

THE INFORMATION IN THIS BOX IS NOT A PART OF THE CONTRACT AND IS FOR COUNTY USE ONLY



Contract Number

SAP Number

Department of Behavioral Health

Department Contract Representative	Diana Barajas
Telephone Number	(909) 388-0982
Contractor	CONFIRE
Contractor Representative	Nathan Cooke
Telephone Number	(909) 957-8532
Contract Term	Upon Execution through June 30, 2028
Original Contract Amount	\$2,040,000
Amendment Amount	
Total Contract Amount	\$2,040,000
Cost Center	
Grant Number (if applicable)	

IT IS HEREBY AGREED AS FOLLOWS:

WHEREAS, Consolidated Fire Agencies Joint Powers Authority, hereinafter referred to as CONFIRE, provides emergency dispatch operation services, and

WHEREAS, The San Bernardino County Department of Behavioral Health, hereinafter referred to as DBH, provides behavioral health crisis services to San Bernardino County residents and their families in need of behavioral health services in San Bernardino County; and

WHEREAS, CONFIRE and DBH desire an agreement for the purpose of defining their respective roles in both entities providing Emergency Communication Nurse System, hereinafter referred to as ECNS, services by coordinating with an onsite behavioral health professional to provide quality crisis care in the least restrictive setting; and

WHEREAS, DBH finds CONFIRE qualified to provide emergency dispatch operation services to County residents; and

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

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

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ATTACHMENTS

ATTACHMENT 1 – ATTESTATION REGARDING INELIGIBLE/EXCLUDED PERSONS

ATTACHMENT 2 – DATA SECURITY REQUIREMENTS

ATTACHMENT 3 – BUSINESS ASSOCIATE AGREEMENT

I. PURPOSE

This Memorandum of Understanding (MOU) outlines DBH's commitment to provide partial financial support allocation to CONFIRE's ECNS program for the period of this MOU. This MOU also includes the collaborative efforts between CONFIRE and DBH regarding the ECNS program.

CONFIRE Staff will be evaluating 911 crisis calls that are behavioral health in nature and determine whether or not the individual is experiencing a behavioral health crisis and requires EMS or police response. If not, those calls will be transferred to the DBH Social Worker II (SWII) who is co-located in the same 911 dispatch center to triage and coordinate with the DBH Crisis Contact Center (CCC) who will dispatch the mobile crisis team when appropriate.

Commented [ET1]: Per our ECNS Manager ECNS should state CONFIRE Staff

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II. DEFINITIONS

- A. Community Crisis Services (CCS): Provides 24/7/365 mobile crisis response. CCS is comprised of the Crisis Contact Center (CCC) and the Community Crisis Response Teams (CCRT). CCC is open 24/7/365 answering all incoming calls. CCRT provides field-based responses from 8:00 a.m. – 6:00 p.m., 7 days per week, 365 days per year. A community-based contractor provides field-based responses from 6:00 p.m. – 8:00 a.m., 7 days per week, 365 days per year.
- B. CONFIRE: Consolidated Fire is a Joint Powers Authority (JPA) in San Bernardino County, California, originally established to provide emergency communications services 24 hours a day, 365 days a year, contingent on the availability of systems, to all CONFIRE serviced areas and member agencies. This means that when you pick up the phone to call for fire or emergency medical services, and you live in an area served by CONFIRE, you would be speaking to a CONFIRE dispatcher. This dispatcher in turn would be getting the right people and resources to you quickly and efficiently using computer and geographic information systems and radio communications.
- C. Joint Powers Authority (JPA): Two or more government organizations coming together to form a separate government organization, for the purposes of exercising common powers. JPA's are beneficial to communities as they provide funding for projects, solve problems, and provide a larger scope of expertise and staffing spread among participating organizations, that would otherwise be unattainable to a solo organization.
- D. Emergency Communication Nurse System (ECNS): ECNS is an innovative program with CONFIRE by which dispatch operators work alongside trained Registered Nurses stationed in the 9-1-1 call center network to quickly assess the level of response required for medical calls with the goal of providing San Bernardino County timely, reliable, and appropriate responses to emergency and non-life-threatening situations.
- E. Authorization for Release of Protected Health Information (PHI): A Health Insurance Portability and Accountability Act (HIPAA) compliant authorization signed by the client or the client's legal representative, authorizing the Department of Behavioral Health (DBH) to release the client's information to a designated recipient. This form must be completed thoroughly with specified records to be shared, a designated time frame and expiration date, as well as a signature by the DBH client or his/her legal representative. If the form is signed by a legal representative, proof from the court system designating legal representation must accompany the request.
- F. Emergency Medical Services (EMS): A system that responds to medical emergencies. It involves a coordinated effort of trained professionals, including paramedics and Emergency

Medical Technicians (EMTs), who provide emergency care and transport patients to medical facilities for further treatment.

