

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

**CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY – COUNTY OF SAN MATEO**

1. **THIS PARTICIPATION AGREEMENT** is entered into on \_\_\_\_\_ by and between the California Mental Health Services Authority (“CalMHSA”) and the County of San Mateo, a political subdivision of the State of California, through its County Behavioral Health Department (“Participant”) for participation in the Mental Health Services Authority Innovation Program (“Program”).
2. CalMHSA and Participant acknowledge that the Program will be governed by CalMHSA’s Joint Powers Agreement and its Bylaws, and by this Participation Agreement. The following exhibits are intended to clarify how the provisions of those documents will be applied to this Program.
  - Exhibit A Program Description
  - Exhibit B General Terms and Conditions
  - Exhibit C County-Specific Scope and Funding
3. The term of the Program is **July 1, 2019** through **June 30, 2020**.

4. Authorized Signatures: [Signature block(s) may be added or deleted as deemed appropriate]

**CalMHSA**

Signed: \_\_\_\_\_ Name (Printed): \_\_\_\_\_

Title: Executive Director/Chief Operating Officer Date: \_\_\_\_\_

**Participant: County of San Mateo**

Signed: \_\_\_\_\_ Name (Printed): \_\_\_\_\_

Title: Chair of the Board of Supervisors (if applicable) Date: \_\_\_\_\_

County Behavioral Health Signed: *Scott Gilman*

Name (Printed): Scott Gilman

Title: Director Date: 5/29/19

APPROVED AS TO FORM:  
Office of the County Counsel

Signed: *Gina J. Beltramo* Name (Printed): Gina J. Beltramo

Title: County Counsel Date: 4/25/19

## EXHIBIT A

### PROGRAM DESCRIPTION

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

II. **Program Overview**

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

## EXHIBIT B

### GENERAL TERMS AND CONDITIONS

#### I. Definitions

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

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

#### II. Responsibilities

- A. Responsibilities of CalMHSA:
  - 1. Act as fiscal and administrative agent for Program.
  - 2. Manage funds received consistent with the requirements of any applicable laws, regulations, guidelines, and/or contractual obligations.
  - 3. Provide regular fiscal reports to Participant and/or other public agencies with a right to such reports.
  - 4. Submit plans, updates, and/or work plans for review and approval by Participant representative.
  - 5. Comply with CalMHSA's Joint Powers Agreement and Bylaws.
- B. Responsibilities of Participant:
  - 1. Transfer funds for the Program as specified in Exhibit C at the beginning of each fiscal year identified in Exhibit C, County-Specific Scope and Funding.
  - 2. Identify a representative authorized to act for Participant and receive notices on behalf of Participant with regard to the Program.

3. Cooperate by providing CalMHSA with requested information and assistance in order to fulfill the purpose of the Program.
4. Provide feedback on Program performance.
5. Comply with applicable laws, regulations, guidelines, contractual agreements, JPAs, and bylaws.

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

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

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

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

### **VI. Fiscal Provisions**

- A. Funding required from Participant will not exceed the amount stated in Exhibit C, "County-Specific Scope and Funding," attached hereto.
- B. CalMHSA shall invoice Participant with the amounts stated in Exhibit C upon execution of this agreement. Each invoice must be signed by a designated official for the Program.
- C. Participant shall remit payment to CalMHSA within thirty (30) days of receipt of invoice.

### **V. Mutual Indemnification**

To the fullest extent permitted by law, each party shall hold harmless, defend and indemnify the other party, including its governing board, employees and agents from and against any and all claims, losses, damages, liabilities, disallowances, recoupments, and expenses, including but not limited to reasonable attorneys' fees, arising out of or resulting from other's negligence in the performance of its obligations under this Agreement, including the performance of the other's subcontractors, except that each party shall have no obligation to indemnify the other for damages to the extent resulting from the

## EXHIBIT C

### COUNTY-SPECIFIC SCOPE AND FUNDING

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

CalMHSA will be contracted to provide overall administrative oversight and contract procurement for a multi-county collaborative innovative program to be active for three years (FY 2018/19 – 2020/2021). Procurement will include contract agreements with existing private sector companies providing a variety of technology-based mental health services and supports. Additionally, these services will include a mechanism for access and linkage to traditional behavioral health care within the San Mateo County system.

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

- Virtual Peer Chat and Digital Therapeutics**
- Virtual Evidence Based Therapy**
- Community Engagement and Outreach**
- Outcomes Evaluation**

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

- Connect transition-age youth and older adults experiencing isolation to in-person services
- Improve access to mental health services and supports
- Improve wellness and recovery outcomes for those who engage with the mobile apps

This will be a 1.5 year project.

