

**AMENDMENT NO. 5  
TO AGREEMENT A-12566 BY AND BETWEEN  
COUNTY OF MONTEREY & ALLEN/LOEB ASSOCIATES**

This Amendment No. 5 to Standard Agreement No. A-12566 is made and entered into by and between the **County of Monterey**, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and **Allen/Loeb Associates**, (hereinafter referred to as CONTRACTOR).

**WHEREAS**, the COUNTY entered into a Standard Agreement No. A-12566 with Allen/Loeb Associates in the amount of \$304,750 for the term of September 30, 2013 to June 30, 2016 for grant writing, evaluation and reporting services; and

**WHEREAS**, the COUNTY entered into Amendment No. 1 to the Standard Agreement No. A-12566 with Allen/Loeb Associates with revised Exhibit A-1, Part 2 for a revised total contract amount of \$313,150 for the term of September 30, 2013 to June 30, 2016 for grant writing, evaluation and reporting services; and

**WHEREAS**, the COUNTY entered into Amendment No. 2 to the Standard Agreement No. A-12566 with Allen/Loeb Associates with revised EXHIBIT A-2 – PART 2 PAYMENT PROVISIONS for a revised total contract amount of \$316,147 for the term of September 30, 2013 to June 30, 2016 for grant writing, evaluation and reporting services; and

**WHEREAS**, the COUNTY entered into Amendment No. 3 to the Standard Agreement No. A-12566 with Allen/Loeb Associates with revised EXHIBIT A-3–SCOPE OF SERVICES AND PAYMENT PROVISIONS and EXHIBIT A-3 – PART 2: PAYMENT PROVISIONS for a revised total contract amount of \$322,147 for the term of September 30, 2013 to June 30, 2016 for DWI Court Planning, Training and Evaluation Services; and

**WHEREAS**, the COUNTY entered into Amendment No. 4 to the Standard Agreement No. A-12566 with Allen/Loeb Associates with revised EXHIBIT A-4–SCOPE OF SERVICES AND PAYMENT PROVISIONS and EXHIBIT A-4 – PART 2: PAYMENT PROVISIONS for a revised total contract amount of \$329,147 for the term of September 30, 2013 to June 30, 2016 for research and evaluation services; and

**WHEREAS**, the COUNTY requests Amendment No. 5 to the AGREEMENT No. A-12566 to reflect the County's exercise of the option to extend for one (1) additional year and six (6) additional months as follows:

1. Extend the terms of the Agreement No. A-12566 to December 31, 2017 for a new term of September 30, 2013 to December 31, 2017.
2. Increase the total contract amount payable by COUNTY to CONTRACTOR by \$51,000 for FY 2016-17 and \$12,750 for FY 2017-18, for a maximum COUNTY obligation of \$392,897 for FY 2013-14 to FY 2017-18. This increase is for the provision of grant evaluation services, which are anticipated to be required for an additional 12-month period, pending notification from the Substance Abuse and

Mental Health Services Administration (SAMHSA) for a Federal granted 12-month no-cost extension of the Bienestar program.

3. Add revised Business Associate Agreement.

**NOW THEREFORE**, the COUNTY and CONTRACTOR hereby agree to amend Agreement No. A-12566 as follows:

1. **Paragraph 3, "TERM OF AGREEMENT", shall be amended by removing "The term of this Agreement is from September 30, 2013 to June 30, 2016, unless sooner terminated pursuant to the terms of this Agreement", and replacing it with "The term of this Agreement is from September 30, 2013 to December 31, 2017 unless sooner terminated pursuant to the terms of this Agreement."**
2. EXHIBIT A-5 – PART 2 PAYMENT PROVISIONS replaces EXHIBIT A-4 - PART 2 PAYMENT PROVISIONS. All references in the Agreement to EXHIBIT A – PART 2 PAYMENT PROVISIONS shall be construed to refer to EXHIBIT A-5 – PART 2 PAYMENT PROVISIONS.
3. EXHIBIT E-5 – BUSINESS ASSOCIATE AGREEMENT replaces EXHIBIT E-2 – BUSINESS ASSOCIATE AGREEMENT. All references in the Agreement to EXHIBIT E-2 – BUSINESS ASSOCIATE AGREEMENT shall be construed to refer to EXHIBIT E-5 – BUSINESS ASSOCIATE AGREEMENT.
4. Except as provided herein, all remaining terms, conditions and provisions of Agreement No. A-12566 are unchanged and unaffected by this Amendment No. 5, and shall remain in full force and effect as set forth in the Agreement.
5. This Amendment No. 5 shall be effective July 1, 2016.
6. A copy of this Amendment No. 5 shall be attached to the original Agreement No. A-12566 executed by the County on September 24, 2013.

