

## 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 SALVATION ARMY**, a California corporation with an address of 180 E. Ocean Boulevard, 9<sup>th</sup> Floor, Long Beach, California 90802 (the “Contractor”), collectively “the Parties”.

### RECITALS:

**A.** The Parties entered into an Agreement dated January 20, 2017, (the “Agreement”), to provide emergency shelter facilities and services for homeless men.

**B.** The Parties wish to amend the Agreement to extend its term, amend the scope of work and budget, increase the Maximum Contract Amount, and modify other terms of the Agreement as set forth below.

**NOW THEREFORE**, the parties agree as follows:

**1.** All references to “Exhibit A” in the existing Agreement shall be amended to read: “Exhibits A and A-1, as applicable”. The scope of work and budget marked as Exhibit A-1 is attached and incorporated by reference. Effective as of January 1, 2018, Exhibit A-1 will replace and supersede Exhibit A and Exhibit A-1 will govern and control the services to be provided from January 1, 2017, until June 30, 2018.

**2.** Article 3 of the Agreement, entitled “**TERM**”, is hereby amended to read as follows:

“**3. TERM:** The Agreement will commence on January 1, 2017, and will expire unless sooner terminated, on June 30, 2018. Subject to the Executive Director’s prior written authorization, the Contractor shall complete any work in progress as of the expiration date and the Term will extend until the work is completed or earlier terminated by the Executive Director.”

**3.** Article 4.d.(1) of the Agreement, entitled “**Maximum Contract Amount**”, is hereby amended to read as follows:

“**d. Maximum Contract Amount:**

**(1)** Notwithstanding any other provision of the Agreement, the City’s maximum payment obligation will not exceed One Million Four Hundred Ninety-Three Thousand Three Hundred Six Dollars and Zero Cents (\$1,493,306.00) (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 Contractor beyond that specifically described in Exhibits A and A-1. Any services performed beyond those in Exhibits A and A-1 are performed at Contractor’s risk and without authorization under the Agreement.”

4. Article 24 of the Agreement, entitled “**NO DISCRIMINATION IN EMPLOYMENT**”, is amended by deleting and replacing it with the following:

“**24. NO DISCRIMINATION IN EMPLOYMENT:** In connection with the performance of work under the Agreement, the Contractor may not refuse to hire, discharge, promote or demote, or discriminate in matters of compensation against any person otherwise qualified, solely because of race, color, religion, national origin, gender, age, military status, sexual orientation, gender expression or gender identity, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.”<sup>1</sup>

5. Article 25 of the Agreement, entitled “**NO DISCRIMINATION IN PROGRAM ASSISTANCE**”, is amended by deleting and replacing it with the following:

“**25. NO DISCRIMINATION IN PROGRAM ASSISTANCE:** In connection with the delivery of services and supports, the Contractor, its approved service providers, subcontractors, subconsultants, or other approved persons or entities performing work under the Agreement shall not discriminate against a program beneficiary or prospective program beneficiary on the basis of race, color, religion, national origin, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, or physical or mental disability. The Contractor shall insert the foregoing provision in all subcontracts.”

6. Except as amended herein, 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.

**End**

**Signature Pages and Exhibit A-1 follow this page.**

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<sup>1</sup> Contractor represents it is a church and its officers are ministers, not employees. Contractor takes the position that it may discriminate against its officers/ministers based on religion. Contractor agrees it may not discriminate against its lay employees based on religion. Contractor also agrees that it may not discriminate against its officers/ministers or lay employees based on race, color, national origin, gender, age, military status, sexual orientation, gender identity, gender expression, marital status, or physical or mental disability.

**Contract Control Number:**

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:

By \_\_\_\_\_

By \_\_\_\_\_

By \_\_\_\_\_



Contract Control Number: SOCSV-201631673-01

Contractor Name: THE SALVATION ARMY

By: Terry O. Hughes

Name: Terry O. Hughes  
(please print)

Title: Secretary  
(please print)

**ATTEST: [if required]**

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

Name: \_\_\_\_\_  
(please print)

Title: \_\_\_\_\_  
(please print)



**SCOPE OF WORK**  
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**I. Purpose of Agreement**

Denver Human Services (DHS) and Denver's Road Home (DRH) will partner with The Salvation Army to oversee emergency shelter operations for homeless men.

**II. Services**

This contract provides funds to support services that will provide operational support at the Crossroads emergency shelter operated by the contractor. The funds will assist clients at the Crossroads shelter located at 1901 29<sup>th</sup> St. Denver, CO 80216. The contractor's staff shall provide assistance and help with the general functions of the facility throughout the duration of this contract.

