

**MEMORANDUM OF UNDERSTANDING  
BETWEEN  
SILVER VALLEY UNIFIED SCHOOL DISTRICT  
AND  
BORREGO COMMUNITY HEALTH FOUNDATION**

This Memorandum of Understanding (“**MOU**”) is made and entered into this 1st day of \_\_\_\_\_, in the State of California, by and between the Silver Valley Unified School District (“**District**” or, where applicable, individually as a “**Party**”), and Borrego Community Health Foundation (“**BCHF**” or where applicable, individually as a “**Party**”), and collectively as “**Parties**”. This MOU sets forth the terms and conditions by which BCHF will provide preventive medical and dental services to students and families at schools within the District.

This MOU is to serve as the operating agreement between Parties for the purpose of BCHF providing and coordinating preventative and primary healthcare services to eligible students and their families through BCHF's mobile clinics. Parties agree, this MOU is intended to ensure MOU and common understanding of regulatory guidance and policies, so as to support the coordination and integration of efforts between BCHF and the District.

**RECITALS**

**WHEREAS**, BCHF is a non-profit public benefit corporation, organized and existing under the laws of the State of California. BCHF operates two (2) Federally Qualified Health Centers (“**FQHC**”) in the County of San Bernardino, located at 750 E. Main St. Barstow, CA. 92311 and 590 North D Street, which provide comprehensive primary care, dental care, and specialty care, including mobile services;

**WHEREAS**, in an effort to increase access to healthcare services for the underserved families in the schools and communities of District, BCHF desires to provide medical and dental care in the schools of the District. BCHF is further able to assist eligible families to access healthcare services by assisting in the application process for public programs including Child Health and Disability Prevention (“**CHDP**”) and Medi-Cal; and

**WHEREAS**, in order to better serve the needs of students in its enrollment area, District wishes to coordinate with BCHF to increase access to healthcare services to the students and families in various opportunities that may be identified from time-to-time, including, but not limited to, medical/dental care provided at District school sites, care coordination and referral to a medical home or other services.

**AGREEMENT**

**NOW, THEREFORE**, in consideration of the covenants and agreements set forth herein, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**I. AGREEMENTS BY BCHF**

BCHF agrees to provide services, as follows:

1. BCHF shall provide health services at mutually agreed upon District school sites. Services may include basic primary care, family practice, and preventive care including age appropriate immunizations as well as mobile dental services. Health services will be provided on a schedule that is mutually determined between the Parties, and are subject to change from time to time. The Parties will consider and pursue other opportunities for delivery of health care services to improve the health of students in the District as the need may arise from time to time, including but not limited to school screenings, events, and health fairs. Flu and Tdap vaccine clinics may be provided based on vaccine availability.
2. BCHF healthcare services shall be provided using mobile vans or portable medical and/or dental units owned or operated by BCHF. These services will be scheduled with the school's sites throughout District or at the District office as deemed appropriate by both Parties.
3. The medical and/or dental care provided by BCHF Providers pursuant to this MOU will be within clinically accepted standards of care and within the scope of services of the established Federally Qualified Health Center(FQHC), Barstow Community Health Center, 750 E. Main Street, Barstow Ca. 92311.
4. BCHF will assume all legal and regulatory responsibilities and any other applicable laws, regulations and policies surrounding the operation of the BCHF mobile units, excluding rules and regulations specific to the operations of the school facilities operations and campus. BCHF will be responsible for adhering to all applicable laws regarding obtaining appropriate parent/guardian consent for services provided pursuant to this MOU.
5. BCHF will provide sufficient qualified staffing for the provision of services.
6. BCHF will assess families seeking care and assist them in resolving barriers to care. This may include assistance with application for public programs or referral to Barstow Community Health Center or other community services. BCHF is a mandatory reporter and there may be a need to work with the District and Public Health regarding any school based public health concerns.
7. BCHF will perform said services in accordance with standards of care independently in keeping with BCHF's independent scope of practice and not as an employee of the District. BCHF will hire, train and supervise BCHF staff providing such health care services. BCHF management ensures the oversight of the team and will assign responsible coordination of services between the VP of Special Programs and Projects, Director of School Based and Mobile Services, Director of Nursing for School Based Health and Mobile Services and the Regional Coordinator of Mobile Services and the District's Program Manager and/or Director of Student Services. BCHF will maintain ongoing communication with the District and schools.

