

AMENDATORY AGREEMENT

THIS AMENDATORY AGREEMENT is made between the **CITY AND COUNTY OF DENVER**, a municipal corporation of the State of Colorado (the “City”), and the **UNIVERSITY SYSTEM OF NEW HAMPSHIRE**, a New Hampshire 501c(3) non-profit institution of higher education, whose address is 5 Chenell, Suite 301, Concord, NH 03301 (the “Contractor”), jointly “the Parties” and individually a “Party.”

WHEREAS, the Parties entered into an Agreement dated October 5, 2021, to provide training and consultation on the development of a START clinical team in Denver for the Department of Human Services and the local START provider to implement a Denver-based START program (the “Agreement”); and

WHEREAS, the Agreement expired by its terms on August 31, 2024, and rather than enter into a new agreement, the Parties wish to revive and reinstate all terms and conditions of the Agreement as they existed prior to the expiration of the term and to amend the Agreement as set forth below.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties incorporate the recitals set forth above and amend the Agreement as follows:

1. Effective September 1, 2024, all references to Exhibit A in the existing Agreement shall be amended to read Exhibits A and A-1, as applicable. Exhibit A-1 is attached and will control from September 1, 2024.

2. Section 3 of the Agreement, titled “**TERM**,” is amended to read as follows:

“3. **TERM**: The term of the Agreement (“Term”) shall commence on September 1, 2021, and expire, unless sooner terminated, on June 30, 2025. Subject to the Director’s prior written authorization, the Contractor shall complete any work in progress as of the then current expiration date and the Term will extend until the work is completed or earlier terminated.”

3. Subsection 4.4.1 of the Agreement, titled “**Maximum Contract Amount**,” is amended to read as follows:

“4.4.1. Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed Six Hundred Twenty-Three Thousand One Hundred Seventy-Four Dollars (\$623,174.00) (the “Maximum Contract Amount”). The City is not obligated to execute an agreement or any amendments for any further services, including any services performed by the Contractor beyond that specifically described in **Exhibits A and A-1**. Any services performed beyond those in **Exhibits A and A-1** or performed outside the Term are performed at the Contractor’s risk and without authorization under the Agreement.”

4. Section 22 of the Agreement, titled “**NO EMPLOYMENT OF A WORKER WITHOUT AUTHORIZATION TO PERFORM WORK UNDER THE AGREEMENT**,” is amended to read as follows:

“22. **COMPLIANCE WITH DENVER WAGE LAWS**: To the extent applicable to the Contractor’s provision of Services hereunder, the Contractor shall comply with, and agrees to be bound by, all rules, regulations, requirements, conditions, and City determinations regarding the City’s Minimum Wage and Civil Wage Theft Ordinances, Sections 58-1 through 58-26 D.R.M.C., including,

but not limited to, the requirement that every covered worker shall be paid all earned wages under applicable state, federal, and city law in accordance with the foregoing D.R.M.C. Sections. By executing this Agreement, the Contractor expressly acknowledges that the Contractor is aware of the requirements of the City's Minimum Wage and Civil Wage Theft Ordinances and that any failure by the Contractor, or any other individual or entity acting subject to this Agreement, to strictly comply with the foregoing D.R.M.C. Sections shall result in the penalties and other remedies authorized therein."

5. Section 25 of the Agreement, titled "**NO DISCRIMINATION IN EMPLOYMENT**," is amended to read as follows:

"25. NO DISCRIMINATION IN EMPLOYMENT: In connection with the performance of work under this Agreement, the Contractor may not refuse to hire, discharge, promote, demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, ethnicity, citizenship, immigration status, gender, age, sexual orientation, gender identity, gender expression, marital status, source of income, military status, protective hairstyle, or disability. The Contractor shall insert the foregoing provision in all subcontracts."

6. Except as amended here, the Agreement is affirmed and ratified in each and every particular.

7. This Amendatory Agreement is not effective or binding on the City until it has been fully executed by all required signatories of the City and County of Denver, and if required by Charter, approved by the City Council.

8. The following attached exhibits are hereby incorporated into and made a material part of this Agreement: **Exhibit A-1**, Scope of Work.

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Contract Control Number: SOCSV-202474975-01; 202159628-01
Contractor Name: UNIVERSITY SYSTEM OF NEW HAMPSHIRE

IN WITNESS WHEREOF, the parties have set their hands and affixed their seals at Denver, Colorado as of:

SEAL

CITY AND COUNTY OF DENVER:

ATTEST:

By:

APPROVED AS TO FORM:

REGISTERED AND COUNTERSIGNED:

Attorney for the City and County of Denver

By:

By:

By:

Contract Control Number:
Contractor Name:

SOCSV-202474975-01; 202159628-01
UNIVERSITY SYSTEM OF NEW HAMPSHIRE

By:  7313G6D1965D408...