III. CONFIRE PROGRAM SERVICES DESCRIPTION

CONFIRE will provide ECNS services as follows:

- A. CONFIRE will determine the caller/individual has a behavioral health need that does not require EMS or police response, ~~CONFIRE Staff~~ will transfer the call to the co-located DBH SWII who will triage the call with the DBH CCC to determine if a field or phone response is warranted.

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IV. CONFIRE SERVICE RESPONSIBILITIES

CONFIRE shall:

- A. ~~Provide data on the number of calls made to the CCC.~~
- B. Assess the caller/individual's situation for safety prior to transferring call to the CCS CCC.
- C. Attend Annual Behavioral Health Training, "Navigating DBH Resources in San Bernardino County"
 - i. The training will deliver a foundational understanding of behavioral health, including definitions of mental health, mental illness, substance use disorders, and co-occurring disorders, as well as the identification of common crisis indicators. Participants will receive a comprehensive overview of DBH resources, encompassing Crisis Services such as, but not limited to, Community Crisis Response Teams (CCRT), Crisis Stabilization Units (CSU), Crisis Walk-In Clinics (CWIC), and Crisis Residential Treatment Facilities. The training will also cover Other Support Services, including the Recovery Based Engagement and Support Team (RBEST), Outpatient Clinics, the Screen Assessment and Referral Center (SARC), Clubhouses, and the Access Unit. To reinforce practical application, a scenario-based activity involving the review of actual 911 behavioral health calls will be included to facilitate discussion on the appropriate utilization of resources for diversion to less restrictive settings. The training will conclude with a question-and-answer session, the provision of relevant contact information, and a training evaluation.
 - ii. Upon completion of the "Navigating DBH Resources in San Bernardino County" training, ~~CONFIRE~~ staff will be equipped to:
 - a. Recognize signs and symptoms associated with a behavioral health crisis.
 - b. Identify relevant DBH crisis and other support programs that can potentially divert 911 callers to more appropriate and less restrictive levels of care.
- D. ~~Contractor shall certify or attest that no staff member, officer, director, partner or principal, or sub-contractor is "excluded" or "suspended" from any Federal health care program, federally funded contract, state health care program or state funded contract. This certification shall be documented by completing the Attestation Regarding Ineligible/Excluded Persons (Attachment I) at time of the initial contract execution and annually thereafter. Contractor shall not certify or attest any excluded person working/contracting for its agency and acknowledges that the County shall not pay the Contractor for any excluded person. The Attestation Regarding Ineligible/Excluded Persons shall be submitted to the following program and address:~~

Commented [ET2]: Per MIS-Please specify the data requested & frequency

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Deleted: <#>Annual completion of this training is required to ensure that all ECNS nurses and triaging staff maintain competence in navigating local DBH resources, thereby enhancing their ability to effectively support individuals experiencing behavioral health crises.¶

DBH Office of Compliance
303 East Vanderbilt Way
San Bernardino, CA 92415-0026

Or send via email to: Compliance_Questions@dbh.sbcounty.gov

V. CONFIRE GENERAL RESPONSIBILITIES

CONFIRE shall:

- A. Make available to the DBH Program Manager (PM) copies of all administrative policies and procedures utilized and developed for this service location and shall maintain ongoing communication with the DBH PM regarding those policies and procedures.
- B. Be aware that DBH is required by regulation to safeguard Personally Identifiable Information (PII) and Protected Health Information (PHI) such as names and other identifying information concerning persons receiving services from unauthorized use or disclosure pursuant to this MOU.
- C. Provide work location for two (2) DBH Social Worker II staff who will be co-located at the 911 dispatch center. Work location that is suitable and conducive to the delivery of behavioral health services, including but not limited to services provided via phone and/or virtually shall be provided. This location must ensure privacy, confidentiality, and a professional environment that facilitates effective service delivery.
- D. Provide access to a desk phone, fax, and photocopier.
- E. Provide access to an Ethernet/wired internet network system.
- F. Provide access to staff restrooms and breakrooms.
- G. Maintain and relay CONFIRE safety/security procedures to DBH staff co-located at the 911 dispatch center.
- H. Assign building passes and/or office keys as needed to DBH staff regularly assigned to the 911 dispatch center.

Commented [DP3]: What is the expectation? They will be located with our nurses on the dispatch floor.

Commented [ET4]: Will a printer be needed? CONFIRE is paperless.

VI. DBH RESPONSIBILITIES

DBH shall:

- A. Provide the "Navigating DBH Resources in San Bernardino County" training annually for all CONFIRE ECNS nurses and triaging staff at no cost to CONFIRE. This training will be facilitated by the DBH Crisis Intervention Training for Law Enforcement and Community Partners (CIT) program. The DBH CIT program will collaborate with CONFIRE ECNS leadership to establish training dates, times, locations (in-person or virtual), and the enrollment process for attendees.
- B. Track number of calls referred from the CONFIRE ECNS Program.
- C. Ensure CCS CCC is operating 24/7/365 to accept transfer calls from CONFIRE Staff.
- D. Train CCS CCC staff to understand terminology that may be used by CONFIRE Staff when transferring calls.
- E. Perform Contract Monitoring.

