

BUSINESS ASSOCIATE AGREEMENT
(HIPAA Compliance)

NOTE: THIS BUSINESS ASSOCIATE AGREEMENT (this “**Agreement**”), when expressly referenced and incorporated into a written agreement between NLACRC and a vendorized service provider, will be applicable to and binding on such parties.

This Agreement is entered into by and between North Los Angeles County Regional Center, Inc. (“**Business Associate**”) and each service provider whose service provider agreement incorporates this Agreement by reference (“**Subcontractor**”). Business Associate and Subcontractor are sometimes collectively referred to herein as the “**Parties**”.

1. Definitions

- (a) “**Breach**” shall mean the unlawful or unauthorized access to, viewing, acquisition, use, or disclosure of PHI.
- (b) “**Business Associate**” shall have the meaning given to such term under HIPAA (defined below) and includes a third party that performs functions for or on behalf of Covered Entity and has access to Covered Entity’s protected health information (“PHI”) (defined below) and uses such PHI in the performance of its functions.
- (c) “**Covered Entity**” shall have the meaning given to such term under HIPAA, which includes the California Department of Developmental Services, as it transmits health information in electronic form in the course of its standard functions to Business Associate.
- (d) “**Data Aggregation**” shall have the meaning given to such term under HIPAA and shall include the combining of PHI received or created by Subcontractor to permit data analyses relating to healthcare operations of Business Associate.
- (e) “**Designated Record Set**” shall have the meaning given to such term under HIPAA and shall include consumers’ (defined below) medical or billing records or any group of records which contains PHI that is used, in whole or in part, by or for Business Associate to make decisions about consumers.
- (f) “**Disclosure**” shall have the meaning given to such term under HIPAA, and includes the release, transfer, provision of access to, or divulging in any manner of information outside the entity holding the information.

- (g) **“HIPAA”** shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and regulations promulgated thereunder by the U. S. Department of Health & Human Services, as amended from time to time.
- (h) **“Limited Data Set”** shall have the meaning given such term under HIPAA.
- (i) **“Consumer”** shall have the same meaning as the term “individual” under HIPAA and shall include a person who qualifies as a personal representative.
- (j) **“Minimum Necessary”** shall have the meaning given such term under HIPAA.
- (k) **“Protected Health Information” (“PHI”)** shall have the meaning given to such term under HIPAA and shall include any information, whether oral or recorded in any form or medium, limited to the information created or received by Subcontractor from or on behalf of Business Associate (i) that relates to the past, present or future physical or mental health condition of the Consumer; the provision of health care to Consumer; or the past, present or future payment for the provision of health care to Consumer; and (ii) that identifies the Consumer or with respect to which there is a reasonable basis to believe the information can be used to identify the Consumer.
- (l) **“Required by Law”** shall have the meaning given such term under HIPAA, and means a mandate contained in law that compels an entity to make a use or disclosure of protected health information and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil of an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- (m) **“Secretary”** shall mean the Secretary of the Department of Health and Human Services or her/his designee.
- (n) **“Secured”** shall mean protection of PHI by a technology or methodology, which renders the data unreadable, unusable, or indecipherable to unauthorized individuals and is consistent with guidance published by the Secretary of the Department of Health and Human Services as then in effect.

- (o) **“Security Incident”** shall mean any accidental, malicious or natural act that:
 - (i) Results in a Breach of any of Business Associate's data;
 - (ii) Adversely impacts the functionality of the Business Associate's information network;
 - (iii) Permits unauthorized access to Business Associate's information network;
 - (iv) Impacts the integrity of Business Associate's files or databases including, but not limited to:
 - 1. Interface failures;
 - 2. Inadequate testing or change control procedures;
 - 3. Other failures, which result in the deletion or unauthorized changes to an electronic database.
 - (v) Involves the loss or loss of control of an information technology resource owned or controlled by Business Associate; or
 - (vi) Involves the use of Business Associate's technology resources for illegal purposes or to launch attacks against other individuals or organizations.
- (p) **“Subcontractor”** shall have the meaning given such term under HIPAA, and includes a person to whom a Business Associate delegates a function, activity, or service, other than in the capacity of a member of the workforce of such business associate.