Name: Susan Sosa
(please print)

Title: Grant and Contract Administrator
(please print)

ATTEST: [if required]

By: _____

Name: _____
(please print)

Title: _____
(please print)



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I. Purpose of Agreement

The purpose of this Agreement is to establish a contractual relationship and Scope of Work between Denver Human Services (DHS) and The University of New Hampshire (UNH), Institute on Disability (“Contractor”).

II. IDDEAS Program Requirements

In addition to the eligibility, residency, and permitted use requirements outlined in the Developmental Disabilities Mill Levy, § 53-550, D.R.M.C. and referenced in this Agreement, all contractors shall adhere to the following program requirements:

Mill levy Contracts. It is anticipated that contractors may be awarded multiple contracts pursuant to the Mill Levy. It is the responsibility of Contractor to ensure that expenses, including payroll, are tracked and submitted on a per contract basis. Failure to do so may result in a determination that Contractor has breached the terms and conditions of one or more of the contracts.

Branding. City branding, including the Denver Human Services (DHS) logo, may be included on curricula, deliverables, and promotional materials under the following circumstances:

- All components of the deliverables meet DHS standards. Contractor may work with the IDDEAS Program Manager and the DHS Marketing and Communications teams to determine opportunities to include attributions and ensure DHS standards are met.
- Any materials that use DHS branding shall be provided to the IDDEAS Program Manager for review and approval by the DHS Marketing and Communications team at least two (2) weeks prior to production deadline.
- Written approval must be received from the DHS Marketing and Communications Director, or designee prior to use.

III. Services

START is a community-based tertiary care crisis intervention system for individuals with intellectual and developmental disabilities (I/DD) with mental/behavioral health needs (IDD/MH) and their families or caregivers. DHS has identified a local community provider to implement and attain START program certification in Denver (i.e. Denver START Clinical Team Program). Contractor’s National Center for START Services (Contractor) program staff will provide training and consultation on the development of a START clinical team in Denver to DHS and the local START provider under contract with DHS. Consultation will span contract term and supports implementation of a Denver-based START Clinical Team Program, including:



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- Remote consultation and technical assistance meetings on a regular basis specific to coach on the START model, to include, but is not limited to provision of technical assistance and/or training, and access to START tools;
- Consultation on regional specific topics and meetings with local and other stakeholders critical to the success of the START model in Denver;
- Contractor staff providing on site consultation and training in two-day visits for each year of the project, or a combination of days based on project needs, that focus on implementation and training on the START model; and
- Regular visits (monthly or quarterly, as needed) from contractor designated staff for each year of the project.

Contractor staff on site visits encompass targeted training and support the development of the community-based infrastructure, including materials, planning, preparation, and implementation of the program. This will include local entities and providers as needed.

Denver START Clinical Team Training & Certification

Contractor staff will combine remote and on-site hours to:

- Provide START Coordinator training and certification for local START provider up to fifteen (15) designated staff as well as DHS oversight staff as needed and requested, with DHS consideration of START training capacity/slot availability.
 - This includes facilitation of Coordinator Training Group.
 - Access to additional contractor coaching, office hours are included as part of training.
- Provide training and implementation of data collection and input into the national START database (i.e. START Information Reporting System (SIRS) database).
 - Contractor will develop and execute a Business Associate Agreement (BAA) with the Denver START provider, develop location-specific segment of the larger SIRS database, establish authorized users (with usernames and passwords), and provide web-based training for all START team users for data collection.
 - Quarterly and annual reports will be provided in collaboration with the Denver, CO START Program Director (see section V. Performance Management, B. Reporting for reporting requirements).
 - The Parties to this Agreement further agree to not disclose confidential client information, including protected health information (PHI), personally identifiable information (PII), or substance use disorder treatment information regarding public assistance, benefits, physical health, mental health, child welfare, or other records created or collected in the course of serving a client, except as required or



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allowed by law, or with the client's permission or permission of their parent or legal guardian, or pursuant to a lawful court order. The Parties will only disclose in compliance with all applicable federal, state, and local laws, regulations, ordinances, including but not limited to the Health Insurance Portability and Accountability Act (HIPPA), the Health Information Technology for Economic and Clinical Health Act (HITECH), the Colorado Children's Code Title 19, 42 CFR Part 2.