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- F. Provide training to ECNS staff regarding community resources and Annual Behavioral Health training.
- G. DBH PM will monitor, and coordinate staff work schedules, as staff work hours may vary.
- H. Assign computers and cell phones to DBH staff. All correspondence with DBH staff must be sent through the DBH email system. DBH staff shall adhere to the DBH Electronic Mail Policy.
- I. Provide administrative supervision to all DBH staff located or utilizing the assigned office space. Any concerns or suggestions regarding any type of matters shall be taken to the DBH Program Manager, supervisory staff, or his/her designee.
- J. Maintain authority and responsibility for the assignment and/or reassignment of all DBH staff.
- K. Maintain consumer records in compliance with all laws and regulations set forth by the State and Federal government and provide access to clinical records by DBH staff.
- L. Pursuant to HIPAA, DBH has implemented administrative, physical, and technical safeguards to protect the confidentiality, integrity, and availability of PHI transmitted or maintained in any form or medium.
- M. Ensure any DBH client PHI that is stored on its premises will be locked and secure in adherence to IIHI and PHI privacy requirements.
- N. Obtain a valid Authorization for Release of PHI from DBH client prior to sharing any OHI with CONFIRE or the ECNS program in the performance of required services.
- O. Provide two (2) Social Worker II (SWII) staff who will provide telephonic support to CONFIRE Staff. Assigned staff will work up to forty (40) hours per week (exact service hours will be agreed upon between DBH and CONFIRE leadership), Monday – Friday.
 - i. SWII will be co-located at the 911 dispatch center.
 - ii. SWII will accept the warm handoff from CONFIRE Staff and triage the call in consultation with the DBH Crisis Contact Center (CCC) using DBH Community Crisis Services' (CCS) protocols to determine if a field or phone response is most appropriate and ensure safety.

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VII. MUTUAL RESPONSIBILITIES

DBH and CONFIRE shall:

- A. Schedule and engage in routine meetings to ensure fidelity of the program and contract.
- B. Coordinate and partner for the purpose of providing crisis intervention services for individuals in a behavioral health crisis not requiring EMS intervention.
- C. Comply with all applicable regulations for any release of information. The agencies agree they will establish mutually satisfactory methods for the exchange of such information as may be necessary in order that each agency may perform its duties and functions under this MOU. The agencies will develop appropriate procedures to ensure all information is safeguarded from unauthorized disclosure in accordance with applicable State and Federal laws and regulations, and as referred herein.
- D. Agree to establish mutually satisfactory methods for problem resolution at the lowest possible level as the optimum, with a procedure to mobilize problem resolution up through the agencies mutual chain of command, as deemed necessary.

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- E. Agree to develop QA/QI procedures and/or business processes to administer and document each call referred for participation, compliance, and effectiveness.

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VIII. FISCAL PROVISIONS

- A. Funding for ECNS is comprised of 1991 Realignment funding administered by DBH.
- B. The maximum amount of payment under this MOU shall not exceed \$680,000 annually, as stated below, and shall be subject to availability of funds to DBH. The consideration to be paid to CONFIRE, as provided herein, shall be in full payment for all services and expenses incurred in the performance hereof.

Fiscal Year	Amount
2025-2026	\$680,000
2026-2027	\$680,000
2027-2028	\$680,000
Total	\$2,040,000

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- C. Compensation may be reduced or withheld in, the event that CONFIRE fails to comply with the provisions of this MOU or does not perform in accordance with the terms of this MOU.
- D. Payment for services provided shall occur on, a monthly basis as invoiced by CONFIRE. No later than ten (10) calendar days following the month of service. CONFIRE shall submit an invoice for payment for the reporting month in a format acceptable to DBH. Monthly claims will be sent to:

Department of Behavioral Health Attn:
Fiscal Provider Support & Accounting Services (PSAS)
303 East Vanderbilt Way
San Bernardino, CA 92415-0026

- E. DBH PSAS unit will obtain appropriate DBH program manager approval for payment. Once the appropriate approval(s) are received, the invoice will be processed for payment. Payment shall be limited to approved budget expenses as detailed in the Program Budget (Schedule A) and the Budget Schedules (Schedule B) and shall be limited to one-twelfth (1/12th) of the contracted allocation. To the extent that there have been lesser payments, the remaining amount(s) may be used to pay monthly service claims which exceed one-twelfth (1/12th) of the contracted allocation.
- F. The invoice shall be submitted in the approved format and shall include a breakdown for the month of service. The breakdown shall consist of the following:
- Period covered (Example: June 1 through June 30, 2021).
 - Explanation of services rendered; backup documentation as required to support charges:
 - Completed Institute of Medicine (IOM) form.
 - Completed PEI Monthly Activity Summary Sheets.