(The remainder of this page is intentionally left blank.)

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Amendment No. 5 to Agreement A-12566 as of the day and year written below.

**COUNTY OF MONTEREY**

**CONTRACTOR**

By: \_\_\_\_\_  
Contracts/Purchasing Officer

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Department Head (if applicable)

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Board of Supervisors (if applicable)

Date: \_\_\_\_\_

Approved as to Form <sup>1</sup>

By: *[Signature]*  
Deputy County Counsel

Date: APRIL 21, 2016

Approved as to Fiscal Provisions<sup>2</sup>

By: *[Signature]*  
Auditor/Controller

Date: 4-22-16

Approved as to Liability Provisions<sup>3</sup>

By: \_\_\_\_\_  
Risk Management

Date: \_\_\_\_\_

ALLEN/LOEB ASSOCIATES

Contractor's Business Name\*

By: *[Signature]*  
(Signature of Chair, President, or Vice-President)\*

*Peter Loeb, Partner*  
Name and Title

Date: 4/18/16

By: \* see below  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

\_\_\_\_\_  
Name and Title

Date: \_\_\_\_\_

\*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If ~~CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership.~~ If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

<sup>1</sup> Approval by County Counsel is required.

<sup>2</sup> Approval by Auditor-Controller is required

<sup>3</sup> Approval by Risk Management is necessary only if changes are made in Sections XI or XII.

## EXHIBIT A-5 – PART 2: PAYMENT PROVISIONS

### I. PAYMENT PROVISIONS

- PAYMENT TYPE
  - Negotiated Rate (NR)

### II. PAYMENT RATES

Program	Travel	Est. Hours	Rate @ Hour	Maximum Cost
<b>Fiscal Year 2013-14</b>				
SAMHSA/CSAT Juvenile Treatment Drug Courts Evaluation Services - *11-Month No-Cost Extension: 09/30/2013 - 06/30/2014	\$ -	405	\$90	\$36,450
SAMHSA/CSAT Adult Treatment Drug Courts Evaluation Services – 9-Month No-Cost Extension & 30-day Close-out: 09/30/2013 - 07/31/2014	\$ -	342	\$100	\$34,200
SAMHSA/CSAT Bienestar Evaluation Services	\$ -	480	\$125	\$60,000
Grant Preparation & Writing	\$ -	300	\$100	\$30,000
FY 2013-14 Contract Amount				\$160,650
<b>Fiscal Year 2014-15</b>				
SAMHSA/CSAT Juvenile Treatment Drug Courts Evaluation Services - *11-Month No-Cost Extension & 30-day Close-out: 07/01/2014 - 09/30/2014	\$2,997	90	\$90	\$11,097
SAMHSA/CSAT Adult Treatment Drug Courts Evaluation Services – No-Cost Extension & 30-day Close-out: 07/01/2014 – 10/29/2014	\$ -	84	\$100	\$8,400
SAMHSA/CSAT Bienestar Evaluation Services	\$ -	480	\$125	\$60,000
NHTSA – DWI Court Planning and Training Evaluation Services	\$2,000	110	\$100	\$13,000
Grant Preparation & Writing	\$ -	80	\$100	\$8,000
FY 2014-15 Contract Amount				\$100,497
<b>Fiscal Year 2015-16</b>				
SAMHSA/CSAT Bienestar Evaluation Services	\$ -	480	\$125	\$60,000
Grant Preparation & Writing	\$ -	80	\$100	\$8,000
FY 2015-16 Contract Amount				\$68,000
<b>Fiscal Year 2016-17</b>				
SAMHSA/CSAT Bienestar Evaluation Services – Grant year: July – September, 2016 & No-Cost Extension (October 1, 2016 – June 30, 2017)	\$ -	408	\$125	\$51,000
FY 2016-17 Contract Amount				\$51,000
<i>Table continues on next page</i>				

