

**AGREEMENT BETWEEN LIBERTY HEALTHCARE
OF CALIFORNIA, INC. AND COUNTY OF SAN
MATEO TO ADMINISTER THE EARLY ACCESS
AND STABILIZATION SERVICES PROGRAM FOR
COUNTY JAIL INMATES**

This Agreement is entered into between the San Mateo County (“County”) and Liberty Healthcare of California, Inc., (“Liberty”) and is executed pursuant to the terms and conditions as set forth below (“Agreement”).

WHEREAS, the State of California, Department of State Hospitals (“CA DSH”) is responsible for returning to competency individuals charged with a felony who have been determined to be incompetent to stand trial by the California Superior Courts; and

WHEREAS, CA DSH has determined that Liberty shall assist it in restoring such individuals to competency and has entered into an agreement (“EASS Agreement”) with Liberty to provide Early Access and Stabilization Services (“EASS”); and

WHEREAS, as set forth in this Agreement, the County has agreed to provide Liberty access to portions of both its Maguire, and Maple Street Correctional Facilities (“Jails”), together with other goods and services, to allow Liberty to provide EASS services; and

WHEREAS, Liberty agrees to pay the County for the goods and services provided by the County as set forth below;

NOW THEREFORE, in consideration of those mutual understandings, the parties enter into this Agreement upon the following terms and conditions:

A. Duties of the County

1. To provide Liberty with physical access to the Jails and applicable County inmates in order that Liberty can provide services pursuant to the EASS Agreement. Access may also include the provision of telehealth services as determined by Liberty.
2. To provide 2.0 full time equivalent (FTE) appropriately trained and qualified deputy Sheriffs to escort EASS inmates to treatment areas and to protect Liberty staff while they are providing services according to Liberty’s schedule.
3. To provide training for Liberty staff in all relevant security and jail policies of the Sheriff’s Department so that Liberty staff may function consistently with those policies.

4. To provide all necessary transportation for the inmates participating in the EASS program.
5. To provide full access to and full utilization by Liberty Personnel of the Jail's Medical Records System during the term of this Agreement and for seven (7) years thereafter, as well as access as required by the State of California or any other governmental or judicial entity, so all medical information of all individuals who have participated in the program is available, to the extent authorized by law.
6. To notify Liberty in advance of any inspections or reviews by any appropriate inspecting or reviewing entities.
7. To provide Liberty with a designated contact person and an additional back up person that Liberty can reach twenty-four (24) hours per day seven (7) days per week for emergencies and other important occurrences or communications. The County will provide individuals who have the authority to act immediately when safety requires immediate action.
8. To comply with all federal and state laws pertaining to the administration of the jails and keeping of inmates. County shall provide the inmates participating in the restoration program with all items, services and supplies which are supplied to all inmates at Jail. Except as otherwise set forth in this Agreement, Liberty will not be charged with, billed for or otherwise expected to provide inmates with the items the Sheriff is required to provide.
9. To provide and dispense oral psychotropic medications as prescribed by Liberty personnel. To provide support as necessary for injectable medications administered by Liberty personnel.

B. Duties of Liberty

1. To adhere to all the rules, policies and regulations of the Jails.
2. To appoint an individual who will be available during Liberty's EASS Service Hours, as a liaison to communicate with County on matters relating to this Agreement.
3. Liberty personnel shall remain in compliance with all applicable state and/or federal licensing requirements applicable to physicians, mental health providers or other providers providing EASS services under the EASS Agreement.
4. To timely remit payment to the County in accordance with Section C.

C. Term and Termination

This Agreement shall commence on October 23, 2023 and continue until October 22, 2026, unless terminated earlier pursuant to this section.

Either party may terminate this agreement, with or without cause, upon written notice to the other party, such termination shall take effect 180 days after receipt of written notice.

Notwithstanding anything set forth above, Liberty may terminate or reduce the size of this Agreement at any time upon thirty (30) days written notice to County in the event its contract with CA- DSH is terminated, reduced, or if required funding is not approved.

D. Consideration

County shall issue a monthly invoice and Liberty shall pay County \$16,666.00 per month for 2.0 FTE deputies to provide support for the EASS staff. In addition, Liberty shall reimburse the County for its actual direct costs for psychotropic medications that are administered to the inmates as prescribed by Liberty physicians pursuant to their participation in the EASS program. An invoice for the County's monthly costs for psychotropic medications that are administered to the inmates participating in the EASS program shall be submitted in writing monthly by the County to Liberty. Liberty shall pay County within 45 days of receipt of Liberty's program reimbursement for the invoiced month from the CA DSH. With respect to payment to the County, this provision shall survive termination of this Agreement.