## **Innovation Primary Purpose**

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

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

## **Target Population**

- Older adults
- Transition-aged youth

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

The components of this innovative project are as follows:

- Technology Investment:
  - Virtual Evidence-Based Therapy: Utilizing an Avatar
  - Digital Phenotyping: Using Passive Data for Early Detection and Intervention
  - Peer Chat and Digital Therapeutics: Using Technology-Based Mental Health Solutions to Intervene and Offer Support
- Community Engagement and Outreach: Engaging Users and Promoting Use of Technology-Based Mental Health Solutions
- Outcome Evaluation

**Budget**

<b>Innovation Project Budget San Mateo</b>	<b>FY18/19</b>	<b>FY19/20</b>	<b>FY20/21</b>	<b>FY21/22</b>	<b>Innovation Total</b>	<b>% of Tech Suite</b>
	<b>6 months</b>	<b>12 months</b>	<b>12 months</b>	<b>6 months</b>		
CalMHSA Overhead (5%)		\$212,927	\$0	\$0	\$212,927	5.68%
Statewide Project Management & Experts (CalMHSA)		\$212,927			\$212,927	5.68%
<b>7 Cups: Apps</b>						
Start-Up Fee	\$212,432				\$212,432	
Development Fund	\$212,432				\$212,432	
Licensure/Annual Fees		\$212,432			\$212,432	
Local Customization		\$424,863			\$424,863	
<b>7 Cups - Apps Subtotal</b>	<b>\$424,864</b>	<b>\$637,295</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,062,159</b>	<b>43.31%</b>
<b>7 Cups: Paid Peers</b>						
Start-Up Fee					\$0	
Development Fund					\$0	
Licensure/Annual Fees					\$0	
Local Customization					\$0	
<b>7 Cups - Apps Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00%</b>
<b>Mindstrong: Apps</b>						
Start-Up Fee					\$0	
Development Fund					\$0	
Licensure/Annual Fees					\$0	
Local Customization					\$0	
<b>Mindstrong - Apps Subtotal</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>	<b>0.00%</b>
<b>Future Apps/Vendors</b>						
Start-Up Fee	\$116,931				\$116,931	
Development Fund	\$100,592				\$100,592	
Licensure/Annual Fees		\$83,522			\$83,522	
Local Customization	\$147,985	\$147,985			\$295,970	

<b>Future Apps Subtotal</b>	<b>\$365,508</b>	<b>\$231,507</b>	<b>\$0</b>	<b>\$0</b>	<b>\$597,015</b>	<b>24.34%</b>
<b>Evaluator</b>						
Start-Up Fee	\$116,931				\$116,931	
Development Fund					\$0	
Licensure/Annual Fees	\$50,113	\$50,113			\$100,226	
Local Customization					\$0	
<b>Evaluator Subtotal</b>	<b>\$167,044</b>	<b>\$50,113</b>	<b>\$0</b>	<b>\$0</b>	<b>\$217,157</b>	<b>8.85%</b>
<b>Outreach &amp; Marketing</b>						
Start-Up Fee	\$33,409				\$33,409	
Development Fund	\$50,113				\$50,113	
Licensure/Annual Fees	\$33,409	\$33,409			\$66,818	
<b>Outreach &amp; Marketing Subtotal</b>	<b>\$116,931</b>	<b>\$33,409</b>	<b>\$0</b>	<b>\$0</b>	<b>\$150,340</b>	<b>6.13%</b>
<b>TOTAL TECH SUITE BUDGET</b>	<b>\$1,074,347</b>	<b>\$1,378,178</b>	<b>\$0</b>	<b>\$0</b>	<b>\$2,452,525</b>	<b>94.00%</b>

Local Funds	Jan 1-Jun 30, 2019	Full Year	Full Year	Final 6 months	Total	% of Local
Technology Equipment for Participants (to be overseen by PC)					\$0	0.0%
Local Marketing & Outreach (to be overseen by PC)		\$10,000			\$10,000	0.8%
social media/texting infrastructure to support 7 cups implementation		\$250,000			\$250,000	19.3%
Project Coordinator (.5 FTE either Extra Hire)	\$32,179	\$29,721			\$61,900	4.8%
Peers		\$750,000			\$750,000	57.8%
County Admin Cost (15% of local funds program costs)	\$554	\$74,046			\$74,600	5.8%
Local Evaluation		\$150,000			\$150,000	11.6%
<b>TOTAL LOCAL EXPENSES</b>	<b>\$32,733</b>	<b>\$1,113,767</b>	<b>\$0</b>	<b>\$0</b>	<b>\$1,296,500</b>	<b>100%</b>