Program	Travel	Est. Hours	Rate @ Hour	Maximum Cost
<b>Fiscal Year 2017-18</b>				
SAMHSA/CSAT Bienestar Evaluation Services – No-Cost Extension (July 1, 2017 – September 30, 2017) & 90 day close-out period (October 1 – December 31, 2017)	\$ -	102	\$125	\$12,750
FY 2016-17 Contract Amount				\$12,750
<b>MAXIMUM COUNTY OBLIGATION</b>				<b>\$392,897</b>

### III. PAYMENT CONDITIONS

A. In order to receive any payment under this Agreement, CONTRACTOR shall submit reports and claims in such form as General Ledger, Payroll Report and other accounting documents as needed, and as may be required by the County of Monterey Department of Health, Behavioral Health Bureau. Specifically, CONTRACTOR shall submit its claims on Cost Reimbursement Invoice Form as provided to this Agreement, along with backup documentation, on a monthly basis, to COUNTY so as to reach the Behavioral Health Bureau no later than the thirtieth (30<sup>th</sup>) day of the month following the month of service. See Section II, above, for payment amount information to be reimbursed each fiscal year period of this Agreement. The amount requested for reimbursement shall be in accordance with the approved budget and shall not exceed the actual net costs incurred for services provided under this Agreement.

CONTRACTOR shall submit via email a monthly claim using a Cost Reimbursement Invoice Form in Excel format with electronic signature along with supporting documentations, as may be required by the COUNTY for services rendered to:

[MCHDBHFinance@co.monterey.ca.us](mailto:MCHDBHFinance@co.monterey.ca.us)

B. CONTRACTOR shall submit all claims for reimbursement under this Agreement within thirty (30) calendar days after the termination or end date of this Agreement. All claims not submitted after thirty (30) calendar days following the termination or end date of this Agreement shall not be subject to reimbursement by the COUNTY. Any claim(s) submitted for services that preceded thirty (30) calendar days prior to the termination or end date of this Agreement may be disallowed, except to the extent that such failure was through no fault of CONTRACTOR. Any “obligations incurred” included in claims for reimbursements and paid by the COUNTY which remain unpaid by the CONTRACTOR after thirty (30) calendar days following the termination or end date of this Agreement shall be disallowed, except to the extent that such failure was through no fault of CONTRACTOR under audit by the COUNTY.

- C. If CONTRACTOR fails to submit claim(s) for services provided under the terms of this Agreement as described above, the COUNTY may, at its sole discretion, deny payment for that month of service and disallow the claim.
- D. COUNTY shall review and certify CONTRACTOR'S claim either in the requested amount or in such other amount as COUNTY approves in conformity with this Agreement, and shall then submit such certified claim to the COUNTY Auditor. The County Auditor-Controller shall pay the amount certified within thirty (30) calendar days of receiving the certified invoice.
- E. To the extent that the COUNTY determines CONTRACTOR has improperly claimed services, COUNTY may disallow payment of said services and require CONTRACTOR to resubmit said claim of services for payment, or COUNTY may make corrective accounting transactions.
- F. If COUNTY certifies payment at a lesser amount than the amount requested COUNTY shall immediately notify the CONTRACTOR in writing of such certification and shall specify the reason for it. If the CONTRACTOR desires to contest the certification, the CONTRACTOR must submit a written notice of protest to the COUNTY within twenty (20) calendar days after the CONTRACTOR'S receipt of the COUNTY notice. The parties shall thereafter promptly meet to review the dispute and resolve it on a mutually acceptable basis. No court action may be taken on such a dispute until the parties have met and attempted to resolve the dispute in person.