8. BCHF will bill Medi-Cal or other third party payers or public programs for services provided. Children and families will be encouraged and assisted to apply for these programs if determined to be eligible. Within its capacity to do so, BCHF will provide services at no charge or on a discounted rate to children and families who do not otherwise qualify for such programs. District shall bear no financial responsibility for services provided to its students pursuant to this MOU.
9. BCHF will provide the technical support to implement electronic health records and other technical elements of the implementation of the program.
10. BCHF will adhere to all HIPPA and FERPA requirements for eligible students and their families served within the BCHF mobile units, as addressed in more detail within this MOU.
11. BCHF will adhere to District policies while on school sites as provided by the School District.

## **II. AGREEMENTS BY DISTRICT**

District agrees as follows:

1. At approved school sites, provide space for the delivery of services. This may include the parking space for a forty-foot mobile unit or space for portable equipment. Access to restrooms shall be readily available.
2. Pursue other opportunities to provide healthcare services and coordination of care throughout the underserved communities within the District.
3. BCHF operations includes mobile electronic communication infrastructure. From time to time, BCHF may require access to electronic connectivity at locations where systems are out of reach of the established service. When needed, District shall provide access to electricity, internet and phone.
4. Work with BCHF staff in the coordination of school-based health functions as they develop through collaborative efforts. This will include at least bi-monthly meetings to discuss upcoming projects and plan and evaluate activities for the purpose of ongoing improvement.
5. District will communicate openly regarding any concerns presented by children and families served by BCHF and allow for resolution of such issues. All formal complaints will be investigated thoroughly through the Patient Relations designee.
6. Work collaboratively with BCHF and support the implementation efforts through school-based communication methods and visibility of the programs and services.
7. District shall not be liable to BCHF for any costs or expenses paid or incurred by BCHF in performing services at District locations.
8. District shall ensure the availability of designated points of contact to represent

District in discussions regarding development of this program. Initially, BCHF shall communicate with School District Superintendent, or other designee. District's designated point of contact shall work with BCHF to develop the program and pursue diligent and amicable resolution to any dispute that may arise incidental to the services contemplated in this MOU between Parties through the provisions of BCHF services. Parties agree that resolution of disputes between BCHF and clients it serves shall be the sole responsibility of BCHF.

### **III. TERM AND TERMINATION**

1. The initial term of the MOU is from \_\_\_\_\_ through, \_\_\_\_\_. This MOU will be automatically renewed thereafter for a period of three years unless otherwise terminated by either party. The Parties will meet no later than sixty (60) days prior to the termination date to address the conditions of the renewal, if applicable.
2. This MOU contains all terms and conditions agreed upon by Parties regarding the subject matter of this MOU and supersedes any prior agreement, oral or written, and all other communications between Parties related to such subject matter.
3. This MOU may be terminated by District or BCHF, with or without cause, upon sixty (60) days written notice. In the event of termination, neither party shall be entitled to anticipatory, lost profits or consequential damages as a result of any termination. Notwithstanding anything in this MOU to the contrary, BCHF reserves the right to terminate this MOU with or without notice in the event of an occurrence which, in its sole discretion, seriously jeopardizes patient care or safety.

### **IV. STAFFING**

BCHF, BCHF's employees and/or BCHF's agents providing Services pursuant to this MOU shall:

1. Be qualified to render services pursuant to this MOU. Any employee and/or agent who is providing medical or dental care shall be a licensed medical/dental practitioner, as defined by the State of California, and shall provide care in a manner that is consistent with the standards of the profession.
2. Be free of active tuberculosis as evidenced by the submission to an examination within the last twelve (12) months. This requirement shall be consistent with the requirements for school employees as defined in California Education Code Section 49406.
3. Nothing in this MOU is intended to supplant work that would belong to a bargaining unit member of the District.

### **V. REGULATIONS**

1. BCHF shall abide by all applicable federal, state, and local statutes, ordinances, rules, regulations, and standards, as well as the standards and requirements imposed upon the District by federal and/or state agencies providing funding to the District.