START Coordinator Certification for local provider staff occurs upon completion of didactic training and Coordinator Training Group, and proven competence in several domains, including development of a cross-systems crisis plan, case presentation and a START comprehensive service evaluation, crisis contacts, and trainings. Participants will receive a certificate recognizing their status as a certified START Coordinator and will have continued access to the national online training series and practice groups.

Under this Agreement, participation in the START model with CONTRACTOR includes access to:

- National Online Training Series
 - Access to the related fiscal year START National Online Training Series.
- Participation in relevant START practice groups, such as:
 - START Program Director's Practice Group
 - Clinical Director's Practice Group
 - Medical Director's Practice Group
 - Team Leader Practice Group
 - Children's Services Practice Group
 - In-Home Therapeutic Coaching Team Leads Practice Group
 - Time-limited, Special Topic Practice Groups (when appropriate)

Information and data sharing between Contractor, DHS, and the Denver START provider is not only anticipated, but critical to a successful local implementation of this national model. Any disclosure of confidential client information will be done in strict compliance with all applicable federal, state and local laws and regulations.

Denver START model implementation timeline and objectives

Year 1: September 1, 2021 – August 31, 2022

Activities focus on team development, community awareness, START Coordination training, and START model philosophy and methods.

Year 2: September 1, 2022 – August 31, 2023



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Activities continue with team development and training. Individual START Coordinator certifications anticipated to occur as mastery of concepts are demonstrated.

Year 3: September 1, 2023-August 31, 2024

Activities continue with team development and training on START model methods and concepts. Individual START Coordinator certifications anticipated to occur as mastery of concepts are demonstrated.

Year 4: September 1, 2024 – June 30, 2025

Activities continue with team development and training. Individual START Coordinator certifications anticipated to occur as mastery of concepts are demonstrated. START program certification is expected to occur within Year 4 as mastery of concepts and execution of START model is achieved (Program certification was originally targeted for completion within Year 3; this amended SOW reflects an extended timeline which aligns with National Center for START services standards).

Formal quality assurance (QA) checks will be completed annually, or more often as needed.

DHS Collaboration

Contractor will have, at least, monthly check ins with DHS either by remote video conference, phone call, or email to track overall progress toward goals outlined in section IV. Process and Outcome Measures. Contractor will stay in close communication with DHS staff liaison and will keep DHS apprised of any hurdles to success they identify throughout the local Denver program development, training, and certification process. Contractor's consultation shall align with DHS's commitment to diversity, equity, access, inclusion, and transparency.

Separate from the required reports outlined in section V-H. Reporting of this Agreement, Contractor staff may be asked to support or participate in additional public facing or internal City presentations about the Denver START program development. DHS understands the decision to participate hinges on hours of availability.

IV. Process and Outcome Measures

A. Process Measures.

- Contractor will facilitate training opportunities under START model including Coordinator Training Group. This includes access to training platforms and resources, as well as START Practice Groups.
- Leadership of and/or facilitation of community-facing meetings under START model.



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- Contractor, in collaboration with the local Denver START provider, will track various process measures, such as:
 - Total number of participants;
 - Demographics of individuals served;
 - Reasons for referral; and
 - Cultural and linguistic competency practices as identified and accepted by contractor and DHS teams, as appropriate.

B. Outcome Measures.

- Contractor will track staff progress toward and achievement of certification of local START provider, including regular updates to DHS on progress towards local program certification; this includes formal quality assurance checks on anticipated timeline for full program certification.
- Contractor, in collaboration with local Denver START provider, will track various outcome measures as identified in this Agreement through START best practices and local program needs, such as:
 - Emergency service utilization over time, including out of home/out of state placement rates;
 - Rates of stabilization following crisis;
 - Successful client stabilization as reflected on START plan data

V. Performance Management

- A. Contractor shall permit the City to carry out reasonable activities to review, monitor, and evaluate any of the procedures used by Contractor in providing or supplying services and make available for inspection all notes and other documents used in performing the services as described in this Agreement.
- B. Monitoring can and shall be performed by the City throughout the term of the Agreement as follows:
- C. Program or Managerial Monitoring – Review of the quality of services being provided and the effectiveness of those services to address the needs of the City.
- D. Contract Monitoring – Review and analysis to determine the extent to which Contractor is achieving established contractual objectives and goals. The City will provide performance monitoring and reporting reviews and will manage any performance issues and develop interventions to resolve concerns.
- E. Compliance Monitoring – Review to ensure the terms of the Agreement are met, including federal, state and city legal requirements, standards, and policies.
- F. Financial Monitoring – Regular reviews to ensure that costs are allocated and expended in accordance with the terms of the Agreement. The City will review allowability and documentation of costs through invoice review, sampling methods, and/or full documentation reviews.
- G. If the City gives notice, as a result of an audit or review relating to the fiscal performance of the Contractor including those performed by a DHS internal



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auditor, of any irregularities or deficiencies, the Contractor shall correct all identified irregularities or deficiencies within the identified time frames. If the identified irregularities or deficiencies cannot be corrected by the designated by the City, Contractor shall notify the City in writing and identify a date that the Contractor expects to correct the irregularities or deficiencies; provided, however, that the irregularities or deficiencies shall be corrected no later than ninety (90) days from the date of the City’s notice.