2. Permitted Uses and Disclosures by Subcontractor

- (a) Except as otherwise limited by law, this Agreement or other agreements between the Parties, Subcontractor shall access, use or disclose PHI only for the benefit of Business Associate, and to perform functions, activities, or services on behalf of Business Associate. Subcontractor shall use only the minimum amount of PHI necessary to perform functions, activities, or services on behalf of Business Associate. In the event of inadvertent access by Subcontractor to more than the minimum necessary amount of Business Associate's PHI, Subcontractor will i) treat all such PHI in accordance with this Business Associate Agreement; ii) promptly notify Business Associate, in accordance with paragraph 3(d) below, of such access; iii) erase, delete, and/or return such PHI as quickly as possible; and iv) take

all necessary actions to prevent further unauthorized access to PHI beyond the minimum necessary amount.

- (b) Except as otherwise limited in this Agreement or other agreements between the Parties, Subcontractor may use or disclose PHI for its proper management and administration or to carry out its legal responsibilities, provided that (i) the disclosure is required by law, or (ii) the Subcontractor obtains reasonable assurances from the person to whom the information is disclosed that such information shall remain confidential and be used or further disclosed solely as required by law or for the purpose of assisting Subcontractor to meet Subcontractor's obligations to Business Associate. Subcontractor shall require any person to whom PHI is disclosed under this subsection to notify Subcontractor of any instance of which it is aware in which the confidentiality or security of the PHI has been breached.
- (c) Except as otherwise limited in this Agreement or other agreements between the Parties, Subcontractor may use PHI to provide data aggregation services only for Business Associate.
- (d) In the event Subcontractor is provided with or is asked to create for Business Associate a Limited Data Set as defined under HIPAA, Subcontractor shall not use or disclose the Limited Data Set provided to it in a manner that would violate the requirements of HIPAA. Further, Subcontractor agrees that it shall not attempt to actually identify the information, or contact the individuals whose records are contained within the Limited Data Set.

3. Obligations of Subcontractor

- (a) Subcontractor shall not use or disclose PHI other than as permitted or required by this Agreement, other agreements between the Parties, or as required by law.
- (b) Subcontractor shall use appropriate safeguards to prevent further use or disclosure of PHI other than as provided for by this Agreement, other agreements between the Parties, or as required by law. Subcontractor shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, security, integrity, and availability of PHI that it receives, maintains, transmits, or creates on behalf of Business Associate. All PHI stored or maintained on portable electronic media (such as laptops, thumb/flash drives, PDAs, CDs, tapes, DVDs, etc.) shall be secured.

- (c) Subcontractor shall promptly mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Subcontractor in violation of this Agreement or other agreements between the Parties.
- (d) Subcontractor shall promptly notify Business Associate of any Security Incident or Breach in writing in the most expedient time possible, and not to exceed twenty-four (24) hours in the event of a Breach, following Subcontractor's initial awareness of such Security Incident or Breach. Notwithstanding any notice provisions in any other agreements between the Parties, such notice shall be made to Carlo DeAntonio, Clinical Services Director or his designee by means of fax to 1-818-756-6461 or by email to CdeAntonio@nlacrc.org. Subcontractor shall cooperate in good faith with Business Associate in the investigation of any Breach or Security Incident. Notwithstanding anything herein to the contrary, attempted access of system operations in an information system by a Packet Internet Groper (PING) program shall not constitute a Security Incident.
- (e) Following notification to Business Associate of a Breach, Subcontractor shall cooperate with Business Associate in determining which entity shall provide any required Breach notification. If the Parties agree that Subcontractor shall provide any required Breach notification, Subcontractor shall provide Business Associate with documentation of Subcontractor's actions, including documentation of the names and addresses of those to whom the notifications were provided.
- (f) Subcontractor shall ensure that any agent, including another subcontractor, to whom it provides PHI agrees in a written contract with Subcontractor to the same restrictions and conditions that apply to Subcontractor with respect to such information and that such agent or subcontractor shall implement reasonable and appropriate safeguards for the protection of the PHI which shall be no less than those required of Subcontractor at Section 3(b) above. In performing services under this Agreement, Subcontractor shall use agents, employees, and/or subcontractors that are domiciled only within the United States of America and its territories.
- (g) If Subcontractor holds PHI in Designated Record Sets as determined by Business Associate, Subcontractor shall provide prompt access to the PHI to Business Associate whenever so requested by Business Associate, or, if directed by Business Associate, to a Consumer in order to meet the requirements of HIPAA. If requested, such access shall be in electronic format. If Consumer requests directly from Subcontractor (i) to inspect or copy his or her PHI, or (ii) requests its disclosure to a third party, the Subcontractor shall promptly notify Business

Associate's Clinical Services Director, Carlo DeAntonio or his designee, by the means provided in Section 3(d).