Combined Total						% of Total
Total Tech Suite	\$1,074,347	\$1,378,178	\$0	\$0	\$2,452,525	65.42%
Total Local Funds	\$32,733	\$1,113,767	\$0	\$0	\$1,296,500	34.58%
Contingency Fund	\$0	-	-	-	\$0	0.00%
<b>TOTAL PROJECT BUDGET</b>	<b>\$1,107,080</b>	<b>\$2,491,945</b>	<b>\$0</b>	<b>\$0</b>	<b>\$3,749,025</b>	<b>100%</b>

**BUSINESS ASSOCIATE AGREEMENT  
UNDER THE HEALTH INSURANCE PORTABILITY  
AND ACCOUNTABILITY ACT OF 1996 (HIPAA)**

San Mateo County Behavioral/Mental Health Department is a Covered Entity as defined by, and subject to the requirements and prohibitions of, the Administrative Simplification provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), and regulations promulgated thereunder, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 Code of Federal Regulations (C.F.R.) Parts 160 and 164 (collectively, the "HIPAA Rules").

CalMHSA performs or provides functions, activities or services to San Mateo County Behavioral/Mental Health Department that require CalMHSA in order to provide such functions, activities or services to create, access, receive, maintain, and/or transmit information that includes or that may include Protected Health Information, as defined by the HIPAA Rules. As such, CalMHSA is a Business Associate, as defined by the HIPAA Rules, and is therefore subject to those provisions of the HIPAA Rules that are applicable to Business Associates.

The HIPAA Rules require a written agreement ("Business Associate Agreement") between San Mateo County Behavioral/Mental Health Department and CalMHSA in order to mandate certain protections for the privacy and security of Protected Health Information, and these HIPAA Rules prohibit the disclosure to or use of Protected Health Information by Contractor if such an agreement is not in place.

This Business Associate Agreement and its provisions are intended to protect the privacy and provide for the security of Protected Health Information disclosed to or used by Contractor in compliance with the HIPAA Rules.

Therefore, the parties agree as follows:

**1. DEFINITIONS**

- 1.1 "Breach" has the same meaning as the term "breach" at 45 C.F.R. § 164.402.
- 1.2 "Business Associate" has the same meaning as the term "business associate" at 45 C.F.R. § 160.103. For the convenience of the parties, a "business associate" is a person or entity, other than a member of the workforce of covered entity, who performs functions or activities on behalf of, or provides certain services to, a covered entity that involve access by the business associate to Protected Health Information. A "business associate" also is a subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of another business associate. And in reference to the party to this Business Associate Agreement "Business Associate" shall mean Contractor (CalMHSA).
- 1.3 "Covered Entity" has the same meaning as the term "covered entity" at 45 C.F.R. § 160.103, and in reference to the party to this Business Associate Agreement, "Covered Entity" shall mean San Mateo County Behavioral/Mental Health Department.
- 1.4 "Data Aggregation" has the same meaning as the term "data aggregation" at 45 C.F.R. § 164.501.
- 1.5 "De-identification" refers to the de-identification standard at 45 C.F.R. § 164.514.
- 1.6 "Designated Record Set" has the same meaning as the term "designated record set" at 45 C.F.R. § 164.501.

- 1.7 "Disclose" and "Disclosure" mean, with respect to Protected Health Information, the release, transfer, provision of access to, or divulging in any other manner of Protected Health Information outside Business Associate's internal operations or to other than its workforce. (See 45 C.F.R. § 160.103.)
- 1.8 "Electronic Health Record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff. (See 42 U.S. C. § 17921.)
- 1.9 "Electronic Media" has the same meaning as the term "electronic media" at 45 C.F.R. § 160.103. For the convenience of the parties, electronic media means (1) Electronic storage material on which data is or may be recorded electronically, including, for example, devices in computers (hard drives) and any removable/transportable digital memory medium, such as magnetic tape or disk, optical disk, or digital memory card; (2) Transmission media used to exchange information already in electronic storage media. Transmission media include, for example, the Internet, extranet or intranet, leased lines, dial-up lines, private networks, and the physical movement of removable/transportable electronic storage media. Certain transmissions, including of paper, via facsimile, and of voice, via telephone, are not considered to be transmissions via electronic media if the information being exchanged did not exist in electronic form immediately before the transmission.
- 1.10 "Electronic Protected Health Information" has the same meaning as the term "electronic protected health information" at 45 C.F.R. § 160.103, limited to Protected Health Information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Electronic Protected Health Information means Protected Health Information that is (i) transmitted by electronic media; (ii) maintained in electronic media.
- 1.11 "Health Care Operations" has the same meaning as the term "health care operations" at 45 C.F.R. § 164.501.
- 1.12 "Individual" has the same meaning as the term "individual" at 45 C.F.R. § 160.103. For the convenience of the parties, Individual means the person who is the subject of Protected Health Information and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502 (g).
- 1.13 "Law Enforcement Official" has the same meaning as the term "law enforcement official" at 45 C.F.R. § 164.103.
- 1.14 "Minimum Necessary" refers to the minimum necessary standard at 45 C.F.R. § 162.502 (b).
- 1.15 "Protected Health Information" has the same meaning as the term "protected health information" at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. For the convenience of the parties, Protected Health Information includes information that (i) 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; (ii) identifies the Individual (or for which there is a reasonable basis for believing that the information can be used to identify the Individual); and (iii) is created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity, and includes Protected Health Information that is made accessible to Business

Associate by Covered Entity. "Protected Health Information" includes Electronic Protected Health Information.

