

ATTACHMENT E

**INDEPENDENT CONTRACTOR AGREEMENT**

BETWEEN

**TRI-CITY MENTAL HEALTH AUTHORITY**

AND

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DATED

**June 19, 2024**

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## AGREEMENT

### 1. PARTIES AND DATE

THIS AGREEMENT (hereinafter "Contract" or "Agreement") is made and entered into as of July 1, 2023 ("Agreement Date") by and between the TRI-CITY MENTAL HEALTH AUTHORITY, a joint powers agency organized under the laws of the State of California with its administrative office at 1717 N. Indian Hill Boulevard, Suite B, Claremont, California 91711 (hereinafter "TCMHA" or "Grantee") and \_\_\_\_\_ incorporated under the laws of the State of California and having its place of business at \_\_\_\_\_ (hereinafter "Contractor" or "Sub-Grantee"). TCMHA and Contractor are sometimes individually referred to as a "Party" and collectively as "Parties."

### 2. INDEPENDENT CONTRACTOR (SUB-GRANTEE)

The express intention of the Parties is that Sub-Grantee \_\_\_\_\_ is an independent contractor and not an employee, agent, joint venture or partner of TCMHA. Nothing in this Agreement shall be interpreted or construed as creating or establishing the relationship of employee and employer between Sub-Grantee and TCMHA or any employee or agent of Sub-Grantee. At all times Sub-Grantee shall be an independent contractor and shall have no power to incur any debt, obligation, or liability on behalf of TCMHA without the express written consent of TCMHA. Neither TCMHA nor any of his agents shall have control over the conduct of Contractor or any of Contractor's employees, except as set forth in this Agreement. In executing this Agreement, Contractor certifies that no one who has or will have any financial interest under this Agreement is an officer or employee of TCMHA; and that Contractor desires to perform and assume responsibility for the provision of certain services required by TCMHA on the terms and conditions set forth in this Agreement.

### 3. SCOPE OF SERVICES

Contractor shall provide services as indicated under the Sub-Grantee's Application for MHSSA Project funds, attached and incorporated hereto as 'Exhibit A'; and in support of the Mental Health Student Services Act (MHSSA) Project Grant from the California Mental Health Services Oversight and Accountability Commission (MHSOAC), which TCMHA is a Grantee (Agreement No. 21MHSOAC061), to provide increased access to mental health services in locations that are easily accessible to students and their families, as set forth under the Welfare and Institutions Code (WIC) Section 5886 *et seq.*, and the federal requirements identified in the Request for Application (RFA) in Appendix 1, Federal and State Guidance, incorporated by reference to this Agreement. Contractor affirms that it has the appropriate experience and expertise to undertake the services and has agreed to undertake the services pursuant to this Agreement and to the best of its ability.

### 4. PERFORMANCE OF SERVICES

Contractor reserves the sole right to control or direct the manner in which services are to be performed. Contractor shall retain the right to perform services for other entities during the term of this Agreement, so long as they are not competitive with the services to be performed under this Agreement. Contractor shall neither solicit remuneration nor accept any fees or commissions from any third party in connection with the Services provided to TCMHA under this Agreement without

the expressed written permission of TCMHA. Contractor warrants that it is not a party to any other existing agreement, which would prevent Contractor from entering into this Agreement or which would adversely affect Contractor's ability to fully and faithfully, without any conflict of interest, perform the Services under this Agreement.

#### 5. SUBCONTRACTORS

Contractor shall not subcontract any service requested hereunder to contractor(s) unless consented to in writing by the Executive Director of TCMHA.

#### 6. TIME AND LOCATION OF WORK

Contractor shall perform the services required by this Agreement at any place or location and at any time as Contractor deems necessary and appropriate, so long as the services are provided within the manner and time frame pursuant to this Agreement.

#### 7. TERMS

The services and/or materials furnished under this Agreement shall be from June 19, 2024 to June 30, 2026, unless earlier terminated as provided under Section 8 below; or renewed subject to an amendment to this Agreement. Contractor shall complete the Services within the term of this Agreement, and shall encumber Sub-grant funds by June 30, 2026 and expend it by September 30, 2026; and shall meet any other established requirements, schedules and deadlines, as indicated under 'Exhibit A.'

#### 8. TERMINATION. This Agreement may be terminated only as follows:

a. Written Election. TCMHA may terminate this Agreement at any time, without cause, upon thirty (30) calendar days' prior written notice to the other Party. Contractor agrees to cooperate fully in any such transition, including the transfer of records and/or work performed.

b. Effect of Termination. No termination of this Agreement shall affect or impair Contractor's right to receive funding for services/work satisfactorily completed through the effective date of termination. In the event of termination, Contractor shall immediately deliver all written work product, if any, to TCMHA, and a final invoice which shall be consistent with all work performed up to the date of termination.

#### 9. SUB-GRANT FUNDING

a. TCMHA shall award Contractor the amount of \_\_\_\_\_ for up to a three-year grant cycle with funds allocated in quarterly payments. An invoice shall be submitted quarterly describing the amount of services provided since the initial commencement date, or since the start of the subsequent billing periods, as appropriate, through the date of the invoice. TCMHA shall pay Contractor within thirty (30) days following receipt of invoice and completion/delivery of services/goods as stated under Sections 3 of this Agreement, and only upon satisfactory delivery/completion of goods/services in a manner consistent with professional/industry standards for the area in which Contractor operates.