#### **IV. MAXIMUM OBLIGATION OF COUNTY**

- A. Subject to the limitations set forth herein, COUNTY shall pay to CONTRACTOR during the term of this Agreement a maximum amount of **\$392,897** for services rendered under this Agreement.

*See Fiscal Year Liability Table on next page.*

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B.. Maximum Annual Liability:

GRANT PROGRAM DESCRIPTION	FISCAL YEAR LIABILITY					TOTAL MAXIMUM PER EACH PROGRAM
	FY 2013-14	FY 2014-15	FY 2015-16	FY 2016-17	FY 2017-18	
Juvenile Treatment Drug Court	\$36,450	\$11,097	\$0.00	\$0.00	\$0.00	\$47,547
Adult Treatment Drug Court	\$34,200	\$8,400	\$0.00	\$0.00	\$0.00	\$42,600
Bienestar	\$60,000	\$60,000	\$60,000	\$51,000	\$12,750	\$243,750
NHTSA – DWI Court	\$0.00	\$13,000	\$0.00	\$0.00	\$0.00	\$13,000
Grant Preparation & Writing	\$30,000	\$8,000	\$8,000	\$0.00	\$0.00	\$46,000
<b>COUNTY MAXIMUM OBLIGATION PER FY</b>	<b>\$160,650</b>	<b>\$100,497</b>	<b>\$68,000</b>	<b>\$51,000</b>	<b>\$12,750</b>	<b>\$392,897</b>

- C. If, as of the date of signing this Agreement, CONTRACTOR has already received payment from COUNTY for services rendered under this Agreement, such amount shall be deemed to have been paid out under this Agreement and shall be counted towards COUNTY’S maximum liability under this Agreement.
- D. If for any reason this Agreement is canceled, COUNTY’S maximum liability shall be the total utilization to the date of cancellation not to exceed the maximum amount listed above.
- E. As an exception to Section D. above with respect to the Survival of Obligations after Termination, COUNTY, any payer, and CONTRACTOR shall continue to remain obligated under this Agreement with regard to payment for services required to be rendered after termination.

**V. BILLING AND PAYMENT LIMITATIONS**

Adjustment of Claims Based on Other Data and Information: The COUNTY shall have the right to adjust claims based upon data and information that may include, but are not limited to, COUNTY’S claims processing information system reports, remittance advices, and billing system data.

**VI. LIMITATION OF PAYMENTS BASED ON FUNDING AND BUDGETARY RESTRICTIONS**

- A. This Agreement shall be subject to any restrictions, limitations, or conditions imposed by State which may in any way affect the provisions or funding of this Agreement, including, but not limited to, those contained in State's Budget Act.
- B. This Agreement shall also be subject to any additional restrictions, limitations, or conditions imposed by the Federal government which may in any way affect the provisions or funding of this Agreement.
- C. In the event that the COUNTY'S Board of Supervisors adopts, in any fiscal year, a COUNTY Budget which provides for reductions in COUNTY Agreements, the COUNTY reserves the right to unilaterally reduce its payment obligation under this Agreement to implement such Board reductions for that fiscal year and any subsequent fiscal year during the term of this Agreement, correspondingly. The COUNTY'S notice to the CONTRACTOR regarding said reduction in payment obligation shall be provided within thirty (30) calendar days of the Board's approval of such action.
- D. Notwithstanding any other provision of this Agreement, COUNTY shall not be obligated for CONTRACTOR'S performance hereunder or by any provision of this Agreement during any of COUNTY'S current or future fiscal year(s) unless and until COUNTY'S Board of Supervisors appropriates funds for this Agreement in COUNTY'S Budget for each such fiscal year. In the event funds are not appropriated for this Agreement, then this Agreement shall terminate as of June 30 of the last fiscal year for which funds were appropriated. COUNTY shall notify CONTRACTOR of any such non-appropriation of funds at the earliest possible date and the services to be provided by the CONTRACTOR under this Agreement shall also be reduced or terminated.

