COUNTY OF MARIN

DEPARTMENT OF HEALTH AND HUMAN SERVICES
DIVISION OF COMMUNITY HEALTH
MENTAL HEALTH AND SUBSTANCE USE SERVICES

REQUEST FOR LETTERS OF INTEREST (RFI)

For the Provision of Sober Living for the AB109 Population

RFI-HHS-2012-11

DATE ISSUED: **April 25, 2012**
DEADLINE FOR SUBMISSIONS: **May 16, 2012 (3:00pm)**

Workers' Compensation:
The Contractor acknowledges the State of California requires every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code. If Contractor has employees, a copy of the certificate evidencing such insurance, a letter of self-insurance, or a copy of the Certificate of Consent to Self-Insure shall be provided to County prior to commencement of work.

Errors and Omissions, Professional Liability or Malpractice Insurance.
Contractor may be required to carry errors and omissions, professional liability or malpractice insurance.

All policies shall remain in force through the life of this Contract and shall be payable on a "per occurrence" basis unless County specifically consents to a "claims made" basis. The insurer shall supply County adequate proof of insurance and/or a certificate of insurance evidencing coverages and limits prior to commencement of work. Should any of the required insurance policies in this Contract be cancelled or non-renewed, it is the Contractor's duty to notify the County immediately upon receipt of the notice of cancellation or non-renewal.

If Contractor does not carry a required insurance coverage and/or does not meet the required limits, the coverage limits and deductibles shall be set forth on a waiver, **Exhibit C**, attached hereto.

Failure to provide and maintain the insurance required by this Contract will constitute a material breach of this Contract. In addition to any other available remedies, County may suspend payment to the Contractor for any services provided during any time that insurance was not in effect and until such time as the Contractor provides adequate evidence that Contractor has obtained the required coverage.

7. ANTI DISCRIMINATION AND ANTI HARASSMENT:

Contractor and/or any subcontractor shall not unlawfully discriminate against or harass any individual including, but not limited to, any employee or volunteer of the County of Marin based on race, color, religion, nationality, sex, sexual orientation, age or condition of disability. Contractor and/or any subcontractor understands and agrees that Contractor and/or any subcontractor is bound by and will comply with the anti discrimination and anti harassment mandates of all Federal, State and local statutes, regulations and ordinances including, but not limited to, County of Marin Personnel Management Regulation (PMR) 21.

8. SUBCONTRACTING:

The Contractor shall not subcontract nor assign any portion of the work required by this Contract without prior written approval of the County except for any subcontract work identified herein. If Contractor hires a subcontractor under this Contract, Contractor shall require subcontractor to provide and maintain insurance coverage(s) identical to what is required of Contractor under this Contract and shall require subcontractor to name Contractor and County of Marin as an additional insured under this Contract for general liability. It shall be Contractor's responsibility to collect and maintain current evidence of insurance provided by its subcontractors and shall forward to the County evidence of same.

9. ASSIGNMENT:

The rights, responsibilities and duties under this Contract are personal to the Contractor and may not be transferred or assigned without the express prior written consent of the County.

10. LICENSING AND PERMITS:

The Contractor shall maintain the appropriate licenses throughout the life of this Contract. Contractor shall also obtain any and all permits which might be required by the work to be performed herein.

11. BOOKS OF RECORD AND AUDIT PROVISION:

Contractor shall maintain on a current basis complete books and records relating to this Contract. Such records shall include, but not be limited to, documents supporting all bids, all income and all expenditures. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the work on this Contract. In addition, Contractor shall maintain detailed payroll records including all subsistence, travel and field expenses, and canceled checks, receipts and invoices for all items. These documents and records shall be retained for at least five years from the

completion of this Contract. Contractor will permit County to audit all books, accounts or records relating to this Contract or all books, accounts or records of any business entities controlled by Contractor who participated in this Contract in any way. Any audit may be conducted on Contractor's premises or, at County's option, Contractor shall provide all books and records within a maximum of fifteen (15) days upon receipt of written notice from County. Contractor shall refund any monies erroneously charged.