**b.** Sub-grant funds must be used as proposed in the Sub-grant application, attached hereto as 'Exhibit A', in compliance with the MHSSA, and in alignment with TCMHA's MHSSA Project Plan as approved by MHSOAC. The MHSSA provides the following guidance on allowable costs:

- i.** Personnel and/or peer support.
- ii.** Contractor, technical assistance, and other support.
- iii.** Program costs include, but are not limited to training, technology (e.g., telehealth), facilities improvements, and transportation.
- iv.** Facilities/Capital Outlay. Refer to Appendix 1 – Federal and State Guidance, for federal guidance these types of expenditures.
- v.** Funds may also be used to facilitate linkages and access to ongoing and sustained services, including:
  - Services provided on school campuses
  - Suicide prevention services
  - Drop-out prevention services
  - Outreach to high-risk youth and young adults, including, but not limited to, foster youth, youth who identify as LGBTQ+, and youth who have been expelled or suspended from school
  - Placement assistance and development of a service plan that can be sustained over time for students in need of ongoing services
- vi.** Funds may also be used to provide other prevention, early intervention, and direct services, including, but not limited to, hiring qualified mental health personnel, professional development for school staff on trauma-informed and evidence-based mental health practices, and other strategies that respond to the mental health needs of children and youth.

**c.** Sub-grant funds may be used to supplement, but not supplant existing financial and resource commitments of the county, city, or multi-county mental health or behavioral health departments, or a consortium of those entities, or educational entities that receive a Sub-grant.

**d.** Sub-grant funds cannot be transferred to any other program account for specific purposes other than the stated purpose of this Sub-grant. All expenditures must only support the program funded by the Sub-grant.

**e.** Unspent Sub-grant funds and unspent accumulated interest, held by the Contractor, will be monitored and may be returned to TCMHA unless there is an approved plan to fully expend these amounts. Contractor must inform TCMHA of any unspent funds as soon as possible or at least six months before the close of the Sub-grant term.

**f.** Undisbursed grant funds held by TCMHA, may result in a reduction of Sub-grant funding unless there is an approved plan to fully expend these amounts.

**g.** TCMHA may withhold funds from Contractor if fails to meet the reporting requirements, falls behind schedule, has unexpended funds, provides incomplete goods/services, or modifies the scope of the project. If Contractor finds itself in this position, the Contractor shall immediately contact TCMHA and provide a mitigation plan to address the contractual project deficiency. TCMHA may withhold funds until an agreed upon mitigation plan is submitted and accepted by TCMHA. If a mitigation plan is not submitted or if it has not been accepted, TCMHA reserves the right to reduce the funding by the amount of any unexpended funds.

**h.** Contractor is responsible for monitoring its own forces/employees/agents/subcontractors to ensure delivery of goods/services within the terms of this Agreement.

**i.** Contractor acknowledges and agrees that, as an independent contractor, the Contractor will be responsible for paying all required state and federal income taxes, social security contributions, and other mandatory taxes and contributions. TCMHA shall neither withhold any amounts from the grant for such taxes, nor pay such taxes on Contractor's behalf, nor reimburse for any of Contractor's costs or expenses to deliver any services/goods including, without limitation, all fees, fines, licenses, bonds, or taxes required of or imposed upon Contractor. TCMHA shall not be responsible for any interest or late charges on any payments from TCMHA to Contractor.

## **10. LICENSES**

Contractor declares that Contractor has complied with all federal, state, and local business permits and licensing requirements necessary to conduct business.

## **11. PROPRIETARY INFORMATION**

The Contractor agrees that all information, whether or not in writing, of a private, secret or confidential nature concerning TCMHA's business, business relationships or financial affairs (collectively, "Proprietary Information") is and shall be the exclusive property of TCMHA. The Contractor will not disclose any Proprietary Information to any person or entity, other than persons who have a need to know about such information in order for Contractor to render services to TCMHA and employees of TCMHA, without written approval by Executive Director of TCMHA, either during or after its engagement with TCMHA, unless and until such Proprietary Information has become public knowledge without fault by the Contractor.

## **12. REPORTS AND DATA COLLECTION**

Contractor shall collect and report data twice a year pertaining to the work or services undertaken pursuant to this Agreement, the costs and obligations incurred in connection therewith, and any other matters covered by this Agreement. TCMHA will work with Contractor to develop a calendar, tools, and templates to assist with collecting and reporting the required data.

## **13. AUDITS**

Contractor shall maintain accounts and records, including all working papers, personnel, property, and financial records, adequate to identify and account for all costs pertaining to the Contract and such other records as may be deemed necessary by TCMHA to assure proper accounting for all

project Sub-grant funds. These records must be made available for audit purposes to TCMHA or any authorized representative, and must be retained, at the Contractor's expense, for a minimum of five (5) years after the Agreement expires, unless the firm is notified in writing by TCMHA of the need to extend the retention period.

#### 14. CONFLICT OF INTEREST

Contractor hereby certify that to the best of their knowledge or belief, no elected/appointed official or employee of TCMHA is financially interested, directly or indirectly, in the provision of goods/services specified in this Agreement. Furthermore, Contractor represents and warrants to TCMHA that it has not employed or retained any person or company employed by TCMHA to solicit or secure the award of this Agreement and that it has not offered to pay, paid, or agreed to pay any person any fee, commission, percentage, brokerage fee, or gift of any kind contingent upon or in connection with, the grant award under this Agreement.