H. Reporting

The following reports shall be developed and delivered to the City as stated in this section.

Report Name	Description	Frequency*	Reports sent to:
1. Denver START Status Report	Report on the progress/status of the Denver START program, to include consultation and technical assistance; SIRS data entry; START Coordinator Training and Certification; START therapeutic coaching supports, participation in practice groups, and national online training series.	Monthly – to be submitted by the 15 th of the following month	DHS Program Manager
2.. START Information Reporting System (SIRS) Quarterly Report	With participation from Denver START program team, Contractor will provide a quarterly report through Denver START certification generated from the SIRS database. Utilizing unique ID numbers, the SIRS database captures de-identified health information about individuals receiving START services and has the ability to provide reporting by caseload, by region, and by state. The quarterly reports will include analysis of service outcomes and provide valuable	11 times, with the first report due on or before January 31, 2022; *April 30, 2022; *July 31, 2022; *January 31, 2023; *April 30, 2023; *July 31, 2023; *January 31, 2024; *April 30, 2024; *July 31, 2024; *January 31, 2025;	Quarterly reports will be sent to DHS Program Manager



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	information on service effectiveness over time to which will be utilized as a management tool for decision-makers. Data provided will include qualitative as well as quantitative measures.	* April 30, 2025 * Report dates subject to change agreed upon by CONTRACTOR CONTRACTOR and DHS.	
2. Final START Evaluation Report	Final evaluation of Denver START program performance, including progress towards certifications, outcome measures, and analysis on impact. This report will include relevant observations and analysis related to the development and implementation of START in Denver.	May 30, 2025 * Report date subject to change agreed upon by Contractor and DHS.	DHS Program Manager

VI. DHS funding information:

- A. **Program Name: IDDEAS Program**
- B. **Funding Source: Mill Levy – Special Revenue**


VII. Budget

Invoices and reports shall be completed and submitted on or before the 20th of each month following the month services were rendered 100% of the time. Contractor shall use DHS’ preferred invoice template, if requested. Invoicing supporting documents must meet DHS requirements.

Unless otherwise instructed, invoices shall be submitted to DHS_Contractor_Invoices@denvergov.org.



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		BUDGET (Cost Reimbursement) Contract Administration – Financial Services Division 1200 Federal Blvd., Fourth Floor Denver, CO 80204-3221 Phone: 720-944-2233 FAX Phone: 720-944-2224 DHS Contracting Services@denvergov.org
Contractor Name: The University System of New Hampshire (UNH), Institute on Disability		
Contract Term: September 1, 2021 – June 30, 2025		
Fiscal Term: September 1, 2021 – June 30, 2025		
Contract Number: 202159628-01; 2024-74975-01		
Program Name: Denver START Clinical Team Program Development & Evaluation		
Fees for Services	Budget Amount	Budget Narrative
Program Consultation: Director level (hourly rate)	\$71,659	Fee for service for remote or on-site program consultation by the CSS Director, to be billed at the following rates: Year 1 (09/01/21 through 08/31/22): \$584/hour; Year 2 (09/01/22 through 08/31/23) & 3 (09/01/23 through 08/31/24): \$620.50/hour; Year 4 (09/01/24 – 6/30/2025):this rate will not be billed
Program Consultation: Staff (hourly rate)	\$348,018	Fee for service for remote or on-site programconsultation by CSS staff as designated based on program development, to be billedat the following rates: Year 1 (09/01/21 through 08/31/22): \$401.50/hour; Year 2 (09/01/22 through 08/31/23) & Year 3 (09/01/23 through 08/31/24): \$438/hour; Year 4 (09/01/2024 through 6/30/2025) includes contractor Director, contractor Staff, and Annual Report: \$438/hour.
Program Consultation: Annual Reports: Staff (hourly rate)	\$217	Fee for service for contractor staff to write/organize up to three (3) annual reports