- G. A payment shall be processed by DBH PSAS no later than thirty (30) calendar days after receipt of an approved invoice for payment (reimbursement) from CONFIRE.
- H. Payments by DBH to CONFIRE for expenditures will be made via interdepartmental fund transfers. CONFIRE will include their accounting string on each invoice. DBH Fiscal will provide CONFIRE with a courtesy copy of each transfer.
- I. Costs for services under the terms of this MOU will be incurred during the MOU period except as approved in writing by the Director of DBH. CONFIRE will not use current year funds to pay prior or future year obligations.
- J. Funds made available under this MOU shall not supplant any federal, state or any governmental funds intended for services of the same nature as this MOU. CONFIRE shall not claim reimbursement or payment from DBH for, or apply sums received from DBH with respect to that portion of its obligations which have been paid by another source of revenue. CONFIRE agrees that it will not use funds received pursuant to this MOU, either directly or indirectly, as a contribution or compensation for purposes of obtaining funds from another revenue source without prior written approval of DBH.
- K. Upon written demonstration of need by CONFIRE and at the option of DBH, funds may be advanced to CONFIRE by DBH upon approval in writing of DBH Director. Any such advance will cause the amounts payable to CONFIRE in subsequent months to be reduced to the amount determined by dividing the balance left by the number of months remaining in the MOU term. No advance will increase the amount shown in Paragraph A of this Section.
- L. Payment will be based on actual costs. Cost reimbursement will be based on the program budget(s) for the designated fiscal year, unless changed and approved by DBH Fiscal and Program staff, as well as DBH's Director or the Director's assigned designee.
- M. Reimbursement shall occur on, a monthly basis for approved expenses incurred and claimed by CONFIRE not to exceed one-twelfth (1/12th) of the maximum annual contract obligation. CONFIRE shall submit claims for payment for the reporting month no later than ten (10) calendar days following the month of service in a format acceptable by DBH.
- N. CONFIRE will input all service information and related data into a data collection system, or any other services/billing system deemed appropriate by DBH, by the tenth (10th) day of the month following the month in which services were provided.
- O. CONFIRE will utilize data collection tools to maintain statistical data. CONFIRE will furnish DBH with statistical reports and outcome data on, a monthly basis and narrative reports capturing qualitative information on a biannual basis in a format approved by DBH.
- P. All reports must be submitted by the thirtieth (30th) day following the last day of the term.

Biannual Term	Report Due
1 st (July-Dec)	January 30 th
2 nd (Jan-June)	July 30 th

DBH retains the right to request additional reports as needed to satisfy Federal, State, and County reporting requirements.

Commented [DP6]: We are to only seek reimbursement for salaries and benefit costs only, correct?

Commented [DP7]: CONFIRE does not currently have a data collection or billing system? We use Excel worksheets currently and our currently in the process of implementing a Financial/Accounting system with an Accounts receivable module.

Q. Prohibited Payments:

- i. DBH shall make no payment to CONFIRE other than payment for services covered under this MOU.
- ii. Federal Financial Participation is not available for any amount furnished to an excluded individual or entity, or at the direction of a physician during the period of exclusion when the person providing the service knew or had reason to know of the exclusion, or to an individual or entity when the County failed to suspend payments during an investigation of a credible allegation of fraud [42 U.S.C. section 1396b(i)(2)].
- iii. In accordance with Section 1903(i) of the Social Security Act, DBH is prohibited from paying for an item or service:
 - a. Furnished under contract by any individual or entity during any period when the individual or entity is excluded from participation under title V, XVIII, or XX or under this title pursuant to sections 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act.
 - b. Furnished at the medical direction or on the prescription of a physician, during the period when such physician is excluded from participation under title V, XVIII, or XX or under this title pursuant to sections 1128, 1128A, 1156, or 1842(j)(2) of the Social Security Act and when the person furnishing such item or service knew, or had reason to know, of the exclusion (after a reasonable time period after reasonable notice has been furnished to the person).
 - c. Furnished by an individual or entity to whom the County has failed to suspend payments during any period when there is a pending investigation of a credible allegation of fraud against the individual or entity, unless DBH determines there is good cause not to suspend such payments.
 - d. With respect to any amount expended for which funds may not be used under the Assisted Suicide Funding Restriction Act (ASFRA) of 1997.

