

## **LEGAL SERVICES AGREEMENT**

This Agreement is made by and between the Sonoma County Counsel's Office on behalf of the County of Sonoma ("County") and Foley & Lardner LLP ("Attorney"). This Agreement is required by Business and Professions Code Section 6148 and is intended to fulfill its requirements.

### **RECITALS**

WHEREAS, Attorney specializes in providing legal services regarding matters involving healthcare law, and has significant experience and recognized expertise in Medicare/Medi-Cal compliance;

WHEREAS, County wishes to obtain specialized services, as authorized by Government Code § 31000, in legal representation of the County in matters related to health care law; and

WHEREAS, the Sonoma County Counsel has determined that Attorney's assistance is needed in connection with legal advice to the Department of Health Service's Compliance Unit.

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties agree as follows:

### **AGREEMENT**

#### **1. Services.**

Attorney will provide legal assistance to County Counsel and advisory and representation services to the Sonoma County Department of Health Services. Attorney shall not perform work hereunder unless authorized verbally or in writing by the Office of the County Counsel. Attorney understand and agree that the County itself is the client, acting by and through the Board of Supervisors. Attorney shall always keep the County Counsel's office adequately informed of the matters Attorney is handling. Attorney shall keep the County Counsel fully advised of the progress in each matter. Attorney shall provide County Counsel with periodic updates, as may be appropriate.

County does not guarantee any amount or types of services, or any duration of services. All services shall be on an as-needed basis as determined by County.

#### **2. Attorney's Key Personnel.**

The parties identified in this section as the work team, project manager, or other professional providing services under this Agreement, are key persons, whose services are a material inducement to County to enter into this Agreement, and without whose services County would not have entered into this Agreement. Except for matters requiring less than 3 hours of recorded time per personnel, Attorney shall assign no other personnel to this Project without the written approval of County Counsel. Key personnel shall be as follows: Judith A. Waltz, Adam Hepworth, and Clara Greaney.

#### **3. Compensation.**

Compensation to Attorney for services shall be at the rates set forth in Exhibit A, provided however that payment shall not exceed \$70,000 per year, and the total payment hereunder shall not exceed \$210,000, without formal amendment to this Agreement. The rates set forth in Exhibit A shall not be adjusted without a formal amendment to this Agreement.

4. Waiver of Conflicts.

Attorney currently represents, and in the future will represent, numerous clients who are currently adverse or, in the future, may be adverse to the County in matters unrelated to services being provided hereunder. These clients wish to maintain, or pursue, their attorney-client relationship with Attorney, and are willing to consent to Attorney's representation of the County provided that this representation does not interfere with Attorney's ability to represent current and future clients in current and future matters adverse to the County. Therefore, as a condition of this engagement, the County hereby confirms that it waives any conflict of interest to the representation by Attorney of current and future clients, in current and future matters unrelated to the services provided hereunder, who are or may potentially be adverse to the County and/or who are or may be seeking permit approvals or other regulatory matters before the County, and agrees that the County will not seek to disqualify Attorney from representing such clients in connection with the following types of matters:

- a. Counseling, advice, and negotiation regarding agreements, rights, or obligations, and preparation of documents.
- b. Arbitration, litigation, or other contested proceeding.
- c. Advocacy before federal, state, and local governments and non-judicial governmental entities.
- d. Bankruptcy or insolvency proceedings in which the client may have an interest.
- e. Evaluation of intellectual property rights, such as claim scope analysis, infringement analysis, invalidity analysis, or analysis with respect to any other statutory or non-statutory requirement, participation in connection with contested and uncontested intellectual property proceedings before the USPTO, or prosecuting non-interfering IP for another client in a related technology.

Attorney agrees that Attorney will not handle directly adverse matters for other clients that are substantially related to any work the Attorney performs for the County.

This consent shall also permit the Attorney to represent in the future any other parties who are or become adversely involved in any matters in which the Attorney represents the County, provided that the matters in which the Attorney represents those other parties are not substantially related to any work the Firm performs for the County.

This representation does not extend to the District Attorney's Office for the County of Sonoma. Representation of individuals or entities in criminal matters handled by the District Attorney's Office will not be viewed as conflicts involving the work to be performed by Attorney under this Agreement, so long as those matters do not involve any civil action involving the District Attorney or County arising from the criminal case.

5. Term.

The term of this Agreement shall commence upon October 25, 2022 and shall terminate on June 30, 2025.

