



Appendix R – Standard Business Associate Agreement



**San Luis Obispo County
Health Agency, Behavioral Health Department
Standard Business Associate Agreement**

BUSINESS ASSOCIATE AGREEMENT

1. This Agreement is entered into on the same date and year as the underlying Agreement (Contract for Information Technology Solution).

2. Protected Information Contractor acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with Protected Information, it is fully bound by the provisions of the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, 42 C.F.R. Part 2 and the Health Insurance Portability and Accountability Act (“HIPAA”), 45 C.F.R. Parts 142, 160, 162 and 164, and may not use or disclose the information except as permitted or required by the underlying Agreement and by law.

Protected Information includes any information received from the County Health Agency identifying or otherwise relating to a County Health Agency program participant and includes, without limitation, all individually identifiable health information including, without limitation, all information, data, documentation and materials, including without limitation, demographic, medical and financial information, that relates to the past, present or future physical or mental health of condition of an individual; the provision of health care to an individual; or the past, present, or future payment for provision of health care to an individual; and 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. Protected Information also includes such information, which is transmitted by or maintained in electronic media.

3. Use of Protected Information Except as otherwise provided in this Exhibit, Contractor may use Protected Information to perform functions, activities or services for or on behalf of the County, as specified in the underlying Agreement, provided that such use does not violate Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records, HIPAA or other law.

4. Third Party Access to Protected Information Contractor agrees to resist any efforts in judicial proceedings to obtain access to Protected Information except as expressly provided for in the regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records; 42 C.F.R. Part 2.



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5. Safeguarding Protected Information Contractor agrees to use appropriate safeguards to prevent the unauthorized use or disclosure of the Protected Information. Contractor shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Protected Information that Contractor creates, receives, maintains or transmits on behalf of the County. The actions taken by Contractor to protect Electronic Protected Information shall include, without limitation: (1) Encrypting Electronic Protected Information that it stores and transmits; (2) Implementing strong access controls, including physical locks, firewalls and strong passwords; (3) Using antivirus software that is upgraded regularly; (4) Adopting contingency planning policies and procedures, including data backup and disaster recovery plans; and (4) Conducting periodic security training.

6. Unauthorized use or Disclosure of Protected Information Contractor agrees to report to County any use or disclosed of the Protected Information not permitted under this Agreement or otherwise in violation of HIPAA or the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records. Contractor shall report any such incidents to County within 48 hours of becoming aware of such an incident. Contractor shall investigate the breach and provide a written report of the investigation to the County and the Department of Mental Health within 30 days of discovery. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to the unauthorized disclosure.

7. Agents or Subcontractors of Contractor Contractor acknowledges that pursuant to this Agreement, it is acting as a “qualified service organization” within the meaning of Federal drug and alcohol regulations. Section 2.11 of Title 42 of the Code of Federal Regulations requires qualified service organizations to abide by all the Federal drug and alcohol regulations, which prohibit such organizations from disclosing any Protected Information to an agent or subcontractor.

8. County Access to Protected Information At the request of the County, and in the time and manner designated by the County, Contractor shall provide access to Protected Information to an Individual or the County in order to meet the requirements of 45 C.F.R. section 164.524, which provides patients with the right to access and copy their own Protected Information. Requests for Protected Information will be honored within a reasonable amount of time to accumulate the data requested.

9. Employee Training and Discipline Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Exhibit by employees who assist in the performance of functions or activities on behalf of County under



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this Contract and use or disclose protected information; and discipline employees who intentionally violate any provisions.

10. Amendments to Records Contractor agrees to make any amendments to the Protected Information as directed or agreed to by County pursuant to 45 C.F.R. section 164.526 within a reasonable time of receiving such a request.

11. Access to Records Contractor agrees to make available its internal practices, books, and reports, including policies and procedures, relating to the use, disclosure, security and privacy protection of Protected Information received from County, or created or received by Contractor on behalf of County, to County or to the Secretary of the Department of Health and Human Services for purposes of determining compliance with HIPAA, in the time and manner designated by the County or Secretary.

12. Documentation of Uses and Disclosures Contractor agrees to document disclosures of Protected Information, and information related to such disclosures, as would be required for the County to respond to a request by an Individual for an accounting of disclosures in accordance with 45 C.F.R. section 164.528. Requests for Protected Information will be honored within a reasonable amount of time to accumulate the data requested. Contractor agrees to implement a process that allows for an accounting to be collected and maintained by Contractor for at least six years prior to the request, but not before the compliance date of the Privacy Rule.

13. Accounting of Disclosures The Contractor shall provide to the County or an Individual, in the time and manner designated by the County, information collected in accordance with 45 C.F.R. section 164.528, to permit the County to respond to a request by the Individual for an accounting of disclosures of Protected Information in accordance with 45 C.F.R. section 164.528.

14. Destruction of Protected Information Upon termination of the underlying Agreement for any reason, Contractor shall return or destroy all Protected Information received from County, or created or received by Contractor on behalf of County. This provision shall apply to Protected Information that is in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of the Protected Information. However, Contractor shall retain all Protected Information throughout the term of the underlying Agreement and shall continue to maintain the information required under Section 10 of this Agreement for a period of six years after termination of the underlying Agreement.



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In the event that Contractor determines that returning or destroying the Protected Information is infeasible, Contractor shall notify County of the conditions that make return or destruction infeasible. If the County agrees that return or destruction of the Protected Information is infeasible, Contractor shall extend the protections of this Agreement to such Protected Information and limit further uses and disclosures of the information to those purposes that make the return or destruction infeasible, as long as Contractor maintains the information.

Contractor agrees to be bound by the obligations of confidentiality and other obligations hereunder and under any State and/or Federal law, regulation, statute, or rule, notwithstanding the termination of the underlying Agreement.

15. Mitigation of Disallowed Uses and Disclosures Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Protected Information by the Contractor in violation of the requirements of the underlying Agreement or HIPAA.

16. Definitions Terms, used but not otherwise defined in this Exhibit shall have the same meaning as those in the Privacy Rule.

17. Interpretation Any ambiguity in this Exhibit shall be resolved to permit County to comply with HIPAA and the Federal regulations governing the Confidentiality of Alcohol and Drug Abuse Patient Records.

18. Termination The underlying Agreement is subject to termination by the County upon knowledge of a material breach of the terms of this Exhibit by the Contractor of which Contractor fails to cure to the satisfaction of the County.

19. Amendment The Parties acknowledge that Federal and State laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for new procedures to ensure compliance with these developments. Contractor specifically agrees to take such action as is necessary to implement the standards and requirements of HIPAA, the HIPAA regulations and other applicable laws relating to security or privacy of protected information. Upon County's request, Contractor agrees to promptly enter into negotiations with County concerning an amendment to this Exhibit, which will embody the new standards and requirements. County may terminate the Contract upon thirty (30) days notice in the event that Contractor does not promptly enter into negotiations to amend this Exhibit or Contractor does not enter into an amendment,