**VII. AUTHORITY TO ACT FOR THE COUNTY**

The Director of the Health Department of the County of Monterey may designate one or more persons within the County of Monterey for the purposes of acting on his/her behalf to implement the provisions of this Agreement. Therefore, the term "Director" in all cases shall mean "Director or his/her designee."

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## EXHIBIT E-5: BUSINESS ASSOCIATE AGREEMENT

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (“Agreement”), effective **July 1, 2016** (“Effective Date”), is entered into by and among the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department (“Covered Entity”) and **ALLEN/LOEB ASSOCIATES** (“Business Associate”) (each a “Party” and collectively the “Parties”).

Business Associate provides certain services for Covered Entity (“Services”) that involve the use and disclosure of Protected Health Information that is created or received by Business Associate from or on behalf of Covered Entity (“PHI”). The Parties are committed to complying with the Standards for Privacy of Individually Identifiable Health Information, 45 C.F.R. Part 160 and Part 164, Subparts A and E as amended from time to time (the “Privacy Rule”), and with the Security Standards, 45 C.F.R. Part 160 and Part 164, Subpart C as amended from time to time (the “Security Rule”), under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), as amended by the Health Information Technology for Economic and Clinical Health Act and its implementing regulations (“HITECH”). Business Associate acknowledges that, pursuant to HITECH, 45 C.F.R. §§ 164.308 (administrative safeguards), 164.310 (physical safeguards), 164.312 (technical safeguards), 164.316 (policies and procedures and documentation requirements) and 164.502 *et. seq.* apply to Business Associate in the same manner that such sections apply to Covered Entity. The additional requirements of Title XIII of HITECH contained in Public Law 111-005 that relate to privacy and security and that are made applicable with respect to covered entities shall also be applicable to Business Associate. The Parties are also committed to complying with the California Confidentiality of Medical Information Act, Ca. Civil Code §§ 56 *et seq.* (“CMIA”), where applicable. Business Associate acknowledges that the CMIA prohibits Business Associate from further disclosing the PHI it receives from Covered Entity where such disclosure would be violative of the CMIA. The Parties are also committed to complying with applicable requirements of the Red Flag Rules issued pursuant to the Fair and Accurate Credit Transactions Act of 2003 (“Red Flag Rules”). This Agreement sets forth the terms and conditions pursuant to which PHI, and, when applicable, Electronic Protected Health Information (“EPHI”), shall be handled. The Parties further acknowledge that state statutes or other laws or precedents may impose data breach notification or information security obligations, and it is their further intention that each shall comply with such laws as well as HITECH and HIPAA in the collection, handling, storage, and disclosure of personal data of patients or other personal identifying information exchanged or stored in connection with their relationship.

The Parties agree as follows:

#### 1. DEFINITIONS

All capitalized terms used in this Agreement but not otherwise defined shall have the meaning set forth in the Privacy Rule, Security Rule and HITECH.

#### 2. PERMITTED USES AND DISCLOSURES OF PHI

2.1 Unless otherwise limited herein, Business Associate may:

(a) use or disclose PHI to perform functions, activities or Services for, or on behalf of, Covered Entity as requested by Covered Entity from time to time, provided that such use or disclosure would not violate the Privacy or Security Rules or the standards for Business Associate Agreements set forth in 45 C.F.R. § 164.504(e), exceed the minimum necessary to accomplish the intended purpose of such use or disclosure, violate the additional requirements of HITECH contained in Public Law 111-005 that relate to privacy and security, or violate the CMIA;

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(b) disclose PHI for the purposes authorized by this Agreement only: (i) to its employees, subcontractors and agents; (ii) as directed by this Agreement; or (iii) as otherwise permitted by the terms of this Agreement;

(c) use PHI in its possession to provide Data Aggregation Services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B);