12. WORK PRODUCT/PRE-EXISTING WORK PRODUCT OF CONTRACTOR:

Any and all work product resulting from this Contract is commissioned by the County of Marin as a work for hire. The County of Marin shall be considered, for all purposes, the author of the work product and shall have all rights of authorship to the work, including, but not limited to, the exclusive right to use, publish, reproduce, copy and make derivative use of, the work product or otherwise grant others limited rights to use the work product.

To the extent Contractor incorporates into the work product any pre-existing work product owned by Contractor, Contractor hereby acknowledges and agrees that ownership of such work product shall be transferred to the County of Marin.

13. TERMINATION:

A. If the Contractor fails to provide in any manner the services required under this Contract or otherwise fails to comply with the terms of this Contract or violates any ordinance, regulation or other law which applies to its performance herein, the County may terminate this Contract by giving five (5) calendar days written notice to the party involved.

B. The Contractor shall be excused for failure to perform services herein if such services are prevented by acts of God, strikes, labor disputes or other forces over which the Contractor has no control.

C. Either party hereto may terminate this Contract for any reason by giving thirty (30) calendar days written notice to the other parties. Notice of termination shall be by written notice to the other parties and be sent by registered mail.

D. In the event of termination not the fault of the Contractor, the Contractor shall be paid for services performed to the date of termination in accordance with the terms of this Contract so long as proof of required insurance is provided for the periods covered in the Contract or Amendment(s).

14. APPROPRIATIONS:

The County's performance and obligation to pay under this Contract is contingent upon an annual appropriation by the Marin County Board of Supervisors, the State of California or other third party. Should the funds not be appropriated County may terminate this Contract with respect to those payments for which such funds are not appropriated. County will give Contractor thirty (30) days' written notice of such termination. All obligations of County to make payments after the termination date will cease.

Where the funding source for this Contract is contingent upon an annual appropriation or grant from the Marin County Board of Supervisors, the State of California or other third party, County's performance and obligation to pay under this Contract is limited by the availability of those funds. Should the funding source for this Contract be eliminated or reduced, upon written notice to Contractor, County may reduce the Maximum Cost to County identified in section 4 to reflect that elimination or reduction.

15. RELATIONSHIP BETWEEN THE PARTIES:

It is expressly understood that in the performance of the services herein, the Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent Contractor and not as officers, employees or agents of the County. Contractor shall be solely responsible to pay all required taxes, including but not limited to, all withholding social security, and workers' compensation.

16. AMENDMENT:

This Contract may be amended or modified only by written Contract of all parties.

17. ASSIGNMENT OF PERSONNEL:

The Contractor shall not substitute any personnel for those specifically named in its proposal unless personnel with substantially equal or better qualifications and experience are provided, acceptable to County, as is evidenced in writing.

18. JURISDICTION AND VENUE:

This Contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Marin County, California.

19. INDEMNIFICATION:

Contractor agrees to indemnify, defend, and hold County, its employees, officers, and agents, harmless from any and all liabilities including, but not limited to, litigation costs and attorney's fees arising from any and all claims and losses to anyone who may be injured or damaged by reason of Contractor's negligence, recklessness or willful misconduct in the performance of this Contract.

20. COMPLIANCE WITH APPLICABLE LAWS:

The Contractor shall comply with any and all Federal, State and local laws and resolutions: including, but not limited to the County of Marin Nuclear Free Zone, Living Wage Ordinance, and Board of Supervisors Resolution #2005-97 prohibiting the off-shoring of professional services involving employee/retiree medical and financial data affecting services covered by this Contract. Copies of any of the above-referenced local laws and resolutions may be secured from the Contract Manager referenced in section 21. In addition, the following NOTICES may apply:

1. **Pursuant to California Franchise Tax Board regulations, County will automatically withhold 7% from all payments made to vendors who are non-residents of California.**

2. **Contractor agrees to meet all applicable program access and physical accessibility requirements under State and Federal laws as may apply to services, programs or activities for the benefit of the public.**

3. **For Contracts involving any State or Federal grant funds, Exhibit D must be attached. Exhibit D shall consist of the printout results obtained by search of the Excluded Parties List System at www.epls.gov.**

Exhibit D - Debarment Certification

By signing and submitting this Contract, the Contractor is agreeing to abide by the debarment requirements as set out below.