6. Standard of Care.

County Counsel has relied on the professional ability, professional experience, and training of Attorney as a material inducement to enter into this Agreement. Attorney warrants that all work

will be performed in accordance with generally accepted and applicable professional practices and standards as well as the requirements of applicable federal, state and local laws, it being understood that acceptance by Agency of work performed by Attorney shall not operate as or be interpreted to be a waiver or release.

7. Billing and Timekeeping.

Duplicate billing statements shall be provided on a monthly basis, one copy to County Counsel and one copy to the Sonoma County Department of Health Services, and shall include the following information:

- a. The date and time spent performing services. Minimum billing times shall not exceed one-tenth of an hour.
- b. Summary description of the services performed regarding the designated matter, with a separate time allocation for each function (e.g., telephone calls, research, drafting).
- c. Separate itemization of non-legal costs by type.
- d. Total fees and costs of the matter to date.
- e. For any extraordinary expenses, the invoice must include the date and who gave prior approval for incurring such expense.
- f. All invoices submitted must include the following statement signed by the firm's supervising attorney:

"I have personally examined this billing statement. All entries are in accordance with the Legal Services Agreement, are correct and reasonable for the services performed and the costs incurred, and no item on this statement has been previously billed to the County."

8. Non-Reimbursable Services.

Attorney shall not be reimbursed for any of the following expenses:

- a. Travel expenses, except to the extent approved in accordance with Section 9 below.
- b. Unnecessary messenger or express mail charges.
- c. Normal overhead functions such as word processing or typing time, scheduling of depositions, ordering records, calendaring functions, filing, indexing, proofreading or copying time, or any other procedures that are of a secretarial nature.
- d. Meals, overtime, office supplies, or attorney time for preparation of bills or audit responses.
- e. Expenses for experts or Attorneys that have been retained without the prior written approval of County Counsel.
- f. Photocopying charges in excess of \$25.00 in any billing cycle without prior written approval of County Counsel.
- g. Office supplies, local telephone charges, per-page fax charges, conference call line charges, routine mail, etc.

- h. Intra-office conferencing time of more than one attorney for routine matters, unless such conference involves expert opinion.
- i. Replacement attorney learning time or other ramp-up learning costs.
- j. Travel time.
- k. Charges/fees for use of computer research programs (e.g., Lexis Nexis, WestLaw, etc.).

9. Direction and Extraordinary Expenses.

All direction and control of Attorney's work for the County will be by the Sonoma County Counsel's Office. Attorney shall seek pre-approval from the County Counsel's Office for all extraordinary expenses before the same is incurred by Attorney. By way of example, extraordinary expenses shall include expenses for preparing complex motions, undertaking significant legal research or substantial drafting, retaining experts and Attorneys, and out-of-town travel.

10. Termination.

This Agreement may be terminated by County Counsel at any time, subject to equitable proportional payments due to Attorney. All files, written material, and documents will be transferred to the County Counsel upon such termination. Attorney will be available to consult with County Counsel or, should one be retained, with the County's new attorney with respect to facts and circumstances of any matters previously worked on by Attorney for a reasonable period of time following such termination.

11. Withdrawal.

Attorney may withdraw as permitted under the Rules of Professional Conduct of the State Bar of California.

12. No Suspension or Debarment.

Attorney warrants that it is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in covered transactions by any federal department or agency. Attorney also warrants that it is not suspended or debarred from receiving federal funds as listed in the List of Parties Excluded from Federal Procurement or Non-procurement Programs issued by the General Services Administration. If the Attorney becomes debarred, Attorney has the obligation to inform the County.

13. Status of Attorney.

The parties intend that Attorney, in performing the services under this Agreement, shall be an independent contractor and shall control the work and the manner in which it is performed. Attorney shall acquire no rights or status in the service of the County. Attorney is not to be considered an agent or employee of the County and is not entitled to participate in any pension plan, insurance, bonus, or similar benefits the County provides its employees. In the event County Counsel exercises its right to terminate this Agreement pursuant to the terms herein, Attorney expressly agrees that Attorney shall have no recourse or right of appeal under rules, regulations, ordinances, or laws applicable to employees.

14. Modification.

If, during the term of this Agreement, it becomes necessary to amend or add to its terms, conditions, scope or requirements, such amendment or addition shall only be made after mutual agreement of Attorney and County Counsel and by way of execution of a written modification to this Agreement.

15. Insurance.

With respect to performance of work under this Agreement, Attorney shall maintain and require all of its subcontractors, Attorneys, and other agents to maintain, insurance as described in Exhibit B, which is attached hereto and incorporated herein, by this reference.