(d) use PHI in its possession for proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate as permitted by 45 C.F.R. § 164.504(e)(4)(i);

(e) disclose the PHI in its possession to third parties for the proper management and administration of Business Associate to the extent and in the manner permitted under 45 C.F.R. § 164.504(e)(4)(ii); provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the persons to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached;

(f) use PHI to report violations of law to appropriate Federal and state authorities, consistent with 45 C.F.R. § 164.502(j)(1);

(g) de-identify any PHI obtained by Business Associate under this Agreement for further use or disclosure only to the extent such de-identification is pursuant to this Agreement, and use such de-identified data in accordance with 45 C.F.R. § 164.502(d)(1).

### 3. RESPONSIBILITIES OF THE PARTIES WITH RESPECT TO PHI

3.1 Responsibilities of Business Associate. With regard to its use and/or disclosure of PHI, Business Associate shall:

(a) use and/or disclose the PHI only as permitted or required by this Agreement or as otherwise Required by Law;

(b) report to the privacy officer of Covered Entity, in writing, (i) any use and/or disclosure of the PHI that is not permitted or required by this Agreement of which Business Associate becomes aware, and (ii) any Breach of unsecured PHI as specified by HITECH, within two (2) days of Business Associate's determination of the occurrence of such unauthorized use and/or disclosure. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure. The notification of any Breach of unsecured PHI shall include, to the extent possible, the identification of each individual whose unsecured PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed during the Breach.

(c) use commercially reasonable safeguards to maintain the security of the PHI and to prevent use and/or disclosure of such PHI other than as provided herein;

(d) obtain and maintain an agreement with all of its subcontractors and agents that receive, use, or have access to, PHI pursuant to which agreement such subcontractors and agents

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agree to adhere to the same restrictions and conditions on the use and/or disclosure of PHI that apply to Business Associate pursuant to this Agreement;

(e) make available all internal practices, records, books, agreements, policies and procedures and PHI relating to the use and/or disclosure of PHI to the Secretary for purposes of determining Covered Entity or Business Associate's compliance with the Privacy Rule;

(f) document disclosures of PHI and information related to such disclosure and, within ten (10) days of receiving a written request from Covered Entity, provide to Covered Entity such information as is requested by Covered Entity to permit Covered Entity to respond to a request by an individual for an accounting of the disclosures of the individual's PHI in accordance with 45 C.F.R. § 164.528, as well as provide an accounting of disclosures, as required by HITECH, directly to an individual provided that the individual has made a request directly to Business Associate for such an accounting. At a minimum, the Business Associate shall provide the Covered Entity with the following information: (i) the date of the disclosure, (ii) the name of the entity or person who received the PHI, and if known, the address of such entity or person; (iii) a brief description of the PHI disclosed; and (iv) a brief statement of the purpose of such disclosure which includes an explanation of the basis for such disclosure. In the event the request for an accounting is delivered directly to the Business Associate, the Business Associate shall, within two (2) days, forward such request to the Covered Entity. The Business Associate shall implement an appropriate recordkeeping process to enable it to comply with the requirements of this Section;

(g) subject to Section 4.4 below, return to Covered Entity within twenty-one (21) days of the termination of this Agreement, the PHI in its possession and retain no copies, including backup copies;

(h) disclose to its subcontractors, agents or other third parties, and request from Covered Entity, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder;

(i) if all or any portion of the PHI is maintained in a Designated Record Set:

(i) upon ten (10) days' prior written request from Covered Entity, provide access to the PHI in a Designated Record Set to Covered Entity or, as directed by Covered Entity, the individual to whom such PHI relates or his or her authorized representative to meet a request by such individual under 45 C.F.R. § 164.524; and

(ii) upon ten (10) days' prior written request from Covered Entity, make any amendment(s) to the PHI that Covered Entity directs pursuant to 45 C.F.R. § 164.526;

(j) maintain policies and procedures to detect and prevent identity theft in connection with the provision of the Services, to the extent required to comply with the Red Flag Rules;

(k) notify the Covered Entity within five (5) days of the Business Associate's receipt of any request or subpoena for PHI. To the extent that the Covered Entity decides to assume responsibility for challenging the validity of such request, the Business Associate shall cooperate fully with the Covered Entity in such challenge;

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(l) maintain a formal security program materially in accordance with all applicable data security and privacy laws and industry standards designed to ensure the security and integrity of the Covered Entity's data and protect against threats or hazards to such security

The Business Associate acknowledges that, as between the Business Associate and the Covered Entity, all PHI shall be and remain the sole property of the Covered Entity.