E. Relationship of the Parties—Independent Contractor

Both parties hereto, in the performance of this Agreement, shall act in an individual capacity and not as agents, employees, partners, joint venturers or associates of one another. The employees or agents of one party shall not be deemed or construed to be the employees or agents of the other party for any purposes whatsoever. Neither party will assume liability for any injury (including death) to any persons, or damage to any property, arising out of the acts or omissions of the agents, employees or subcontractors of the other party. Each party shall be responsible for providing all necessary unemployment and workers' compensation insurance for their respective employees.

F. Notices

Whenever any notice, statement or other communication is required under this Agreement, it shall be sent to the following addresses, unless otherwise specifically advised.

Notices to Liberty shall be sent to:

Liberty Healthcare of California, Inc.
Attn: President
401 E. City Ave., Ste. 820
Bala Cynwyd, PA 19004

Notices to the County shall be sent to:

Michael del Rosario, Director of
Correctional Health Services
300 Bradford Street
Redwood City, CA 94063

G. Entire Agreement

This Agreement constitutes the entire agreement between the parties hereto, pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understandings, negotiations and discussions, whether written or oral, of the parties, and there are no representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. No supplement, modification, or waiver of this Agreement shall be binding unless executed in writing by authorized representatives of the parties to be bound thereby.

H. Contract Requirements

1. Legality and Severability

The parties' actions under the Agreement shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. If a provision of the Agreement is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

2. Iran Contracting Act of 2010

In accordance with Public Contract Code section 2204(a), Liberty certifies that at the time the proposal is submitted, Liberty is not identified on a list created pursuant to subdivision (b) of Public Contract Code section 2203 (<http://www.dgs.ca.gov/pd/Resources/PDLegislation.aspx>) as a person (as defined in

Public Contract Code section 2202(e)) engaging in investment activities in Iran described in subdivision (a) of Public Contract Code section 2202.5, or as a person described in subdivision (b) of Public Contract Code section 2202.5, as applicable. Liberty understands that making a false certification may subject Liberty to civil penalties, termination of existing contract, and ineligibility to bid on a contract for a period of three (3) years in accordance with Public Contract Code section 2205. **Liberty agrees that signing this Agreement shall constitute the required certification.**

3. Vendor Primary Contact

Liberty will designate an individual to serve as the primary point of contact, for the Agreement. Liberty will also designate a back-up point of contact in the event the primary contact is not available.

4. Change of Address

Liberty shall notify the County in writing of any change in mailing address within thirty (30) business days of the change.

5. Duration of Terms

This Agreement, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Agreement.

6. Time of the Essence

Time is of the essence in performance of this Agreement and of each of its provisions.

7. Strict Performance

Failure by a party to insist upon the strict performance of any of the provisions of this Agreement by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Agreement thereafter.

8. Mutual Covenants

The parties to this Agreement mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of "good faith" and "fair dealing".

9. County Representative

The County Sheriff Office or their designee shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the

Services/Scope of Work by Contractor.

10. Licenses, Permits, and/or Certifications

Liberty shall ensure that it has all necessary licenses, permits and/or certifications required by Federal, State, County, and municipal laws, ordinances, rules and regulations (including, but not limited to: CA Title 15 and correctional community standards for mental healthcare as per NCCHC, IMQ, and ACHSA guidelines), to the extent applicable to Liberty's provision of EASS services. Liberty shall maintain these licenses, permits, and/or certifications in effect for the duration of this Agreement.

11. Conflict of Interest

Liberty shall make reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Liberty shall make a reasonable effort to prevent employees, vendors, or members of its governing body from using their positions for purposes that are, or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. This provision shall not be construed to prohibit employment of persons with whom Liberty's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant. In addition, Liberty shall make reasonable efforts to ensure its officers, employees or subcontractors do not violate any applicable state or federal conflict of interest laws or regulations.