#### 15. GENERAL TERMS AND CONDITIONS.

**a. Indemnity.** Contractor shall, at its sole cost and expense, indemnify, defend and hold harmless TCMHA, its elective and appointive officers, officials, agents, employees, volunteers, and contractors who serve as TCMHA officers, officials or staff (collectively "TCMHA Indemnitees" in this Subsection (a) of Section 15), from any and all demands, claims, costs or liability of personal injury, bodily injury (including death) and property damage of any nature (collectively "Claims"), in law or in equity, whether actual, alleged or threatened, caused by or arising out of, in whole or in part, the acts or omissions of Contractor, its officers, trustees, directors, agents, employees, contractors, subcontractors, or their officers, trustees, directors, agents or employees (or any entity or individual that Contractor shall bear the legal liability thereof), (collectively "Contractor Indemnitors" in this Subsection (a) of Section 15), including the Contractor Indemnitors' active or passive negligence, recklessness or willful misconduct in the performance of this Agreement, except as for Claims arising from the sole negligence or willful misconduct of TCMHA Indemnitees. With regard to Contractor's work product, Contractor agrees to indemnify, defend and hold harmless TCMHA, or any TCMHA Indemnitees, from any and all demands, claims or liability of any nature to the extent caused by the negligent performance of Contractor under this Agreement.

**b. Insurance.** Contractor shall obtain and file with TCMHA, at Contractor's expense, certificates of insurance providing the following insurance before commencing any services under this Agreement as follows:

**i. Workers Compensation Insurance:** Minimum statutory limits.

**ii. Commercial General Liability Insurance:** General Liability and Property Damage Combined. \$2,000,000.00 per occurrence including comprehensive form, personal injury, broad form personal damage, contractual and premises/operation, all on an occurrence basis. If an aggregate limit exists, it shall apply separately or be no less than two (2) times the occurrence limit.

**iii. Notice Of Cancellation:** TCMHA requires, and Contractor shall provide TCMHA with, 30 days' written notice of cancellation. Additionally, the notice statement on the

certificate should not include the wording "endeavor to" or "but failure to mail such notice shall impose no obligation or liability of any kind upon the company, its agents or representatives."

**iv. Waiver of Subrogation:** Each insurance policy required by this Agreement shall expressly waive the insurer's right of subrogation against TCMHA and its elected and appointive officials, officers, employees, agents, volunteers and contractors serving as TCMHA officers, officials or staff. Contractor hereby waives all rights of subrogation against TCMHA.

**v. Certificate Of Insurance:** Prior to commencement of services, evidence of insurance coverage must be shown by a properly executed certificate of insurance by an insurer licensed to do business in California, satisfactory to TCMHA, and it shall name "*Tri-City Mental Health Authority, its elective and appointed officers, employees, volunteers, and contractors who serve as TCMHA officers, officials, or staff*" as additional insureds.

**vi. Delivery of Certificates and Endorsements:** To prevent delay and ensure compliance with this Agreement, the insurance certificates and endorsements must be submitted to:

Tri-City Mental Health Authority  
Attn: JPA Administrator/Clerk  
1717 N. Indian Hill Boulevard, #B  
Claremont, CA 91711-2788

**c. Prevailing Wage Rates.** In the performance of this Agreement, Contractor shall adhere to the Federal Labor Standards Provisions, including prevailing wage requirements of the Davis-Bacon and Related Acts will be enforced. In the event of a conflict between Federal and State wage rates, the higher of the two will prevail. The Contractor's duty to pay State prevailing wages can be found under Labor Code Section 1770 et seq. and Labor Code Sections 1775 and 1777.7 outline the penalties for failure to pay prevailing wages and employ apprentices including forfeitures and debarment. Any classification omitted herein shall be paid not less than the prevailing wage scale as established for similar work in the particular area, and all overtime shall be paid at the prevailing rates as established for the particular area. Sunday and holiday time shall be paid at the wage rates determined by the Director of Industrial Relations. The current prevailing wage rates as adopted by the Director are available at the office of the Board of Supervisors, Room 383, Hall of Administration, 500 West Temple Street, Los Angeles, CA 90012.

**d. Non-Discrimination and Equal Employment Opportunity.** In the performance of this Agreement, Contractor shall not discriminate against any employee, subcontractor, or applicant for employment because of race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental disability, medical condition, sexual orientation or gender identity. Contractor will take affirmative action to ensure that subcontractors and applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, religion, sex, marital status, national origin, ancestry, age, physical or mental handicap, medical condition, sexual orientation or gender identity.

**e. Prohibition on Assignment.** This Agreement shall not be assigned or transferred without advance written consent of TCMHA.

**f. Changes to the Agreement.** No changes or variations of any kind are authorized without the written consent of TCMHA's Executive Director. This Agreement may only be



amended by a written instrument signed by both Parties. The Contractor agrees that any written change or changes in funding after the signing of this Agreement shall not affect the validity or scope of this Agreement and shall be deemed to be a supplement to this Agreement and shall specify any changes in the Scope of Services.