3.2 Additional Responsibilities of Business Associate with Respect to EPHI. In the event that Business Associate has access to EPHI, in addition to the other requirements set forth in this Agreement relating to PHI, Business Associate shall:

(a) implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by 45 C.F.R. Part 164, Subpart C;

(b) ensure that any subcontractor or agent to whom Business Associate provides any EPHI agrees in writing to implement reasonable and appropriate safeguards to protect such EPHI; and

(c) report to the privacy officer of Covered Entity, in writing, any Security Incident involving EPHI of which Business Associate becomes aware within two (2) days of Business Associate's discovery of such Security Incident. For purposes of this Section, a Security Incident shall mean (consistent with the definition set forth at 45 C.F.R. § 164.304), the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. In such event, the Business Associate shall, in consultation with the Covered Entity, mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of such improper use or disclosure.

3.3 Responsibilities of Covered Entity. Covered Entity shall, with respect to Business Associate:

(a) provide Business Associate a copy of Covered Entity's notice of privacy practices ("Notice") currently in use;

(b) notify Business Associate of any limitations in the Notice pursuant to 45 C.F.R. § 164.520, to the extent that such limitations may affect Business Associate's use or disclosure of PHI;

(c) notify Business Associate of any changes to the Notice that Covered Entity provides to individuals pursuant to 45 C.F.R. § 164.520, to the extent that such changes may affect Business Associate's use or disclosure of PHI;

(d) notify Business Associate of any changes in, or withdrawal of, the consent or authorization of an individual regarding the use or disclosure of PHI provided to Covered Entity pursuant to 45 C.F.R. § 164.506 or § 164.508, to the extent that such changes may affect Business Associate's use or disclosure of PHI; and notify Business Associate, in writing and in a timely manner, of any restrictions on use and/or disclosure of PHI as provided for in 45 C.F.R. § 164.522 agreed to by Covered Entity, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

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### 4. TERMS AND TERMINATION

4.1 Term. This Agreement shall become effective on the Effective Date and shall continue in effect unless terminated as provided in this Article 4. Certain provisions and requirements of this Agreement shall survive its expiration or other termination as set forth in Section 5.1 herein.

4.2 Termination. Either Covered Entity or Business Associate may terminate this Agreement and any related agreements if the terminating Party determines in good faith that the terminated Party has breached a material term of this Agreement; provided, however, that no Party may terminate this Agreement if the breaching Party cures such breach to the reasonable satisfaction of the terminating Party within thirty (30) days after the breaching Party's receipt of written notice of such breach.

4.3 Automatic Termination. This Agreement shall automatically terminate without any further action of the Parties upon the termination or expiration of Business Associate's provision of Services to Covered Entity.

4.4 Effect of Termination. Upon termination or expiration of this Agreement for any reason, Business Associate shall return all PHI pursuant to 45 C.F.R. § 164.504(e)(2)(ii)(I) if, and to the extent that, it is feasible to do so. Prior to doing so, Business Associate shall recover any PHI in the possession of its subcontractors or agents. To the extent it is not feasible for Business Associate to return or destroy any portion of the PHI, Business Associate shall provide Covered Entity a statement that Business Associate has determined that it is infeasible to return or destroy all or some portion of the PHI in its possession or in possession of its subcontractors or agents. Business Associate shall extend any and all protections, limitations and restrictions contained in this Agreement to any PHI retained after the termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed.