16. Indemnity.

Attorney agrees to accept responsibility for loss or damage to any person or entity, and to indemnify, the County of Sonoma, its officers, agents, and employees whom Attorney agrees to represent from and against any and all actions, claims, damages, liabilities, or expenses, excluding Attorney's fees, that may be asserted by any person or entity, including Attorney, caused by the negligent performance or willful misconduct of Attorney hereunder. In addition, Attorney shall be liable to the County for any loss or damage to the County property arising from or in connection with Attorney's negligent performance or willful misconduct hereunder.

17. Rules of Professional Conduct.

Nothing contained herein shall be construed to relieve Attorney of Attorney's obligations under the Rules of Professional Conduct.

18. Merger.

This Agreement contains the entire agreement of the parties. No other agreement, statement or promise made on or before the effective date of this agreement will be binding on the parties.

19. Taxes.

Attorney agrees to file federal and state tax returns and pay all applicable taxes on amounts paid pursuant to this Agreement and shall be solely liable and responsible to pay such taxes and other obligations, including, but not limited to, state and federal income and FICA taxes. Attorney agrees to indemnify and hold the County harmless from any liability which it may incur to the United States or to the State of California as a consequence of Attorney's failure to pay, when due, all such taxes and obligations. If the County is audited for compliance regarding any withholding or other applicable taxes, Attorney agrees to furnish the County with proof of payment of taxes on these earnings.

20. Conflict of Interest.

Attorney covenants that Attorney presently has no present conflict of interest, as defined by the applicable Rules of Professional Conduct, that would prevent Attorney from performing the services hereunder. Subject to Paragraph 4 of this Agreement, Waiver of Conflicts, where the County deems that there is an actual or potential conflict of interest in Attorney representing another party in a matter, the County must waive any such actual or potential conflict before Attorney may represent such other party.

21. Nondiscrimination.

Attorney shall comply with all applicable federal, state, and local laws, rules and regulations in regard to nondiscrimination in employment because of race, color, ancestry, national origin, religion, sex, marital status, age, medical condition, pregnancy, disability, sexual orientation, or other prohibited basis, including without limitation the County' Non-Discrimination Policy. All nondiscrimination rules or regulations required by law to be included in this Agreement are incorporated by this reference.

22. Assignment and Delegation.

Neither party hereto shall assign, delegate, sublet, or transfer any interest in or duty under this Agreement without the prior written consent of the other, and no such transfer shall be of any force or effect whatsoever unless and until the other party shall have so consented.

23. Method and Place of Giving Notice, Submitting Bills and Making Payments.

All notices, bills, and payments shall be made in writing and may be given by personal delivery or by mail. Notices, bills, and payments sent by mail shall be addressed as follows:

To County:	To Attorney:
Roy Dajalos, Assistant Director County of Sonoma Department of Health Services 1450 Neotomas Avenue, Suite 200 Santa Rosa, CA 95405 707-565-4769 roy.dajalos@sonoma-county.org  Copy to: County Counsel 575 Administration Drive, Room 105A Santa Rosa, CA 95403 Attn: Deputy County Counsel Adam Radtke	Foley & Lardner LLP 555 California Street, Suite 1700 San Francisco, CA 94104 Attn: Judith A. Waltz

And when so addressed, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, notices, bills, and payments shall be deemed given at the time of actual delivery. Changes may be made in the names and addresses of the person to whom notices, bills, and payments are to be given by giving notice pursuant to this paragraph.

24. No Waiver of Breach.

The waiver by the County of any breach of any term or promise contained in this Agreement shall not be deemed to be a waiver of such term or promise or any subsequent breach of the same or any other term or promise contained in this Agreement.

25. Applicable Law and Forum.

This Agreement shall be construed and interpreted according to California Law, and any action or proceeding to enforce this Agreement or for the breach thereof shall be brought or tried in the County of Sonoma.

26. AIDS Discrimination.

Attorney agrees to comply with the provisions of Article II of Chapter 19 of the Sonoma County Code, prohibiting discrimination in housing, employment, and services because of AIDS or HIV infection during the term of this Agreement and any extensions of the term.

27. Statutory Compliance/Living Wage Ordinance.

Attorney agrees to comply with, and to ensure compliance with from its subcontractors, all applicable federal, state and local laws, regulations, statutes and policies — including but not limited to the County of Sonoma Living Wage Ordinance-- applicable to the services provided under this Agreement as they exist now and as they are changed, amended or modified during the term of this Agreement. Without limiting the generality of the foregoing, Attorney expressly acknowledges and agrees that this Agreement is subject to the provisions of Article XXVI of Chapter 2 of the Sonoma County Code, requiring payment of a living wage to covered employees. Noncompliance during the term of the Agreement will be considered a material breach and may result in termination of the Agreement or pursuit of other legal or administrative remedies.