2. BCHF shall be subject to the rules, regulations and policies of District, including recognizing the confidential nature of information regarding pupils and their records.
3. Parties agree, all applications and individual records related to services provided under this MOU, including eligibility for services, enrollment and referrals shall be confidential and shall not be open to disclosure or examination for any purpose not directly connected with the delivery or evaluation of services. BCHF agrees not to use or further disclose any protected health information, as defined in 42 CFR Part 164, or individual health information as defined in 42 CFR Part 142, collectively "PHI", concerning a student unless permitted by this MOU and applicable federal and state privacy and security laws and regulations, including, but not limited to, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"). In addition, BCHF will implement appropriate safeguards to prevent the use and disclosure of a student's PHI beyond the scope of what is provided for by this MOU and permitted under the law. District agrees to the terms of the Business Associate Agreement, attached hereto and incorporated herein by reference.
4. BCHF agrees not to disclose any student information in a manner which would violate the Family Educational Rights and Privacy Act (FERPA). In addition, BCHF will implement appropriate safeguards to prevent the use and disclosure of a student's educational records beyond the scope of what is provided for by this MOU and permitted under the law. In adherence to FERPA and other applicable laws, regulations, policies or procedures, District is subject to confidentiality of student identifiable information.
5. A Party shall promptly notify the other Party of any unauthorized possession, use, knowledge or attempt thereof, regarding the other Party's data files or other confidential information, and shall promptly furnish full details of the unauthorized release of such confidential information and shall assist with the investigation or prevention of the further release of such information.
6. In the interest of public health, the District is proud to provide a healthy, tobacco-free environment. Smoking or the use of any tobacco products are prohibited in buildings and vehicles, and on any property owned, leased or contracted for by the District. Smoking or the use of any tobacco products are prohibited in and around District students by BCHF at all times.
7. BCHF, and BCHF's staff, shall at all times comply with the provisions and requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.).

## **VI. CERTIFICATIONS, REPRESENTATIONS AND WARRANTIES**

BCHF makes the following certifications, representations, and warranties for the benefit of the District and BCHF acknowledges and agrees that the District, in deciding to engage BCHF pursuant to this MOU, is relying upon the truth and validity of the following certifications, representations and warranties and their effectiveness throughout the term of this MOU and the course of BCHF's engagement hereunder:

1. BCHF is qualified in all respects to provide all of the Services contemplated by this MOU and, to the extent required by any applicable laws, BCHF has all such licenses and/or governmental approvals as would be required to carry out and perform for the benefit of the District, such services as are called for hereunder.
2. BCHF, in providing the Services and in otherwise carrying out its obligations to the District under this MOU, shall, at all times, comply with all applicable federal, state and local laws, rules, regulations, and ordinances, including workers' compensation and equal protection and non-discrimination laws.
3. BCHF shall at all times enforce appropriate discipline and good order itself and among its employees and shall not employ or work any unfit person or anyone not skilled in providing the Services required under this MOU. If District determines that any person in the employ of BCHF, or an agent thereof, appears incompetent, unfit, intemperate, troublesome or otherwise undesirable, District shall communicate its concerns directly to the Director of School Based and Mobile Services. BCHF shall take appropriate steps to address District's concern, subject to findings of an investigation and dispute resolution.
4. BCHF, and BCHF's staff, shall at all times follow the instructions and directions of District staff during a school campus emergency or during a school campus emergency practice drill, as to evacuation, assembly, emergency care, protection of persons and property, and ingress and egress to the campus. At any time it becomes necessary for the BCHF to request emergency services while on District property, such services shall be requested by calling 911. BCHF shall immediately notify the site administrator that 911 emergency services have been requested.

## **VII. INDEPENDENT CONTRACTOR**

It is expressly understood and agreed to by both Parties that BCHF, while engaged in carrying out and complying with any of the terms and conditions of this MOU, as an independent contractor and is not an officer, agent, or employee of the District. BCHF employees shall under no circumstance be considered or held to be employees of District and District shall have no obligation to provide any benefits including Workers' Compensation or Unemployment Insurance coverage for or on behalf of such employees.

## **VIII. CHILD ABUSE REPORTING**

BCHF shall establish a procedure acceptable to District to ensure that all employees performing services under this MOU report child abuse or neglect to a child protective agency as defined in California Penal Code Section 11166.

## **IX. BACKGROUND CHECK**

BCHF shall certify, in the form and with the content similar to Exhibit "A", that BCHF has completed the criminal background check requirements of California Education Code Section 45125.1 and that none of its employees that may come in contact with District students or their families have been convicted of a violent felony listed in California Penal Code Section 667.5(c) 1192.7(c). BCHF agrees to comply with this contract provision by submitting fingerprints through the District's provider for services. BCHF shall not permit any employee to have any contact with District students or their families until such certification has been provided

to District. BCHF shall supply the District with a list of names of those employees who are cleared to work with District students and their families.

