

**AGREEMENT BETWEEN KIDS IN DISTRESS, INC., AND BROWARD COUNTY
FOR SUBSTANCE ABUSE SERVICES**

Contract Number: KID-BARC-CFS-2017

This is an Agreement ("Agreement"), made and entered into by and between BROWARD COUNTY ("COUNTY"), a political subdivision of the State of Florida, and KIDS IN DISTRESS, INC. ("KID"), a Florida not-for-profit corporation, collectively referred to as "the Parties."

WHEREAS, KID and COUNTY desire to improve the substance abuse assessment and treatment services available to parents of children at risk of being removed from their families or parents who have had their children removed and need to fulfill the tasks outlined in their court-ordered family services case plan in Broward County; and

WHEREAS, COUNTY's Broward Addiction Recovery Center ("BARC") offers a comprehensive range of services for Broward County residents over the age of 18 who are affected by substance abuse and/or co-occurring disorders with the ability to provide outpatient substance abuse treatment services; NOW, THEREFORE,

IN CONSIDERATION of the mutual terms, conditions, promises, covenants, agreements, and other consideration, the sufficiency of which is acknowledged, the Parties agree as follows:

ARTICLE 1. DEFINITIONS

- 1.1 Client(s) - Parents of children who are clients of KID and who are in need of substance abuse assessment and treatment services.
- 1.2 CFS - KID Coordinated Family Services program that provides services to families whose children have been removed from their home due to allegations of abuse, neglect, and abandonment and placed in foster care or in relative/non-relative placement, and who reside in Broward County.
- 1.3 Scope of Services - The Scope of Services consists of services as referenced in the "Scope of Services" in Article 3 and in Exhibit A of this Agreement.

ARTICLE 2. TERM AND TERMINATION

- 2.1 This Agreement shall be effective July 1, 2017, and shall continue through June 30, 2018, unless terminated earlier pursuant to the terms of this Agreement. This Agreement may also be renewed automatically for two (2) additional one-year periods at the end of the then effective term unless one party notifies the other party, in writing, of its intent to not renew the Agreement within no less than ten (10) business days prior to the expiration of the current term of this Agreement.
- 2.2 This Agreement may be terminated for convenience by KID or by COUNTY, through action of each party's governing board upon no less than thirty (30) days' written notice to the other party. This Agreement may be terminated for cause by KID or by COUNTY

through action by either party's governing board or by either party's Contract Administrator, with no less than seven (7) calendar days' written notice to the other party.

- 2.3 This Agreement shall terminate automatically if COUNTY fails to comply with the license requirement or fails to maintain its license in good standing.
- 2.4 Notice of termination shall be provided in accordance with the "NOTICES" section of this Agreement.
- 2.5 In the event this Agreement is terminated, COUNTY shall be paid for any services performed to the date the Agreement is terminated.

ARTICLE 3. SCOPE OF SERVICES

- 3.1 The Parties shall perform all work identified in Exhibit A, Scope of Services. The Scope of Services is a description of each party's obligations and responsibilities and is deemed to include preliminary considerations and prerequisites.
- 3.2 COUNTY has no authority to make changes that would increase, decrease, or otherwise modify the Scope of Services under this Agreement.

- 3.3 KID Contract Administrator for this Agreement shall be:

Lisa Bayne, COO
Kids in Distress, Inc.
819 NE 26th Street
Wilton Manors, FL 33305

KID Signatory for this Agreement shall be:

Mark Dhooge, President/CEO
Kids in Distress, Inc.
819 NE 26th Street
Wilton Manors, FL 33305

- 3.4 COUNTY Contract Administrator for this Agreement shall be:

Stacy Fruhling, Director
Broward Addiction Recovery Division
1011 SW 2nd Court
Fort Lauderdale, FL 33312

ARTICLE 4. COMPENSATION

- 4.1 This is a fixed price unit cost Agreement. KID shall pay COUNTY for the provision of substance abuse assessment and treatment services pursuant to this Agreement as set forth in Exhibit A. Notwithstanding Section 3.2, COUNTY shall have the authority to transfer funds between any cost reimbursement schedule line item as set forth in Exhibit A, or create new line items within existing Agreement amounts upon receipt of prior approval from KID, without an amendment to this Agreement. The annual maximum amount to be expended by KID for this Agreement during the initial term and any renewal period shall not exceed the amount of Seventy-three Thousand Six Hundred Thirty-four and 88/100 Dollars (\$73,634.88).
- 4.2 COUNTY shall submit invoices to KID on a monthly basis for units incurred for the provision of substance abuse assessment and treatment services to Clients referred by KID. Invoices shall be submitted within five (5) business days after the last day of the month and shall include all charges for services rendered during the previous month. KID shall pay COUNTY within thirty (30) calendar days from the date of each invoice submitted by COUNTY.