- The certification in this clause is a material representation of fact relied upon by County.
- The Contractor shall provide immediate written notice to County if at any time the Contractor learns that its certification was erroneous or has become erroneous by reason of changed circumstances.
- Contractor certifies that none of its principals, affiliates, agents, representatives or contractors are excluded, disqualified or ineligible for the award of contracts by any Federal agency and Contractor further certifies to the best of its knowledge and belief, that it and its principals:
    - Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal Department or Agency;
    - Have not been convicted within the preceding three-years of any of the offenses listed in 2 CFR 180.800(a) or had a civil judgment rendered against it for one of those offenses within that time period;
    - Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or Local) with commission of any of the offenses listed in 2 CFR 180.800(a);
    - Have not had one or more public transactions (Federal, State, or Local) terminated within the preceding three-years for cause or default.

- The Contractor agrees by signing this Contract that it will not knowingly enter into any subcontract or covered transaction with a person who is proposed for debarment, debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction.

- The Contractor to this Contract and any subcontractor will provide a debarment certification that includes the debarment clause as noted in preceding bullets above, without modification.

21. NOTICES:

This Contract shall be managed and administered on County's behalf by the Department Contract Manager named below. All invoices shall be submitted and approved by this Department and all notices shall be given to County at the following location:

Contract Manager: _____

Dept./Location: _____

Telephone No.: _____

Notices shall be given to Contractor at the following address:

Contractor: _____

Address: _____

Telephone No.: _____

22. ACKNOWLEDGEMENT OF EXHIBITS:

☒ ***Check applicable Exhibits***

			CONTRACTOR'S INITIALS
EXHIBIT A.	☐	**Scope of Services**	
EXHIBIT B.	☐	**Fees and Payment**	
EXHIBIT C.	☐	**Insurance Reduction/Waiver**	
EXHIBIT D.	☐	**Contractor's Debarment Certification**	
EXHIBIT E.	☐	**Subcontractor's Debarment Certification**	
OTHER REQUIRED EXHIBITS (HHS USE ONLY)	☐ ☐		

IN WITNESS WHEREOF, the parties have executed this Contract on the date first above written.

CONTRACTOR:

By: _____
Name: _____
Title: _____

APPROVED BY COUNTY OF MARIN:

By: _____

COUNTY COUNSEL REVIEW AND APPROVAL ***(required if template content has been modified)***

County Counsel: _____ **Date:** _____

EXHIBIT "A"
SCOPE OF SERVICES (required)

EXHIBIT "B"
FEES AND PAYMENT SCHEDULE (required)

EXHIBIT I

ALCOHOL, DRUG AND TOBACCO PROGRAMS

1. Services to be Performed:

1.1 Services and work provided by Contractor at the County's request under this Agreement will be performed in a timely manner, and in accordance with applicable federal and state statutes and regulations, including, but not limited to, sections 96.126, 96.127, 96.128, 96.131, and 96.132, and all references therefrom, of the Alcohol, Drug Abuse, and Mental Health Administration (ADAMHA) Reauthorization Act, Public Law 106-310, the State of California Alcohol and/or Other Drug Program Certification Standards, and any and all guidelines promulgated by the State Department of Alcohol and Drug Programs and the Marin County Department of Health and Human Services to serve special populations and groups, as applicable, County laws, ordinances, regulations and resolutions; and in a manner in accordance with the standards and obligations of Contractor's profession. Contractor shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of Contractor's obligations. The County shall maintain copies of all statutes, regulations, and guidelines for Contractor's use.

2. Program Evaluation:

2.1 Contractor shall maintain books, records, files, documents and other evidence directly pertinent to all work under this Agreement in sufficient detail to make possible an evaluation of services provided and compliance with State Department of Alcohol and Drug Programs Regulations, as applicable, and in accordance with accepted professional practice and accounting procedures for a minimum of four (4) years after the termination of the Agreement. Contractor agrees to extend to the State Department of Alcohol and Drug Programs and to the County and their designees the right to review and investigate records, programs, and procedures, as well as overall operation of Contractor's program with reasonable notice.