**g. Business Associate Agreement.** To the extent necessary, TCMHA will furnish Protected Health Information (PHI) to Contractor (Business Associate) in accordance with all applicable legal requirements to allow Contractor to perform services as indicated in the Sub-Grantee's Application for MHSSA Project funds ('Exhibit A'). Contractor is required to appropriately safeguard the PHI disclosed to Contractor. In accordance with TCMHA's policies and procedures, Contractor will sign a *Business Associate Agreement*, attached and incorporated hereto as 'Exhibit B', accepting liability for any breach of ePHI or PHI.

**h. Contractor Attestation.** Also in accordance with TCMHA's policies and procedures, TCMHA will not enter into contracts with individuals, or entities, or owners, officers, partners, directors, or other principals of entities, who have been convicted recently of a criminal offense related to health care or who are debarred, excluded or otherwise precluded from providing goods or services under Federal health care programs, or who are debarred, suspended, ineligible, or voluntarily suspended from securing Federally funded contracts. TCMHA requires that Contractor certify that no staff member, officer, director, partner, or principal, or sub-contractor is excluded from any Federal health care program, or federally funded contract and will sign attached *Contractor's Attestation That Neither It Nor Any Of Its Staff Members Are Restricted, Excluded Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program*, attached and incorporated hereto as 'Exhibit C'. Contractor agrees that Contractor shall comply with this requirement.

**i. Non-Use of Names.** Except as required by applicable law, neither Party shall use the name of the other Party, of the other Party's officials, employees, volunteers, or independent contractors acting as that Party's official, in any publicity without the prior written permission of the Party whose name is to be used.

**j. Governing Law, Jurisdiction and Venue.** This Agreement shall be governed by, and construed in accordance with, the laws of the State of California. Except that any rule of construction to the effect that ambiguities are to be resolved against the drafting Party shall not be applied in interpreting this Agreement. The Parties agree that venue of any action that arises under or relates to this Agreement (whether contract, tort, or both) shall be resolved exclusively in a superior court or federal court in the County of Los Angeles, California.

## 16. REPRESENTATIVE AND NOTICE

**a. TCMHA's Representative.** TCMHA hereby designates its Executive Director to act as its representative for the performance of this Agreement ("TCMHA's Representative"). TCMHA's Representative shall have the power to act on behalf of TCMHA for all purposes under this Agreement.

**b. Contractor's Representative.** Contractor warrants that the individual who has signed the Agreement has the legal power, right, and authority to make this Agreement and to act on behalf of Contractor for all purposes under this Agreement.

c. Delivery of Notices. All notices permitted or required under this Agreement shall be given to the respective parties at the following address, or at such other address as the respective parties may provide in writing for this purpose:

If to TCMHA:

Tri-City Mental Health Authority  
 1717 N. Indian Hill Boulevard, #B  
 Claremont, CA 91711-2788  
 Attn: Executive Director

If to Contractor:

Agency/Company Name:  
 Address:  
 City:  
 Attn:

Any notices required by this Agreement shall be deemed received on (a) the day of delivery if delivered by hand during receiving Party's regular business hours or by facsimile before or during receiving Party's regular business hours; or (b) on the third business day following deposit in the United States mail, postage prepaid, to the addresses set forth below, or to such other addresses as the Parties may, from time to time, designate in writing pursuant to the provision of this Section. Actual notice shall be deemed adequate notice on the date actual notice occurred, regardless of the method of service.

**17. NO INTENT TO CREATE A THIRD PARTY BENEFICIARY CONTRACT**

Notwithstanding any other provision of this Agreement, the Parties do not in any way intend that any person shall acquire any rights as a third Party beneficiary of this Agreement; and no third Party shall have the right to enforce any right or enjoy any benefit created or established under this Agreement.

**18. EXHIBITS.** The following attached exhibits are hereby incorporated into and made a part of this Agreement:

- a. Exhibit A: Sub-Grantee Application
- b. Exhibit B: Business Associate Agreement
- c. Exhibit C: Contractor's Attestation That Neither It Nor Any Of Its Staff Members Are Restricted, Excluded Or Suspended From Providing Goods Or Services Under Any Federal Or State Health Care Program

**19. EFFECTIVE DATE**

This Agreement shall become effective upon (a) its approval and execution by Contractor; and (b) its approval and execution by TCMHA.

**20. ENTIRE AGREEMENT**

This Agreement and any other documents incorporated herein by specific reference, represents the entire and integrated agreement between the Parties. Any ambiguities or disputed terms between this Agreement and any attached Exhibits shall be interpreted according to the language in this Agreement and not the Exhibits. This Agreement supersedes all prior agreements, written or oral, between the Contractor and TCMHA relating to the subject matter of this Agreement.

**21. SEVERABILITY**

The validity or unenforceability of any provision of this Agreement declared by a valid judgment or decree of a court of competent jurisdiction, shall not affect the validity or enforceability of any other provision of this Agreement.

**22. WAIVER**

No delay or omission by TCMHA in exercising any right under this Agreement will operate as a waiver of that or any other right. A waiver or consent given by TCMHA on any one occasion is effective only in that instance and will not be construed as a bar to or waiver of any right on any other occasion or a waiver of any other condition of performance under this Agreement.

**23. EXECUTION**

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Agreement Date.