ARTICLE 5. INDEMNIFICATION

Nothing herein is intended to serve as a waiver of sovereign immunity by any party nor shall anything included herein be construed as consent to be sued by third parties in any matter arising out of this Agreement or any other contract. COUNTY is a state agency or political subdivision as defined in Chapter 768.28, Florida Statutes, and shall be fully responsible for the acts and omissions of its agents or employees to the extent permitted by law.

ARTICLE 6. EQUAL EMPLOYMENT OPPORTUNITY COMPLIANCE

No party to this Agreement may discriminate on the basis of race, color, sex, religion, national origin, disability, age, marital status, political affiliation, sexual orientation, pregnancy, or gender identity and expression in the performance of this Agreement. The Parties shall not unlawfully discriminate against any person in its operations and activities or in its use or expenditure of funds in fulfilling its obligations under this Agreement and shall not otherwise unlawfully discriminate in violation of Chapter 16½, Broward County Code of Ordinances. KID and COUNTY shall affirmatively comply with all applicable provisions of the Americans with Disabilities Act (ADA) in the course of providing any services under this Agreement, including Titles I and II of the ADA (regarding nondiscrimination on the basis of disability), and all applicable regulations, guidelines, and standards. In addition, KID and COUNTY shall take affirmative steps to prevent discrimination in employment against disabled persons.

ARTICLE 7. MISCELLANEOUS

OWNERSHIP OF DOCUMENTS

7.1

Any and all reports, photographs, surveys, and other data and documents provided or created in connection with this Agreement are and shall remain the property of KID and COUNTY jointly.

7.2 AUDIT RIGHT, RETENTION OF RECORDS, AND ACCESS TO BOOKS, DOCUMENTS, AND RECORDS

KID and COUNTY shall provide each other with access to its books, documents, and records, including, before and after payment is made, to verify costs of the services rendered until the expiration of three (3) years or for longer as required by the Florida Public Records Act (Chapter 119, Florida Statutes), after the services are furnished under this Agreement.

KID and COUNTY shall have the right to audit the books, records, financial records, and accounts, including before and after payment, of the other party that are related to this Agreement. KID and COUNTY shall keep such books, records, and accounts as may be necessary in order to record complete and correct entries related to this Agreement.

KID and COUNTY shall preserve and make available, at reasonable times for examination and audit by the other party, all financial records, supporting documents, statistical records, and any other documents pertinent to this Agreement for the required retention period of the Florida Public Records Act (Chapter 119, Florida Statutes), if applicable, or, if the Florida Public Records Act is not applicable, for a minimum period of three (3) years after termination of this Agreement.

If any audit has been initiated and audit findings have not been resolved at the end of the retention period or three (3) years, whichever is longer, the books, records, and accounts shall be retained until resolution of the audit findings.

Notwithstanding any provision to the contrary, no confidentiality or non-disclosure requirement of either federal or state law shall be violated by either party. KID and COUNTY shall maintain the confidentiality of client services and records in full accordance with any federal or state laws or federal regulations mandating such confidentiality. Access to service delivery and interactive situations need not be made available when such access would violate federal or state law or compromise effective service delivery or client confidentiality.

7.3 INDEPENDENT CONTRACTOR

KID and COUNTY are independent contractors under this Agreement. Services provided by COUNTY shall be subject to the supervision of COUNTY. In providing

such services, neither COUNTY nor its agents shall act as officers, employees, or agents of KID. Services provided by KID shall be subject to the supervision of KID, and such services shall not be provided by COUNTY or its agents as officers, employees, or agents of COUNTY. No partnership, joint venture, or other joint relationship is created hereby.

7.4 AMENDMENTS

The Parties may amend this Agreement to conform to changes in federal, state, or local laws, regulations, directives, and objectives. No modification, amendment, or alteration in the terms or conditions contained herein shall be effective unless contained in a written document prepared with the same or similar formality as this Agreement and executed by COUNTY and KID.