28. Records.

Consistent with the County's records retention policy, Attorney shall retain (in either physical or electronic form) all records (except for original time records) for a period of twenty (20) years from the date of completion of services; or, alternatively, if Attorney's own internal retention policy is for a period less than that provided under the County's retention policy, Attorney shall after expiration of its own internal retention period, forward the records to County Counsel for retention. In no event shall Attorney destroy or otherwise purge any records without providing the County with at least thirty (30) days written notice. Records will be made available to the County upon request for audit purposes. Attorney will maintain both invoices of costs and primary records in order that such auditing may occur. (Original time records will be retained for two years.)

29. Counterparts.

This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one agreement that shall be binding on all of the parties, notwithstanding that all of the parties are not signatory to the original or same counterpart.

§ The remainder of this page has intentionally been left blank. Signature page follows. §

**FOLEY & LARDNER LLP:**

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Judith A. Waltz

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Dated

**COUNTY OF SONOMA:**

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Robert H. Pittman  
Sonoma County Counsel

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Dated

Approved as to funds for Sonoma County Department of Health Services:

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Tina Rivera, Director

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Dated

Certificates of Insurance on file and Approved as to Form:

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Deputy County Counsel

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Dated

Approved as to Substance:

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Privacy & Security Officer

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Dated



**EXHIBIT A****RATES**

<b>Attorney</b>	<b>Hourly Rate</b>
Judith A. Waltz	\$785.00
Adam Hepworth	\$680.00
Clara Greaney	\$405.00

**EXHIBIT B**  
**INSURANCE REQUIREMENTS**

With respect to performance of work under this Agreement, Attorney shall maintain and shall require all of its subcontractors, Attorneys, and other agents to maintain insurance as described below unless such insurance has been expressly waived by the attachment of a Waiver of Insurance Requirements. Any requirement for insurance to be maintained after completion of the work shall survive this Agreement.

County reserves the right to review any and all of the required insurance policies and/or endorsements, but has no obligation to do so. Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve Attorney from, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

1. Workers Compensation and Employers Liability Insurance.

- a. Required if Attorney has employees as defined by the Labor Code of the State of California.
- b. Workers Compensation insurance with statutory limits as required by the Labor Code of the State of California.
- c. Employers Liability with minimum limits of \$1,000,000 per Accident; \$1,000,000 Disease per employee; \$1,000,000 Disease per policy.
- d. Required Evidence of Insurance: Certificate of Insurance.

If Attorney currently has no employees as defined by the Labor Code of the State of California, Attorney agrees to obtain the above-specified Workers Compensation and Employers Liability insurance should employees be engaged during the term of this Agreement or any extensions of the term.

2. General Liability Insurance.

- a. Commercial General Liability Insurance on a standard occurrence form, no less broad than Insurance Services Office (ISO) form CG 00 01.
- b. Minimum Limits: \$1,000,000 per Occurrence; \$2,000,000 General Aggregate; \$2,000,000 Products/Completed Operations Aggregate. The required limits may be provided by a combination of General Liability Insurance and Commercial Excess or Umbrella Liability Insurance. If Attorney maintains higher limits than the specified minimum limits, County requires and shall be entitled to coverage for the higher limits maintained by Attorney.
- c. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. Attorney is responsible for any deductible or self-insured retention
- d. County of Sonoma, its officers, agents and employees shall be additional insureds for liability arising out of operations by or on behalf of the Attorney in the performance of this Agreement.

- e. The insurance provided to the additional insureds shall be primary to, and non-contributory with, any insurance or self-insurance program maintained by them.
- f. The policy definition of “insured contract” shall include assumptions of liability arising out of both ongoing operations and the products-completed operations hazard (broad form contractual liability coverage including the “f” definition of insured contract in ISO form CG 00 01, or equivalent).
- g. The policy shall cover inter-insured suits between the additional insureds and Attorney and include a “separation of insureds” or “severability” clause which treats each insured separately.
- h. Required Evidence of Insurance:
- i. Certificate of Insurance.

### 3. Automobile Liability Insurance.

- a. Minimum Limit: \$1,000,000 combined single limit per accident. The required limits may be provided by a combination of Automobile Liability Insurance and Commercial Excess or Umbrella Liability Insurance.
- b. Insurance shall cover all owned autos. If Attorney currently owns no autos, Attorney agrees to obtain such insurance should any autos be acquired during the term of this Agreement or any extensions of the term.
- c. Insurance shall cover hired and non-owned autos.
- d. Required Evidence of Insurance: Certificate of Insurance.