- (h) Subcontractor shall promptly make amendment(s) to PHI requested by Business Associate and shall do so in the time and manner requested by Business Associate to enable it to comply with HIPAA. If Consumer requests an amendment to his or her PHI, directly from Subcontractor, Subcontractor shall promptly notify Business Associate's Clinical Services Director, Carlo DeAntonio or his designee of such request and await such official's denial or approval of the request, by the means provided in Section 3(d).
- (i) Subcontractor shall promptly make its internal practices, books, records, including its policies and procedures, relating to the use, disclosure, or security of PHI that the Subcontractor received from, maintained or created for or on behalf of Business Associate, available to Business Associate or the Secretary, in a time and manner designated by Business Associate or the Secretary, to enable the Secretary to determine compliance with HIPAA.
- (j) Subcontractor shall document all disclosures of PHI and information related to such disclosures as required under HIPAA in order that it may provide an accounting of such disclosures as Business Associate directs. Subcontractor shall:
 - (i) Provide an accounting as required under HIPAA to those Consumers who direct their requests to Subcontractor; or
 - (ii) Provide the accounting information required under HIPAA to Business Associate, if so requested by Business Associate, in the time and manner specified by Business Associate.
- (k) Subcontractor shall cooperate with Business Associate to preserve and protect the confidentiality of PHI accessed or used pursuant to this Agreement, other agreements between the Parties, or as required by law and shall not disclose or testify about such information during or after the termination of this Agreement or other agreements between the Parties except as required by law.
- (l) If, during the term of this Agreement or other agreements between the Parties, Subcontractor wishes to destroy PHI, it shall notify Business Associate in writing about its intent to destroy such data at least ten (10) days before such date of destruction. If Business Associate requests the return of any PHI, Business Associate shall comply as requested.

- (m) Subcontractor shall comply with all the obligations required of a Subcontractor under the Health Information Technology for Economic Clinical Health Act (“**HITECH Act**”), Title XIII of the American Recovery and Reinvestment Act of 2009. 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316 shall apply to Subcontractor in the same manner that such sections apply to Business Associate. The written policies and procedures and documentation required by 45 CFR Section 164.316 shall be made available to Business Associate, upon Business Associate's request. The additional requirements of the HITECH Act that relate to privacy and security and that are made applicable with respect to covered entities and business associates shall also be applicable to Subcontractor and shall be and by this reference hereby are incorporated into this Agreement.

4. Effect of Breach of Obligations

- (a) If Subcontractor breaches any of its obligations under this Agreement, said breach shall also be considered a breach of its obligations under any other agreements between the Parties hereto. In the event of a breach of this Agreement by Subcontractor , Business Associate shall have the option to do the following:
 - (i) Provide Subcontractor an opportunity to cure the breach, to the extent curable, and end the violation within a reasonable time specified by Business Associate. If Subcontractor does not cure the breach or end the violation as and within the time specified by Business Associate, or if the breach is not curable, Business Associate may terminate its obligations to Subcontractor , including, but not limited to, its future payment obligations and obligations to provide information, materials, equipment or resources to Subcontractor ; or
 - (ii) Immediately terminate this Agreement and any other agreements between the Parties, if Business Associate reasonably determines that Subcontractor (i) has acted with gross negligence in performing its obligations; (ii) is in violation of the law; (iii) willfully has violated or is violating the privacy and security provisions of this Agreement; (iv) is unable to provide, if requested, written assurances to Business Associate of its ability to protect the confidentiality and security of PHI; or (v) is unable to comply with its obligations under this Agreement. Such termination of this Agreement and any other agreements between the Parties shall be without prejudice to other legal remedies available to Business Associate.
- (b) Business Associate may also report the violation to the Secretary, and shall report the violation if neither termination nor cure is feasible.

5. Effect of Termination

- (a) Upon termination of this Agreement, Subcontractor shall promptly return to Business Associate one copy of all PHI, including derivatives thereof, and shall take all reasonable steps to promptly destroy all other PHI held by Subcontractor by (i) shredding; (ii) securely erasing, or (iii) otherwise modifying the information in those records to make it unreadable or undecipherable through any means. This provision shall apply to PHI in the possession of subcontractors or agents of Subcontractor. At Business Associate's request, Subcontractor shall certify in writing that it has complied with the requirements of this section.
- (b) If the return or destruction of PHI is infeasible, Subcontractor shall promptly notify Business Associate of the conditions that make such return or destruction infeasible. Upon mutual determination by the Parties that return or destruction of PHI is infeasible; Subcontractor shall extend the protections of this Agreement to such data and shall limit its further use or disclosure to purposes that make its return or destruction infeasible. If Subcontractor subsequently wishes to destroy PHI, Subcontractor shall notify Business Associate in writing about its intent to destroy data at least ten (10) days before such date of destruction. If Business Associate requests the return of any PHI, Subcontractor shall comply as requested.