7.5 ASSIGNMENT AND PERFORMANCE

Neither this Agreement nor any right or interest herein shall be assigned, transferred, or encumbered without the written consent of the other party and neither party shall subcontract any portion of the work required by this Agreement without written approval as set forth in this Agreement. The Parties represent that all persons who will render services pursuant to this Agreement are duly qualified to perform such services by all appropriate governmental authorities, where required, and that each such person is reasonably experienced and skilled in the area(s) for which he or she will render his or her services, if applicable.

7.6 MATERIALITY AND WAIVER OR BREACH

Each requirement, duty, and obligation set forth herein was bargained for at arm's-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth herein is substantial and important to the formation of this Agreement, and that each is, therefore, a material term hereof.

A party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement.

7.7 RENEGOTIATION

The Parties agree to renegotiate this Agreement if revisions of any applicable law, regulation, or increase or decrease in allocations make changes in this Agreement necessary.

7.8 NOTICES

Whenever either party desires to give notice to the other, such notice must be in writing, sent by certified United States Mail, postage prepaid, return receipt requested, or sent by commercial express carrier with acknowledgement of delivery, or by hand delivery with a request for a written receipt of acknowledgement of delivery, addressed to the party for whom it is intended at the place last specified. The place for giving of notice shall remain the same as set forth herein until changed in writing in the manner provided in this section. For the present, the Parties designate the following:

FOR COUNTY:

Stacy Fruhling, Director
Broward Addiction Recovery Division
1011 SW 2nd Court
Fort Lauderdale, FL 33312

FOR KID:

Mark Dhooge, President/CEO
Kids in Distress, Inc.
819 NE 26th Street
Wilton Manors, FL 33305

7.9 LAW, JURISDICTION, VENUE, WAIVER OF JURY TRIAL

This Agreement shall be interpreted and construed in accordance with and governed by the laws of the state of Florida. The exclusive venue for any lawsuit arising from, related to, or in connection with this Agreement shall be in the state courts of the Seventeenth Judicial Circuit in and for Broward County, Florida. If any claim arising from, related to, or in connection with this Agreement must be litigated in federal court, the exclusive venue for any such lawsuit shall be in the United States District Court or United States Bankruptcy Court for the Southern District of Florida. **BY ENTERING INTO THIS AGREEMENT, KID AND COUNTY HEREBY EXPRESSLY WAIVE ANY RIGHTS EITHER PARTY MAY HAVE TO A TRIAL BY JURY OF ANY CIVIL LITIGATION RELATED TO THIS AGREEMENT. IF A PARTY FAILS TO WITHDRAW A REQUEST FOR A JURY TRIAL IN A LAWSUIT ARISING OUT OF THIS AGREEMENT AFTER WRITTEN NOTICE BY THE OTHER PARTY OF VIOLATION OF THIS SECTION, THE PARTY MAKING THE REQUEST FOR JURY TRIAL SHALL BE LIABLE FOR THE REASONABLE ATTORNEYS' FEES AND COSTS OF THE OTHER PARTY IN CONTESTING THE REQUEST FOR JURY TRIAL, AND SUCH AMOUNTS SHALL BE AWARDED BY THE COURT IN ADJUDICATING THE MOTION.**

7.10 COMPLIANCE WITH LAWS

The Parties shall comply with all applicable federal, state, and local laws, codes, ordinances, rules, and regulations in performing its duties, responsibilities, and obligations pursuant to this Agreement.

7.11 PRIOR AGREEMENTS

This document represents the final and complete understanding of the Parties and incorporates or supersedes all prior negotiations, correspondence, conversations, agreements, and understandings applicable to the matters contained herein. The Parties agree that there is no commitment, agreement, or understanding concerning the subject matter of this Agreement that is not contained in this written document. Accordingly, no deviation from the terms hereof shall be predicated upon any prior representation or agreement, whether oral or written.

7.12 SEVERABILITY

In the event any part of this Agreement is found to be unenforceable by any court of competent jurisdiction, that part shall be deemed severed from this Agreement and the balance of this Agreement shall remain in full force and effect.

7.13 JOINT PREPARATION

The Parties and their counsel have participated fully in the drafting of this Agreement and acknowledge that the preparation of this Agreement has been their joint effort. The language agreed to expresses their mutual intent and the resulting document shall not, solely as a matter of judicial construction, be construed more severely against one of the Parties than the other. The language in this Agreement shall be interpreted as to its fair meaning and not strictly for or against any party.