2.2 Formal evaluation of the program shall be made annually through a Provider Self-Audit and on-site visit. This evaluation shall result in a written report to the Contractor within fifteen (15) working days of the site visit. Any report that results from a site visit shall be submitted to the Contractor within fifteen (15) working days. Contractor shall submit a written response within thirty (30) working days of receipt of such report, and such response shall be part of the official written report provided for in this section.

2.3 Contractor shall meet the requirements of and participate in the management information system of the County Alcohol and Drug Program Office, and maintain fiscal, administrative, and programmatic records and such other data as may be required by the Chief of Alcohol and Drug Programs for program evaluation and research requirements.

3. Records:

3.1 Contractor and County mutually agree to maintain the confidentiality of Contractor's participant records, including billings, pursuant to Sections 11812(c) and 11879, Health and Safety Code, and Federal Regulations for Confidentiality of Alcohol and Drug Abuse Patient Records, dated June 9, 1987, the federal Health Insurance Portability and Accountability Act, and all other applicable State and Federal laws and any amendments. Contractor shall inform all its officers, employees, and agents of the confidentiality provisions of said regulations, and provide all necessary policies and procedures and training to ensure compliance.

4. Applicable Fee:

4.1 Contractor shall charge participant fees. No one shall be denied services based solely on ability or inability to pay.

4.2 Contractor shall perform eligibility and financial determinations in accordance with a fee schedule approved by the Chief of Alcohol and Drug Programs for this purpose. Individual income, expenses, and number of dependents shall be considered in formulating the fee schedule and in its utilization.

4.3 Contractor shall conduct community-centered fundraising activities, as appropriate.

5. Consideration:

5.1 Upon Contractor's completion of services under this Agreement to County's satisfaction, payment to Contractor shall be made monthly in accordance with the procedures set forth in Exhibits B and D, after receipt by County of billings made by Contractor on Provider Claim and Service Level Report forms. Format or other changes may be made by County to billing and report forms from time to time as needed and shall be furnished to Contractor for billing and reporting purposes. All billings and reports shall clearly reflect and in reasonable detail give information regarding the services for which the claim is being made. It is understood and agreed that County may withhold payment until receipt of billings and reports in the prescribed detail and format. Billings and reports shall be made and forwarded to County promptly at the end of each calendar month in order to reach the Division of Alcohol, Drug & Tobacco Programs, 10 N. San Pedro Rd., # 1013, San Rafael, CA 94903, not later than the 10th day of the month following the month in which the services for which billing is made were rendered. Payments received after that date

may result in a delay in payment until the next monthly billing cycle. The payment for the month of September may be withheld pending receipt of the preceding year's Cost Report on continuing services contracts.

5.2 Contractor shall provide County with an annual Cost Report no later than ninety (90) days after the termination of this Agreement. In addition to the annual Cost Report, Contractor shall furnish County, within one hundred and eighty (180) days of close of Contractor fiscal year, a certified copy of an Audit Report from an independent CPA firm. This Audit Report shall cover Contractor's fiscal year which most nearly coincides with County's fiscal year. Contractors receiving federal funds shall comply with Office of Management and Budget (OMB) Circular Number A-133, Uniform Administrative Requirements for Grants and Other Agreements with Institutions of Higher Education, Hospitals, and other Nonprofit Organizations. Cost Report settlements shall be made when a proper Cost Report has been submitted to the County. The findings of the annual Cost Report shall be subject to an audit by County and State. The State of California may make such audits as it deems necessary for the purpose of determining reimbursement due to the County.

6. Nondiscrimination:

6.1 Contractor shall develop and implement policies and procedures that ensure: nondiscrimination in the provision of services based on a diagnosis of Acquired Immune Deficiency Syndrome (AIDS) or AIDS-related Complex (ARC), or upon testing positive for Human Immunodeficiency Virus (HIV); the prohibition of the use of HIV antibody testing as a screening criterion for program participation; training of all staff and all participants in AIDS-related problems, issues, and special recovery needs; provision of information to all participants regarding high-risk behaviors, safer sex practices, and perinatal transmission of HIV infection; and development of procedures for addressing the special needs and problems of those individuals who test positive for antibodies to HIV. No individual shall be required to disclose his or her HIV status.