### 5. MISCELLANEOUS

5.1 Survival. The respective rights and obligations of Business Associate and Covered Entity under the provisions of Sections 4.4, 5.1, 5.6, and 5.7, and Section 2.1 (solely with respect to PHI that Business Associate retains in accordance with Section 4.4 because it is not feasible to return or destroy such PHI), shall survive termination of this Agreement until such time as the PHI is returned to Covered Entity or destroyed. In addition, Section 3.1(i) shall survive termination of this Agreement, provided that Covered Entity determines that the PHI being retained pursuant to Section 4.4 constitutes a Designated Record Set.

5.2 Amendments; Waiver. This Agreement may not be modified or amended, except in a writing duly signed by authorized representatives of the Parties. To the extent that any relevant provision of the HIPAA, HITECH or Red Flag Rules is materially amended in a manner that changes the obligations of Business Associates or Covered Entities, the Parties agree to negotiate in good faith appropriate amendment(s) to this Agreement to give effect to the revised obligations. Further, no provision of this Agreement shall be waived, except in a writing duly signed by authorized representatives of the Parties. A waiver with respect to one event shall not be construed as continuing, or as a bar to or waiver of any right or remedy as to subsequent events.

5.3 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than the Parties and the respective successors or assigns of the Parties, any rights, remedies, obligations, or liabilities whatsoever.

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5.4 Notices. Any notices to be given hereunder to a Party shall be made via U.S. Mail or express courier to such Party's address given below, and/or via facsimile to the facsimile telephone numbers listed below.

If to Business Associate, to:

ALLEN/LOEB ASSOCIATES  
117 E. Laguna Ave., San Francisco, Ca 94110  
Attn: Tim Allen/Peter Loeb  
Tel: 415-648-2715  
Fax: 415-401-0544

If to Covered Entity, to:

Monterey County Health Department, Behavioral Health Bureau  
1270 Natividad Road, Salinas, CA 93906  
Attn: Amie Miller, MFT, Psy D.  
Tel: 831-755-4509  
Fax: 831-755-4980

Each Party named above may change its address and that of its representative for notice by the giving of notice thereof in the manner hereinabove provided. Such notice is effective upon receipt of notice, but receipt is deemed to occur on next business day if notice is sent by FedEx or other overnight delivery service.

5.5 Counterparts; Facsimiles. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original. Facsimile copies hereof shall be deemed to be originals.

5.6 Choice of Law; Interpretation. This Agreement shall be governed by the laws of the State of California; as provided, however, that any ambiguities in this Agreement shall be resolved in a manner that allows Business Associate to comply with the Privacy Rule, and, if applicable, the Security Rule and the CMIA.

5.7 Indemnification. Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter County), its officers, agents, and employees from any claim, liability, loss, injury, cost, expense, penalty or damage, including the County's reasonable cost of providing notification of and of mitigating any acquisition, access, use or disclosure of PHI in a manner not permitted by this BAA, arising out of, or in connection with, performance of this BAA by Contractor and/or its agents, members, employees, or sub-contractors, excepting only loss, injury, cost, expense, penalty or damage caused by the negligence or willful misconduct of personnel employed by the County. It is the intent of the parties to this BAA to provide the broadest possible indemnification for the County. Contractor shall reimburse the County for all costs, attorneys' fees, expenses, and liabilities incurred by the County with respect to any investigation, enforcement proceeding or litigation in which Contractor is obligated to indemnify, defend, and hold harmless the County under this BAA. This provision is in addition to and independent of any indemnification provision in any related or other agreement between the Covered Entity and the Business Associate.

**EXHIBIT E-5: BUSINESS ASSOCIATE AGREEMENT**

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IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf as of the Effective Date.

**COUNTY OF MONTEREY, ON BEHALF OF  
THE HEALTH DEPARTMENT**

**ALLEN/LOEB ASSOCIATES**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Print Title: \_\_\_\_\_  
Date: \_\_\_\_\_

By: Peter Loeb  
Print Name: Peter Loeb  
Print Title: Partner  
Date: 4/18/10