12. Improper Consideration

Liberty shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to, cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Agreement. The County, by written notice, may immediately terminate any Agreement if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once an Agreement has been awarded. Liberty shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Liberty. The report shall be made to the supervisor or manager charged with supervision of the employee or to the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

13. Damage to County Property, Facilities, Buildings or Grounds

Liberty shall repair, or cause to be repaired, at its own cost, all damage to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Liberty or employees or agents of Liberty. Such repairs shall be made immediately after Liberty becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

14. Drug and Alcohol-Free Workplace

In recognition of individual rights to work in a safe, healthful and productive workplace, as a material condition of this agreement, Liberty agrees that Liberty and the Liberty's employees, while performing service for the County, on County property, or while using County equipment:

- a. Shall not be in any way impaired because of being under the influence of alcohol or a drug.
 - b. Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal drug.
 - c. Shall not sell, offer, or provide alcohol or a drug to another person.
- This shall not be applicable to a Vendor or Vendor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

Liberty shall inform all employees that are providing their services pursuant to this Agreement on County property, or using County equipment, of the County's objective of a safe, healthful and productive workplace and the prohibition of drug or alcohol use or impairment from same while performing such service for the County. The County may terminate for default or breach of this agreement with the County, if Liberty or Liberty's employees are determined by the County not to be in compliance with above.

15. Non-Discrimination

Liberty shall not in any way discriminate against any person because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, sexual orientation, age, or military and veteran status. Liberty shall include a clause to this effect in all its pertinent subcontracts. Liberty and any subcontractors shall also comply with all applicable provisions of the Americans with Disabilities Act of 1990.

16. Employment Discrimination

During the term of the Agreement, Liberty shall not willfully discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender identity, gender expression, sexual orientation, age, or military and veteran status. Liberty shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VII of the Civil Rights Act of 1964, the California Fair Housing and Employment Act (Gov. Code 12900 et. Seq), the American with Disabilities Act of 1990 (42 U.S. C. S1210 et seq.) and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

17. Informal Dispute Resolution

In the event of any dispute, claim, question or disagreement arising from or relating to this Agreement or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties. In the event of a dispute or a conflict among documents, the following shall be the precedence and order:

- a. First, the body of this Agreement.
- b. Second, all other written documentation and correspondence pertaining to this Agreement.

18. The Liberty- County Business Associate Addendum which is attached hereto and made part hereof shall hereinafter be referred to as Exhibit "A".

19. The County- Liberty Business Associate Addendum which is attached hereto and made part hereof shall hereinafter be referred to as Exhibit "B".

I. Indemnification and Insurance Requirements

Indemnification

Liberty agrees to indemnify and hold harmless the County and its authorized officers, employees, agents and volunteers ("Indemnitees") from any and all claims, actions, losses, damages, and/or liability arising out of or in connection with any act, error or omission or any failure by Liberty to perform under this Agreement from any cause whatsoever, including any costs or expenses incurred by County on account of any claim except where such indemnification is prohibited by law.

County agrees to indemnify and hold harmless Liberty and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, and/or liability arising out of or in connection with any act, error or omission or any failure by County to perform under this Agreement from any cause whatsoever, including any costs or expenses incurred by Liberty on account of any claim except where such indemnification is prohibited by law.

In the event that Liberty and/or the County are determined to be comparatively at fault for any claim, action, loss or damage, which results from their respective obligations under this Agreement, the County and/or Liberty shall indemnify the other to the extent of its comparative fault.

Proof of Coverage

Liberty shall furnish Certificates of Insurance to the County Department administering the Agreement evidencing the insurance coverage at the time the contract is executed, additional endorsements, as required shall be provided prior to the commencement of

performance of services hereunder, which certificates shall provide that such insurance shall not be terminated or expire without thirty (30) days written notice to the Department, and Liberty shall maintain such insurance from the time Liberty commences performance of services hereunder until the completion of such services.

Insurance Specifications

Liberty agrees to provide insurance set forth in accordance with the requirements herein. If Liberty uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, Liberty agrees to amend, supplement or endorse the existing coverage to do so. The type(s) of insurance required is determined by the scope of the contract services.

Without in anyway affecting the indemnity herein provided and in addition thereto, Liberty shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

Workers' Compensation/Employers Liability

A program of Workers' Compensation insurance or a State approved Self-Insurance Program in an amount and form to meet all applicable requirements of the Labor Code of the State of California, including Employer's Liability with \$1,000,000 limits, covering all persons providing services on behalf of Liberty and all risks to such persons under this Agreement. If Liberty has no employees, it may certify or warrant to County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management. With respect to vendors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

Commercial/General Liability Insurance

Liberty shall carry General Liability Insurance covering all operations performed by or on behalf of Liberty providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations)
- d. Personal Injury
- e. Contractual liability
- f. \$2,000,000 general aggregate limit

Automobile Liability Insurance

Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a

combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

Umbrella Liability Insurance

An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements.