7. Assignability:

7.1 Except as otherwise provided in this section, Contractor shall not subcontract any portion of the performance contemplated and provided for herein without prior written approval of County. Any subcontractor(s), independent Contractor(s) or any type of agent(s) or employees performing or hired to perform any term or condition of this Agreement on behalf of Contractor, (hereinafter referred to as the "Secondary Parties"), as may be allowed by this Agreement, shall comply with and be bound by each term and condition of this Agreement. Furthermore, **Contractor shall be responsible for the Secondary Parties acts and satisfactory performance of the terms and conditions of this Agreement**.

8. Nondiscrimination:

8.1 Contractor and/or any permitted subcontractor, shall not unlawfully discriminate against any individual based on race, religious creed, color, national origin, ancestry, medical condition, marital status, sex, sexual orientation, age, condition of disability, or any statutorily protected status. Contractor and/or any permitted subcontractor understands and agrees that Contractor and/or any permitted subcontractor is bound by and will comply with the nondiscrimination mandates of all Federal, State and local statutes, regulations and ordinances. In the performance of the terms of this Agreement, Contractor shall not discriminate against any employee or applicant for employment, or against **any applicant for or beneficiary of services, because of race, sex, sexual orientation, HIV status, color, religion, ancestry, national origin, age, disability, or any other statutorily protected status.** Contractor shall take affirmative action to ensure that applicants are employed and that employees are treated fairly during employment without regard to their race, sex, sexual orientation, HIV status, color, religion, ancestry, national origin, age, or disability. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, lay-off or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship. Contractor shall post in conspicuous places, available to employees and applicants for employment, notices setting forth Fair Employment Practices outlined in this section. Contractor shall permit access to its records of employment, employment advertisements, application forms, and other pertinent data and records by the State Fair Employment Practice Commission, or any other agency of the State of California designated by the awarding authority, for the purpose of investigation to ascertain compliance with the Fair Employment Practices section of this Agreement.

9. CONTRACTOR'S COMPLIANCE WITH PROVISIONS OF STATE CONTRACT

9.1 The County receives funding from the California Department of Alcohol and Drug Programs pursuant to an annual contracting arrangement (hereinafter "State Contract"). The State Contract contains certain requirements pertaining to the privacy and security of personally identifiable information (hereinafter "PII") and/or protected health information (hereinafter "PHI") and requires that the County contractually obligate any of its subcontractors to also comply with these requirements. Contractor hereby agrees to be bound by, and comply with, any and all terms and conditions of the State Contract pertaining to the privacy and/or security of PII and/or PHI, a copy of which is attached to this Agreement as Attachment One.

9.2 Additionally, in the event the State Contract requires the County to notify the State of a breach of privacy and/or security of PII and/or PHI, Contractor shall, immediately upon discovery of a breach of privacy and/or security of PII and/or PHI by Contractor, notify County of such breach by telephone and email or facsimile. Contractor further agrees that it shall notify County of any such breaches prior to the time County is required to notify the State pursuant to the State Contract.

9.3 In the event the State Contract requires the County to pay any costs associated with a breach of privacy and/or security of PII and/or PHI, including but not limited to the costs of notification, Contractor shall pay on County's behalf any and all such costs arising out of a breach of privacy and/or security of PII and/or PHI by Contractor.

EXHIBIT M

BUSINESS ASSOCIATE AGREEMENT
TERMS AND CONDITIONS

To the extent Contractor is a business associate as defined under the Federal Health Insurance Portability and Accountability Act (HIPAA) and the HITECH Act, Contractor shall comply with the additional terms and conditions set forth in this Exhibit ("M") to the Professional Services Agreement. This Business Associate Agreement Exhibit "M" supplements and is made a part of the Professional Services Agreement ("Agreement") by and between the County of Marin, referred to herein as Covered Entity ("CE"), and _____, referred to herein as Business Associate ("BA"), to which this Exhibit "M" is an incorporated attachment.