7.14 PRIORITY OF PROVISIONS

If there is a conflict or inconsistency between any term, statement, requirement, or provision of any document or exhibit attached hereto or referenced or incorporated herein and any provision of Articles 1 through 7 of this Agreement, the provisions contained in Articles 1 through 7 shall prevail and be given effect.

7.15 HIPAA COMPLIANCE

It is expressly understood by the Parties that COUNTY personnel or their agents have access to protected health information (hereinafter known as "PHI") that is subject to the requirements of 45 C.F.R. §160, 162, and 164 and related regulations. In the event KID is considered by COUNTY to be a covered entity or business associate or is required to comply with the Health Insurance Portability and Accountability Act of 1996 (hereinafter known as "HIPAA"), KID shall fully protect individually identifiable health

information as required by HIPAA and shall adhere to the terms of the Business Associate Agreement as provided in Exhibit B for HIPAA compliance. Where required, KID shall handle and secure such PHI in compliance with HIPAA and its related regulations and, if required by HIPAA or other laws, include in its "Notice of Privacy Practices" notice of KID's and COUNTY's uses of Client's PHI. The requirement to comply with this provision and HIPAA shall survive the expiration or earlier termination of this Agreement.

7.16 INCORPORATION BY REFERENCE

Any and all Recital clauses stated above are true and correct and are incorporated herein by reference. The attached Exhibits A and B are incorporated into and made a part of this Agreement.

7.17 THIRD PARTY BENEFICIARIES

Neither KID nor COUNTY intends to directly or substantially benefit a third party by this Agreement. Therefore, the Parties acknowledge that there are no third party beneficiaries to this Agreement and that no third party shall be entitled to assert a right or claim against either of them based upon this Agreement.

7.18 INTERPRETATION

The headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement. All personal pronouns used in this Agreement shall include the other gender, and the singular shall include the plural, and vice versa, unless the context otherwise requires. Terms such as "herein," "hereof," "hereunder," and "hereinafter," refer to this Agreement as a whole and not to any particular sentence, paragraph, or section where they appear, unless the context otherwise requires. Whenever reference is made to a Section or Article of this Agreement, such reference is to the Section or Article as a whole, including all of the subsections of such Section, unless the reference is made to a particular subsection or subparagraph of such Section or Article.

7.19 REPRESENTATION OF AUTHORITY

Each individual executing this Agreement on behalf of a party hereto hereby represents and warrants that he or she is, on the date he or she signs this Agreement, duly authorized by all necessary and appropriate action to execute this Agreement on behalf of such party and does so with full legal authority.

7.20 COUNTERPARTS AND MULTIPLE ORIGINALS

This Agreement may be executed in multiple originals, and may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.

IN WITNESS WHEREOF, the Parties hereto have made and executed this Agreement: BROWARD COUNTY, through its BOARD OF COUNTY COMMISSIONERS, signing by and through its Mayor or Vice-Mayor, authorized to execute same by Board action on the ____ day of _____, 2017, and KIDS IN DISTRESS, INC., signing by and through its President/CEO, duly authorized to execute same.

COUNTY

ATTEST:

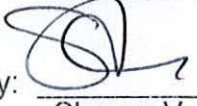
BROWARD COUNTY, by and through its Board of County Commissioners

Broward County Administrator, as
Ex-officio Clerk of the Broward County
Board of County Commissioners

By _____
____ day of _____, 2017

Approved as to form by
Joni Armstrong Coffey
Broward County Attorney
Governmental Center, Suite 423
115 South Andrews Avenue
Fort Lauderdale, Florida 33301
Telephone: (954) 357-7600
Telecopier: (954) 357-7641

By  8/2/17
Karen S. Gordon (Date)
Assistant County Attorney

By:  8/3/17
Sharon V. Thorsen (Date)
Senior Assistant County Attorney

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07/10/17, 07/31/17
#17-064.02

AGREEMENT BETWEEN KIDS IN DISTRESS, INC., AND BROWARD COUNTY, AS PROVIDER, FOR SUBSTANCE ABUSE SERVICES, CONTRACT NUMBER KID-BARC-CFS-2017

KID

WITNESSES:

KIDS IN DISTRESS, INC.