6. Indemnity

- (a) Subcontractor shall promptly and fully defend, indemnify and hold harmless Business Associate, its affiliates and respective officers, directors, agents and employees ("**Indemnified Parties**") against any act or omission of Subcontractor which gives rise to or results in any claim, demand, liability, losses, fine, penalty, assessment, cost, judgment and award, including attorney's fees, made or recovered against Indemnified Parties or issued in favor of a third party, or cost of notification or remediation relating to notification required by law for individuals whose PHI or personal information have been inappropriately accessed or disclosed.
- (b) In the event that either party is required by law to notify individuals whose PHI was inappropriately accessed, used, or disclosed by Subcontractor or its agents, and the PHI contains i) the individual's first initial or first name, last name, and social security number; ii) the individual's first initial or first name, last name, and driver's license or state identification card; iii) the individual's first initial or first name, last name, account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; and/or iv) the individual's first initial or first name, last name, and PHI, then Subcontractor and Business Associate shall work together to structure a credit monitoring offering commensurate to the risk posed by the

breach and Subcontractor shall, in any event, pay the costs of credit monitoring for one (1) year for such individuals and the costs and fees related to timely notification in accordance with law.

7. Insurance

Subcontractor shall obtain insurance for itself and all its employees, agents and independent contractors in an amount not less than One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate of Commercial General Liability insurance and One Million Dollars (\$1,000,000) per occurrence and Three Million Dollars (\$3,000,000) annual aggregate of Errors and Omissions insurance. The Errors and Omissions insurance shall cover, among other things, Breaches. Subcontractor shall name Business Associate as an “additional insured”. Subcontractor shall provide Business Associate with certificates of insurance or other written evidence of the insurance policy or policies required herein prior to execution of this Agreement and other agreements between the Parties (or as shortly thereafter as is practicable) and as of each annual renewal of such insurance policies during the period of such coverage. Further, in the event of any modification, termination, expiration, non-renewal, or cancellation of any of such insurance policies, Subcontractor shall give written notice thereof to Business Associate not more than ten (10) days following Subcontractor's receipt of such notification. In the event Subcontractor fails to procure, maintain, or pay for the insurance required under this section, Business Associate shall have the right, but not the obligation, to obtain such insurance. In such event, Subcontractor shall promptly reimburse Business Associate for the cost thereof upon written request, and failure to repay the same upon demand by Business Associate shall constitute a material breach of this Agreement and other agreements between the Parties.

If any of the insurance provisions in this Agreement are inconsistent with the insurance provisions in a service provider agreement or other contract between Business Associate and Subcontractor, the insurance provisions in such service provider agreement or other contract shall prevail over the insurance provisions in this Agreement.

8. No Third-Party Beneficiary

The provisions and covenants set forth in this Agreement are expressly entered into only by and between Subcontractor and Business Associate, and are only for their benefit. Neither Subcontractor nor Business Associate intends to create or establish any third party beneficiary status or right (or the equivalent thereof) in any other third party and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

9. Amendment

Business Associate may periodically amend this Agreement as posted on Business Associate's website, to permit Business Associate to comply with any new laws, rules, or

regulations that might modify the terms and conditions herein. On the 10th day after Business Associate notifies Subcontractor of such amendment, the amendment shall be binding on Subcontractor, unless Subcontractor reasonably objects within such 10-day period.

10. Applicable Law & Enforcement

This Agreement is made, executed and entered into and is intended to be governed, construed and performed in accordance with the laws of the State of California, and any action to enforce or for breach of this Agreement shall be brought in the Los Angeles County Superior Court.

11. Benefit of Agreement

This Agreement shall inure to the benefit of the Parties, their affiliates and respective officers, directors, agents and employees, and shall be binding upon each of the Parties and their affiliates and respective officers, directors, agents and employees.

12. Warranty

The Parties warrant that they have read and understand the terms of this Agreement and have been given the opportunity to have this Agreement reviewed by an attorney representing their sole and separate interest.

13. Integration

This Agreement supersedes and replaces all prior negotiations and agreements between the Parties and constitutes the entire agreement of the Parties regarding the subject matter hereof. No other oral or written representations have been made to the Parties or any of their agents. The terms of this Agreement are contractual and not mere recitals.

14. Waiver

No breach of this Agreement or of any provision herein may be waived except by an express written waiver executed by the Party waiving such breach. Waiver of any one breach shall not be deemed a waiver of any other breach of the same or other provisions of this Agreement.

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