### 4. Professional Liability/Errors and Omissions Insurance.

- a. Minimum Limit: \$1,000,000 per claim or per occurrence.
- b. Any deductible or self-insured retention shall be shown on the Certificate of Insurance. If the deductible or self-insured retention exceeds \$25,000 it must be approved in advance by County. County’s execution of this Agreement constitutes approval of Attorney’s deductible.
- c. If the insurance is on a Claims-Made basis, the retroactive date shall be no later than the commencement of the work.
- d. Coverage applicable to the work performed under this Agreement shall be continued for two (2) years after completion of the work. Such continuation coverage may be provided by one of the following: (1) renewal of the existing policy; (2) an extended reporting period endorsement; or (3) replacement insurance with a retroactive date no later than the commencement of the work under this Agreement.
- e. Required Evidence of Insurance: Certificate of Insurance.

### 5. Standards for Insurance Companies.

- a. Insurers, other than the California State Compensation Insurance Fund, shall have an A.M. Best’s rating of at least A:VII or Fitch Rating of A.

**6. Documentation.**

- a. The Certificate of Insurance must include the following reference: Sonoma County — Legal Services Agreement.
- b. All required Evidence of Insurance shall be submitted prior to the execution of this Agreement. Attorney agrees to maintain current Evidence of Insurance on file with County for the entire term of this Agreement and any additional periods if specified in Sections 1— 4 above.
- c. The name and address for Additional Insured endorsements and Certificates of Insurance is: County of Sonoma, County Counsel's Office, Attn: Ali Ostello, 575 Administration Drive, Suite 105A, Santa Rosa, CA 95403.
- d. Upon receipt, Attorney shall forward required Evidence of Insurance for any renewal or replacement of a policy that already exists.
- e. Attorney shall provide immediate written notice if: (1) any of the required insurance policies is terminated; (2) the limits of any of the required policies are reduced; or (3) the deductible or self-insured retention is increased.
- f. Upon written request, certified copies of required insurance policies must be provided within thirty (30) days.

**7. Policy Obligations.**

Attorney's indemnity and other obligations shall not be limited by the foregoing insurance requirements.

**8. Material Breach.**

If Attorney fails to maintain insurance which is required pursuant to this Agreement, it shall be deemed a material breach of this Agreement. County, at its sole option, may terminate this Agreement and obtain damages from Attorney resulting from said breach. These remedies shall be in addition to any other remedies available to County.

**Exhibit C**  
**QUALIFIED SERVICE ORGANIZATION/BUSINESS ASSOCIATE ADDENDUM**  
**TO THE**  
**AGREEMENT FOR SERVICES**  
**BETWEEN**  
**COUNTY OF SONOMA**  
**AND**  
**FOLEY & LARDNER LLP ("Attorney")**  
(Revised 2018 Sep 11)

This Qualified Service Organization/Business Associate Addendum ("Addendum") supplements and is made a part of the services agreement ("Agreement") by and between County of Sonoma ("County") and Foley & Lardner LLP ("QSO/BA").

**RECITALS**

WHEREAS, County is a Hybrid Entity as defined under 45 Code of Federal Regulations ("CFR") Section 164.103;

WHEREAS, Attorney is a Qualified Service Organization/Business Associate as defined under 42 CFR Section 2.11 and 45 CFR Section 160.103;

WHEREAS, County wishes to disclose certain information to QSO/BA that is protected by the Health Insurance Portability and Accountability Act ("HIPAA") and regulations promulgated thereunder, and by federal regulations entitled Confidentiality of Substance Use Disorder Patient Records and codified as set forth at 42 CFR Part 2 (the "Part 2 Regulations");

WHEREAS, County and QSO/BA intend to protect the privacy and provide for the security of protected information disclosed to QSO/BA pursuant to Addendum in compliance with the HIPAA Regulations and the Part 2 Regulations; and

WHEREAS, the HIPAA Regulations and the Part 2 Regulations require County to enter into a contract containing specific requirements with QSO/BA prior to the disclosure of protected information.

NOW THEREFORE, in consideration of the mutual promises below and the exchange of information pursuant to Addendum, the parties agree as follows:

**1. Definitions**

Terms used, but not otherwise defined, in Addendum shall have the same meaning as those terms in the HIPAA Regulations as set forth at 45 CFR Sections 160.103, 164.304, and 164.501, and as those terms in 42 CFR Section 2.11.

A. HIPAA Regulations. "HIPAA Regulations" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules as set forth at 45 CFR Parts 160 and 164.

B. Breach. "Breach" shall mean the acquisition, access, use, or disclosure of protected health information in a manner not permitted under 45 CFR Part 164 Subpart E and that compromises the security or privacy of protected health information as defined at 45 CFR Section 164.402.