IX. RIGHT TO MONITOR AND AUDIT

- A. DBH staff or any subdivision or appointee thereof, and the State of California or any subdivision or appointee thereof, including the Inspector General, shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of CONFIRE in the delivery of services provided under this MOU [with reasonable advanced notice](#). Full cooperation shall be given by CONFIRE in any auditing or monitoring conducted.
- B. CONFIRE shall cooperate with DBH in the implementation, monitoring, and evaluation of this MOU and comply with any, and all reporting requirements established by this MOU.
- C. All records pertaining to service delivery and all fiscal, statistical and management books and records shall be available for examination and audit by DBH PSAS staff for DBH, Federal and State representatives for a period of ten (10) years after final payment under the MOU or until all pending County, State and Federal audits are completed, whichever is later. Records of CONFIRE which do not pertain to the services under this MOU shall not be subject to review or audit unless otherwise provided in this MOU. Technical program data shall be retained locally and made available upon DBH's reasonable advance written notice or turned over to

DBH.

- D. CONFIRE shall provide all reasonable facilities and assistance for the safety and convenience of DBH's representative in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work of CONFIRE.
- E. If a post MOU audit finds that funds reimbursed to CONFIRE under this MOU were in excess of actual costs or in excess of claimed costs (depending upon State of California reimbursement/audit policies) of furnishing the services, or in excess of the State of California Schedule of Maximum Allowances, the difference shall be reimbursed on demand by CONFIRE to DBH using one of the following methods, which shall be at the election of DBH:
 - i. Payment of total.
 - ii. Payment on a monthly schedule of reimbursement.

X. TERM

This Memorandum of Understanding (MOU) is effective as of the date of execution by both parties, and expires June 30, 2028, but may be terminated earlier in accordance with provisions of Section XI. EARLY TERMINATION. This MOU may be extended for two (2) additional one (1) year periods upon written agreement of both parties, unless terminated earlier under the provisions of Section XI. EARLY TERMINATION.

XI. EARLY TERMINATION

- A. This MOU may be terminated without cause upon thirty (30) days written notice by either party. DBH's Director is authorized to exercise DBH's rights with respect to any termination of this MOU. The CONFIRE Director, or his/her appointed designee, has authority to terminate this MOU on behalf of CONFIRE.
- B. CONFIRE will only be reimbursed for costs and un-cancelable obligations incurred prior to the date of termination. CONFIRE will not be reimbursed for costs incurred after the date of termination.
- C. If, during the term of this MOU, State and/or Federal funds appropriated for the purposes of this MOU are reduced or eliminated, DBH may immediately terminate this MOU upon written notice to CONFIRE.

XII. GENERAL PROVISIONS

- A. No waiver of any of the provisions of the MOU documents shall be effective unless it is made in a writing which refers to provisions so waived and which is executed by the Parties. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right. A Party shall not be precluded from exercising a right by its having partially exercised that right or its having previously abandoned or discontinued steps to enforce that right. No course of dealing and no delay or failure of a Party in exercising any right under any MOU document shall affect any other or future exercise of that right or any exercise of any other right.
- B. Any alterations, variations, modifications, or waivers of provisions of the MOU, unless specifically allowed in the MOU, shall be valid only when they have been reduced to writing, duly signed, and approved by the Authorized Representatives of both parties as an amendment to this MOU. No oral understanding or agreement not incorporated herein shall

be binding on any of the Parties hereto.

- C. Each Party is an authorized self-insured or partially self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Worker's Compensation and warrant that through their respective programs of self-insurance and insurance, they have adequate coverage or resources to protect against liabilities arising out of performance of the terms, conditions or obligations of this Agreement.
- D. Each Party agrees to indemnify, defend (with counsel approved by the other Party) and hold harmless the other Parties ("Indemnitees") and their authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of this Agreement, but only to the extent actually caused by the negligent acts, errors or omissions of the indemnifying Party and its authorized officers, employees, agents, and volunteers, and for any costs or expenses incurred by Indemnitees on account of any claim except where such indemnification is prohibited by law.
- E. If the Parties are determined to be comparatively at fault for any claim, action, loss, or damage which results from their respective obligations under this Agreement, each Party shall indemnify the others to the extent of its comparative fault as determined in a legal action.
- G. **Privacy** and Security