RECITALS

CE and BA have entered into a business relationship through which BA may receive Protected Health Information ("PHI") (defined below) from CE or create, collect, transmit, retain, process or otherwise use PHI on behalf of CE pursuant to the terms of the Agreement

CE and BA intend to protect the privacy and provide for the security of PHI disclosed to, created by, or in any manner used by, BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

As part of the HIPAA Regulations, the Privacy Rule and the Security Rule (defined below) require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e) and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Exhibit "M".

In consideration of the mutual promises below and the exchange of information pursuant to this Exhibit "M", the parties agree as follows:

1. **Definitions**

   a. **Breach** shall have the meaning given to such term under the HITECH Act [42 U.S.C. Section 17921].

   b. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103. For purposes of this Exhibit "M", use of the term Business Associate includes all Contractor agents, employees, contractors or other associates providing services or assistance to Contractor under the Agreement.

   c. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103. For purposes of this Agreement, this term is intended to mean the County of Marin.

   d. **Data Aggregation** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

   e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

   f. **DHHS Secretary** shall mean the Secretary of the U.S. Department of Health and Human Services.

   g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

   h. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.

   i. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.

   j. **Individual** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.

   k. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

   l. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental 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 (ii) that identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual, and shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].

m. **Protected Information** shall mean PHI provided by CE to BA or created or received by BA on CE's behalf.

n. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.

o. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h).

2. **Obligations of Business Associate**

a. **Permitted Uses.** BA shall not use Protected Information except for the purpose of performing BA's obligations under the Agreement and as permitted under the Agreement and this Exhibit "M". Further, and notwithstanding anything to the contrary above, BA shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by CE. However, BA may use Protected Information (i) for the proper management and administration of BA, (ii) to carry out the legal responsibilities of BA, or (iii) for Data Aggregation purposes for the Health Care Operations of CE [45 C.F.R. Sections 164.504(e)(2)(ii)(A) and 164.504(e)(4)(i)].

b. **Permitted Disclosures.** BA shall not disclose Protected Information except for the purpose of performing BA's obligations under the Agreement and as permitted under the Agreement and this Exhibit "M". Further, and notwithstanding anything to the contrary above, BA shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by CE. However, BA may disclose Protected Information (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) as required by law; or (iv) for Data Aggregation purposes for the Health Care Operations of CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Exhibit "M" and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such breach [42 U.S.C. Section 17932; 45 C.F.R. Sections 164.504(e)(2)(i), 164.504(e)(2)(i)(B), 164.504(e)(2)(ii)(A) and 164.504(e)(4)(ii)].

c. **Prohibited Uses and Disclosures.** BA shall not use or disclose Protected Information for fundraising or marketing purposes. BA shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates 42 U.S.C. Section 17935(a). BA shall not directly or indirectly receive remuneration in exchange for Protected Information, except with the prior written consent of CE and as permitted by the HITECH Act, 42 U.S.C. section 17935(d)(2); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

d. **Appropriate Safeguards.** BA shall implement appropriate administrative, physical and technical safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement that reasonably and appropriately protect the confidentiality, integrity and availability of the Protected Information, in accordance with 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931]

e. **Reporting of Improper Access, Use or Disclosure.** Unless stricter reporting requirements apply in accordance with federal or state laws or regulations, other provisions of the Agreement, or this Exhibit "M", BA shall report to CE in writing of any access, use or disclosure of Protected Information not permitted by the Agreement and this Exhibit "M", and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than 5 business days after discovery [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].

f. **Business Associate's Agents.** BA shall ensure that any agents, including subcontractors, to whom it provides Protected Information, agree in writing to the same restrictions and conditions that apply to BA with respect to such PHI and implement the safeguards required by paragraph d above with respect to PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BA shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).

g. **Access to Protected Information.** BA shall make Protected Information maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within ten (10) business days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 CF.R. Section 164.504(e)(2)(ii)(E)]. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act, including, but not limited to,

42 U.S.C. Section 17935(e). If any Individual requests access to Protection Information directly from BA or its agents or subcontractors, BA shall further conform with and meet all of the requirements of 45 C.F.R. Section 164.524 and other applicable laws, including the HITECH Act and related regulations.