C. Business Associate. "Business Associate" shall have the same meaning as the term "Business Associate" as set forth at 45 CFR Section 160.103.

D. Covered Entity. "Covered Entity" shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 CFR Section 160.103. For purposes of this Addendum, this term is intended to mean the County of Sonoma.

E. Data Aggregation. "Data Aggregation" shall have the same meaning as the term "Data aggregation" as set forth at 45 CFR Section 164.501.

F. Designated Record Set. "Designated Record Set" shall have the same meaning as the term "designated record set" as set forth at 45 CFR Section 164.501.

G. Disclosure. "Disclosure" shall mean the release of, transfer of, provision of access to, or divulging in any manner information outside the entity holding the information in accordance with 45 CFR Section 160.103.

H. Health Care Operations. "Health Care Operations" shall have the same meaning as "Health care operations" as set forth at 45 CFR Section 164.501.

I. Individual. "Individual" shall have the same meaning as the term "Individual" as set forth at 45 CFR Section 164.501, except the term "Individual" as used in this Addendum shall also include a person who qualifies as a personal representative in accordance with 45 CFR Section 164.502(g).

J. Minimum Necessary. "Minimum Necessary" shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at 45 CFR Sections 164.502(b) and 164.514(d); Standard: Minimum Necessary.

K. Part 2 Regulations. "Part 2 Regulations" shall mean the Confidentiality of Substance Use Disorder Patient Records regulations as set forth at 42 CFR Part 2.

L. Patient Identifying Information. "Patient Identifying Information" shall have the same meaning as the term "patient identifying information" as set forth at 42 CFR Section 2.11, except the term "Patient Identifying Information" as used in this Addendum may also include Protected Health Information.

M. Privacy Rule. "Privacy Rule" shall mean the HIPAA Standards for Privacy of Individually Identifiable Health Information as set forth at 45 CFR Part 160 and 45 CFR Part 164 Subparts A and E.

N. Protected Health Information. "Protected Health Information" shall have the same meaning as the term "protected health information" as set forth at 45 CFR Section 160.103, except limited to the information received from Covered Entity or created, received, maintained, or transmitted by QSO/BA on behalf of Covered Entity, and may include Patient Identifying Information.

O. Protected Information. "Protected Information" shall mean "Protected Health Information" and "Patient Identifying Information."

P. Qualified Service Organization. "Qualified Service Organization" shall have the same meaning as the term "qualified service organization" as set forth at 42 CFR Part 2 Section 2.11.

Q. Required by Law. "Required by law" shall have the same meaning as the term "required by law" as set forth at 45 CFR Section 164.103.

R. Secretary. "Secretary" shall mean the Secretary of the United States Department of Health and Human Services ("DHHS") or his/her designee.

S. Security Incident. "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of personally identifiable information. A Security Incident includes the attempted or successful unauthorized access, use, disclosure, modification, or destruction of or interference with systems operations in an information system which processes Protected Health Information that is under the control of Covered Entity, or QSO/BA of Covered Entity, but does not include minor incidents that occur on a daily basis, such as scans, "pings", or unsuccessful random attempts to penetrate computer networks or servers maintained by QSO/BA.

T. Security Rule. "Security Rule" shall mean the HIPAA Security Standards for the Protection of electronic Protected Health Information as set forth at 45 CFR Part 160 and 45 CFR Part 164 Subparts A and E.

U. Subcontractor. "Subcontractor" shall mean a subcontractor of QSO/BA that creates, receives, maintains, or transmits Protected Health Information on behalf of QSO/BA.

V. Unsecured Protected Health Information. "Unsecured Protected Health Information" shall have the same meaning as the term "unsecured protected health information" as set forth at 45 CFR Section 164.402, except limited to the information received from Covered Entity or created, received, maintained, or transmitted by QSO/BA on behalf of Covered Entity.

W. Use. "Use" shall mean, with respect to individually identifiable health information, the sharing, employment, application, utilization, examination, or analysis of such information within an entity that maintains such information in accordance with 45 CFR Section 160.103.

## 2. Obligations of QSO/BA

QSO/BA acknowledges that in receiving, transmitting, transporting, storing, processing, or otherwise dealing with any Protected Information received from County, QSO/BA is fully bound by the HIPAA Regulations and the Part 2 Regulations; and that QSO/BA (including its subcontractors) may be held directly liable for and subject to penalties for failure to comply. To the extent QSO/BA is to carry out one or more of County's obligations under of 45 CFR Part 164 Subpart E of the Privacy Rule, QSO/BA agrees to comply with the requirements of 45 CFR Part 164 Subpart E that apply to County in the performance of such obligations.