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		throughout the contract term, billed at \$108.40/hour.
Training Groups (flat fee monthly installments)	\$35,030	Coordinator Training Group and Therapeutic Coaching Training Groups billed at a flat fee , based on phases of START model development in Denver. Year 1 (09/01/21 through 08/31/22): \$8,374 total, to be billed at \$698/month. Year 2 (09/01/22 through 08/31/23): \$11,301, to be billed at \$941.75/month. Year 3 (09/01/23 through 08/31/24): \$8,374 total, to be billed at \$698/month. Year 4 (09/01/2024 through 6/30/2025): \$6,980 total, to be billed at \$698/month.
National Online Training Series	\$5,750	START National Online Training Series access fee, to be billed at \$125/month.
SIRS Database	\$15,364	Fee for use of and/or access to START SIRS database for local START provider and DHS, to be billed at \$334/month.
Total Fee for Service Costs	\$476,038	
Direct Reimbursable Costs	Cost	Budget Narrative
Travel	\$39,076	Personal vehicle mileage reimbursed at the standard IRS rate at the time of travel, to be reimbursed upon receipt of mileage records demonstrating start and end locations including zip codes, date, and reason for trip; additional program-related travel expenses including travel to seminars or conferences, including conference registration fees, lodging, airfare or other transportation costs, travel insurance for flights.



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		<p>Reimbursement of flights, public transportation and ride share services, parking and toll costs associated with program-related travel to be reimbursed at cost, once the travel occurs, with travel itinerary and supportive materials such as invoices/ receipts, conference schedules, and proof of payment.</p> <p>Travel expenses, including but not limited to flights, rental cars, hotels or accommodations, and per diems for food. Per diems for travel will be reimbursed based on standard IRS guidelines at the time of travel. Tips are capped at 20% and expenses should follow IRS guidelines regarding travel.</p>
Total Direct Reimbursable Costs	\$39,076	
Total Direct Costs	\$515,114	
Indirect cost	\$108,060	City Negotiated Rate of 21% of total direct costs, based on UNH indirect or policy and IOD indirect costs for operations. Billed at a flat rate for total costs invoiced.
Contract Total Amount	\$623,174	

Contract Version	Contract Term	Fiscal Term	Previous Amount	Additional Amount	New Contract Total
Base	9/1/2021-8/31/2024	9/1/2021-8/31/2024	\$0	\$599,072	\$599,072
1st Amendment	9/1/2021-6/30/2025	9/1/2021-06/30/2025	\$599,072	\$24,102	\$623,174



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VIII. HIPAA/HITECH (Business Associate Terms)

1. GENERAL PROVISIONS AND RECITALS

- 1.01 The parties agree that the terms used, but not otherwise defined below, shall have the same meaning given to such terms under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and their implementing regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") as they exist or may hereafter be amended.
- 1.02 The parties agree that a business associate relationship (as described in 45 CFR §160.103) under HIPAA, the HITECH Act, and the HIPAA regulations arises between the CONTRACTOR and the CITY to the extent that CONTRACTOR performs, or delegates to subcontractors to perform, functions or activities on behalf of CITY.
- 1.03 CITY wishes to disclose to CONTRACTOR certain information, some of which may constitute Protected Health Information ("PHI") as defined below, to be used or disclosed in the course of providing services and activities.
- 1.04 The parties intend to protect the privacy and provide for the security of PHI that may be created, received, maintained, transmitted, used, or disclosed pursuant to the Agreement in compliance with the applicable standards, implementation specifications, and requirements of HIPAA, the HITECH Act, and the HIPAA regulations as they exist or may hereafter be amended.
- 1.05 The parties understand and acknowledge that HIPAA, the HITECH Act, and the HIPAA regulations do not pre-empt any state statutes, rules, or regulations that impose more stringent requirements with respect to privacy of PHI.
- 1.06 The parties understand that the HIPAA Privacy and Security rules apply to the CONTRACTOR in the same manner as they apply to a covered entity. CONTRACTOR agrees to comply at all times with the terms of this Agreement and the applicable standards, implementation specifications, and requirements of the Privacy and the Security rules, as they exist or may hereafter be amended, with respect to PHI.

2. DEFINITIONS.

- 2.01 "Administrative Safeguards" are administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect electronic PHI and to manage the



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conduct of CONTRACTOR's workforce in relation to the protection of that information.

2.02 "Agreement" means the attached Agreement and its exhibits to which these additional terms are incorporated by reference.

2.03 "Breach" means the acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule which compromises the security or privacy of the PHI.

2.03.1 Breach excludes:

1. any unintentional acquisition, access, or use of PHI by a workforce member or person acting under the authority of CONTRACTOR or CITY, if such acquisition, access, or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
2. any inadvertent disclosure by a person who is authorized to access PHI to another person authorized to access PHI, or organized health care arrangement in which CITY participates, and the information received as a result of such disclosure is not further used or disclosed in a manner disallowed under the HIPAA Privacy Rule.
3. a disclosure of PHI where CONTRACTOR or CITY has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.