h. **Amendment of PHI.** Within ten (10) business days of receipt of a request from CE for an amendment of Protected Information or a record about an Individual contained in a Designated Record Set, BA or its agents or subcontractors shall make such Protected Information available to CE for amendment and incorporate any such amendment to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If any Individual requests an amendment of Protected Information directly from BA or its agents or subcontractors, BA must notify CE in writing within five (5) business days of the request. Any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors shall be the responsibility of CE [45 C.F.R. Section 164.504(e)(2)(ii)(F)].

i. **Accounting Rights.** Within ten (10) business days of notice by CE of a request for an accounting of disclosures of Protected Information, BA and its agents or subcontractors shall make available to CE the information required to provide an accounting of disclosures to enable CE to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an Electronic Health Record and is subject to this requirement. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed and (iv) a brief statement of purpose of the disclosure that reasonably informs the Individual of the basis for the disclosure, or a copy of the Individuals' authorization, or a copy of the written request for disclosure. In the event that the request for an accounting is delivered directly to BA or its agents or subcontractors, BA shall within five (5) business days of a request forward it to CE in writing. However, it shall be BA's responsibility to prepare and deliver any such accounting requested and to do so in accordance with law. BA shall not disclose any Protected Information except as set forth in Sections 2.b. of this Exhibit "M" [45 C.F.R. Sections 164.504(e)(2)(ii)(G) and 165.528].

j. **Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use, disclosure and privacy protection of Protected Information available to CE and to the DHHS Secretary for purposes of determining BA's compliance with the Privacy Rule [45 C.F.R. Section 164.504(e)(2)(ii)(H)]. BA shall provide to CE a copy of any Protected Information that BA provides to the DHHS Secretary concurrently with providing such Protected Information to the DHHS Secretary.

k. **Minimum Necessary.** BA and its agents or subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)(3)] BA understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the DHHS Secretary with respect to what constitutes "minimum necessary."

l. **Data Ownership.** BA acknowledges that BA has no ownership rights with respect to the Protected Information.

m. **Notification of Breach.** Unless stricter reporting requirements apply in accordance with federal or state laws or regulations, other provisions of the Agreement, or this Exhibit "M", BA shall notify CE within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. Unless CE provides BA with written notice that it will undertake such obligations on behalf of BA, BA shall take (i) prompt corrective action to cure any such deficiencies and (ii) any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. The parties agree that CE has the sole discretion to determine whether or not it will undertake such obligations on behalf of BA and that, if it does, CE has the right to require BA to pay for any or all costs associated therewith.

n. **Breach Pattern or Practice by Covered Entity.** Pursuant to 42 U.S.C. Section 17934(b), if the BA knows of a pattern of activity or practice of the CE that constitutes a material breach or violation of the CE's obligations under the Agreement or this Exhibit "M" or other arrangement, the BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, the BA must terminate the Agreement or other arrangement if feasible, or if termination is not feasible, report the problem to the DHHS Secretary. BA shall provide written notice to CE of any pattern of activity or practice of the CE that BA believes constitutes a material breach or violation of the CE's obligations under the Agreement or this Exhibit "M" or other arrangement within five (5) business days of discovery and shall meet with CE to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.

o. **Audits, Inspection and Enforcement.** Within ten (10) days of a written request by CE, BA and its agents or subcontractors shall allow CE to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Exhibit "M" for the purpose of determining whether BA has complied with this Exhibit; provided, however, that (i) BA and CE shall mutually

agree in advance upon the scope, timing and location of such an inspection, (ii) CE shall protect the confidentiality of all confidential and proprietary information of BA to which CE has access during the course of such inspection; and (iii) CE shall execute a nondisclosure agreement, upon terms mutually agreed upon by the parties, if requested by BA. The fact that CE inspects, or fails to inspect, or has the right to inspect, BA's facilities, systems, books, records, agreements, policies and procedures does not relieve BA of its responsibility to comply with this Exhibit "M", nor does CE's (i) failure to detect or (ii) detection, but failure to notify BA or require BA's remediation of any unsatisfactory practices, constitute acceptance of such practice or a waiver of CE's enforcement rights under the Agreement or this Exhibit "M". BA shall notify CE within ten (10) business days of learning that BA has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights.