**GRANTEE**

**SUB-GRANTEE:**

**TRI-CITY MENTAL HEALTH AUTHORITY**

**CONTRACTOR**

By: \_\_\_\_\_  
Rimmi Hundal, Executive Director

By: \_\_\_\_\_

**Attest:**

By: \_\_\_\_\_  
Micaela P. Olmos, JPA Administrator/Clerk

**Approved as to Form and Content:**  
RICHARDS WATSON & GERSHON LAW

By: \_\_\_\_\_  
Steven L. Flower, General Counsel

**EXHIBIT A**

**SUB-GRANTEE APPLICATION**

SAMPLE

**EXHIBIT B****BUSINESS ASSOCIATE AGREEMENT**

This BUSINESS ASSOCIATE AGREEMENT (“**BAA**”) is made as of this 1st day of July, 2023 (the “**Effective Date**”) by and between TRI-CITY MENTAL HEALTH AUTHORITY, a Covered Entity (“**Covered Entity**” or “**CE**”) and \_\_\_\_\_ (“**Business Associate**” or “**BA**”) (each a “**party**” and, collectively, the “**parties**”).

**RECITALS**

A. CE is a “covered entity” under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“**HIPAA**”) and, as such, must enter into so-called “business associate” contracts with certain contractors that may have access to certain consumer medical information.

B. Pursuant to the terms of one or more agreements between the parties, whether oral or in writing, (collectively, the “**Agreement**”), BA shall provide certain services to CE. To facilitate BA’s provision of such services, CE wishes to disclose certain information to BA, some of which may constitute Protected Health Information (“**PHI**”) (defined below).

C. CE and BA intend to protect the privacy and provide for the security of PHI disclosed to BA pursuant to the Agreement in compliance with HIPAA, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“**HITECH Act**”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (“**HIPAA Regulations**”) and other applicable laws, including without limitation state patient privacy laws (including the Lanterman-Petris-Short Act), as such laws may be amended from time to time. This BAA shall be governed by and construed in accordance with the laws of the State of California.

D. 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 (defined below), 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 BAA.

**NOW, THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this BAA, CE and BA agree as follows:

**AGREEMENT****I. Definitions.**

**A. Breach** shall have the meaning given to such term under 42 U.S.C. § 17921(1) and 45 C.F.R. § 164.402.

**B. Business Associate** shall have the meaning given to such term under 42 U.S.C. § 17921 and 45 C.F.R. § 160.103.

**C. Consumer** is an individual who is requesting or receiving mental health services and/or has received services in the past. Any consumer certified as eligible under the Medi-Cal program according to Title 22, Section 51001 is also known as a beneficiary.

**D. Covered Entity** shall have the meaning given to such term under 45 C.F.R. § 160.103.

**E. Data Aggregation** shall have the meaning given to such term under 45 C.F.R. § 164.501.

**F. Designated Record Set** shall have the meaning given to such term 45 C.F.R. § 164.501.

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

**H. Electronic Health Record** shall have the meaning given to such term under 42 U.S.C. § 17921(5).

**I. Health Care Operations** shall have the meaning given to such term under 45 C.F.R. § 164.501.

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

**K. 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 45 C.F.R. § 160.103. Protected Health Information includes Electronic Protected Health Information.

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

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

**N. Subcontractor** shall mean 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, pursuant to 45 C.F.R. § 160.103.

**O. Unsecured PHI** shall have the meaning given to such term under 42 U.S.C. § 17932(h), 45 C.F.R. § 164.402 and guidance issued pursuant to the HITECH Act including, but not limited to that issued on April 17, 2009 and published in 74 Federal Register 19006 (April 27, 2009), by the Secretary of the U.S. Department of Health and Human Services (“**Secretary**”).

## II. Obligations of Business Associate.

**A. Permitted Access, Use or Disclosure.** BA shall neither permit the unauthorized or unlawful access to, nor use or disclose, PHI other than as permitted or required by the Agreement, this BAA, or as required by law, including but not limited to the Privacy Rule. To the extent that BA carries out CE's obligations under the Privacy Rule, BA shall comply with the requirements of the Privacy Rule that apply to CE in the performance of such obligations. Except as otherwise limited in the Agreement, this BAA, or the Privacy Rule or Security Rule, BA may access, use, or disclose PHI (i) to perform its services as specified in the Agreement; and (ii) for the proper administration of BA, provided that such access, use, or disclosure would not violate HIPAA, the HITECH Act, the HIPAA Regulations, or applicable state law if done or maintained by CE. If BA discloses Protected Information to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable assurances from such third party that such Protected Information will be held confidential as provided pursuant to this BAA and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) agreement from such third party to promptly notify BA of any Breaches of confidentiality of the Protected Information, to the extent it has obtained knowledge of such Breach.

**B. Prohibited Uses and Disclosures.** Notwithstanding any other provision in this BAA, BA shall comply with the following requirements: (i) BA shall not use or disclose Protected Information for fundraising or marketing purposes, except as provided under the Agreement and consistent with the requirements of the HITECH Act, the HIPAA Regulations, and applicable state law, including but not limited to 42 U.S.C. § 17936, 45 C.F.R. § 164.508, and 45 C.F.R. § 164.514(f); (ii) 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. § 17935(a); 45 C.F.R. § 164.522(a); (iii) 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. § 17935(d)(2); 45 C.F.R. § 164.502(a)(5); however, this prohibition shall not affect payment by CE to BA for services provided pursuant to the Agreement.