2.03.2 Except as provided in paragraph (a) of this definition, an acquisition, access, use, or disclosure of PHI in a manner not permitted under the HIPAA Privacy Rule is presumed to be a breach unless CONTRACTOR demonstrates that there is a low probability that the PHI has been compromised based on a risk assessment of at least the following factors:

- a. The nature and extent of the PHI involved, including the types of identifiers and the likelihood of re-identification;
- b. The unauthorized person who used the PHI or to whom the disclosure was made;
- c. Whether the PHI was actually acquired or viewed; and
- d. The extent to which the risk to the PHI has been mitigated.



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- 2.04 "CONTRACTOR" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.05 "CITY" shall have the same meaning as in the attached Agreement, to which these Business Associate terms are incorporated by reference.
- 2.06 "Data Aggregation" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.07 "Designated Record Set" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.08 "Disclosure" shall have the meaning given to such term under the HIPAA regulations in 45 CFR §160.103.
- 2.09 "Health Care Operations" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §164.501.
- 2.10 "Immediately" where used here shall mean within 24 hours of discovery.
- 2.11 "Individual" shall have the meaning given to such term under the HIPAA Privacy Rule in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 2.12 "Parties" shall mean "CONTRACTOR" and "CITY", collectively.
- 2.13 "Physical Safeguards" are physical measures, policies, and procedures to protect CONTRACTOR's electronic information systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.
- 2.14 "The HIPAA Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- 2.15 "Protected Health Information" or "PHI" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.16 "Required by Law" shall have the meaning given to such term under the HIPAA Privacy Rule at 45 CFR §164.103.
- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.



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- 2.18 "Security Incident" means attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system. "Security incident" does not include trivial incidents that occur on a daily basis, such as scans, "pings", or unsuccessful attempts to penetrate computer networks or servers maintained by CONTRACTOR.
- 2.19 "The HIPAA Security Rule" shall mean the Security Standards for the Protection of electronic PHI at 45 CFR Part 160, Part 162, and Part 164, Subparts A and C.
- 2.20 "Subcontractor" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.
- 2.21 "Technical safeguards" means the technology and the policy and procedures for its use that protect electronic PHI and control access to it.
- 2.22 "Unsecured PHI" or "PHI that is unsecured" means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary of Health and Human Services ("HHS") in the guidance issued on the HHS Web site.
- 2.23 "Use" shall have the meaning given to such term under the HIPAA regulations at 45 CFR §160.103.

3. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR AS BUSINESS ASSOCIATE.

- 3.01 CONTRACTOR agrees not to use or further disclose PHI that CITY discloses to CONTRACTOR except as permitted or required by this Agreement or by law.
- 3.02 CONTRACTOR agrees to use appropriate safeguards, as provided for in this Agreement, to prevent use or disclosure of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY, except as provided for by this Contract.
- 3.03 CONTRACTOR agrees to comply with the HIPAA Security Rule, at Subpart C of 45 CFR Part 164, with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits, on behalf of CITY.
- 3.04 CONTRACTOR agrees to mitigate, to the extent practicable, any harmful effect of a Use or Disclosure of PHI by CONTRACTOR in violation of the requirements of this Agreement that becomes known to CONTRACTOR.



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- 3.05 CONTRACTOR agrees to immediately report to CITY any Use or Disclosure of PHI not provided for by this Agreement that CONTRACTOR becomes aware of. CONTRACTOR must report Breaches of Unsecured PHI in accordance with 45 CFR §164.410.
- 3.06 CONTRACTOR agrees to ensure that any of its subcontractors that create, receive, maintain, or transmit, PHI on behalf of CONTRACTOR agree to comply with the applicable requirements of Section 164 Part C by entering into a contract or other arrangement.
- 3.07 To comply with the requirements of 45 CFR §164.524, CONTRACTOR agrees to provide access to CITY, or to an individual as directed by CITY, to PHI in a Designated Record Set within fifteen (15) calendar days of receipt of a written request by CITY.
- 3.08 CONTRACTOR agrees to make amendment(s) to PHI in a Designated Record Set that CITY directs or agrees to, pursuant to 45 CFR §164.526, at the request of CITY or an Individual, within thirty (30) calendar days of receipt of the request by CITY. CONTRACTOR agrees to notify CITY in writing no later than ten (10) calendar days after the amendment is completed.
- 3.09 CONTRACTOR agrees to make internal practices, books, and records, including policies and procedures, relating to the use and disclosure of PHI received from, or created or received by CONTRACTOR on behalf of CITY, available to CITY and the Secretary in a time and manner as determined by CITY, or as designated by the Secretary, for purposes of the Secretary determining CITY'S compliance with the HIPAA Privacy Rule.
- 3.10 CONTRACTOR agrees to document any Disclosures of PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY, and to make information related to such Disclosures available as would be required for CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.11 CONTRACTOR agrees to provide CITY information in a time and manner to be determined by CITY in order to permit CITY to respond to a request by an Individual for an accounting of Disclosures of PHI in accordance with 45 CFR §164.528.
- 3.12 CONTRACTOR agrees that, to the extent CONTRACTOR carries out CITY's obligation(s) under the HIPAA Privacy and/or Security rules, CONTRACTOR will comply with the requirements of 45 CFR Part 164 that apply to CITY in the performance of such obligation(s).
- 3.13 CONTRACTOR shall work with CITY upon notification by CONTRACTOR to CITY of a Breach to properly determine if any Breach exclusions exist as defined below.