- 1. CONFIRE and DBH shall comply with any County applicable privacy-related policies pertaining to PHI and PII as well as applicable State and Federal regulations pertaining to privacy and security of client information. Regulations have been promulgated governing the privacy and security of individually identifiable health information (IIHI) and/or PHI or electronic Protected Health Information (ePHI). The HIPAA Privacy and Security Regulations specify requirements with respect to contracts between an entity covered under the HIPAA Privacy and Security Regulations and its Business Associates. A Business Associate is defined as a party that performs certain services on behalf of, or provides certain services for, a Covered Entity and, in conjunction therewith, gains access to IIHI, PHI or ePHI. Therefore, in accordance with the HIPAA Privacy and Security Regulations, Contractor shall comply with the terms and conditions as set forth in the attached Business Associate Agreement, hereby incorporated by this reference as Attachment 3, Business Associate Agreement. Contractor shall not use or disclose PHI other than as permitted or required by law.
- 2. In addition to the aforementioned protection of IIHI, PHI and e-PHI, it is required that CONFIRE and DBH shall adhere to the protection of personally identifiable information (PII) and Medi-Cal PII. PII includes any information that can be used to search for or identify individuals such as but not limited to name, social security number or date of birth. Whereas Medi-Cal PII is the information that is directly obtained in, the course of performing an administrative function on behalf of Medi-Cal, such as determining or verifying eligibility that can be used alone or in conjunction with any other information to identify an individual.
- 3. CONFIRE and DBH shall comply with the data security requirements set forth by the County as referenced in Data Security Requirements attachment (Attachment 2).
- 4. Reporting of Improper Access, Use or Disclosure or Breach.

Deleted: . If applicable, CONFIRE shall have written procedures for referring individuals to a psychiatrist when necessary, or to a physician, if a psychiatrist is not available.

Commented [ET8]: Per our HR Manager's Review: Paragraph F (Insurance Requirements) are the same as Paragraph C.

Deleted: <#>Insurance: Each Party is an authorized self-insured or partially self-insured public entities for purposes of Professional Liability, General Liability, Automobile Liability and Worker's Compensation and warrant that through their respective programs of self-insurance and insurance, they have adequate coverage or resources to protect against liabilities arising out of performance of the terms, conditions or obligations of this Agreement.¶

CONFIRE shall report to DBH Office of Compliance any unauthorized use, access or disclosure of unsecured Protected Health Information or any other security incident with respect to Protected Health Information no later than one (1) business day upon the discovery of a potential breach consistent with the regulations promulgated under HITECH by the United States Department of Health and Human Services, 45 CFR Part 164, Subpart D. Upon discovery of the potential breach, CONFIRE shall complete the following actions:

- a. Provide DBH Office of Compliance with the following information to include but not limited to:
 - i. Date the potential breach occurred.
 - ii. Date the potential breach was discovered.
 - iii. Number of staff, employees, subcontractors, agents or other third parties and the titles of each person allegedly involved.
 - iv. Number of potentially affected patients/clients.
 - v. Description of how the potential breach allegedly occurred.
- b. Provide an update of applicable information to the extent known at that time without reasonable delay and in no case later than three (3) calendar days of discovery of the potential breach.
- c. Provide completed risk assessment and investigation documentation to DBH Office of Compliance within ten (10) calendar days of discovery of the potential breach with decision whether a breach has occurred, including the following information:
 - i. The nature and extent of the PHI involved, including the types of identifiers and likelihood of reidentification.
 - ii. The unauthorized person who used PHI or to whom it was made.
 - iii. Whether the PHI was actually acquired or viewed.
 - iv. The extent to which the risk to PHI has been mitigated.
- d. Make available to the County and governing State and Federal agencies in a time and manner designated by the County or governing State and Federal agencies, any policies, procedures, internal practices, and records relating to a potential breach for the purposes of audit or should the County reserve the right to conduct its own investigation and analysis.

XIII. CONCLUSION

- A. This MOU, consisting of fifteen (15) pages, Schedules, and Attachments, is the full and complete document describing services to be rendered by CONFIRE to DBH including all covenants, conditions, and benefits.
- B. The signatures of the Parties affixed to this MOU affirm that they are duly authorized to commit and bind their respective departments to the terms and conditions set forth in this document.
- C. This MOU may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the

same MOU. The parties shall be entitled to sign and transmit an electronic signature of this MOU (whether by facsimile, PDF, or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed MOU upon request.

All other terms and conditions of Contract No. 25-476 remain in full force and effect.

This Amendment may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same MOU. The parties shall be entitled to sign and transmit an electronic signature of this Amendment (whether by facsimile, PDF or other email transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Amendment upon request.

IN WITNESS WHEREOF, the San Bernardino County and the Contractor have each caused this MOU Amendment to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

Consolidated Fire Agencies Joint Powers Authority

(Print or type name of corporation, company, contractor, etc.)