- 1.16 "Required by Law" " has the same meaning as the term "required by law" at 45 C.F.R. § 164.103.
- 1.17 "Secretary" has the same meaning as the term "secretary" at 45 C.F.R. § 160.103
- 1.18 "Security Incident" has the same meaning as the term "security incident" at 45 C.F.R. § 164.304.
- 1.19 "Services" means, unless otherwise specified, those functions, activities, or services in the applicable underlying Agreement, Contract, Master Agreement, Work Order, or Purchase Order or other service arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 1.20 "Subcontractor" has the same meaning as the term "subcontractor" at 45 C.F.R. § 160.103.
- 1.21 "Unsecured Protected Health Information" has the same meaning as the term "unsecured protected health information" at 45 C.F.R. § 164.402.
- 1.22 "Use" or "Uses" means, with respect to Protected Health Information, the sharing, employment, application, utilization, examination or analysis of such Information within Business Associate's internal operations. (See 45 C.F.R § 164.103.)
- 1.23 Terms used, but not otherwise defined in this Business Associate Agreement, have the same meaning as those terms in the HIPAA Rules.

## **2. PERMITTED AND REQUIRED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- 2.1 Business Associate may only Use and/or Disclose Protected Health Information as necessary to perform Services, and/or as necessary to comply with the obligations of this Business Associate Agreement.
- 2.2 Business Associate may Use Protected Health Information for de-identification of the information if de-identification of the information is required to provide Services.
- 2.3 Business Associate may Use or Disclose Protected Health Information as Required by Law.
- 2.4 Business Associate shall make Uses and Disclosures and requests for Protected Health Information consistent with the Covered Entity's applicable Minimum Necessary policies and procedures.
- 2.5 Business Associate may Use Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities.
- 2.6 Business Associate may Disclose Protected Health Information as necessary for the proper management and administration of its business or to carry out its legal responsibilities, provided the Disclosure is Required by Law or Business Associate obtains reasonable assurances from the person to whom the Protected Health Information is disclosed (i.e., the recipient) that it will be held confidentially and Used or further Disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient and the

recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Health Information has been breached.

- 2.7 Business Associate may provide Data Aggregation services relating to Covered Entity's Health Care Operations if such Data Aggregation services are necessary in order to provide Services.

### **3. PROHIBITED USES AND DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- 3.1 Business Associate shall not Use or Disclose Protected Health Information other than as permitted or required by this Business Associate Agreement or as Required by Law.
- 3.2 Business Associate shall not Use or Disclose Protected Health Information in a manner that would violate Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except for the specific Uses and Disclosures set forth in Sections 2.5 and 2.6.
- 3.3 Business Associate shall not Use or Disclose Protected Health Information for de-identification of the information except as set forth in section 2.2.

### **4. OBLIGATIONS TO SAFEGUARD PROTECTED HEALTH INFORMATION**

- 4.1 Business Associate shall implement, use, and maintain appropriate safeguards to prevent the Use or Disclosure of Protected Health Information other than as provided for by this Business Associate Agreement.
- 4.2 Business Associate shall comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for by this Business Associate Agreement.

### **5. REPORTING NON-PERMITTED USES OR DISCLOSURES, SECURITY INCIDENTS, AND BREACHES OF UNSECURED PROTECTED HEALTH INFORMATION**

- 5.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information not permitted by this Business Associate Agreement, any Security Incident, and/ or any Breach of Unsecured Protected Health Information as further described in Sections 5.1.1, 5.1.2, and 5.1.3.
  - 5.1.1 Business Associate shall report to Covered Entity any Use or Disclosure of Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors not provided for by this Agreement of which Business Associate becomes aware.
  - 5.1.2 Business Associate shall report to Covered Entity any Security Incident of which Business Associate becomes aware.
  - 5.1.3 Business Associate shall report to Covered Entity any Breach by Business Associate, its employees, representatives, agents, workforce members, or Subcontractors of Unsecured Protected Health Information that is known to Business Associate or, by exercising reasonable diligence, would have been known to Business Associate. Business Associate shall be deemed to have knowledge of a Breach of Unsecured Protected Health Information if the Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or other agent of Business

Associate, including a Subcontractor, as determined in accordance with the federal common law of agency.