Lisa Bayne
Signature of Witness

By Mark Dhooge
Mark Dhooge
President/CEO

Lisa Bayne
Print or Type Name of Witness

1st day of August, 2017

Jerilyn Mocombe
Signature of Witness

Jerilyn Mocombe
Print or Type Name of Witness

(Corporate Seal)

EXHIBIT A
SCOPE OF SERVICES

I. Scope of Services

A. Services to be provided by COUNTY:

1. COUNTY shall participate in KID's CFS program that provides services to families whose children are involved in the Child Protection System and families whose children have been removed from their home due to allegations of abuse, neglect, and abandonment and placed in foster care or relative/non relative placement.
2. COUNTY shall provide Master's Degree level Certified Addictions Professionals for the provision of substance abuse assessment and treatment services to the parents of children in the CFS program as referred by KID.
3. COUNTY shall provide outpatient substance abuse assessment and treatment services to Clients on site at the following location: Kids in Distress, Inc., 819 NE 26th Street, Wilton Manors, Florida 33305.
4. COUNTY shall ensure that Clients referred by KID for CFS services have access to all services provided by BARC, including detoxification and residential treatment services, as deemed appropriate by the BARC counselor.
5. COUNTY shall report to KID the number of service units delivered by use of the unit-tracking log utilizing the form provided to COUNTY by KID. The unit-tracking log shall be fully completed for each Client and/or group service (with group sign-in logs attached) and submitted on a weekly basis to the CFS Program Coordinator by 5:00 p.m. every Monday. COUNTY shall forward all reports to the CFS Program Coordinator. COUNTY shall provide information that summarizes active Client progress toward treatment goals via information on monthly program reports or via written comments on the KID monthly progress reports, which shall be provided to KID by COUNTY, by the fifth (5th) business day of each month on a monthly basis.
6. COUNTY shall provide KID with a detailed discharge information packet for each Client served, which includes dates of service, services rendered, outcomes attained, certificates issued, and a complete copy of the substance abuse assessment and treatment services file within thirty (30) calendar days following the discharge of each Client. COUNTY shall submit a completed CFS Client Discharge Form, utilizing the form provided to COUNTY by KID or the COUNTY computer generated form, for each Client discharged from the program. If determined necessary, KID may change the form to accommodate the contract funder, and KID will provide COUNTY such revised form. The CFS Client Discharge Form shall be submitted to the CFS Program

Coordinator within five (5) business days following the Client's discharge from the program.

7. COUNTY shall provide KID with a quarterly outcome report to support COUNTY success in meeting required performance measures. COUNTY shall forward all reports to KID's CFS Program Coordinator.

B. Services to be provided by KID:

1. KID shall identify Clients who are in need of substance abuse assessment and treatment services and shall refer Clients to COUNTY when substance abuse assessment and treatment services are required.
2. KID shall monitor the number of Clients, the number of units of service, and the type of outpatient services provided by COUNTY.
3. KID shall work with COUNTY in an effort to eliminate duplication in services and personnel among agencies.
4. KID shall use its case managers in a coordinated effort with COUNTY so that a case manager is assigned at the Client's first point of entry into the CFS program. The case manager shall be responsible for coordinating services to specific families and households and for conducting follow-up activities designed to prevent CFS clients from becoming dependent on the program once restorative services are completed.

II. Unit of Service Definitions:

- A. Substance Abuse Service - One (1) hour of face-to-face substance abuse assessment or treatment services that includes all COUNTY responsibilities associated with individual or group sessions specified in this Agreement.
- B. Client Drug Screen - Client drug screening. One (1) drug screen equals one (1) unit.

III. Price Per Unit of Service:

- A. Substance Abuse Service \$61.55 per hour
- B. Client Drug Screen \$17.78 per screen

Where units are billed at an hourly rate, units may be rounded and billed in 15-minute increments and documented on the invoice as .25, .50, .75, or whole units.

IV. Maximum Number of Units Per Term of Agreement:

- A. Substance Abuse Service:1014 units
- B. Client Drug Screen: 626 units

V. Maximum Dollar Amount Per Term of Agreement: \$73,634.88

- A. Substance Abuse Service: \$62,455.50
- B. Client Drug Screen: \$11,179.38

VI. Outcomes/Indicators:

Relevance	Outcome	Measure	Target	Data Collection Method
AFSA Outcome WB1	Families have enhanced capacities to provide for their children's needs	Percentage of families enrolled in program for at least thirty (30) days who complete Substance Abuse Program.	75%	Provider internal tracking system
AFSA Outcome WB1	Families have enhanced capacities to provide for their children's needs	Percentage of clients who reduce or eliminate their use of substance	80%	Provider internal tracking system

EXHIBIT B

BUSINESS ASSOCIATE AGREEMENT BETWEEN BROWARD COUNTY, FLORIDA, AND KIDS IN DISTRESS, INC.

