

AMENDMENT NO. 1 TO MENTAL HEALTH SERVICES AGREEMENT A-12513  
BY AND BETWEEN  
COUNTY OF MONTEREY AND CALIFORNIA PSYCHIATRIC TRANSITIONS

**THIS AMENDMENT NO. 1** is made to AGREEMENT A-12513 for the provision of community mental health services to adults with severe psychiatric disabilities in an adult residential Mental Health Rehabilitation Center (MHRC) facility by and between **CALIFORNIA PSYCHIATRIC TRANSITIONS**, hereinafter "CONTRACTOR", and the County of Monterey, a political subdivision of the State of California, hereinafter referred to as "County".

**WHEREAS**, the County and CONTRACTOR wish to amend the AGREEMENT to modify the service levels and descriptions, increase Service Level Rates for Fiscal Year (FY) 2014-15 and FY 2015-16, reduce the total amount of the AGREEMENT, and revise the Program Description, Payment and Billing Provisions, Business Associate Agreement and Cost Reimbursement Invoice.

**NOW THEREFORE**, the County and CONTRACTOR hereby agree to amend the AGREEMENT in the following manner:

1. EXHIBIT A-1 PROGRAM DESCRIPTION replaces EXHIBIT A. All references in the Agreement to EXHIBIT A shall be construed to refer to EXHIBIT A-1.
2. EXHIBIT B-1 PAYMENT AND BILLING PROVISIONS replaces EXHIBIT B. All references in the Agreement to EXHIBIT B shall be construed to refer to EXHIBIT B-1.
3. EXHIBIT F-1 BUSINESS ASSOCIATE AGREEMENT replaces EXHIBIT F. All references in the Agreement to EXHIBIT F shall be construed to refer to EXHIBIT F-1.
4. EXHIBIT G-1 COST REIMBURSEMENT INVOICE FORM replaces EXHIBIT G. All references in the Agreement to EXHIBIT G shall be construed to refer to EXHIBIT G-1.
5. Except as provided herein, all remaining terms, conditions and provisions of the AGREEMENT are unchanged and unaffected by this AMENDMENT and shall continue in full force and effect as set forth in the AGREEMENT.
6. This Amendment is effective August 1, 2014.
7. A copy of the AMENDMENT shall be attached to the original AGREEMENT executed by the County on July 16, 2013.

IN WITNESS WHEREOF, COUNTY and CONTRACTOR have executed this Amendment No. 1 to Agreement A-12513 as of the day and year written below.

**COUNTY OF MONTEREY**

**CONTRACTOR**

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

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

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

Date: 6-29-15

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

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

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

By: Stangoralla  
Deputy County Counsel

Date: 7/2/15

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

By: [Signature]  
Auditor/Controller

Date: 2-6-15

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

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

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

**CALIFORNIA PSYCHIATRIC TRANSITIONS**

Contractor's Business Name\*

By: John T. Hackett Pres.  
(Signature of Chair, President, or Vice-President)\*

John T. Hackett - Pres.  
Name and Title

Date: 5/18/15

By: Dina Hackett - U.P.  
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)\*

Dina Hackett - U.P.  
Name and Title

Date: 5/18/15

\*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; if Agreement is \$100,000 and less approval by County Counsel is required only when modifications are made to any of the Agreement's standardized terms and conditions

<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-1: PROGRAM DESCRIPTION**

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### **I. IDENTIFICATION OF CONTRACTOR**

Name: California Psychiatric Transitions

Address: P. O. Box 339  
Delhi, CA 95315

Incorporation Status: Private, for profit, Corporation

Type of Facility: Mental Health Rehabilitation Center (MHRC)

Type of License: MHRC

### **II. TARGET POPULATION/FACILITY SPECIALIZATION**

Serving adults with psychiatric impairment that has led to their grave disability and requires a locked skilled nursing level of care.