5.2 Except as provided in Section 5.3, for any reporting required by Section 5.1, Business Associate shall provide, to the extent available, all information required by, and within the times frames specified in, Sections 5.2.1 and 5.2.2.

5.2.1 Business Associate shall make an immediate telephonic report upon discovery of the non-permitted Use or Disclosure of Protected Health Information, Security Incident or Breach of Unsecured Protected Health Information to **(562) 940-3335** that minimally includes:

- (a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;
- (b) The number of Individuals whose Protected Health Information is involved;
- (c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);
- (d) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach

5.2.2 Business Associate shall make a written report without unreasonable delay and in no event later than three (3) business days from the date of discovery by Business Associate of the non-permitted Use or Disclosure of Protected Health Information, Security Incident, or Breach of Unsecured Protected Health Information and to the **Chief Privacy Officer at: Privacy Officer, Name, \_\_\_\_\_ County Behavioral/Mental Health Department, Address, Email**, that includes, to the extent possible:

- (a) A brief description of what happened, including the date of the non-permitted Use or Disclosure, Security Incident, or Breach and the date of Discovery of the non-permitted Use or Disclosure, Security Incident, or Breach, if known;
- (b) The number of Individuals whose Protected Health Information is involved;
- (c) A description of the specific type of Protected Health Information involved in the non-permitted Use or Disclosure, Security Incident, or Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code or other types of information were involved);
- (d) The identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been, accessed, acquired, Used, or Disclosed;

- (e) Any other information necessary to conduct an assessment of whether notification to the Individual(s) under 45 C.F.R. § 164.404 is required;
- (f) Any steps Business Associate believes that the Individual(s) could take to protect him or herself from potential harm from the non-permitted Use or Disclosure, Security Incident, or Breach;
- (g) A brief description of what Business Associate is doing to investigate, to mitigate harm to the Individual(s), and to protect against any further similar occurrences; and
- (h) The name and contact information for a person highly knowledgeable of the facts and circumstances of the non-permitted Use or Disclosure of PHI, Security Incident, or Breach.

5.2.3 If Business Associate is not able to provide the information specified in Section 5.2.1 or 5.2.2 at the time of the required report, Business Associate shall provide such information promptly thereafter as such information becomes available.

5.3 Business Associate may delay the notification required by Section 5.1.3, if a law enforcement official states to Business Associate that notification would impede a criminal investigation or cause damage to national security.

5.3.1 If the law enforcement official's statement is in writing and specifies the time for which a delay is required, Business Associate shall delay its reporting and/or notification obligation(s) for the time period specified by the official.

5.3.2 If the statement is made orally, Business Associate shall document the statement, including the identity of the official making the statement, and delay its reporting and/or notification obligation(s) temporarily and no longer than 30 days from the date of the oral statement, unless a written statement as described in Section 5.3.1 is submitted during that time.

## **6. WRITTEN ASSURANCES OF SUBCONTRACTORS**

6.1 In accordance with 45 C.F.R. § 164.502 (e)(1)(ii) and § 164.308 (b)(2), if applicable, Business Associate shall ensure that any Subcontractor that creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate is made aware of its status as a Business Associate with respect to such information and that Subcontractor agrees in writing to the same restrictions, conditions, and requirements that apply to Business Associate with respect to such information.

6.2 Business Associate shall take reasonable steps to cure any material breach or violation by Subcontractor of the agreement required by Section 6.1.

6.3 If the steps required by Section 6.2 do not cure the breach or end the violation, Contractor shall terminate, if feasible, any arrangement with Subcontractor by which Subcontractor creates, receives, maintains, or transmits Protected Health Information on behalf of Business Associate.

6.4 If neither cure nor termination as set forth in Sections 6.2 and 6.3 is feasible, Business Associate shall immediately notify CalMHSA.

- 6.5 Without limiting the requirements of Section 6.1, the agreement required by Section 6.1 (Subcontractor Business Associate Agreement) shall require Subcontractor to contemporaneously notify Covered Entity in the event of a Breach of Unsecured Protected Health Information.
- 6.6 Without limiting the requirements of Section 6.1, agreement required by Section 6.1 (Subcontractor Business Associate Agreement) shall include a provision requiring Subcontractor to destroy, or in the alternative to return to Business Associate, any Protected Health Information created, received, maintained, or transmitted by Subcontractor on behalf of Business Associate so as to enable Business Associate to comply with the provisions of Section 18.4.
- 6.7 Business Associate shall provide to Covered Entity, at Covered Entity's request, a copy of any and all Subcontractor Business Associate Agreements required by Section 6.1.
- 6.8 Sections 6.1 and 6.7 are not intended by the parties to limit in any way the scope of Business Associate's obligations related to Subcontracts or Subcontracting in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