This BUSINESS ASSOCIATE AGREEMENT ("BAA") is entered into by and between Broward County, Florida ("County"), and Kids in Distress, Inc., a not-for-profit corporation authorized to do business in the State of Florida with its principal office located at 819 NE 26 Street, Wilton Manors, Florida 33305 ("Business Associate"), in connection with the Agreement for Substance Abuse Services, KID-BARC-CFS-2017 (the " Agreement").

RECITALS

1. Business Associate provides services related to the operation of certain activities/programs that involve the use or disclosure of Protected Health Information ("PHI");

2. The operation of such activities/programs is subject to the federal Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the Health Information Technology for Economic and Clinical Health Act ("HITECH");

3. HIPAA and HITECH mandate that certain responsibilities of contractors with access to PHI be documented through a written agreement; and

4. The County and Business Associate desire to comply with the requirements of HIPAA and HITECH and acknowledge their respective responsibilities.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1: Definitions

- 1.1 All terms used in this BAA not otherwise defined herein shall have the meanings stated in the Privacy and Security Rules, 45 C.F.R. Parts 160, 162, 164, and 42 U.S.C. § 17921.
- 1.2 "HIPAA Laws" mean collectively HIPAA, HITECH, 42 C.F.R. Part 2 (if applicable), and the related regulations and amendments.
- 1.3 When the term "PHI" is used in this BAA, it includes the term "Electronic Protected Health Information" or "EPHI."
- 1.4 Penalties as used in Section 3.18 below are defined as civil penalties that may be applied to the Business Associate and its workforce members by the Secretary of Health and Human Services (HHS). The amount of the penalties range depending

on the type of violation. In determining penalties, the Secretary may take into account:

- a. the nature and extent of the violation;
- b. the nature and extent of harm resulting from such violation;
- c. the degree of culpability of the covered entity or business associate;
- d. the history of prior compliance with the administrative simplification provision including violations by the covered entity or business associate;
- e. the financial condition of the covered entity or business associate, and
- f. such other matters as justice may require.

Section 2: Confidentiality

- 2.1 County and Business Associate shall comply with all federal and state laws governing the privacy and security of PHI.
- 2.2 If this box is checked, the County and Business Associate are required to comply with 42 C.F.R. Part 2 with respect to patient identifying information concerning alcohol and substance abuse treatment.

Section 3: Obligations and Activities of the Business Associate

Use and Disclosure of PHI

- 3.1 The Business Associate shall not use or disclose PHI other than as permitted or required by this BAA or as required by law. Business Associate may:
 - a. Use and disclose PHI only as necessary to perform its obligations under the Agreement, provided that such use or disclosure would not violate HIPAA Laws if done by the County;
 - b. Use the PHI received in its capacity as a Business Associate of the County for its proper management and administration and to fulfill any legal responsibilities of Business Associate;
 - c. Disclose PHI in its possession to a third party for the proper management and administration of Business Associate, or to fulfill any legal responsibilities of Business Associate, provided that the disclosure would not violate HIPAA Laws if made by the County, or is required by law, and Business Associate has received from the third party written assurances that (i) the information will be kept confidential and used or further disclosed only for the purposes

for which it was disclosed to the third party or as required by law; (ii) the third party will notify Business Associate of any instances of which it becomes aware in which the confidentiality of the information may have been breached; and (iii) the third party has agreed to implement reasonable and appropriate steps to safeguard the information;

- d. Use PHI to provide data aggregation activities relating to the operations of the County; and
- e. De-identify any and all PHI created or received by Business Associate under the Agreement, provided that the de-identification conforms to the requirements of the HIPAA Laws.

3.2 Business Associate shall limit its use and disclosure of, and request for PHI when practical or as required by law, to the information making up a Limited Data Set, as defined by HIPAA, and in all other cases subject to the requirements of 45 C.F.R. 164.502(b), to the minimum amount of PHI necessary to accomplish the intended purpose of the use, disclosure, or request.

3.3 Business Associate is prohibited from selling PHI, using PHI for marketing purposes, or attempting to re-identify any PHI information in violation of HIPAA Laws.