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4. SECURITY RULE.

- 4.01 CONTRACTOR shall comply with the requirements of 45 CFR § 164.306 and establish and maintain appropriate Administrative, Physical and Technical Safeguards in accordance with 45 CFR §164.308, §164.310, §164.312, §164.314 and §164.316 with respect to electronic PHI that CITY discloses to CONTRACTOR or that CONTRACTOR creates, receives, maintains, or transmits on behalf of CITY. CONTRACTOR shall follow generally accepted system security principles and the requirements of the HIPAA Security Rule pertaining to the security of electronic PHI.
- 4.02 CONTRACTOR shall ensure that any subcontractors that create, receive, maintain, or transmit electronic PHI on behalf of CONTRACTOR agree through a contract with CONTRACTOR to the same restrictions and requirements contained here.
- 4.03 CONTRACTOR shall immediately report to CITY any Security Incident of which it becomes aware. CONTRACTOR shall report Breaches of Unsecured PHI as described in 5. BREACH DISCOVERY AND NOTIFICATION below and as required by 45 CFR §164.410.

5. BREACH DISCOVERY AND NOTIFICATION.

- 5.01 Following the discovery of a Breach of Unsecured PHI, CONTRACTOR shall notify CITY of such Breach, however, both parties may agree to a delay in the notification if so advised by a law enforcement official pursuant to 45 CFR §164.412.
 - 5.01.1 A Breach shall be treated as discovered by CONTRACTOR as of the first day on which such Breach is known to CONTRACTOR or, by exercising reasonable diligence, would have been known to CONTRACTOR.
 - 5.01.2 CONTRACTOR shall be deemed to have knowledge of a Breach, if the Breach is known, or by exercising reasonable diligence would have been known, to any person who is an employee, officer, or other agent of CONTRACTOR, as determined by the federal common law of agency.
- 5.02 CONTRACTOR shall provide the notification of the Breach immediately to the CITY DHS Executive Director or other designee.
 - 5.02.1 CONTRACTOR'S initial notification may be oral, but shall be followed by written notification within 24 hours of the oral notification.
- 5.03 CONTRACTOR'S notification shall include, to the extent possible:



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- 5.03.1 The identification of each Individual whose Unsecured PHI has been, or is reasonably believed by CONTRACTOR to have been, accessed, acquired, used, or disclosed during the Breach;
- 5.03.2 Any other information that CITY is required to include in the notification to each Individual under 45 CFR §164.404 (c) at the time CONTRACTOR is required to notify CITY, or promptly thereafter as this information becomes available, even after the regulatory sixty (60) day period set forth in 45 CFR §164.410 (b) has elapsed, including:
 - a. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
 - b. A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
 - c. Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;
 - d. A brief description of what CONTRACTOR is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any future Breaches; and
 - e. Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 5.04 CITY may require CONTRACTOR to provide notice to the Individual as required in 45 CFR §164.404, if at the sole discretion of the CITY, it is reasonable to do so under the circumstances.
- 5.05 In the event that CONTRACTOR is responsible for a Breach of Unsecured PHI in violation of the HIPAA Privacy Rule, CONTRACTOR shall have the burden of demonstrating that CONTRACTOR made all required notifications to CITY, and as required by the Breach notification regulations, or, in the alternative, that the acquisition, access, use, or disclosure of PHI did not constitute a Breach.
- 5.06 CONTRACTOR shall maintain documentation of all required notifications of a Breach or its risk assessment under 45 CFR §164.402 to demonstrate that a Breach did not occur.