►
Dawn Rowe, Chair, Board of Supervisors

By ►
(Authorized signature - sign in blue ink)

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

Name _____
(Print or type name of person signing contract)

Lynna Monell
Clerk of the Board of Supervisors
San Bernardino County

Title _____
(Print or Type)

By _____
Deputy

Dated: _____

Address _____

FOR COUNTY USE ONLY

Approved as to Legal Form	Reviewed for Contract Compliance	Reviewed/Approved by Department
► Dawn Martin, Deputy County Counsel	► Michael Shin, Administrative Manager	► Georgina Yoshioka, Director
Date _____	Date _____	Date _____

ATTESTATION REGARDING INELIGIBLE/EXCLUDED PERSONS**Contractor CONFIRE shall:**

To the extent consistent with the provisions of this Agreement, comply with regulations found in Title 42 Code of Federal Regulations (CFR), Parts 1001 and 1002, et al regarding exclusion from participation in Federal and State funded programs, which provide in pertinent part:

1. Contractor certifies to the following:
 - a. it is not presently excluded from participation in Federal and State funded health care programs,
 - b. there is not an investigation currently being conducted, presently pending or recently concluded by a Federal or State agency which is likely to result in exclusion from any Federal or State funded health care program, and/or
 - c. unlikely to be found by a Federal and State agency to be ineligible to provide goods or services.
2. As the official responsible for the administration of Contractor, the signatory certifies the following:
 - a. all of its officers, employees, agents, subcontractors and/or persons having five percent (5%) or more of direct or indirect ownership or control interest of the Contractor are not presently excluded from participation in any Federal or State funded health care programs,
 - b. there is not an investigation currently being conducted, presently pending or recently concluded by a Federal or State agency of any such officers, employees, agents and/or subcontractors which is likely to result in an exclusion from any Federal and State funded health care program, and/or
 - c. its officers, employees, agents and/or subcontractors are otherwise unlikely to be found by a Federal or State agency to be ineligible to provide goods or services.
3. Contractor certifies it has reviewed, at minimum prior to hire or contract start date and monthly thereafter, the following lists in determining the organization nor its officers, employees, agents, subcontractors and/or persons having five percent (5%) or more of direct or indirect ownership or control interest of the Contractor are not presently excluded from participation in any Federal or State funded health care programs:
 - a. OIG's List of Excluded Individuals/Entities (LEIE).
 - b. United States General Services Administration's System for Award Management (SAM).
 - c. California Department of Health Care Services Suspended and Ineligible Provider (S&I) List, if receives Medi-Cal reimbursement.
4. Contractor certifies that it shall notify DBH immediately (within 24 hours) by phone and in writing within ten (10) business days of being notified of:
 - a. Any event, including an investigation, that would require Contractor or any of its officers, employees, agents and/or subcontractors exclusion or suspension under Federal or State funded health care programs, or
 - b. Any suspension or exclusionary action taken by an agency of the Federal or State government against Contractor, or one or more of its officers, employees, agents and/or subcontractors, barring it or its officers, employees, agents and/or subcontractors from providing goods or services for which Federal or State funded health care program payment may be made.

Printed name of authorized official

Signature of authorized official

Date

DATA SECURITY REQUIREMENTS

Pursuant to its contract with the State Department of Health Care Services, the Department of Behavioral Health (DBH) requires Contractor adhere to the following data security requirements:

A. Personnel Controls

1. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of DBH, or access or disclose DBH Protected Health Information (PHI) or Personal Information (PI) must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
2. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
3. Confidentiality Statement. All persons that will be working with DBH PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The Statement must be signed by the workforce member prior to accessing DBH PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DBH inspection for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
4. Background Check. Before a member of the workforce may access DBH PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later.

B. Technical Security Controls

1. Workstation/Laptop Encryption. All workstations and laptops that store DBH PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved in writing by DBH's Office of Information Technology.
2. Server Security. Servers containing unencrypted DBH PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
3. Minimum Necessary. Only the minimum necessary amount of DBH PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
4. Removable Media Devices. All electronic files that contain DBH PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes, etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
5. Antivirus / Malware Software. All workstations, laptops and other systems that process and/or store DBH PHI or PI must install and actively use comprehensive anti-virus software / Antimalware software solution with automatic updates scheduled at least daily.
6. Patch Management. All workstations, laptops and other systems that process and/or store DBH PHI or PI must have all critical security patches applied with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and CONFIRE recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of CONFIRE release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Application and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
7. User IDs and Password Controls. All users must be issued a unique user name for accessing DBH PHI or PI. Username must be promptly disabled, deleted, or the password changed upon

Commented [ET9]: Can you clarify the data flow requirements (one way data? 2-way?)

ATTACHMENT 2

the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every ninety (90) days, preferably every sixty (60) days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- a. Upper case letters (A-Z)
 - b. Lower case letters (a-z)
 - c. Arabic numerals (0-9)
 - d. Nonalphanumeric characters (special characters)
8. Data Destruction. When no longer needed, all DBH PHI or PI must be wiped using the Gutmann or U.S. Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of DBH's Office of Information Technology.
9. System Timeout. The system providing access to DBH PHI or PI must provide an automatic timeout, requiring reauthentication of the user session after no more than twenty (20) minutes of inactivity.
10. Warning Banners. All systems providing access to DBH PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
11. System Logging. The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DBH PHI or PI, or which alters DBH PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DBH PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least seven (7) years from the final date of the contract period or from the date of completion of any audit, whichever is later.
12. Access Controls. The system providing access to DBH PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
13. Transmission Encryption. All data transmissions of DBH PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing DBH PHI can be encrypted. This requirement pertains to any type of DBH PHI or PI in motion such as website access, file transfer, and E-Mail.
14. Intrusion Detection. All systems involved in accessing, holding, transporting, and protecting DBH PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

C. Audit Controls

1. System Security Review. Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing DBH PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
2. Log Review. All systems processing and/or storing DBH PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
3. Change Control. All systems processing and/or storing DBH PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

D. Business Continuity/Disaster Recovery Controls

1. Emergency Mode Operation Plan. Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of DBH PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.

