Insurance Guide rating of "A- VII".
- vii. **Verification of Coverage** – Contractor shall furnish the County with proof of insurance, original certificates and amendatory endorsements as required by this Agreement. The proof of insurance, certificates and endorsements are to be received and approved by the County before work commences. However, failure to obtain the required documents prior to the work beginning shall not waive the Contractor's obligation to provide them. The Contractor shall furnish evidence of renewal of coverage throughout the term of the Agreement. The County reserves the right to require complete, certified copies of all required insurance policies, including endorsements required by these specifications, at any time.
- viii. **Failure to Procure Coverage** – In the event that any policy of insurance required under this Agreement does not comply with the requirements, is not procured, or is canceled and not replaced, County has the right but not the obligation or duty to terminate the Agreement. Maintenance of required insurance coverage is a material element of the Agreement and failure to maintain or renew such coverage or to provide evidence of renewal may be treated by County as a material breach of contract.

EXHIBIT C

INDEMNIFICATION AND INSURANCE REQUIREMENTS

(FOR PROFESSIONAL CONTRACTS)

- ix. **Subcontractors** – Contractor shall require and verify that all subcontractors maintain insurance meeting all the requirements stated herein, and Contractor shall ensure that County is an additional insured on insurance required from subcontractors.
- x. **Claims Made Policies** – If any of the required policies provide coverage on a claims-made basis:
 - a) The Retroactive Date must be shown and must be before the date of the contract or the beginning of contract work.
 - b) Insurance must be maintained and evidence of insurance must be provided for at least five (5) years after completion of contract work.
 - c) If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the Contractor must purchase “extended reporting” coverage for a minimum of five (5) years after completion of contract work.
- xi. **Special Risks or Circumstances** – County reserves the right to modify these requirements, including limits, based on the nature of the risk, prior experience, insurer, coverage, or other special circumstances.

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

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

2014 04 04

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 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 60 calendar 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.