Professional Services Requirements

Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim or occurrence and two million (\$2,000,000) aggregate limits

or

Errors and Omissions Liability Insurance with limits of not less than one million (\$1,000,000) and two million (\$2,000,000) aggregate limits. If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the start of the Agreement work.

J. Correction of Performance Deficiencies

1. Failure by either party to comply with any of the provisions, covenants, requirements or conditions of this Agreement shall be a material breach of this Agreement.
2. In the event of a non-cured breach, the other party may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Agreement:
 - a. Afford the alleged breaching party a time period within which to cure the breach; and/or
 - b. Terminate this Agreement.

K. Force Majeure

Either party shall not be liable for failure to perform or for any damages under this Agreement if such failure to perform arises out of causes beyond the control and without the fault or negligence of either party. Such causes may include, but are not limited to, acts of God, acts of the public enemy, fires, floods, and unusually severe weather. Either party shall not be liable for any failure to act if it reasonably believed such action would have violated any law, rule or regulation. Such nonperformance shall not be deemed to be a breach of this Agreement.

*****END OF SECTION*****

County of San Mateo

Michael del Rosario
MICHAEL DEL ROSARIO
DIRECTOR, CORRECTIONAL
HEALTH SERVICES
Date: 11/1/2023

Liberty Healthcare of California, Inc.

DocuSigned by:
Francis M. Ysla, MD
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Francis Ysla, M. D.
President
11/1/2023 | 2:40 PM EDT
Date: _____

EXHIBIT "A"
BUSINESS ASSOCIATE ADDENDUM
TO THE SERVICES AGREEMENT

This Business Associate Addendum (the or this "Addendum") is made and entered into by and between Liberty Healthcare of California, Inc. ("Liberty") and the County of San Mateo ("Business Associate") (each a "Party" and collectively the "Parties").

WHEREAS, Liberty and Business Associate have entered into a service agreement (referred to herein as the "Agreement");

WHEREAS, pursuant to the Agreement, Business Associate will provide certain services to Liberty, including services requiring Business Associate to create, receive, maintain, transmit, use, disclose, access, and/or store PHI (as defined below);

WHEREAS, the services provided by Business Associate to Liberty may include the creation, receipt, maintenance, or transmission of Protected Health Information as defined and governed by the Health Insurance Portability and Accountability Act of 1996, as amended by the Health Information Technology for Economic and Clinical Health Act, Pub. L. No. 111-5 (the "HITECH Act") and these Acts' implementing Privacy, Security, Breach Notification and Enforcement Rules found at 45 C.F.R. Parts 160 and 164, as may be amended from time to time (All statutes and regulations referenced in this Whereas clause shall be collectively referred to herein as "HIPAA" for ease of reference.); and

WHEREAS, Liberty and Business Associate desire to modify the Agreement to include certain provisions required by HIPAA.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein and upon provision of PHI by Liberty to Business Associate under the Agreement in reliance on this Addendum, the Parties agree as follows:

1. **Definitions.** For purposes of this Addendum, the terms below shall have the meanings given to them in this Section.
 - a. **Breach Notification Rule** shall mean the regulations and applicable subparts found at 45 C.F.R. Part 164.
 - b. **Breach of Unsecured PHI** shall have the meaning given to the terms "Breach" and "Unsecured Protected Health Information" at 45 C.F.R. § 164.402.
 - c. **Covered entity** shall have the meaning given to that term at 45 C.F.R. § 160.103.
 - d. **Data Aggregation** shall have the meaning given to that term at 45 C.F.R. § 164.501.
 - e. **De-Identify** shall mean to alter the PHI such that the resulting information meets the requirements described in 45 C.F.R. § 164.514(a) and (b).
 - f. **Effective Date** shall mean the effective date of the Agreement or March 26, 2013 (HIPAA Omnibus Final Rule effective date), whichever is later.
 - g. **Electronic Protected Health Information or Electronic PHI** shall have the meaning given to that term at 45 C.F.R. § 160.103.
 - h. **HHS** shall mean the U.S. Department of Health and Human Services.
 - i. **HIPAA Privacy Rule** shall mean the regulations and applicable subparts found at 45 C.F.R. Parts 160 and 164, as may be amended from time to time.
 - j. **HIPAA Security Rule** shall mean the regulations and applicable subparts found at 45 C.F.R. Parts 160 and 164, as may be amended from time to time.
 - k. **Protected Health Information or PHI** shall mean information created, received, transmitted or maintained in any form or medium on behalf of Liberty, including demographic information collected from an individual, that

- (i) is created or received by a health care provider, health plan, employer, or health care clearinghouse; and
- (ii) 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 (a) identifies the individual or (b) with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

I. **Required by Law** shall have the meaning given to that term at 45 C.F.R. § 164.103.

The terms used in this Addendum that are not otherwise defined shall have the meaning assigned to those terms in HIPAA and its corresponding guidance(s). To the extent HIPAA or a guidance is amended, this Addendum shall be modified automatically (with regard to the Addendum's defined terms and undefined terms) to correspond to the meaning of the terms as defined in HIPAA and/or applicable guidance.