**C. Appropriate Safeguards.** BA shall comply, where applicable, with the HIPAA Security Rule, including but not limited to 45 C.F.R. §§ 164.308, 164.310, and 164.312 and the policies and procedures and documentation requirements set forth in 45 C.F.R. § 164.316, and shall implement appropriate safeguards designed to prevent the access, use or disclosure of Protected Information other than as permitted by the Agreement or this BAA. BA shall use administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of EPHI.

### D. Reporting of Improper Access, Use, or Disclosure.

**1. Generally.** BA shall provide an initial telephone report to CE's Compliance Contact within twenty-four (24) hours of any suspected or actual breach of security, intrusion or unauthorized access, use, or disclosure of PHI of which BA becomes aware and/or any actual or suspected access, use, or disclosure of data in violation of the Agreement, this BAA, or any applicable federal or state laws or regulations, including, for the avoidance of doubt, any Security Incident (as defined in 45 C.F.R. § 164.304). BA shall take (i) prompt corrective action to cure any deficiencies in its policies and procedures that may have led to the incident, and (ii) any

action pertaining to such unauthorized access, use, or disclosure required of BA by applicable federal and state laws and regulations.

**2. Breaches of Unsecured PHI.** Without limiting the generality of the reporting requirements set forth in Section D(1), BA shall report to CE any use or disclosure of the information not permitted by this BAA, including any Breach of Unsecured PHI pursuant to 45 C.F.R. § 164.410. Following the discovery of any Breach of Unsecured PHI, BA shall notify CE in writing of such Breach without unreasonable delay and in no case later than three (3) days after discovery. The notice shall include the following information if known (or can be reasonably obtained) by BA: (i) contact information for the individuals who were or who may have been impacted by the Breach (*e.g.*, first and last name, mailing address, street address, phone number, email address); (ii) a brief description of the circumstances of the Breach, including the date of the Breach and date of discovery (as defined in 42 U.S.C. § 17932(c)); (iii) a description of the types of Unsecured PHI involved in the Breach (*e.g.*, names, social security numbers, date of birth, addresses, account numbers of any type, disability codes, diagnostic and/or billing codes and similar information); (iv) a brief description of what the BA has done or is doing to investigate the Breach and to mitigate harm to the individuals impacted by the Breach; (v) any other available information that CE is required to include in notification to the individual under 45 C.F.R. § 164.404.

**3. Mitigation.** BA shall establish and maintain safeguards to mitigate, to the extent practicable, any deleterious effects known to BA of any unauthorized or unlawful access or use or disclosure of PHI not authorized by the Agreement, this BAA, or applicable federal or state laws or regulations; provided, however, that such mitigation efforts by BA shall not require BA to bear the costs of notifying individuals impacted by such unauthorized or unlawful access, use, or disclosure of PHI, unless (i) otherwise agreed in writing by the parties, (2) BA bears responsibility for the unauthorized or unlawful access or use or disclosure of PHI, or (3) required by applicable federal or state laws or regulations; provided, further, however, that BA shall remain fully responsible for all aspects of its reporting duties to CE under Section D(1) and Section D(2).

**E. Business Associate's Subcontractors and Agents.** BA shall ensure that any agents or Subcontractors to whom it provides Protected Information agree to the same restrictions and conditions that apply to BA with respect to such PHI. To the extent that BA creates, maintains, receives or transmits EPHI on behalf of the CE, BA shall ensure that any of BA's agents or Subcontractors to whom it provides Protected Information agree to implement the safeguards required by Section C above with respect to such EPHI.

**F. Access to Protected Information.** To the extent BA maintains a Designated Record Set on behalf of the CE, 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) 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. § 164.524. 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. § 17935(e).



**G. Amendment of PHI.** To the extent BA maintains a Designated Record Set on behalf of CE, within ten (10) days of receipt of a request from the 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 PHI available to CE so that CE may make any amendments that CE directs or agrees to in accordance with the Privacy Rule.

**H. Accounting Rights.** Within ten (10) 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. § 164.528, and its obligations under the HITECH Act, including but not limited to 42 U.S.C. § 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 three (3) years prior to the request, and only to the extent BA maintains an electronic health record and is subject to this requirement. At a minimum, the information collected and maintained shall include, to the extent known to BA: (i) the date of the disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. The accounting must be provided without cost to the individual or the requesting party if it is the first accounting requested by such individual within any twelve (12) month period. For subsequent accountings within a twelve (12) month period, BA may charge the individual or party requesting the accounting a reasonable cost-based fee in responding to the request, to the extent permitted by applicable law, so long as BA informs the individual or requesting party in advance of the fee and the individual or requesting party is afforded an opportunity to withdraw or modify the request. BA shall notify CE within five (5) business days of receipt of any request by an individual or other requesting party for an accounting of disclosures. The provisions of this Section H shall survive the termination of this BAA.

**I. Governmental Access to Records.** BA shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to CE and to the Secretary for purposes of determining BA's compliance with the Privacy Rule. BA shall immediately notify CE of any requests made by the Secretary and provide CE with copies of any documents produced in response to such request.