Commented [ET10]: Our retention policy states 7YRs. (If we are receiving data) See data flow requirement note above.

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Commented [ET11]: Per MIS-we need to understand the data ownership & chain of custody. If we will store data, how extensive does the Vulnerability testing have to be? (NA if not storing data)

ATTACHMENT 2

2. Data Backup Plan. Contractor must have established documented procedures to backup DBH PHI to maintain retrievable exact copies of DBH PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DBH PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DBH data.

E. Paper Document Controls

1. Supervision of Data. DBH PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DBH PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
2. Escorting Visitors. Visitors to areas where DBH PHI or PI is contained shall be escorted and DBH PHI or PI shall be kept out of sight while visitors are in the area.
3. Confidential Destruction. DBH PHI or PI must be disposed of through confidential means, such as crosscut shredding and pulverizing.
4. Removal of Data. Only the minimum necessary DBH PHI or PI may be removed from the premises of Contractor except with express written permission of DBH. DBH PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of Contractor's locations.
5. Faxing. Faxes containing DBH PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
6. Mailing. Mailings containing DBH PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of DBH PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DBH to use another method is obtained.

BUSINESS ASSOCIATE AGREEMENT

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

RECITALS

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

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

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

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

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

A. Definitions

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

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Business Associate (BA) shall have the same meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 U.S.C. section 17921 and 45 C.F.R. section 160.103.
3. Covered Entity (CE) shall have the same meaning given to such term as under the Privacy Rule and Security Rule, including, but not limited to 45 C.F.R. section 160.103.
4. Designated Record Set shall have the same meaning given to such term under 45 C.F.R. section 164.501.
5. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
6. Individual shall have the same meaning given to such term under 45 C.F.R. section 160.103.
7. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.

ATTACHMENT 3

8. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
9. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.
10. Unsecured PHI shall have the same meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

B. Obligations and Activities of BA

1. Permitted Uses and Disclosures

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

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach. [42 U.S.C. section 17932; 45 C.F.R. sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)]

2. Prohibited Uses and Disclosures

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. (42 U.S.C. section 17935(a) and 45 C.F.R. section 164.522(a)(1)(i)(A).)
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act (42 U.S.C. section 17935(d)(2); and 45 C.F.R. section 164.508); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

3. Appropriate Safeguards

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

ATTACHMENT 3

- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

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

4. Subcontractors

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

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

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

- i. Provide CE's Office of Compliance with the following information to include but not limited to:
 - a) Date the Breach or suspected Breach occurred;
 - b) Date the Breach or suspected Breach was discovered;
 - c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
 - d) Number of potentially affected Individual(s) with contact information; and
 - e) Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) calendar days of discovery of the Breach or suspected Breach to determine the following:
 - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
 - b) The unauthorized person who had access to the PHI;
 - c) Whether the PHI was actually acquired or viewed; and
 - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) calendar days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
 - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
 - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) days of a request by CE to enable CE to fulfill its obligations under the Privacy

ATTACHMENT 3

Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall immediately forward such request to CE.

7. Amendment of PHI

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

8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

9. Accounting for Disclosures

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

10. Termination

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

11. Return of PHI

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

12. Breach by the CE

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

13. Mitigation

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

14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

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

15. Direct Liability

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

16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

18. Insurance

In addition to any general and/or professional liability insurance coverage required of BA under the Contract for services, BA shall provide appropriate liability insurance coverage during the term of this Agreement to cover any and all claims, causes of action, and demands whatsoever made for loss, damage, or injury to any person arising from the breach of the security, privacy, or confidentiality obligations of BA, its agents or employees, under this Agreement and under HIPAA 45 C.F.R. Parts 160 and 164, Subparts A and E.

19. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, employees, or agents assisting BA in the performance of its obligations under the Agreement, available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy, except where BA or its subcontractor, employee or agent is a named adverse party.

C. Obligations of CE

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

D. General Provisions

1. Remedies

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

2. Ownership

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

3. Regulatory References

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

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. To the extent an amendment to this Agreement is required by law and this Agreement has not been so amended to comply with the applicable law in a timely manner, the amendment required by law shall be deemed to be incorporated into this Agreement automatically and without further action required by either of the parties. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

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

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

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