2. **Use and Disclosure of PHI.**

- a. Except as otherwise provided in this Addendum, Business Associate may create, maintain, receive, transmit, store, use or disclose PHI as reasonably necessary to provide the services described in the underlying Agreement, or as otherwise permitted or required of Business Associate by this Addendum or as Required by Law.
- b. To the extent that Business Associate will carry out a covered entity's obligations under the HIPAA Privacy Rule, Business Associate shall comply with the requirements of the HIPAA Privacy Rule in performance of such obligation.
- c. Except as otherwise limited by this Addendum, Business Associate may perform Data Aggregation services relating to the health care operations for Liberty to the extent such services are required in the Agreement.
- d. Except as otherwise limited by this Addendum, Liberty authorizes Business Associate to use the PHI in its possession for the proper management and administration of Business Associate's business and to carry out its legal responsibilities. Business Associate may disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided that (i) such disclosures are Required by Law; or (ii) Business Associate obtains, in writing, prior to making any disclosure to a third party (a) reasonable assurances from such third party that the PHI will be held confidential as provided under this Addendum and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to such third party; and (b) an agreement from such third party to notify Business Associate immediately of any potential breaches of the confidentiality of the PHI or Breach of Unsecured PHI.
- e. Business Associate shall not use or disclose PHI in a manner other than as provided in this Addendum or as Required by Law. Business Associate will not use or disclose PHI in any manner that would violate applicable laws or regulations, including without limitation, HIPAA (as may be amended from time to time) if such use or disclosure were to be done by Liberty.
- f. Business Associate shall not be allowed to use PHI to create de-identified PHI and shall not be allowed to disclose de-identified PHI, unless for the benefit of Liberty and unless expressly allowed by the Agreement.
- g. Business Associate agrees to comply with 45 C.F.R. § 164.502 and agrees not to sell PHI (including but not limited to patient email addresses or other demographic/financial information), limited data sets (as defined by the HIPAA Privacy Rule) or De-identified PHI to any third party.

- h. Upon request, Business Associate shall make available to Liberty (or other designee) any of Liberty's PHI or PHI related to the Service Agreement that Business Associate, or any of Business Associate's agents or subcontractors, have in their possession in the time, format and manner required by Liberty at no additional cost to Liberty.
- i. Business Associate agrees to comply with HIPAA minimum necessary requirements at 45 C.F.R. § 164.502(b), as may be amended from time to time.

3. Medical Records Requirements:

- a. Agree that all mental health records created by County and maintained in the Counties record system are the property of the County;
- b. Maintain mental health records in accordance with all applicable laws, regulations and rules for every inmate receiving treatment in the EASS.
- c. Adhere to applicable informed consent regulations and standards;
- d. Business Associate will enter clinical documentation into Business Associate's electronic health system (EHR) for clinical documentation and will also enter medication orders in the CHS EHR. Business Associate's other Clinical documentation may be scanned into the CHS EHR as required for coordination of care purposes.

4. Safeguards Against Misuse of PHI. Business Associate shall use appropriate safeguards to prevent the use or disclosure of PHI other than as provided by this Addendum and in compliance with HIPAA. Business Associate specifically agrees to comply with the HIPAA Privacy Rule, the HIPAA Security Rule and the Breach Notification Rule that are directly applicable to Business Associate. Business Associate agrees to use appropriate safeguards to comply with 45 C.F.R. Part 164 Subpart C with respect to Electronic PHI to prevent the use or disclosure of Electronic PHI, other than as provided for by this Addendum. Business Associate represents and certifies that it has conducted a HIPAA Security Rule risk analysis and has taken appropriate measures to assess and manage security risks. Business Associate agrees to take reasonable steps to ensure that the actions or omissions of its workforce, agents or Subcontractors do not cause Business Associate to breach the terms of this Addendum.