## **X. NOTICES**

All notices, claims, correspondence, reports, and/or statements authorized or required by the MOU shall be addressed as follows:

BCHF	Borrego Community Health Foundation Attn: Mikia Wallis, Chief Executive Officer P.O. Box 2369 4343 Yaqui Pass Road Borrego Springs, CA 92004-2369 Phone: (760) 767-6722
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District	Silver Valley Unified School District Attn: Jeff Youskievicz Assistant Superintendent Educational Services P.O. Box 847 35320 Daggett-Yermo Rd. Yermo, CA. 92398 Phone: 760-254-2916 ext.1157
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All notices shall be deemed effective when they are made in writing, addressed as indicated above, and deposited in the United States mail. Any notices, correspondence, reports, and/or statements authorized or required by the MOU addressed in any other fashion will not be acceptable.

## **XI. HOLD HARMLESS**

BCHF shall defend, indemnify and hold District, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorneys' fees) or claims for injury or damages arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for injury or damages are caused by or result from the negligent, intentional acts, omissions or misconduct of BCHF its officers, agents, or students.

District shall defend, indemnify and hold BCHF, its officers, employees and agents harmless from and against any and all liability, loss, expense (including reasonable attorney's fees) or claims for injury or damages arising out of the performance of this MOU but only in proportion to and to the extent such liability, loss, expense, attorneys' fees, or claims for

injury or damages are caused by or result from the negligent or intentional acts or omissions of District, its officers, agents, or employees.

## **XII. INSURANCE**

Without limiting or diminishing the Parties' obligation to indemnify or hold the other party harmless, each party shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverage during the term of this MOU.

1. General Liability, Employer's Liability, Professional Liability and Automobile Liability Insurance. Each policy shall have limits of not less than one million dollars (\$1,000,000) per occurrence, three million dollars (\$3,000,000) in the aggregate.
2. Workers' Compensation, as required under California State law.
3. Such other insurance in such amounts which from time to time may be reasonably required by the mutual consent of District and BCHF against other insurable risks relating to performance of this MOU.
4. Additional insured endorsements are required for general, property damage, sexual abuse and automobile liability policy coverage. Such a provision, however, shall only apply in proportion to and to the extent deemed necessary by the insured Party to protect against the negligent acts or omissions of the other Party, its officers, agents, or employees. Each Party, upon the execution of this MOU, shall furnish the other Party with Certificates of Insurance evidencing compliance with all requirements. Certificates shall provide for thirty (30) days advance written notice to District of any material modifications, change or cancellation of the above insurance coverage.

## **XIII. CONFLICT OF INTEREST**

BCHF covenants that it presently has no interest, including but not limited to, other projects or independent agreements, and shall not acquire any such interest, direct or indirect, which are, or which the BCHF believes to be, incompatible in any manner or degree with the performance of services required to be performed under this MOU. BCHF further covenants that in the performance of this MOU, no person having any such interest shall be employed or retained by it under this MOU.

BCHF agrees to inform District of all of the BCHF's interests, if any, which are or which the BCHF believes to be, incompatible with any interests of District.

## **XIV. ASSIGNMENT**

BCHF shall not assign the whole or any part of this MOU without the written consent of the District.

## **XV. THIRD PARTY BENEFICIARY**

Nothing contained in this MOU shall create a contractual relationship with or a cause of action in favor of any third party against either the District or BCHF.

## **XVI. NON-WAIVER**

The failure of either party to insist upon strict performance of any of the terms, conditions, or covenants in this MOU shall not be deemed a waiver of any right or remedy that either party may have and shall not be deemed a waiver of any right or remedy for a subsequent breach or default of the terms, conditions or covenants herein contained.

#### **XVII. AUTHORITY**

The individuals executing this MOU on behalf of the parties each represent and warrant that they have the legal right and actual authority to bind the parties to the terms and conditions hereof.

#### **XVIII. GOVERNING LAW AND VENUE**

This MOU shall be governed by and construed in accordance with the laws of the State of California. Jurisdiction and venue shall be agreed upon in the appropriate courts in the County of San Bernardino, State of California.

#### **XIX. ENTIRE MOU/MODIFICATIONS**

This MOU constitutes the entire MOU between the Parties with respect to the subject matter hereof, and supersedes all prior negotiations, understandings or agreements, either written or oral. All exhibits referenced herein and attached hereto shall be deemed incorporated into and made a part of this MOU by each reference as though fully set forth in each instance in the text hereof. This MOU may only be modified by written MOU signed by both Parties.