### 2.1. Use or Disclosure of Protected Information

Except as otherwise provided in Addendum, QSO/BA shall use and/or disclose Protected Information only as necessary to perform functions, activities, or services documented in accordance with of Agreement for or on behalf of County, as specified in Addendum, provided that such use and/or disclosure does not violate the Part 2 Regulations or the HIPAA Regulations. QSO/BA agrees not to further use or disclose Protected Information other than as permitted or required by Addendum or by law. QSO/BA must make reasonable efforts to limit Protected Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request. The uses of Protected Information may not exceed the limitations applicable to County under the 42 CFR Part 2 and HIPAA Regulations.

## 2.2. Judicial Proceedings

QSO/BA agrees to resist any efforts in judicial proceedings to obtain access to Patient Identifying Information except as expressly provided for in the regulations governing the Part 2 Regulations.

## 2.3. Safeguarding Protected Information

QSO/BA shall use appropriate safeguards to prevent the use or disclosure of Protected Information other than as provided for by Addendum. QSO/BA shall implement administrative, physical, and technical safeguards and shall comply with of 45 CFR Part 164 Subpart C with respect to electronic Protected Information that reasonably and appropriately protect the confidentiality, integrity, and availability of electronic Protected Information created, received, maintained, or transmitted on behalf of County and prevent the use or disclosure of Protected Information other than as provided for by Agreement.

- a. Encryption Requirements for Transmission and Storage of Electronic Data. All Protected Information transmitted to QSO/BA by County, and/or for or on behalf of County by QSO/BA, and/or to County by QSO/BA shall be provided or transmitted using encryption methods which render such Protected Information unusable, unreadable, or indecipherable by unauthorized persons. All ePHI stored by Business Associate on electronic media shall be protected using encryption methods which render such ePHI unusable, unreadable, or indecipherable by unauthorized persons. Encryption of ePHI in transit or at rest shall use a technology or methodology set forth by the Secretary in the guidance issued under Section 13402(h)(2) of Public Law 111-5, and in accordance with the National Institute of Standards Technology (NIST) and Standards and Federal Information Processing Standards (FIPS), as applicable.
- b. Destruction of Protected Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying the Protected Information so that it cannot be read or reconstructed.
- c. Should any employee or subcontractor of QSO/BA have direct, authorized access to County computer systems that contain Protected Information, QSO/BA shall immediately notify County of any change of such personnel (e.g., employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for County to disable the previously authorized access.

## 2.4. Notification of Breach, Unauthorized Use or Improper Disclosure

QSO/BA must notify County in writing of any access, use, or disclosure of Protected Information not permitted or provided for by Addendum and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations of which Business Associate becomes aware. A breach or unauthorized access, use, or disclosure shall be treated as discovered by QSO/BA the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to QSO/BA or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent, or other representative of QSO/BA.



- a. Notification must be made as soon as practicable, but not later than 24 hours after discovery, by telephone call to 707-565-5703 plus e-mail to: DHS-Privacy&Security@sonoma-county.org, and will include:
  1. The identification of each Individual whose Protected Information has been, or is reasonably believed by QSO/BA to have been, accessed, acquired, used, or disclosed; and
  2. A description of any remedial action taken or proposed to be taken by QSO/BA.
- b. QSO/BA must mitigate any harm that results or may result from the breach, security incident, or unauthorized access, use, or disclosure of unsecured Protected Information by QSO/BA or its employees, officers, subcontractors, agents, or other representatives.
- c. Following a breach or unauthorized access, use or disclosure of unsecured Protected Information, QSO/BA agrees to take any and all corrective action necessary to prevent recurrence, to document any such corrective action, and to make this documentation available to County.

#### 2.5. Agents and Subcontractors of QSO/BA

In accordance with 45 CFR Sections 164.502(e)(1)(ii) and 164.308(b)(2), and to the extent that QSO/BA uses any agent, including a subcontractor, to which QSO/BA provides Protected Information received from, created by, maintained by, or received by QSO/BA on behalf of County, QSO/BA shall execute an agreement with such agent or contractor containing a requirement to ensure compliance with the same restrictions and conditions that apply through Addendum to QSO/BA with respect to Protected Information.

#### 2.6. Access to Protected Information

At the request of County, and in the time and manner designated by County, QSO/BA shall provide access to Protected Information to an Individual or County to meet the requirements of 45 CFR Section 164.524.

#### 2.7. Amendments to Protected Information

QSO/BA shall make any amendment(s) to Protected Information as directed or agreed to by County, or shall take other measures necessary to satisfy County's obligations under 45 CFR Section 164.526.