5. Monitoring and Reporting Disclosures and Breaches of PHI. Business Associate agrees to and represents and warrants that it will exercise reasonable diligence to detect a Breach of Unsecured PHI and to report to Liberty Privacy Officer any potential Breach of Unsecured PHI. Specifically, Business Associate shall report to Liberty in writing any unauthorized use or disclosure of PHI, including but not limited to the following: (1) any Security Incident involving Electronic PHI of which it becomes aware, and/or (2) any potential Breach of Unsecured PHI. Business Associate agrees to report any such unauthorized use or disclosure within twenty-four (24) hours of becoming aware of such use or disclosure and agrees to provide such report in the manner and with the content required by HIPAA and Liberty. Business Associate agrees that it shall be the sole decision of Liberty to correspond with or notify individuals regarding potential or actual Breaches of Unsecured PHI, unless Liberty directs Business Associate to make such correspondences or notices. Liberty reserves the right to direct Business Associate to notify individuals at Business Associate's expense of a Breach of Unsecured PHI that occurs as the result of Business Associate's actions or omissions.

6. HIPAA-HITECH Compliance. Notwithstanding additional provisions specifically required by this Addendum, Business Associate agrees to and represents and warrants that it will comply with all mandatory requirements of HIPAA that apply to Business Associate, as issued and as may be amended from time to time.

7. Mitigation of Disclosures of PHI. Business Associate shall mitigate, to the greatest extent

practicable, any harmful effect that is known to Business Associate of any use or disclosure of PHI by Business Associate or its agents or Subcontractors in violation of the requirements of this Addendum.

8. **Agreements with Agents or Subcontractors.** Business Associate shall ensure that any of its agents or Subcontractors that have use, disclose, create, receive, maintain or have access to PHI agree to the same or substantially similar terms and conditions that apply to Business Associate in this Addendum.
9. **Access to PHI by Individuals.**
 - a. Upon request, Business Associate agrees to furnish Liberty, at no additional cost, with PHI maintained in a Designated Record Set in the time, manner, form and format (including an electronic copy) requested by Liberty to allow Liberty to comply with 45 C.F.R. § 164.524 (as may be amended from time to time) Such access shall be furnished no later than 5 calendar days after a request.
 - b. In the event any individual (or individual's personal representative) requests access to the individual's PHI directly from Business Associate, Business Associate shall forward such request to Liberty five (5) calendar days of receipt, unless the Agreement directs otherwise. Business Associate shall respond to the individual's request only upon direction by Liberty or if required by the Agreement. The decision to disclose PHI requested by an individual or a personal representative shall be determined solely by the Liberty unless access response is delegated to Business Associate by the terms of the Agreement.
10. **Amendment of PHI.**
 - a. Upon request by Liberty, Business Associate shall amend PHI about an individual in a Designated Record Set that is maintained by, or otherwise within the possession of, Business Associate in the manner and time frame to allow Liberty to comply with 45 C.F.R. § 164.526 (as may be amended from time to time) at no additional cost to Liberty. Such amendment shall be made no later than 5 calendar days after request.
 - b. In the event any individual (or individual's personal representative) requests that Business Associate amend such individual's PHI in a Designated Record Set, Business Associate shall forward such request to Liberty within five (5) calendar days of receipt. Any amendment of, or decision not to amend, the PHI as requested by an individual shall be determined by Liberty, unless amendment response is delegated to Business Associate by the terms of the Agreement.
11. **Accounting of Disclosures.**
 - a. Business Associate shall make available information related to such disclosures as would be required for Liberty to respond timely to a request for an accounting of disclosures pursuant to 45 C.F.R. § 164.528 (as may be amended from time to time). Such information shall be provided no later than 5 calendar days after a request.
 - b. Business Associate shall document any disclosures of PHI made by Business Associate, in the same manner required of Liberty by 45 C.F.R. § 164.528. Business Associate hereby agrees to implement an appropriate recordkeeping system to enable it to comply with the requirements of this Section. Business Associate agrees to retain such records for a minimum of six (6) years.
 - c. Business Associate shall furnish to Liberty (or to the individual requestor only upon Liberty's direction) information collected in accordance with this Section, in the time and manner designated by Liberty, to permit Liberty to comply with 45 C.F.R. § 164.528 (as may be amended from time to time).
 - d. In the event an individual delivers a request for an accounting directly to Business Associate, Business Associate shall within five (5) calendar days forward such request to Liberty. Liberty shall receive request and shall determine the manner for preparing and delivering any accounting requested, unless response to requests for accountings

of disclosures is delegated to Business Associate in the Agreement.