Administrative, Physical, and Technical Safeguards

3.4 Business Associate shall implement administrative, physical, and technical safeguards that protect the confidentiality, integrity and availability of PHI that it creates, receives, maintains, or transmits on behalf of the County. The safeguards shall include written policies, procedures, a security risk assessment, training of Business Associate employees, and sanctions that are in compliance with HIPAA Laws.

3.5 Business Associate shall require all of its subcontractors, agents, and other third parties that receive, use, transmit, maintain, store, or have access to PHI to agree, in writing, to the same restrictions and conditions that apply to Business Associate pursuant to this BAA, including implementation of administrative, physical, and technical safeguards.

Access of Information; Amendment of Information; Accounting of Disclosures

3.6 Business Associate shall make available to the County all PHI in Designated Record Sets within ten (10) days of the County's request for the County to meet the requirements under 45 C.F.R. § 164.524.

3.7 Business Associate shall make any amendments to PHI in a Designated Record Set as directed or agreed to by the County pursuant to 45 C.F.R. § 164.526 in the time and manner reasonably designated by the County.

- 3.8 Business Associate shall timely document such disclosures of PHI and information related to such disclosures as would be required for the County to respond to an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528. Further, Business Associate shall provide to the County an accounting of all disclosure of PHI during the term of this BAA within ten (10) days of termination of this BAA, or sooner if reasonably requested by the County for purposes of any monitoring/auditing of the County for compliance with HIPAA Laws.
- 3.9 Business Associate shall provide the County, or an individual under procedures approved by the County, information and documentation collected in accordance with the preceding paragraph to respond to an individual requesting an accounting for disclosures as provided under 45 C.F.R. § 164.528 and HIPAA Laws.

Mitigation

- 3.10 Business Associate shall mitigate, to the extent possible and at its own expense, any harmful effect that is known to Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this BAA or applicable law.
- 3.11 Business Associate shall take appropriate disciplinary action against any members of its workforce who use or disclose PHI in any manner not authorized by this BAA or applicable law.

Reporting of Breaches and Mitigation of Breach

- 3.12 Business Associate shall notify the County's HIPAA Privacy Official at (954) 357-6500 of any impermissible access, acquisition, use or disclosure of any unsecured PHI within twenty-four (24) hours of Business Associate becoming aware of such access, acquisition, use or disclosure. Unsecured PHI shall refer to such PHI that is not secured through use of a technology or methodology specified by the Secretary of HHS that renders such PHI unusable, unreadable, or indecipherable to unauthorized individuals. A breach of unsecured PHI shall be treated as discovered by Business Associate as of the first day on which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to Business Associate, including any employee, officer, contractor, subcontractor, or other agent of Business Associate.
- 3.13 Business Associate shall submit a written report of a breach to the County within ten (10) business days after initial notification, and shall document the following:
 - a. The identification of each individual whose PHI has been, or is reasonably believed by Business Associate, to have been accessed, acquired, used, or disclosed during the breach;

- b. A brief description of what occurred, including the date of the breach and the date of the discovery of the breach, if known;
 - c. A description of the types of PHI that are involved in the breach (such as full name, social security number, date of birth, home address, account number, diagnosis, etc.);
 - d. A description of what is being done to investigate the breach, to mitigate harm to individuals, and the reasonable and appropriate safeguards being taken to protect against future breaches;
 - e. Any steps the County or the individual impacted by the breach should take to protect himself or herself from potential harm resulting from the breach;
 - f. Contact procedures for the Business Associate to enable individuals to ask questions or learn additional information, which may include, in the discretion of the County, a toll-free telephone number, e-mail address, website, or postal address, depending upon the available contact information that the Business Associate has for the affected individuals; and
 - g. Any other reasonable information requested by the County.
- 3.14 In the event of a breach, Business Associate shall, in consultation with and at the direction of the County, assist the County in conducting a risk assessment of the breach and mitigate, to the extent practicable, any harmful effect of such breach known to Business Associate.
- 3.15 The County, in its sole discretion, will determine whether the County or Business Associate shall be responsible to provide notification to individuals whose unsecured PHI has been disclosed, as well as to the Secretary of HHS and the media.
- a. Notification will be by first-class mail, or by electronic mail, if the individual has specified notice in the manner as a preference.
 - b. Information may be posted on the County and Business Associate's website where the Business Associate experienced, or is reasonably believed to have experienced, an impermissible use or disclosure of unsecured PHI that compromised the security or privacy of more than ten (10) individuals when no other current information is available to inform such individuals.
 - c. Notice shall be provided to prominent media outlets with information on an incident where the Business Associate experienced an impermissible use and disclosure of unsecured PHI that compromised the security or privacy of more than five hundred (500) individuals within the same state or jurisdiction during the incident.