## **7. ACCESS TO PROTECTED HEALTH INFORMATION**

- 7.1 To the extent Covered Entity determines that Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within two (2) business days after receipt of a request from Covered Entity, make the Protected Health Information specified by Covered Entity available to the Individual(s) identified by Covered Entity as being entitled to access and shall provide such Individual(s) or other person(s) designated by Covered Entity with a copy the specified Protected Health Information, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.524.
- 7.2 If any Individual requests access to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within two (2) days of the receipt of the request. Whether access shall be provided or denied shall be determined by Covered Entity.
- 7.3 To the extent that Business Associate maintains Protected Health Information that is subject to access as set forth above in one or more Designated Record Sets electronically and if the Individual requests an electronic copy of such information, Business Associate shall provide the Individual with access to the Protected Health Information in the electronic form and format requested by the Individual, if it is readily producible in such form and format; or, if not, in a readable electronic form and format as agreed to by Covered Entity and the Individual.

## **8. AMENDMENT OF PROTECTED HEALTH INFORMATION**

- 8.1 To the extent Covered Entity determines that any Protected Health Information is maintained by Business Associate or its agents or Subcontractors in a Designated Record Set, Business Associate shall, within ten (10) business days after receipt of a written request from Covered Entity, make any amendments to such Protected Health Information that are

requested by Covered Entity, in order for Covered Entity to meet the requirements of 45 C.F.R. § 164.526.

- 8.2 If any Individual requests an amendment to Protected Health Information directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request. Whether an amendment shall be granted or denied shall be determined by Covered Entity.

## **9. ACCOUNTING OF DISCLOSURES OF PROTECTED HEALTH INFORMATION**

- 9.1 Business Associate shall maintain an accounting of each Disclosure of Protected Health Information made by Business Associate or its employees, agents, representatives or Subcontractors, as is determined by Covered Entity to be necessary in order to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

9.1.1 Any accounting of disclosures provided by Business Associate under Section 9.1 shall include:

- (a) The date of the Disclosure;
- (b) The name, and address if known, of the entity or person who received the Protected Health Information;
- (c) A brief description of the Protected Health Information Disclosed; and
- (d) A brief statement of the purpose of the Disclosure.

9.1.2 For each Disclosure that could require an accounting under Section 9.1, Business Associate shall document the information specified in Section 9.1.1, and shall maintain the information for six (6) years from the date of the Disclosure.

- 9.2 Business Associate shall provide to Covered Entity, within ten (10) business days after receipt of a written request from Covered Entity, information collected in accordance with Section 9.1.1 to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528
- 9.3 If any Individual requests an accounting of disclosures directly from Business Associate or its agents or Subcontractors, Business Associate shall notify Covered Entity in writing within five (5) days of the receipt of the request, and shall provide the requested accounting of disclosures to the Individual(s) within 30 days. The information provided in the accounting shall be in accordance with 45 C.F.R. § 164.528.

## **10. COMPLIANCE WITH APPLICABLE HIPAA RULES**

- 10.1 To the extent Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 C.F.R. Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity's performance of such obligation(s).

10.2 Business Associate shall comply with all HIPAA Rules applicable to Business Associate in the performance of Services.

**11. AVAILABILITY OF RECORDS**

11.1 Business Associate shall make its internal practices, books, and records relating to the Use and Disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary for purposes of determining Covered Entity's compliance with the Privacy and Security Regulations.

11.2 Unless prohibited by the Secretary, Business Associate shall immediately notify Covered Entity of any requests made by the Secretary and provide Covered Entity with copies of any documents produced in response to such request.

**12. MITIGATION OF HARMFUL EFFECTS**

12.1 Business Associate shall mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of Protected Health Information by Business Associate in violation of the requirements of this Business Associate Agreement that is known to Business Associate.

**13. BREACH NOTIFICATION TO INDIVIDUALS**

13.1 Business Associate shall, to the extent Covered Entity determines that there has been a Breach of Unsecured Protected Health Information by Business Associate, its employees, representatives, agents or Subcontractors, provide breach notification to the Individual in a manner that permits Covered Entity to comply with its obligations under 45 C.F.R. § 164.404.

13.1.1 Business Associate shall notify, subject to the review and approval of Covered Entity, each Individual whose Unsecured Protected Health Information has been, or is reasonably believed to have been, accessed, acquired, Used, or Disclosed as a result of any such Breach.