12. **Request for Restrictions/Confidential Communications.** Upon notice by Liberty, Business Associate agrees to comply with any restriction to the use or disclosure of PHI or confidential communications that Liberty has agreed to in accordance with 45 C.F.R. § 164.522(a) and (b), or as otherwise required of Liberty by HIPAA.

Further, Business Associate agrees to comply with an individual's request for restriction of disclosure to the individual's health plan for purposes of payment or health care operations, if the PHI to be disclosed pertains solely to a health care item or service for which a Liberty has been paid out of pocket in full.

13. **Availability of Books and Records.** Business Associate shall make available its internal practices, books, agreements, records, and policies and procedures relating to the use and disclosure of PHI, upon request, to HHS for purposes of determining compliance with HIPAA and this Addendum. Notwithstanding the foregoing, prior to any such disclosure to HHS or any other federal or state agency, Business Associate shall notify Liberty immediately of such request and shall furnish Liberty with copies of such request and Business Associate's response. Liberty and Business Associate agree to work together in responding to such request.

Upon reasonable notice, Liberty may inspect the internal practices, facilities, systems, books, records, and policies and procedures of Business Associate as they relate to the Services to monitor compliance with this Agreement. Business Associate shall promptly remedy any material violation of this Agreement found by Liberty.

14. **Term and Termination.**

- a. This Addendum shall become effective on the Effective Date and shall continue in effect until all obligations of the Parties have been met under the Agreement and under this Addendum.
- b. Liberty may terminate immediately this Addendum, the Agreement, and any other related agreements if Liberty makes a determination that Business Associate has breached a material term of this Addendum. Liberty has a right to allow Business Associate to cure such material breach and continue under the terms of the Agreement and Addendum if Liberty deems appropriate.
- c. Upon termination of the Agreement for any reason, all PHI maintained by Business Associate shall be returned to Liberty (or other party upon Liberty's direction) by Business Associate in the manner and format required by Liberty at no additional cost to Liberty. Business Associate shall not retain any copies of such information, unless instructed by Liberty or required by the Agreement. This provision shall also apply to PHI in the possession of Business Associate's agents and subcontractors. If return of the PHI is not feasible, Business Associate shall furnish Liberty notification, in writing, of the conditions that make return infeasible. Upon sole determination by Liberty that return or destruction of the PHI is infeasible, Business Associate agrees to extend the protections of this Addendum and rights/obligations under this Addendum at no additional cost for as long as Business Associate retains such information and agrees to limit further uses and disclosures. This Section shall survive any termination of this Addendum.

15. **No Agency Relationship.** Parties expressly agree and assert that no agency relationship is created by this Addendum or the Agreement with regard to Business Associate's HIPAA obligations. Parties agree that each individual Party shall maintain its own independent HIPAA compliance obligations. Parties will be providing their services as separate legal entities and independent contractors. Business Associate acknowledges that any Breaches of Unsecured PHI shall be considered to be independent acts or omissions by Business Associate and beyond the scope of work/duties anticipated by Liberty for the Agreement; any uses or disclosures of PHI not in compliance with the de-identification, marketing and sale of PHI prohibitions of this Addendum and/or in violation of the minimum necessary

standards or other HIPAA violations shall not be anticipated by Liberty, and as such, Business Associate shall not be authorized to act as Liberty's agent in this regard. Liberty reserves the right to argue no agency relationship existed for any/all acts/omissions of Business Associate.