#### 2.8. Accounting of Disclosures

QSO/BA shall document and make available such disclosures of Protected Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Information in accordance with 45 CFR Section 164.528.

#### 2.9. Records Available to County, State, and Secretary

QSO/BA shall make available internal practices, books, and records related to the use, disclosure, and privacy protection of Protected Information received from County, or created, maintained, or received by QSO/BA on behalf of County, to County, State, or the Secretary for

the purposes of investigating or auditing QSO/BA's compliance with the HIPAA Regulations in the time and manner designated by County, State, or Secretary.

#### 2.10. Return or Destruction of Protected Information

Upon termination of Addendum for any reason, QSO/BA shall:

- a. (i) Return all Protected Information received from County; return all Protected Information created, maintained or received by QSO/BA on behalf of County; and return all Protected Information required to be retained by the HIPAA Regulations; or (ii) at the discretion of County, destroy all Protected Information received from County, or created, maintained, or received by QSO/BA on behalf of County. Destruction of Protected Information on paper, film, or other hard copy media must involve shredding or otherwise destroying the Protected Information in a manner which will render the Protected Information unreadable, undecipherable, or unable to be reconstructed. QSO/BA shall certify in writing that such Protected Information has been destroyed.
- b. In the event QSO/BA determines that returning or destroying Protected Information is not feasible, QSO/BA shall provide County notification of the conditions that make return or destruction not feasible. QSO/BA shall extend the protections of this Addendum to such Protected Information and limit further uses and disclosures of such Protected Information to those purposes that make the return or destruction infeasible, for so long as QSO/BA maintains such Protected Information.

#### 2.11. Data Aggregation

QSO/BA may provide data aggregation services related to the health care operations of County as permitted by 45 CFR Section 164.504(e)(2)(i)(B).

#### 2.12. Other Applicable Laws

QSO/BA shall comply with all other applicable laws to the extent that such state confidentiality laws are not preempted by the HIPAA Regulations or the Part 2 Regulations.

#### 2.13. Penalties/Fines for Failure to Comply with HIPAA

QSO/BA shall pay any penalty or fine assessed against Covered Entity arising from QSO/BA's failure to comply with the obligations imposed by HIPAA.

#### 2.14. Training of Employees and Enforcement of Requirements

Business Associate shall train and use reasonable measures to ensure compliance with the requirements of this Business Associate Agreement by employees who assist in the performance of functions or activities on behalf of County under this Contract and use or disclose protected information; and discipline employees who intentionally violate any provisions.

### 3. Amendments to Addendum

No amendment of Addendum shall be effective unless and until such amendment is evidenced by a writing signed by the parties. County and QSO/BA agree to take such action as is necessary to amend Addendum as required for County to comply with the requirements of the HIPAA Regulations and the Part 2 Regulations. However, any provision required by the HIPAA

Regulations or the Part 2 Regulations to be in Addendum shall bind the parties whether or not provided for in Addendum.

#### 4. Termination of Addendum

If QSO/BA should fail to perform any of its obligations hereunder, or materially breach any of the terms of Addendum, County may terminate Addendum immediately upon provision of notice stating the reason for such termination to QSO/BA. County, within its sole discretion, may elect to give QSO/BA an opportunity to cure such breach.

##### 4.1. Material Breach

A breach by QSO/BA or any of its agents or subcontractors of any provision of Addendum, as determined by County, shall constitute a material breach of Addendum and shall provide grounds for immediate termination of Addendum.

#### 5. Indemnification

QSO/BA agrees to accept all responsibility for loss or damage to any person or entity, including County, and to indemnify, hold harmless, and release County, its officers, agents, and employees from and against any actions, claims, damages, liabilities, disabilities, or expenses that may be asserted by any person or entity, including QSO/BA, that arise out of, pertain to, or relate to QSO/BA's or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under Agreement. QSO/BA agrees to provide a complete defense for any claim or action brought against County based upon a claim relating to such QSO/BAs' or its agents', employees', contractors', subcontractors', or invitees' performance or obligations under Agreement. QSO/BAs' obligations under Article 16 (Indemnity) apply whether or not there is concurrent negligence on County's part, but to the extent required by law, excluding liability due to County's conduct. County shall have the right to select its legal counsel at QSO/BA's expense, subject to QSO/BA's approval, which shall not be unreasonably withheld. This indemnification obligation is not limited in any way by any limitation on the amount or type of damages or compensation payable to or for QSO/BA or its agents under workers' compensation acts, disability benefits acts, or other employee benefit acts.