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- 5.07 CONTRACTOR shall provide to CITY all specific and pertinent information about the Breach, including the information listed above, if not yet provided, to permit CITY to meet its notification obligations under Subpart D of 45 CFR Part 164 as soon as practicable, but in no event later than fifteen (15) calendar days after CONTRACTOR's initial report of the Breach to CITY.
- 5.08 CONTRACTOR shall continue to provide all additional pertinent information about the Breach to CITY as it becomes available, in reporting increments of five (5) business days after the prior report to CITY. CONTRACTOR shall also respond in good faith to all reasonable requests for further information, or follow-up information, after report to CITY, when such request is made by CITY.
- 5.09 In addition to the provisions in the body of the Agreement, CONTRACTOR shall also bear all expense or other costs associated with the Breach and shall reimburse CITY for all expenses CITY incurs in addressing the Breach and consequences thereof, including costs of investigation, notification, remediation, documentation or other costs or expenses associated with addressing the Breach.

6. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.

- 6.01 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR as necessary to perform functions, activities, or services for, or on behalf of, CITY as specified in the Agreement, provided that such use or Disclosure would not violate the HIPAA Privacy Rule if done by CITY.
- 6.02 CONTRACTOR may use PHI that CITY discloses to CONTRACTOR, if necessary, for the proper management and administration of the Agreement.
- 6.03 CONTRACTOR may disclose PHI that CITY discloses to CONTRACTOR to carry out the legal responsibilities of CONTRACTOR, if:
 - 6.03.1 The Disclosure is required by law; or
 - 6.03.2 CONTRACTOR obtains reasonable assurances from the person or entity to whom/which the PHI is disclosed that it will be held confidentially and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person or entity and the person or entity immediately notifies CONTRACTOR of any instance of which it is aware in which the confidentiality of the information has been breached.
- 6.04 CONTRACTOR may use or further disclose PHI that CITY discloses to CONTRACTOR to provide Data Aggregation services relating to the Health Care Operations of CONTRACTOR.



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6.05 CONTRACTOR may use and disclose PHI that CITY discloses to CONTRACTOR consistent with the minimum necessary policies and procedures of CITY.

7. OBLIGATIONS OF CITY.

7.01 CITY shall notify CONTRACTOR of any limitation(s) in CITY'S notice of privacy practices in accordance with 45 CFR §164.520, to the extent that such limitation may affect CONTRACTOR'S Use or Disclosure of PHI.

7.02 CITY shall notify CONTRACTOR of any changes in, or revocation of, the permission by an Individual to use or disclose his or her PHI, to the extent that such changes may affect CONTRACTOR'S Use or Disclosure of PHI.

7.03 CITY shall notify CONTRACTOR of any restriction to the Use or Disclosure of PHI that CITY has agreed to in accordance with 45 CFR §164.522, to the extent that such restriction may affect CONTRACTOR'S use or disclosure of PHI.

7.04 CITY shall not request CONTRACTOR to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Rule if done by CITY.

8. BUSINESS ASSOCIATE TERMINATION.

8.01 Upon CITY'S knowledge of a material breach or violation by CONTRACTOR of the requirements of this Contract, CITY shall:

8.01.1 Provide an opportunity for CONTRACTOR to cure the material breach or end the violation within thirty (30) business days; or

8.01.2 Immediately terminate the Agreement, if CONTRACTOR is unwilling or unable to cure the material breach or end the violation within (30) days, provided termination of the Agreement is feasible.

8.02 Upon termination of the Agreement, CONTRACTOR shall either destroy or return to CITY all PHI CONTRACTOR received from CITY and any and all PHI that CONTRACTOR created, maintained, or received on behalf of CITY in conformity with the HIPAA Privacy Rule.

8.02.1 This provision shall apply to all PHI that is in the possession of subcontractors or agents of CONTRACTOR.

8.02.2 CONTRACTOR shall retain no copies of the PHI.

8.02.3 In the event that CONTRACTOR determines that returning or destroying the PHI is not feasible, CONTRACTOR shall provide to CITY notification of the



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conditions that make return or destruction infeasible. Upon determination by CITY that return or destruction of PHI is infeasible, CONTRACTOR shall extend the protections of this Agreement to the PHI and limit further Uses and Disclosures of the PHI to those purposes that make the return or destruction infeasible, for as long as CONTRACTOR maintains the PHI.

8.03 The obligations of this Agreement shall survive the termination of the Agreement.

9 SUBSTANCE ABUSE (42 C.F.R., Part 2)

Provider will also comply with all provisions of 42 C.F.R., Part 2 relating to substance abuse treatment and records.