**Crossroads Shelter**

**Service Delivery and Process**

- Crossroads, operated by the contractor and located at 1901 29<sup>th</sup> St. Denver, CO 80216, will provide shelter to men depending on space availability.
- The contractor shall maintain a log of men who receive a mat. The log shall include the full name of the individual receiving the mat, the date that the mat was provided and the date for which the mat is eligible. Records will be retained for up to 7 years.
- During severe weather, Crossroads will take additional clients once overflow provided through Denver's Road Home and Denver Rescue Mission has been filled, on a space available basis.

**Time and Manner of Service Delivery:**

- Excepting circumstances where an individual in need of a mat is accompanied by an employee of the contractor or a member of the Denver Police Department (DPD), or an outreach worker and is brought to the shelter location after 8:00 p.m., hours of operation for the overflow shelter are 4:30 p.m. – 8:00 a.m., with intake procedures beginning at 4:30 p.m.
- Each man possessing a ticket may arrive to the shelter location beginning at 4:30 p.m. Doors to the shelter will open at 4:30 p.m. The contractor will complete intake procedures no later than 6:00 p.m., except for those individuals who are working and provided verification as such. The Salvation Army may open the courtyard or shelter earlier than 4:30 p.m. as severe weather dictates.
- Each man possessing a ticket must enter the shelter through the side door.
- Each man possessing a ticket must place their full name on a sign-in log provided by the contractor.
- The contractor shall maintain a sign-in log at the shelter location that includes the first and last name of each man that has presented a ticket. The contractor will work in partnership with DPD to facilitate compliance checks on transient offenders registered to the block of Crossroads.

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- If a resident leaves the shelter, he will not be allowed to re-enter for the night.
- Showers for residents will be available between the hours of 8:00 p.m. and 10:00 p.m. Use of a shower will be made consistent with rules established by the contractor.
- A light breakfast and dinner will be provided in kind by the contractor before the men leave the shelter on a regular basis.
- Shelter lights will be turned out at 10:30 p.m., except on occasions where hours of operation are extended by an emergency situation (e.g. a snowstorm).
- Each man must leave the shelter by 8:00 a.m. except under extenuating circumstances such as snowstorm or emergency.

**Responsibilities of the Contractor:**

- Provide staff at the shelter location.
- Provide physical space to be used by the overnight residents that have been referred to the shelter.
- Prohibit men with tickets from queuing in a line by placing their personal belongings in the line in their absence.
- Ensure the rules of the shelter are followed by communicating the shelter rules to men as they enter the shelter and by providing signage that displays the shelter rules. Signage must be displayed inside and outside the shelter in locations that are easily seen by shelter residents.
- Take action with any person from the shelter that does not follow the shelter rules. This may include discharge from the shelter for acts of physical or verbal abuse.
- Provide full-time and part-time staff at the shelter location for shelter operations. Maintain staffing 24 hours a day at 1901 29<sup>th</sup> St. for security purposes. This shall include video surveillance and a building perimeter walk through no less than four (4) times a day.
- Provide a sufficient amount of additional lighting near and around the shelter. Sufficiency has been determined based on a joint assessment made by DPD and The Salvation Army.
- Provide physical space on first floor at Crossroads to be used by the overnight residents that are part of the overnight shelter system.
- Provide laundry facilities (machines where blankets will be laundered by staff or volunteers).
- The Salvation Army's rescue vehicle will be available for pick-up call from DPD and Street Outreach from 4-10 p.m. and on an emergency basis only from 10 p.m. until 2 a.m.
- Provide a process for outreach teams, members of the Denver Police Department and resource providers including agencies and hospitals in the community to contact the contractor on occasions when a man is found outdoors and has need for shelter for the night.
- The Salvation Army shall establish a working relationship with The Denver Anti-Discrimination Office and commit to post signage about anti-discrimination within the shelter facility. The City will provide signage materials to assist with compliance.

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**Responsibilities of the City and County of Denver thru Denver Human Services and Denver's Road Home**

- Provide the name of an outreach coordinator from the city who will serve as a point person for concerns or questions that the contractor may have. The liaison will serve as the connection between the City and County of Denver, shelters/resource providers and the contractor.
- Inform the contractor, outreach teams, the Denver Police Department and Denver Road Home partners and providers about when shelters will be operational.
- Organize periodic community meetings for the purpose of obtaining feedback concerning shelter activity.
- Coordinate a communication meeting that allows residents and business owners in the shelter area to provide immediate feedback and concerns about Crossroads shelter.