3. **Termination of Agreement**

   a. **Material Breach**. A breach by BA of any provision of this Exhibit "M", as determined by CE, shall constitute a material breach of the Agreement and shall provide grounds for immediate termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].

   b. **Judicial or Administrative Proceedings.** Notwithstanding any provision in the Agreement to the contrary, CE may terminate the Agreement, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws or (ii) a finding or stipulation that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the HIPAA Regulations or other security or privacy laws is made in any administrative or civil proceeding in which the party has been joined.

   c. **Effect of Termination.** Upon termination of the Agreement for any reason, BA shall, at the option of CE, return or destroy all Protected Information that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by CE, BA shall continue to extend the protections of Section 2 of this Exhibit "M" to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible. [45 C.F.R. Section 164.504(e)(ii)(2(I)]. If CE elects destruction of the PHI, BA shall certify in writing to CE that such PHI has been destroyed.

4. **Indemnification**

   In addition to any other indemnification and defense obligation under the Agreement, BA has a separate and additional obligation to indemnify and defend CE against any claims or suits arising from BA's breach of its obligations under the terms and conditions of this Exhibit "M".

5. **Limitation of Liability**

   Notwithstanding any limitation of liability provision that may exist in the Agreement or this Exhibit "M", BA is solely liable for any damages related to a breach of the BA's privacy or security obligations under the terms of this Exhibit "M".

6. **Disclaimer**

   CE makes no warranty or representation that compliance by BA with this Exhibit "M", HIPAA, the HITECH Act, or the HIPAA Regulations will be adequate or satisfactory for BA's own purposes. BA is solely responsible for all decisions made by BA regarding the safeguarding of PHI.

7. **Certification**

   To the extent that CE determines that such examination is necessary to comply with CE's legal obligations pursuant to HIPAA relating to certification of its security practices, CE or its authorized agents or contractors, may, at CE's expense, examine BA's facilities, systems, procedures and records as may be necessary for such agents or contractors to certify to CE the extent to which BA's security safeguards comply with HIPAA, the HITECH Act, the HIPAA Regulations or this Addendum.

8. **Amendment**

   a. **Amendment to Comply with Law.** The parties acknowledge that state and federal laws relating to data security and privacy are rapidly evolving and that amendment of the Agreement or this Exhibit "M" may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule and other applicable laws relating to the security or confidentiality of PHI. The parties understand and agree that CE must receive satisfactory written assurance from BA that BA will adequately safeguard all Protected Information. Upon the request of either party, the other party agrees to promptly enter into negotiations concerning the terms of an amendment to this Exhibit "M" embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule or other applicable laws. CE may terminate the Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into negotiations to amend the Agreement or this Exhibit "M" when requested by CE pursuant to this Section or (ii) BA does not enter not enter into an amendment to the Agreement or this Exhibit "M" providing assurances regarding the safeguarding of PHI that CE, in its sole discretion, deems sufficient to satisfy the standards and requirements of applicable laws.

b. **Amendment of Exhibit "M".** This Exhibit "M" may be modified or amended at any time without amendment of the Agreement, but only by written agreement of the parties.

9. Assistance in Litigation of Administrative Proceedings

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

10. No Third-Party Beneficiaries

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

11. Effect on Agreement

Except as specifically required to implement the purposes of this Exhibit "M", or to the extent inconsistent with this Exhibit "M", all other terms of the Agreement shall remain in force and effect.

12. Interpretation

The provisions of this Exhibit "M" shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this Exhibit "M". This Exhibit "M" and the Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule. The parties agree that any ambiguity in this Exhibit "M" shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, the Privacy Rule and the Security Rule.

13. Survival of Provisions

Excepting only the provisions regarding BA's use or disclosure of Protected Information for the purpose of performing BA's obligations under the Agreement, the terms of this Exhibit "M" shall survive the termination of the Agreement so long as PHI obtained or generated during the term of the Agreement is retained by BA.