13.1.2 The notification provided by Business Associate shall be written in plain language, shall be subject to review and approval by Covered Entity, and shall include, to the extent possible:

(a) A brief description of what happened, including the date of the Breach and the date of the Discovery of the Breach, if known;

(b) A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);

(c) Any steps the Individual should take to protect him or herself from potential harm resulting from the Breach;

(d) A brief description of what Business Associate is doing to investigate the Breach, to mitigate harm to Individual(s), and to protect against any further Breaches; and

- (e) Contact procedures for Individual(s) to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 13.2 Covered Entity, in its sole discretion, may elect to provide the notification required by Section 13.1 and/or to establish the contact procedures described in Section 13.1.2.
- 13.3 Business Associate shall reimburse Covered Entity any and all costs incurred by Covered Entity, in complying with Subpart D of 45 C.F.R. Part 164, including but not limited to costs of notification, internet posting, or media publication, as a result of Business Associate's Breach of Unsecured Protected Health Information; Covered Entity shall not be responsible for any costs incurred by Business Associate in providing the notification required by 13.1 or in establishing the contact procedures required by Section 13.1.2.

**14. INDEMNIFICATION**

- 14.1 Business Associate shall indemnify, defend, and hold harmless Covered Entity, its Special Districts, elected and appointed officers, employees, and agents from and against any and all liability, including but not limited to demands, claims, actions, fees, costs, expenses (including attorney and expert witness fees), and penalties and/or fines (including regulatory penalties and/or fines), arising from or connected with Business Associate's acts and/or omissions arising from and/or relating to this Business Associate Agreement, including, but not limited to, compliance and/or enforcement actions and/or activities, whether formal or informal, by the Secretary or by the Attorney General of the State of California.
- 14.2 Section 14.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Insurance and/or Indemnification in the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

**15. OBLIGATIONS OF COVERED ENTITY**

- 15.1 Covered Entity shall notify Business Associate of any current or future restrictions or limitations on the Use or Disclosure of Protected Health Information that would affect Business Associate's performance of the Services, and Business Associate shall thereafter restrict or limit its own Uses and Disclosures accordingly.
- 15.2 Covered Entity shall not request Business Associate to Use or Disclose Protected Health Information in any manner that would not be permissible under Subpart E of 45 C.F.R. Part 164 if done by Covered Entity, except to the extent that Business Associate may Use or Disclose Protected Health Information as provided in Sections 2.3, 2.5, and 2.6.

**16. TERM**

- 16.1 Unless sooner terminated as set forth in Section 17, the term of this Business Associate Agreement shall be the same as the term of the applicable underlying Agreement, Contract, Participation Agreement, Master Agreement, Work Order, Purchase Order, or other service arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

- 16.2 Notwithstanding Section 16.1, Business Associate's obligations under Sections 11, 14, and 18 shall survive the termination or expiration of this Business Associate Agreement.

**17. TERMINATION FOR CAUSE**

- 17.1 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Participation Agreement, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and the breaching party has not cured the breach or ended the violation within the time specified by the non-breaching party, which shall be reasonable given the nature of the breach and/or violation, the non-breaching party may terminate this Business Associate Agreement.
- 17.2 In addition to and notwithstanding the termination provisions set forth in the applicable underlying Agreement, Contract, Participation Agreement, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, if either party determines that the other party has violated a material term of this Business Associate Agreement, and cure is not feasible, the non-breaching party may terminate this Business Associate Agreement immediately.

**18. DISPOSITION OF PROTECTED HEALTH INFORMATION UPON TERMINATION OR EXPIRATION**

- 18.1 Except as provided in Section 18.3, upon termination for any reason or expiration of this Business Associate Agreement, Business Associate shall return or, if agreed to by Covered entity, shall destroy as provided for in Section 18.2, all Protected Health Information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that Business Associate, including any Subcontractor, still maintains in any form. Business Associate shall retain no copies of the Protected Health Information.
- 18.2 Destruction for purposes of Section 18.2 and Section 6.6 shall mean that media on which the Protected Health Information is stored or recorded has been destroyed and/or electronic media have been cleared, purged, or destroyed in accordance with the use of a technology or methodology specified by the Secretary in guidance for rendering Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals.
- 18.3 Notwithstanding Section 18.1, in the event that return or destruction of Protected Health Information is not feasible or Business Associate determines that any such Protected Health Information is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities, Business Associate may retain that Protected Health Information for which destruction or return is infeasible or that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities and shall return or destroy all other Protected Health Information.
- 18.3.1 Business Associate shall extend the protections of this Business Associate Agreement to such Protected Health Information, including continuing to use appropriate safeguards and continuing to comply with Subpart C of 45 C.F.R Part 164 with respect to Electronic Protected Health Information, to prevent the Use or Disclosure of such information other than as provided for in Sections 2.5 and 2.6 for so long as such Protected Health Information is retained, and Business Associate

shall not Use or Disclose such Protected Health Information other than for the purposes for which such Protected Health Information was retained.