### **III. PROGRAM DESCRIPTION**

Treatment services include:

- A. An individualized program to meet the specific needs of each client. Individual programs shall be provided based on the specific needs identified through resident assessments.
- B. A structured regimen with individualized services to assist clients in the development of new skills and in modifying behaviors that exclude them from living in a lower level of care facility. The facility shall have the capability of providing all of the following special rehabilitation program services.
  1. Self-Help Skills Training. This shall include but not be limited to:
    - a) Supervision of medication and education regarding medication;
    - b) Money management;
    - c) Use of public transportation;
    - d) Use of community resources;
    - e) Behavior control and impulse control;
    - f) Frustration tolerance/stress management;
    - g) Mental health/substance abuse education;
    - h) Physical education;
    - i) ADLs; Restoration of activities of daily living.

2. Behavioral Intervention Training. This shall include but not be limited to:
  - a) Behavior modification modalities;
  - b) Re-motivation therapy;
  - c) Patient government activities;
  - d) Group counseling;
  - e) Individual counseling;
  - f) Interpersonal Relationships. This shall include but not be limited to:
    - (1) Social counseling;
    - (2) Educational and recreational training;
    - (3) Social activities such as outings, dances, etc.;
  - g) Understanding of legal issues and court processes.
  
3. Pre-vocational Preparation Services. This shall include but not be limited to:
  - a) Homemaking;
  - b) Work activity;
  - c) Vocational counseling; work habits
  - d) Pre-release planning;
  - e) Out-of-home planning;
  - f) Linkage to medical services in the community as needed.

#### **IV. PROGRAM GOALS**

- A. To assist Monterey County Behavioral Health in efficiently and effectively managing limited resources by providing an alternative to utilization of State hospital days and acute hospital administrative days.
- B. To stabilize the individual's psychiatric condition through medication management and program services.
- C. To restore the individual's level of functioning to the community to a lower level of care.
- D. To increase the individual's motivation and skills toward self-restoration.
- E. To prevent or decrease the rate of de-compensation, thus decreasing placements at higher, more costly levels of care.
- F. To provide the intensive staff required to supervise and treat behavioral psychiatric and medical conditions.

#### **V. PROGRAM PLAN OF OPERATION**

The Contractor will provide the COUNTY with a copy of the Mental Health Rehabilitation Center Plan of Operation.

## **VI. CASE MANAGEMENT**

The County will provide a case manager to coordinate services and assess for discharge planning.

## **VII. ADMISSIONS/BASIC SERVICES/CONTINUED STAY CRITERIA**

### **A. ADMISSION CRITERIA**

The CONTRACTOR shall admit patients with a DSM IV diagnosis and conserved found to be gravely disabled subject to bed availability, with order of a physician, and in compliance with reasonable admission policies and procedures. Individuals in need of 24-hour nursing services, patients who may have histories of and, without adequate treatment, are at risk of displaying behavioral symptoms (such as combativeness, development risk, suicide risk, and excessive verbal abusiveness) which preclude them from being admitted into a lower level care facility, shall be considered acceptable for admission. Frequency, scope, and severity of these behaviors are a determining factor to be discussed on an individual patient basis between the COUNTY and the CONTRACTOR. The COUNTY may grant individual exceptions to these admission criteria. Individuals whose mental illness is deemed appropriate for acute care, as well as individuals suffering exclusively from developmental disability, mental retardation or physical illnesses (without a psychiatric component) shall not be considered for admission. All admissions are subject to the prior authorization from the COUNTY and CONTRACTOR's commitment to provide care and services in accordance with the terms of this Agreement.

### **B. BASIC SERVICES**

The basic service level (the minimum array of services provided to IMD residents) shall comply with Title 9 of the California Code of Regulations, Chapter 3.5, Sections 782.10 through 787.14, which includes life skill training, money management, training on accessing community services, transitional programs, and discharge planning with the COUNTY staff. Basic services shall also include reasonable access to required medical treatment and up-to-date psychopharmacology and transportation to reasonable needed off-site services and bilingual/ bicultural programming as specifically described herein.

### **C. CONTINUED STAY CRITERIA**

1. Admission for contracted services occurs only under the order of a licensed mental health physician, with approval of the COUNTY representative(s).
2. Admission is available only to individuals in need of 24-hour nursing services and observation of mental illness or other related disorders. Individuals with exclusively physical illnesses shall not be admitted.

3. Clients must exhibit behavioral symptoms, which prohibit them from being admitted into a lower level care. Due to their mental illness, clients are unable to provide for their basic needs.