**J. 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. Because the definition of "minimum necessary" is in flux, BA shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary." Notwithstanding the foregoing, BA must limit its (and its agents or Subcontractors) uses and disclosures of Protected Information to be consistent with CE's minimum necessary policies and procedures as furnished to BA.

**K. Permissible Requests by Covered Entity.** CE shall not request BA to use or disclose PHI in any manner that would not be permissible under HIPAA or the HITECH Act if done by CE or BA. CE shall not direct BA to act in a manner that would not be compliant with the Security Rule, the Privacy Rule, or the HITECH Act.

**L. Breach Pattern or Practice.** If CE knows of a pattern of activity or practice of the BA that constitutes a material breach or violation of BA's obligations under this BAA or other arrangement, CE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, CE must terminate the applicable Agreement to which the breach and/or violation relates if feasible. If BA knows of a pattern of activity or practice of an agent or Subcontractor that constitutes a material breach or violation of the agent or Subcontractor's obligations under its BAA or other arrangement with BA, BA must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BA must terminate the applicable agreement to which the breach and/or violation relates if feasible.

**III. Indemnification; Limitation of Liability.** To the extent permitted by law, BA shall indemnify, defend and hold harmless CE from any and all liability, claim, lawsuit, injury, loss, expense or damage resulting from or relating to the acts or omissions of BA or its agents, Subcontractors or employees in connection with the representations, duties and obligations of BA under this Agreement. Any limitation of liability contained in the applicable Agreement shall not apply to the indemnification requirement of this provision. This provision shall survive the termination of this BAA.

**IV. Business Associate's Insurance.** BA 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 Two Million Dollars (\$2,000,000) annual aggregate of Commercial General Liability insurance, and Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual aggregate of Errors and Omissions insurance. The Errors and Omissions insurance shall cover, among other things, Breaches. If the general liability or the errors and omissions insurance do not cover, among other things, Breaches, Business Associate should also carry Two Million Dollars (\$2,000,000) per occurrence and Four Million Dollars (\$4,000,000) annual aggregate of Cyber/Privacy insurance that covers, among other things, Breaches. BA shall provide CE with certificates of insurance or other written evidence of the insurance policy or policies required herein prior to execution of this BAA (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, BA shall give written notice thereof to CE not more than ten (10) days following BA's receipt of such notification. If BA fails to procure, maintain or pay for the insurance required under this section, CE shall have the right, but not the obligation, to obtain such insurance. In such event, BA shall promptly reimburse CE for the cost thereof upon written request, and failure to repay the same upon demand by CE shall constitute a material breach of this BAA.

**V. Term and Termination.**

**A. Term.** The term of this BAA shall be effective as of the Effective Date and shall terminate when all of the PHI provided by CE to BA, or created or received by BA on behalf of CE, is destroyed or returned to CE.

**B. Termination.**

**1. Material Breach by BA.** Upon any material breach of this BAA by BA, CE shall provide BA with written notice of such breach and such breach shall be cured by BA within thirty (30) business days of such notice. If such breach is not cured within such time period, CE may immediately terminate this BAA and the applicable Agreement.

**2. Effect of Termination.** Upon termination of any of the agreements comprising the Agreement for any reason, BA shall, if feasible, return or destroy all PHI relating to such agreements that BA or its agents or Subcontractors still maintain in any form, and shall retain no copies of such PHI. If return or destruction is not feasible, BA shall continue to extend the protections of this BAA to such information, and limit further use of such PHI to those purposes that make the return or destruction of such PHI infeasible.

**VI. Assistance in Litigation.** BA shall make itself and any subcontractors, employees or agents assisting BA in the performance of its obligations under the Agreements or this BAA 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 shareholders, directors, officers, agents or employees based upon a claim of violation of HIPAA, the HITECH Act, or other laws related to security and privacy, except where BA or its subcontractor, employee or agent is named as an adverse party.

**VII. Compliance with State Law.** Nothing in this BAA shall be construed to require BA to use or disclose Protected Information without a written authorization from an individual who is a subject of the Protected Information, or without written authorization from any other person, where such authorization would be required under state law for such use or disclosure.

**VIII. Compliance with 42 C.F.R. Part 2.** CE is also subject to the Confidentiality of Alcohol and Drug Abuse Patient Records regulations, 42 C.F.R. Part 2, which requires certain programs to enter into contracts with qualified service organizations (as defined in 42 C.F.R. § 2.11) that may have access to certain patient medical information. BA acknowledges that in receiving, storing, processing, or otherwise dealing with any Records (as defined in 42 C.F.R. Part 2) from CE, BA is fully bound by 42 C.F.R. Part 2. BA agrees to resist in judicial proceedings any efforts to obtain access to patient records except as permitted by 42 C.F.R. Part 2. To the extent any provisions of 42 C.F.R. Part 2 restricting disclosure of Records are more protective of privacy rights than the provisions of this BAA, HIPAA, the HITECH Act, or other applicable laws, 42 C.F.R. Part 2 controls.