**III. Process and Outcomes Measures**

**Process Measures**

1. Rules of the shelter will be communicated to all men sleeping in the Crossroads Shelter upon entry, both verbally and by providing signage both inside and outside the shelter.
2. Appropriate action will be taken with any client who does not follow the rules of the shelter, up to and including discharge from the facility, to ensure the safety of staff and other clients.

**Outcome Measures**

1. Safe shelter will be provided to 100% of men sleeping in the Crossroads Shelter
2. All critical safety issues will be reported to the DHS Programs Manager.

**IV. Performance Management and Reporting**

Monitoring will be performed by the program area and Contracting Services. Contractor may be reviewed for:

1. **Program or Managerial Monitoring:** The quality of the services being provided and the effectiveness of those services addressing the needs of the program.
2. **Contract & Financial Monitoring:** Review and analysis of (a) current program information to determine the extent to which contractors are achieving established contractual goals; (b) financial systems & billings to ensure that contract funds are allocated & expended in accordance with the terms of the agreement. Contracting Services will provide regular

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performance monitoring and reporting to program area management. Contracting Services, in conjunction with the DHS program area, will manage any performance issues and will develop interventions that will resolve concerns.

3. **Compliance Monitoring:** Monitoring to ensure that the terms of the contract document are met, as well as Federal, State and City legal requirements, standards and policies.

**A. Reporting**

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

<b>Report # and Name</b>	<b>Description</b>	<b>Frequency</b>	<b>Report to be sent to:</b>
1. Quarterly Report	Report shall demonstrate achievement of Outcome measures in Section III above as well as the following Outcome Evaluation Plan criteria. Reports must include utilization of beds/mats available each night and the number of recorded incidents of physical harm, if any, involving a client.	Quarterly	DRH Program Manager  DHS_Contracting Services_Documents@denvergov.org
2. Contract Summary Report	Report shall demonstrate all functions performed, and how services provided met the overall goals of this agreement. Other data will include total budget per line item, amount	Contract End, within 45 days after Term End.	DRH Program Manager & DHS_Contracting Services_Documents@denvergov.org



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	spent, and an explanation as to unspent funds, etc.		
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**V. Outcome Evaluation Plan: Denver Road Home  
Program: The Salvation Army, Crossroads Center**

<b>Goals</b>	<b>Objectives</b>	<b>Measurement</b>	<b>Time frame for Data Collection</b>	<b>Outcomes</b>
#1 Provide safe shelter	#1 Provide safe shelter for men at Crossroads Shelter in 2017-18	The Salvation Army Crossroads Shelter will maintain incident reports of any incident involving the physical harm of a client.	Daily	All men sleeping at Crossroads will be provided with safe shelter.

**VI. Budget**

- A. Contractor shall provide the identified services for the City under the support of Denver Human Services using best practices and other methods for fostering a sense of collaboration and communication.
- B. Invoices and reports shall be completed and submitted on or before the 15<sup>th</sup> of each month following the month services were rendered 100% of the time. Contractor shall use DHS' preferred invoice template, if requested.

Invoices shall be submitted to:  
[DHS\\_Contractor\\_Invoices@denvergov.org](mailto:DHS_Contractor_Invoices@denvergov.org)  
 or by US Mail to:

Attn: Financial Services  
 Denver Human Services  
 1200 Federal Boulevard  
 Denver, Colorado 80204

<b>BUDGET (Fee for Service)</b>		
<b>Contractor Name: Salvation Army Crossroads</b>		
<b>Contract No.: SOCSV2016-31673-01</b>		
<b>Contract Term: 1/1/2017 to 12/31/2017</b>		
<b>Unit of Service</b>	<b>Total</b>	<b>Budget Narrative</b>
<b>Night Per Mat Client</b>	<b>\$1,002,000</b>	\$11.31 per unit, not to exceed \$1,002,000
<b>TOTAL BUDGET</b>	<b>\$1,002,000</b>	*\$176,000 added to the budget to be used between the dates of 1/1/2017-

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		12/31/2017
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<b>BUDGET (Fee for Service)</b>		
<b>Contractor Name: Salvation Army Crossroads</b>		
<b>Contract No.: SOCSV2016-31673-01</b>		
<b>Contract Term: 1/1/2018 to 06/30/2018</b>		
<b>Unit of Service</b>	<b>Total</b>	<b>Budget Narrative</b>
<b>Night Per Mat Client</b>	<b>\$491,306</b>	\$11.31 per unit, not to exceed \$491,306
<b>TOTAL BUDGET</b>	<b>\$491,306</b>	*\$491,306 added to the budget to be used between the dates of 1/1/2018-06/30/2018