## **VIII. DISCHARGE CRITERIA & PLANNING**

At the point the individual no longer requires the level of service of a locked facility, as determined by the COUNTY case manager, a plan for their transfer to a less restrictive community setting will be arranged by the COUNTY case manager in conjunction with the CONTRACTOR staff.

## **IX. TRANSFER TO ACUTE LEVEL OF CARE**

If an individual meets the criteria of medical necessity for acute psychiatric inpatient care, the CONTRACTOR will notify the COUNTY conservator and case manager, then proceed with notification by the CONTRACTOR's psychiatrist to the COUNTY's inpatient psychiatrist to arrange for the transfer of the individual.

## **X. LIMITATIONS OF SERVICE**

The CONTRACTOR will operate within the scope of services outlined in the CONTRACTOR's State of California license.

## **XI. CHANGE OF SERVICE LEVEL/RATE**

### **A. SERVICE LEVEL/RATE REDUCTIONS**

Service level/rate reductions must be approved by the CONTRACTOR. COUNTY is eligible to submit a service level/rate change every ninety (90) days. COUNTY has the option to request a lower service level/rate and thereby shall submit a written notice to CONTRACTOR requesting the lower service level/rate change. Upon CONTRACTOR's determination the lower service level/rate change would be approved or denied.

### **B. SERVICE LEVEL/RATE INCREASES**

Service level/rate increases must be approved by the COUNTY and incorporated into a fully-executed Amendment to this Contract in advance of the submission of any invoice with a new level/rate beyond that specified in the Contract. CONTRACTOR is eligible to request the COUNTY Contract Amendment process at any time, and has the option to request a higher service level/rate and thereby shall submit a written notice to COUNTY via the Program Manager/Contract Monitor or assigned Contracts Analyst, requesting the higher service level/rate change, with written justification as to the budgetary reasons underlying the requested increase. Upon COUNTY's determination the higher service level/rate change would be approved or denied.

## XII. TYPES OF SERVICES

1. The following program service levels will be provided for FY 2013-14:

<b>Service Type / Designation</b>	<b>Rate/Day</b>	<b>Service Description</b>
Level 1	\$300.00	Residents are integrated with only minor to moderate deviations from the structured program.
Level 2	\$325.00	Residents require specialized services such as forensic competency training management of frequent behavioral episodes or medication complications.
Level 3	\$350.00	Step down level of care for residents admitted directly from the State Hospital for an intensive evaluation period.

2. The following program service levels will be provided for FY 2014-15 / FY 2015-16:

<b>Service Type / Designation</b>	<b>Rate/Day</b>	<b>Service Description</b>
MHRC Level 1	\$300.00 (July 2014) \$350.00 (Remainder of Contract Term)	Residents are integrated with only minor to moderate deviations from the structured program.
DBU Level 1	\$700.00	Disruptive Behavioral Unit program provides intensive therapy that focuses directly on disruptive behaviors; 1:1 staffing sessions address behavioral issues, medication changes and program compliance with a Board Certified Forensic Psychiatrist; 3:1 resident to staff ratio and 24 hour nursing.

## XIII. EVALUATION AND REPORTING REQUIREMENTS

In addition to all evaluation and reporting requirements previously stated in this Agreement, CONTRACTOR shall meet all evaluation and reporting requirements stated as a condition of the facility's license. Additionally, CONTRACTOR shall report any unusual incidents that occur at the facility to the Contract Monitor/Liaison.

#### **XIV. QUALITY ASSURANCE**

- A. CONTRACTOR shall comply with Chapter 3.5 of Division 1 of Title 9 of the California Code of Regulations pertaining to Mental Health Rehabilitation Centers.
- B. CONTRACTOR shall meet all quality assurance requirements which are a condition of their license. COUNTY will routinely monitor the CONTRACTOR in terms of compliance with the COUNTY'S Quality Improvement Plan (QIP) in the following areas:
1. Medical necessity;
  2. Appropriateness of continued treatment;
  3. Focus, level, intensity of care;
  4. Outcome of treatment; and
  5. Cost of treatment

#### **XV. CONTRACT MONITOR**

Robert L. Jackson  
Behavioral Health Services Manager  
Monterey County Health Department  
Behavioral Health Bureau  
1270 Natividad Road  
Salinas, CA 93906  
Telephone: (831) 755-6351  
Email: JacksonRL@co.monterey.ca.us

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**EXHIBIT B-1: PAYMENT AND BILLING PROVISIONS**

**I. PAYMENT TYPE**

Negotiated Rate (NR) up to the maximum contract amount.