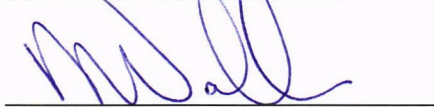
Any purchase order issued by District in connection with this MOU is deemed to be issued for District's administrative or billing identification purposes only. The terms and conditions contained herein shall exclusively govern the Services to be provided hereunder.

#### **XX. COUNTERPARTS**

The Parties may execute this MOU in two or more counterparts, which shall, in the aggregate, be signed by all of the Parties. Each counterpart shall be deemed an original instrument as against any Party who has signed it. The Parties further agree that signatures sent by electronic mail, in .PDF format, shall be treated as original signatures to this MOU.

IN WITNESS WHEREOF, the Parties hereto on the day and year written below have executed this MOU.

BORREGO COMMUNITY  
HEALTH FOUNDATION



Mikia Wallis  
Chief Executive Officer

SILVER VALLEY  
UNIFIED SCHOOL DISTRICT



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

Date: 9-23-19

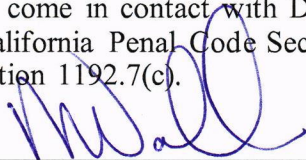
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## EXHIBIT A

### Background Check Requirements

With respect to the MOU dated \_\_\_\_\_ by and between the Silver Valley Unified School District ("District") and Borrego Community Health Foundation ("BCHF") for medical and dental services, BCHF hereby certifies to the governing board that it has completed the background check requirements of California Education Code Section 45125.1 and that none of its employees that may come in contact with District students have been convicted of a violent felony listed in California Penal Code Section 667.5(c) or a serious felony listed in California Penal Code Section 1192.7(c).

  
\_\_\_\_\_  
Mikia Wallis, Chief Executive Officer

9-23-19  
\_\_\_\_\_  
Date

## **EXHIBIT B**

### **CONFIDENTIALITY OF STUDENT INFORMATION / PROTECTED HEALTH INFORMATION (PHI)**

#### **Business Associate Agreement**

This Agreement is made effective the \_\_\_\_\_, by and between Borrego Community Health Foundation, hereinafter referred to as "Covered Entity", and Silver Valley Unified School District, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

#### **RECITALS:**

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information;

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Security and Privacy Rule");

WHEREAS, the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), pursuant to Title XIII of Division A and Title IV of Division B, called the "Health Information Technology for Economic and Clinical Health" ("HITECH") Act, provides modifications to the HIPAA Security and Privacy Rule (hereinafter, all references to the "HIPAA Security and Privacy Rule" are deemed to include all amendments to such rule contained in the HITECH Act and any accompanying regulations, and any other subsequently adopted amendments or regulations);

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Security and Privacy Rule (the agreement evidencing such arrangement is entitled "AGREEMENT BETWEEN SILVER VALLEY UNIFIED SCHOOL DISTRICT AND BORREGO COMMUNITY HEALTH FOUNDATION FOR MEDICAL/DENTAL COORDINATION SERVICES," dated \_\_\_\_\_, and is hereby referred to as the "Arrangement Agreement"); and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

NOW, THEREFORE, in consideration of the Parties' continuing obligations under the Arrangement Agreement, compliance with the HIPAA Security and Privacy Rule, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and intending to be legally bound, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Security and Privacy Rule and to protect the interests of both Parties.

## I. DEFINITIONS

### a) Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required By Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Security and Privacy Rule, as amended, the HIPAA Security and Privacy Rule shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Security and Privacy Rule, but are nonetheless permitted by the HIPAA Security and Privacy Rule, the provisions of this Agreement shall control.

### b) Specific definitions:

- (a) Business Associate. "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Silver Valley Unified School District.
- (b) Covered Entity. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean Borrego Health.
- (c) HIPAA Rules. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
- (d) Protected Health Information. "Protected Health Information (PHI)" shall mean 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 or 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 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 Health Information" includes without limitation "Electronic Protected Health Information" as defined below.
- (e) Electronic Protected Health Information. "Electronic Protected Health Information" shall mean Protected Health Information which is transmitted by Electronic Media (as defined in the HIPAA Security and Privacy Rule) or maintained in Electronic Media.