16. **Secure PHI; Encryption of PHI.** Business Associate agrees to secure PHI in compliance with the safe harbors set forth in HHS Guidance "Specifying the Technologies and Methodologies that Render PHI Unusable, Unreadable, or Indecipherable," as may be amended from time to time.
17. **Indemnification.** Business Associate hereby agrees to indemnify, defend, and hold harmless Liberty, its officers, employees, workforce members and agents from and against any and all claims, losses, damages, costs, expenses, liabilities, assessments, judgments, administrative fines or deficiencies of any nature whatsoever, including, without limitation, reasonable attorneys' fees and other costs and expenses, suits, actions, or proceedings, which may arise out of, result from, or constitute any Breach of any Unsecured PHI, or breach of contract, representation, warranty, or covenant contained in this Addendum. Business Associate further agrees to indemnify and hold harmless Liberty from any liability for claims for damages or injury against Liberty that are caused by or result from negligent acts or omissions by Business Associate in the performance of its HIPAA duties and obligations, together with all costs and expenses, including reasonable attorneys' fees.
18. **Insurance.** Business Associate shall maintain cyber security and privacy liability insurance to cover expenses (including, but not limited to, notification expenses, fraud alert expenses, mitigation of damages expenses, consultant fees, investigation/litigation costs, legal costs, etc.) associated with a Breach of Unsecured PHI and other privacy and security violations, including state law privacy and security violations. Business Associate shall provide Covered Entity evidence of such coverage upon request.
19. **Marketing and Fundraising.** Business Associate agrees to comply with the HIPAA requirements and prohibitions applicable to covered entities regarding marketing and fundraising, including any opt-out, notice and authorization requirements. Business Associate shall not use or disclose PHI for Marketing purposes unless requested to do so by Liberty as part of the Service Agreement.
20. **Policies and Procedures; Training; Documentation.** Business Associate agrees to maintain policies and procedures to comply with HIPAA, to train its workforce on such policies, and to document such compliance, to the extent required by HIPAA. Business Associate agrees to maintain documentation as required by law.
21. **Overseas Data and Cloud Computing.** Business Associate agrees not to create, receive, maintain, transmit, use, disclose, access, store or otherwise outsource PHI physically outside of the United States of America and its territories. Business Associate agrees not to use cloud computing models, without executing with the cloud vendor a HIPAA-compliant Business Associate Agreement/Addendum containing substantially the same terms and conditions as this Addendum.
22. **Representation and Warranty.** Business Associate represents and warrants that it is in compliance with the regulatory requirements of this Addendum and the HIPAA Privacy Rule, Security Rule and Breach Notification Rule. Business Associate expressly acknowledges that it will be subject to the Enforcement Rule and both criminal and civil penalties for violations of this Addendum or HIPAA by Business Associate and potentially by Business Associate's subcontractors, among other penalties that maybe applicable under the law.
23. **Regulatory References.** A reference in this Addendum to a section in HIPAA shall mean a reference to the provision as in effect or as amended.
24. **State Law.** Business Associate acknowledges it shall be responsible for complying with all applicable state laws regarding the confidentiality, integrity and availability of personal information.

Business Associate acknowledges and agrees that it is responsible for the notification of a

breach of personal information as defined by any applicable state data breach law. Business Associate shall, prior to making such notification, report the reasons for such notification and provide a copy of the intended notification to Liberty.

25. Miscellaneous.

- a. Governing Law. This Addendum shall be governed and construed under the laws of the state that governs the Agreement, other than its conflicts of laws principles.
- b. No Third Party Beneficiaries. Except as expressly stated herein or as provided by law, this Agreement shall not create any rights in favor of any third party.
- c. Amendments; Waiver. Except as otherwise provided herein, this Addendum may not be modified, nor shall any provision be waived or amended, except in writing duly signed by authorized representatives of the Parties. The Parties agree to modify this Addendum as necessary to comply with HIPAA or other legal or contractual obligations. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.
- d. Effect of Addendum. To the extent the Parties have previously entered into a business associate relationship relative to the Agreement and such relationship still exists in any manner through a stand-alone business associate agreement, business associate terms/provisions/sections incorporated into the Agreement, a business associate amendment/addendum/appendix, surviving termination obligations or any other contracting mechanism that obligated Business Associate as a business associate (collectively referred to as "BA Terms"), this Addendum hereby supersedes, updates and replaces any such BA Terms or business associate obligations.
- e. Interpretation. In the event of inconsistency between the provisions of this Addendum and mandatory provisions of HIPAA, as amended, or their interpretation by any court or regulatory agency with authority over either Party hereto, HIPAA, as interpreted by such court or agency, shall control. Where the provisions of this Addendum are different than those mandated by HIPAA, but are nonetheless permitted by such HIPAA Privacy Rule, Security Rule, and Breach Notification Rule as interpreted by courts or agencies, the provisions of this Addendum shall control.
- f. Conflicts. This Addendum is a part of and subject to the terms of the Service Agreement, except that to the extent any terms of this Addendum conflict with any term of the Service Agreement, the terms of this Addendum shall govern unless otherwise stated in this Addendum.
- g. Notices. All notices, requests and demands or other communications to be given hereunder to a Party shall be made via first class mail, registered or certified or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below:

If to Liberty, to:
401 City Avenue, Suite 820,
Bala Cynwyd, PA 19004

If to Business Associate, to:
Michael del Rosario, Director of
Correctional Health Services
300 Bradford Street
Redwood City, CA 94063