**\*A total of \$667,306 is being added to the contract through this 1<sup>st</sup> amendment.**

**VII. Homeless Management Information System (HMIS):**

**A. Homeless Management Information System:**

The Contractor agrees to fully comply with the Rules and Regulations required by the U.S. Department of Housing and Urban Development (HUD) which govern the Homeless Management Information System (HMIS). HUD requires recipients and sub recipients of McKinney-Vento Act funds to collect electronic data on their homeless clients through HMIS. Programs that receive funding through McKinney-Vento that produce an Annual Progress Report (APR) must also collect program level data elements. These programs include: SHP (a.k.a. S+C), Section 8 Mod Rehab, Emergency Solutions Grant (ESG), and Housing Opportunities for Persons With AIDS (HOPWA). This is a requirement for recipients of City homeless funding.

The contractor, in addition to the HUD requirements, shall conform to the HMIS policies established and adopted by the Metro Denver Homeless Initiative (MDHI) Continuum of Care (CoC) and the Balance of State Continuum of Care.

*Colorado Coalition for the Homeless (CCH)* is the implementing organization for the Homeless Management Information System (HMIS), under the direction of the MDHI CoC.

Technical assistance and training resources for HMIS are available to the Contractor via the Colorado HMIS Helpdesk based on requests by the Contractor to DHS and by periodic assessments of participation, compliance and accuracy of data collection.

**B. Security**

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The importance of the integrity and security of HMIS cannot be overstated. **All** workstations, desktops, laptops, and servers connected to the Contractor's network or computers accessing the HMIS through a Virtual Private Network (VPN) must comply with the baseline security requirements. The Contractor's HMIS computers and networks must meet the following standards:

1. Secure location
2. Workstation username and password
3. Virus protection with auto update
4. Locking password protected screen saver
5. Individual or network firewall
6. PKI-certificate installed or static IP address

**C. HUD Continuum of Care Data Standards:**

Revised HMIS Data Standards went into effect October 1, 2014 and Contractor is required to collect data based on these new standards. For the MDHI Continuum of Care/Balance of State Continuum of Care, the City of Denver and its Contractors will collect Universal and CoC program specific elements. The Contractor is required to attend the HMIS training on the data collection requirements for these revised standards.

**D. MDHI HMIS User Group Meetings:**

The Contractor should attend at least three HMIS user group meetings during the contract year. User Group offers valuable and informative information on HMIS and is a forum to ask questions and address issues related to HMIS. Typically, MDHI's HMIS User Group meets at Mile High United Way on Thursdays and the Balance of the State user group meets via webinar every other month. The Colorado HMIS team sends out meeting reminders. Information may be found on the Metro Denver Homeless Initiative web page - <http://mdhi.org> and the meeting schedule may be found their page at - <http://mdhi.org/calendar/>.

**E. Data Quality Standards:**

1. The Contractor must maintain an overall program Data Quality completeness score of 95% or higher.
2. The Contractor must enter HMIS data (program enrollments and services) into the system within five (5) business days of the actual enrollment or service provided date.
3. CCH reserves the right to request Data Quality reports from Colorado HMIS for Contractor's programs on a monthly basis.
4. CCH reserves the right to participate in on-site HMIS audits.
5. CCH reserves the right to request Data Timeliness tests from Colorado HMIS at any time on Contractor's programs in HMIS.
6. CCH reserves the right to detailed APRs (displaying client-level data) and summary APRs (displaying aggregate-level data) from Colorado HMIS at any time during the project's operating year. APRs are used to review and monitor the Contractor's program data quality and progress toward achieving annual project goals and outcomes for HUD and MDHI requirements. The Contractor's

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APR data will be consolidated with other Contractor's and CCH data to fulfill HUD annual reporting requirements.

7. *CCH reserves the right to access the Contractor's HMIS Web portal to review real-time client data to ensure the Contractor adheres to the data quality standards required by the MDHI Continuum of Care.*

**F. Staff Changes:**

If the Contractor has changes in staff that may affect the program outcomes or the processing of invoices, the changes must be reported to DHS within 30 days of the change.

**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,

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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 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;

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- 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.
- 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.

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- 2.17 "Secretary" shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 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:
- 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;

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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.

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.

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- 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.
- 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.

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- 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 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.



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