## II. CONFIDENTIALITY AND SECURITY REQUIREMENTS

### a) Business Associate agrees:

- a. Not to use or disclose protected health information other than as permitted or required by the Agreement or as required by law;

- b. To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement;
- c. To report to covered entity any use or disclosure of protected health information not provided for by the Agreement of which it becomes aware, including breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware. Such report shall be made by Business Associate to Covered Entity within twenty-four hours of the time when Business Associate becomes aware of the breach;
- d. In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, to ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;
- e. To make available protected health information in a designated record set to the individual or the individual's designee" as necessary to satisfy covered entity's obligations under 45 CFR 164.524;
- f. To make any amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526;
- g. To maintain and make available the information required to provide an accounting of disclosures to the individual as necessary to satisfy covered entity's obligations under 45 CFR 164.528;
- h. To the extent the business associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, to comply with the requirements of Subpart E that apply to the covered entity in the performance of such obligation(s); and
- i. To make its internal practices, books, and records available to the Secretary for purposes of determining compliance with the HIPAA Rules.
- j. Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

- b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:
- a. As necessary to perform the services set forth in the underlying Service Agreement; and/or
  - b. As required by law.
  - c. Business Associate agrees to make uses and disclosures and requests for protected health information consistent with Covered Entity's minimum necessary policies and procedures.
  - d. Business Associate may not use or disclose PHI in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.
  - e. Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity.
  - f. Business associate may use protected health information for the proper management and administration of the business associate or to carry out the legal responsibilities of the business associate.
  - g. Business associate may disclose protected health information for the proper management and administration of business associate or to carry out the legal responsibilities of the business associate, provided the disclosures are required by law, or business associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person, and the person notifies business associate of any instances of which it is aware in which the confidentiality of the information has been breached.
  - h. Business associate may provide data aggregation services relating to the health care operations of the covered entity.
- c) Business Associate will implement appropriate safeguards to prevent use or disclosure of Protected Health Information other than as permitted in this Agreement. Business Associate will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of any Electronic Protected Health Information that it creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security and Privacy Rule.
- d) The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Security and Privacy Rule.
- e) Business Associate shall report to Covered Entity any use or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement of which it becomes aware. Business Associate shall report to Covered Entity any Security Incident of which it becomes aware. Such report shall be made within twenty-four hours of the date and time upon which Business Associate becomes aware of the unauthorized

use or disclosure and/or Security Incident.

For purposes of this Agreement, "Security Incident" means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. AVAILABILITY OF PHI

- A. Business Associate agrees to comply with any requests for restrictions on certain disclosures of Protected Health Information pursuant to Section 164.522 of the HIPAA Security and Privacy Rule to which Covered Entity has agreed and of which Business Associate is notified by Covered Entity. Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Security and Privacy Rule. If Business Associate maintains Protected Health Information electronically, it agrees to make such Protected Health Information electronically available to the applicable individual. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Security and Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Security and Privacy Rule and Section 13405(c)(3) of the HITECH Act. Business Associate and Covered Entity shall cooperate in providing any accounting required on a timely basis.

### IV. TERM/TERMINATION

- A. Term. The Term of this Agreement shall be effective as of the date first listed above and shall continue in effect concurrently with the term of the Arrangement Agreement.
- B. Termination. Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Arrangement Agreement immediately. Covered Entity may seek injunctive relief and/or any other available remedy to prevent a breach of this Agreement.
- C. Obligations of Business Associate Upon Termination. Upon termination of this Agreement for any reason, business associate shall return to covered entity all protected



health information received from covered entity, or created, maintained, or received by business associate on behalf of covered entity that the business associate still maintains in any form. Business associate shall retain no copies of the protected health information.

- D. Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

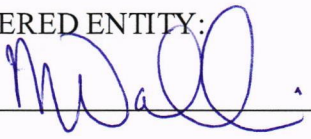
V. MISCELLANEOUS

- A. Third Parties; Survival. Except as expressly stated herein or the HIPAA Security and Privacy Rule, the Parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Arrangement Agreement and/or the business relationship of the Parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.
- B. Amendment; Independent Parties. This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- C. Minimum Requirements. The Parties agree that, in the event that any documentation of the arrangement pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.
- D. Severability. In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a Party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Security and Privacy Rule, including any then-current requirements of the HITECH Act or its regulations, such Party shall notify the other Party in writing. For a period of up to thirty days, the Parties shall address in good faith such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, after such thirty-day period, the Agreement fails to comply with the HIPAA Security and Privacy Rule, including the HITECH Act, then either Party has the right to terminate upon written notice to the other Party.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and

year written above.

COVERED ENTITY:

By: 

Title: CEO - 9-23-19

BUSINESS ASSOCIATE:

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

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

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