18.3.2 Business Associate shall return or, if agreed to by Covered entity, destroy the Protected Health Information retained by Business Associate when it is no longer needed by Business Associate for Business Associate's proper management and administration or to carry out its legal responsibilities.

18.4 Business Associate shall ensure that all Protected Health Information created, maintained, or received by Subcontractors is returned or, if agreed to by Covered entity, destroyed as provided for in Section 18.2.

## **19. AUDIT, INSPECTION, AND EXAMINATION**

19.1 Covered Entity reserves the right to conduct a reasonable inspection of the facilities, systems, information systems, books, records, agreements, and policies and procedures relating to the Use or Disclosure of Protected Health Information for the purpose determining whether Business Associate is in compliance with the terms of this Business Associate Agreement and any non-compliance may be a basis for termination of this Business Associate Agreement and the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, as provided for in section 17.

19.2 Covered Entity and Business Associate shall mutually agree in advance upon the scope, timing, and location of any such inspection.

19.3 At Business Associate's request, and to the extent permitted by law, Covered Entity shall execute a nondisclosure agreement, upon terms and conditions mutually agreed to by the parties.

19.4 That Covered Entity inspects, fails to inspect, or has the right to inspect as provided for in Section 19.1 does not relieve Business Associate of its responsibility to comply with this Business Associate Agreement and/or the HIPAA Rules or impose on Covered Entity any responsibility for Business Associate's compliance with any applicable HIPAA Rules.

19.5 Covered Entity's failure to detect, its detection but failure to notify Business Associate, or its detection but failure to require remediation by Business Associate of an unsatisfactory practice by Business Associate, shall not constitute acceptance of such practice or a waiver of Covered Entity's enforcement rights under this Business Associate Agreement or the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

19.6 Section 19.1 is not intended by the parties to limit in any way the scope of Business Associate's obligations related to Inspection and/or Audit and/or similar review in the applicable underlying Agreement, Contract, Participation Agreement, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.

**20. MISCELLANEOUS PROVISIONS**

- 20.1 Disclaimer. Covered Entity makes no warranty or representation that compliance by Business Associate with the terms and conditions of this Business Associate Agreement will be adequate or satisfactory to meet the business needs or legal obligations of Business Associate.
- 20.2 HIPAA Requirements. The Parties agree that the provisions under HIPAA Rules that are required by law to be incorporated into this Amendment are hereby incorporated into this Agreement.
- 20.3 No Third Party Beneficiaries. Nothing in this Business Associate Agreement shall confer upon any person other than the parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 20.4 Construction. In the event that a provision of this Business Associate Agreement is contrary to a provision of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order, or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate, the provision of this Business Associate Agreement shall control. Otherwise, this Business Associate Agreement shall be construed under, and in accordance with, the terms of the applicable underlying Agreement, Contract, Master Agreement, Work Order, Purchase Order or other services arrangement, with or without payment, that gives rise to Contractor's status as a Business Associate.
- 20.5 Regulatory References. A reference in this Business Associate Agreement to a section in the HIPAA Rules means the section as in effect or as amended.
- 20.6 Interpretation. Any ambiguity in this Business Associate Agreement shall be resolved in favor of a meaning that permits the parties to comply with the HIPAA Rules.
- 20.7 Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity or Business Associate to comply with the requirements of the HIPAA Rules and any other privacy laws governing Protected Health Information.

AUTHORIZED SIGNORS:

**SAN MATEO COUNTY BEHAVIORAL/MENTAL HEALTH DEPARTMENT**

Signed:  Name (Printed): Scott Gilman  
Title: Director of Behavioral Health & Recovery Services Date: 5/31/19  
Address: 2000 Alameda de Las Pulgas, San Mateo, CA 94403  
Phone: 650-573-2748 Email: sgilman@smcgov.org

APPROVED AS TO FORM:

Signed: /s/ Gina Beltramo Name (Printed): Gina J. Beltramo  
Title: County Counsel, San Mateo County Date: 4-25-19  
Address: Hall of Justice, Redwood City, CA  
Phone: 650-573-4758 Email: gbeltramo@smcgov.org

**CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY (CalMHSA)**

Signed: \_\_\_\_\_ Name (Printed): \_\_\_\_\_

Title: Executive Director or Chief Operating Officer Date: \_\_\_\_\_

Address: c/o George Hills Company, 3043 Gold Canal Drive, Rancho Cordova, CA 95670

Phone: (916) 859-4800 Email: @calmhsa.org

Signed: \_\_\_\_\_ Name (Printed): Dawan Utecht

Title: CalMHSA President Date: \_\_\_\_\_