- d. The County may report, at least annually, any impermissible use and disclosure of unsecured PHI by the Business Associate to the Secretary of HHS as required by HIPAA Laws.
- 3.16 Business Associate agrees to pay the costs for notification to the County, individuals, and their representatives of any security or privacy breach that should be reported by Business Associate to the County. Business Associate also agrees to pay the costs for mitigating damages, including, but not limited to, the expenses for credit monitoring, if the County determines that the breach warrants such measures.
- 3.17 Business Associate agrees to have established procedures to investigate a breach, mitigate losses, and protect against any future breaches, and to provide such procedures and any specific findings of the investigation to the County in the time and manner reasonably requested by the County.
- 3.18 Business Associate is liable to the County for any civil penalties imposed on the County under the HIPAA laws in the event of a violation of the HIPAA Laws as a result of any practice, behavior, or conduct of Business Associate.

Available Books and Records

- 3.19 Business Associate shall make its internal practices and books, related to the Agreement and the BAA, including all policies and procedures required by HIPAA Laws, available to the County Contract Grants Administrator within five (5) business days of the Agreement.
- 3.20 Business Associate shall make its internal practices, books, and records, including all policies and procedures required by HIPAA Laws and PHI, relating to the use and disclosure of PHI received from the County or created or received on behalf of the County available to the County or to the Secretary of HHS or its designee within five (5) business days of request for the purposes of determining the Business Associate's compliance with HIPAA Laws.

Section 4: Obligations of the County

- 4.1 The County shall notify Business Associate of any limitations in its notice of privacy practices in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect the Business Associate's use of PHI.
- 4.2 The County shall notify Business Associate of any changes in, or revocation of, permission by an individual to use or disclose PHI, to the extent that such changes may affect Business Associate's use of PHI.
- 4.3 The County shall notify Business Associate of any restriction to the use or disclosure of PHI to which the County has agreed in accordance with 45 C.F.R. § 164.522, to the extent that such changes may affect Business Associate's use of PHI.

- 4.4 The County shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Laws if done by the County.

Section 5: Term and Termination

Term

- 5.1 The term of this BAA shall be effective upon execution by all parties, and shall terminate upon the latter of termination or expiration of the Agreement, or the return or destruction of all PHI within the possession or control of the Business Associate as a result of the Agreement.

Termination

- 5.2 Upon the County's knowledge of a material breach of this BAA by Business Associate, the County shall either:
- a. Provide an opportunity for Business Associate to cure the breach or terminate this BAA and the Agreement if the Business Associate does not cure the breach within the time specified by the County;
 - b. Immediately terminate this BAA and the Agreement if Business Associate has breached a material term of this BAA and a cure is not possible; or
 - c. If neither termination nor cure is feasible, the County's HIPAA Privacy Official shall report the violation to the Secretary of HHS.

Effect of Termination

- 5.3 Upon completion or termination of the Agreement, Business Associate agrees, at County's option, to return to the County or destroy all PHI gathered, created, received, or processed pursuant to the Agreement. No PHI related to the Agreement will be retained by Business Associate, or a contractor, subcontractor, or other agent of Business Associate, unless retention is required by law and specifically permitted in writing by the County.
- 5.4 In the event that returning or destroying PHI is infeasible, Business Associate shall provide to the County a written statement that it is infeasible to return or destroy the PHI and describe the conditions that make return or destruction of the PHI infeasible. Under that circumstance, Business Associate shall extend the protections of this BAA to the PHI retained and limit further uses and disclosures of such PHI to those purposes that make return or destruction infeasible, for so long as Business Associate maintains the PHI, in which case Business Associate's obligations under this section shall survive termination of this BAA.

Section 6: Miscellaneous

- 6.1 Amendment. The County and Business Associate shall take such action as is necessary to amend this BAA for the County to comply with the requirements of HIPAA Laws or other applicable law.
- 6.2 Interpretation. Any ambiguity in this BAA shall be resolved to permit the County to comply with HIPAA Laws.

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