**II. PAYMENT AUTHORIZATION FOR SERVICES**

The COUNTY'S commitment to authorize reimbursement to the CONTRACTOR for services as set forth in this Exhibit B is contingent upon COUNTY authorized admission and service, and CONTRACTOR'S commitment to provide care and services in accordance with the terms of this Agreement.

**III. PAYMENT RATE**

**C. BED HOLD RATE**

The rate for Leave of Absence and Bed Hold for acute hospitalization shall remain at the per diem rate based on the placement rate of client at the time of leave.

**D. NEGOTIATED RATE**

1. The following rates are established by the CONTRACTOR as follows for Mental Health Rehabilitation services for Fiscal Year (FY) 2013-14:

Service Type	Estimated # Bed Days (UOS)	Rate/Day	FY 2013-14 Estimated Amount
Level 1	360	\$300.00	<b>\$108,000</b>
Level 2	740	\$325.00	<b>\$240,500</b>
Level 3	360	\$350.00	<b>\$126,000</b>
<b>Fiscal Year 2013-14 TOTAL:</b>			<b>\$474,500</b>

2. The following rates are established by the CONTRACTOR as follows for Mental Health Rehabilitation services for Fiscal Year 2014-15 and FY 2015-16:

2nd and 3rd Fiscal Year / Service Term	MHRC Level 1 Rate	Estimated # Bed Days (UOS)	Total MHRC Level 1	DBU Level 1 Rate	Estimated # Bed Days (UOS)	Total DBU Level 1	Maximum Fiscal Year Total Cost
July 1, 2014 - July 31, 2014	\$300.00	93	\$27,900	n/a	n/a	\$0	<b>\$448,600</b>
August 1, 2014 - June 30, 2015	\$350.00	1002	\$350,700	\$700.00	100	\$70,000	
July 1, 2015 - June 30, 2016	\$350.00	1095	\$383,250	\$700.00	100	\$70,000	
<b>TOTAL MAXIMUM COUNTY OBLIGATION:</b>							<b>\$1,376,350</b>

#### **IV. 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 provided as Exhibit G, 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 III, 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 Exhibit G, 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 within five (5) calendar days. 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.

**V. 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 **\$1,376,350** for services rendered under this Agreement.

- B. Maximum Annual Liability:

<b>FISCAL YEAR LIABILITY</b>	<b>AMOUNT</b>
July 1, 2013 to June 30, 2014	\$474,500
July 1, 2014 to June 30, 2015	\$448,600
July 1, 2015 to June 30, 2016	\$453,250
<b>TOTAL AGREEMENT MAXIMUM LIABILITY:</b>	<b>\$1,376,350</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.

## **VI. 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.

## **VII. 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.

## **VIII. 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."

## **EXHIBIT F-1: BUSINESS ASSOCIATE AGREEMENT**

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This Business Associate Agreement (“Agreement”), effective **May 12, 2015** (“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 **California Psychiatric Transitions** (“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;

(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 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;

(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

(e) 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.

#### 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.

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:

Donna McGowan  
Facility Director  
California Psychiatric Transitions  
P.O. Box 339  
9226 N. Hinton Ave.  
Delhi, CA 95315  
Tele: (209) 667-9304 x-101

If to Covered Entity, to:

Ray Bullick  
Director of Health  
1270 Natividad Rd.  
Salinas, CA 93906  
Tele: (831) 755-4526  
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.

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**

**CALIFORNIA PSYCHIATRIC TRANSITIONS**

By: 

By: 

Print Name: RAY BULLICK

Print Name: DONNA MCGOWAN

Print Title: DIRECTOR OF HEALTH

Print Title: DIRECTOR

Date: MAY 29, 2015

Date: 5/18/15

BAA-Health Department Revised 12/12/2014