**IX. Amendment to Comply with Law.** Because state and federal laws relating to data security and privacy are rapidly evolving, amendment of the Agreement or this BAA may be required to provide for procedures to ensure compliance with such developments. BA and CE shall 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. BA shall provide to CE satisfactory written assurance that BA will adequately safeguard all PHI. Upon the request of either party, the other party shall promptly enter into negotiations concerning the terms of an amendment to this BAA 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 applicable Agreement upon thirty (30) days written notice in the event (i) BA does not promptly enter into

negotiations to amend the Agreement or this BAA when requested by CE pursuant to this Section or (ii) BA does not enter into an amendment to the Agreement or this BAA providing assurances regarding the safeguarding of PHI that CE, in its reasonable discretion, deems sufficient to satisfy the standards and requirements of applicable laws, within thirty (30) days following receipt of a written request for such amendment from CE.

**X. No Third-Party Beneficiaries.** Nothing express or implied in the Agreement or this BAA 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.

**XI. Notices.** All notices hereunder shall be in writing, delivered personally, by certified or registered mail, return receipt requested, or by overnight courier, and shall be deemed to have been duly given when delivered personally or when deposited in the United States mail, postage prepaid, or deposited with the overnight courier addressed as follows:

**If to CE:** Tri-City Mental Health Authority  
1717 N. Indian Hill Blvd., Suite B  
Claremont, CA 91711  
Attn: Privacy Officer

**If to BA:** Agency/Company Name  
Address  
City  
Attn:

**With a copy to:** Hooper, Lundy & Bookman, P.C.  
1875 Century Park East, Suite 1600  
Los Angeles, CA 90067  
Attn: Linda Kollar, Esq.  
Fax: 310-551-8181

or to such other persons or places as either party may from time to time designate by written notice to the other.

**XII. Interpretation.** The provisions of this BAA shall prevail over any provisions in the Agreement that may conflict or appear inconsistent with any provision in this BAA. This BAA 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. Any ambiguity in this BAA 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. Except as specifically required to implement the purposes of this BAA, or to the extent inconsistent with this BAA, all other terms of the Agreement shall remain in force and effect.

**XIII. Entire Agreement of the Parties.** This BAA supersedes any and all prior and contemporaneous business associate agreements or addenda between the parties and constitutes the final and entire agreement between the parties hereto with respect to the subject matter hereof. Each party to this BAA acknowledges that no representations, inducements, promises, or agreements, oral or otherwise, with respect to the subject matter hereof, have been made by either

party, or by anyone acting on behalf of either party, which are not embodied herein. No other agreement, statement or promise, with respect to the subject matter hereof, not contained in this BAA shall be valid or binding.

**XIV. Regulatory References.** A reference in this BAA to a section of regulations means the section as in effect or as amended, and for which compliance is required.

**XV. Counterparts.** This BAA may be executed in one or more counterparts, each of which shall be deemed to be an original, and all of which together shall constitute one and the same instrument.

**IN WITNESS WHEREOF,** the parties hereto have duly executed this BAA as of the BAA Effective Date.

**AGREED AND ACCEPTED:**

TRI-CITY MENTAL HEALTH  
AUTHORITY

\_\_\_\_\_  
**Name of Covered Entity**

\_\_\_\_\_  
**Name of Business Associate**

\_\_\_\_\_  
**Authorized Signature**

\_\_\_\_\_  
**Authorized Signature**

RIMMI HUNDAL

\_\_\_\_\_  
**Print Name**

\_\_\_\_\_  
**Print Name**

EXECUTIVE DIRECTOR

\_\_\_\_\_  
**Print Title**

\_\_\_\_\_  
**Print Title**

\_\_\_\_\_  
**Date**

\_\_\_\_\_  
**Date**

**EXHIBIT C**

**CONTRACTOR'S ATTESTATION THAT NEITHER IT NOR ANY OF ITS STAFF MEMBERS ARE RESTRICTED, EXCLUDED OR SUSPENDED FROM PROVIDING GOODS OR SERVICES UNDER ANY FEDERAL OR STATE HEALTH CARE PROGRAM**

Contractor's Name	Last	First
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Contractor hereby warrants that neither it nor any of its staff members is restricted, excluded, or suspended from providing goods or services under any health care program funded by the Federal or State Government, directly or indirectly, in whole or in part, and the Contractor will notify the Tri-City Mental Health Authority (TCMHA) within thirty (30) days in writing of: 1) any event that would require Contractor or a staff member's mandatory exclusion or suspension from participation in a Federal or State funded health care program; and 2) any exclusionary action taken by any agency of the Federal or State Government against Contractor or one or more staff members barring it or the staff members from participation in a Federal or State funded health care program, whether such bar is direct or indirect, or whether such bar is in whole or in part.

Contractor shall indemnify and hold TCMHA harmless against any and all loss or damage Contractor may suffer arising from the Federal or State exclusion or suspension of Contractor or its staff members from such participation in a Federal or State funded health care program.

Failure by Contractor to meet the requirements of this paragraph shall constitute a material breach of contract upon which TCMHA may immediately terminate or suspend this Agreement.

**Is Contractor/Proposer/Vendor or any of its staff members currently barred from participation in any Federal or State funded health care program?**

       **NO**, Contractor or any of its staff members is not currently barred from participation in any Federal or State funded health care program.

       **YES**, Contractor or any of its staff members is currently barred from participation in any Federal or State funded health care program. Describe the particulars on a separate page.

Date	Contractor or Vendor's Name	Contractor or Vendor's Signature
	Rimmi Hundal, Executive Director	

Date	TCMHA Executive Official's Name	TCMHA Executive Official's Signature
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