

**BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement (this “**Agreement**”) is made effective the 1<sup>ST</sup> day of January 2018 (“**Effective Date**”) by and between NORTH SOUND BEHAVIORAL HEALTH ORGANIZATION, LLC (**North Sound BHO**) and WHATCOM COUNTY (**Contractor**) (individually, a “**Party**” and, collectively, the “**Parties**”).

- A. WHEREAS, the Parties wish to enter into this Agreement to comply with the administrative simplification section of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations, as amended (collectively, “**HIPAA**”).
- B. WHEREAS, the Parties have entered into one or more written or verbal arrangements (collectively, the “**Service Contract**”) under which Contractor will provide certain services to North Sound BHO that may involve Contractor creating, receiving, maintaining, or transmitting PHI, as defined below, and Contractor may be considered a “Business Associate” of North Sound BHO under HIPAA and a “**Qualified Service Organization**” under the Confidentiality of Alcohol and Drug Abuse Patient Records regulations at 42 CFR Part 2 (“**Part 2**”).

NOW, THEREFORE, in consideration of the Parties’ continuing obligations under the Service Contract, their compliance with HIPAA and Part 2, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement.

- I. **DEFINITIONS.** Except as otherwise defined in this Agreement, capitalized terms in this Agreement shall have the definitions set forth in HIPAA. “**Individual**” shall have the same meaning as the term “Individual” in 45 CFR § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g). “**Part 2 Information**” means alcohol abuse, drug abuse, or substance use disorder information covered by Part 2. “**PHI**” shall have the same meaning as the term “Protected Health Information” that is created, received, maintained, or transmitted by Contractor from or on behalf of North Sound BHO. PHI includes, without limitation, Electronic PHI and Part 2 Information. “**PII**” means personally identifiable information as defined under Washington law.

**II. PERMITTED USES AND DISCLOSURES BY CONTRACTOR.**

- 2.1 **Performance of Service Contract.** Contractor may use and disclose PHI and PII to perform functions, activities, or services for, or on behalf of, North Sound BHO as specified in the Service Contract as long as the use or disclosure would not violate HIPAA, Part 2, and state and federal laws (collectively, “**Law**”), if done by North Sound BHO.
- 2.2 **Management; Administration; Legal Responsibilities.** Contractor may use PHI and PII for its proper management and administration and to fulfill its legal responsibilities, as long as the uses are permitted under Law for both North Sound BHO and Contractor.
- 2.3 **Required by Law.** Except as otherwise limited in this Agreement, Contractor may disclose PHI and PII as Required by Law. Contractor shall: (i) to the extent permitted by Law, immediately notify North Sound BHO prior to the disclosure; (ii) cooperate with North Sound BHO in making any disclosures Required by Law, including efforts to challenge or limit the disclosure; and (iii) provide a copy of all information disclosed relating to this Agreement or the Service Contract.
- 2.4 **De-identified Information.** Contractor may not use or disclose PHI or PII to create de-identified information or Limited Data Sets or to otherwise anonymize or aggregate PHI or PII for its own use or disclosure, without prior, express, written approval from North Sound BHO.

- 2.5 **Minimum Necessary.** Contractor shall make all reasonable efforts to access, use, disclose, or request only the minimum necessary amount of PHI or PII to accomplish the intended, permitted purpose of the access, use, disclosure, or request. Contractor shall comply with North Sound BHO's policies and procedures concerning minimum necessary requirements. The Parties shall collaborate in determining what quantum of information constitutes the "minimum necessary" amount for Contractor to accomplish its intended purposes.

**III. OBLIGATIONS AND ACTIVITIES OF CONTRACTOR.**

- 3.1 **Compliance with this Agreement.** Notwithstanding anything to the contrary, Contractor agrees to not use or further disclose PHI or PII other than as permitted or required by this Agreement or as Required by Law.
- 3.2 **Safeguards.** Contractor agrees to: (i) use appropriate safeguards to prevent use or disclosure of PHI and PII other than as provided for by this Agreement; (ii) implement the administrative, physical, and technical safeguards of the Security Standards for the Protection of Electronic Protected Health Information (the "**Security Rule**") that reasonably and appropriately protect the confidentiality, integrity, and availability of any PHI; and (iii) comply with those requirements under the Security Rule that apply to Business Associates.
- 3.3 **Notification.**
- 3.3.1 **Impermissible Use or Disclosure.** Contractor shall report to North Sound BHO any use or disclosure of PHI or PII not permitted under this Agreement, regardless of whether the use or disclosure rises to the level of a Breach.
- 3.3.2 **Security Incident.** Contractor shall report to North Sound BHO any Security Incident of which Contractor becomes aware, regardless of whether the Security Incident rises to the level of a Breach. This Agreement constitutes notification of "unsuccessful" Security Incidents that do not present a risk to PHI such as: (i) "pings" on an information system firewall; (ii) port scans; and (iii) attempts to log on to an information system or enter a database with an invalid password or user name.
- 3.3.3 **Breach Notification.** Contractor shall report any Breach of Unsecured PHI, as required by the Notification of a Breach of Unsecured Protected Health Information Standards.
- 3.3.4 **Reporting Requirements.** Contractor shall make the report as soon as practical and in any event within five (5) business days of Contractor's discovery of one of the above described events (an "**Event**"). Contractor shall supplement the information provided in the report as it becomes available. An Event shall be treated as discovered by Contractor as of the first day on which the Event is known to Contractor or, through the exercise of reasonable diligence, would have been known to Contractor.
- 3.3.5 **Content of Notification.** Contractor shall provide information to fully inform North Sound BHO of each Event and any additional information requested by North Sound BHO. At a minimum, the report of an Event shall include, to the extent possible:
- (i) The identification of each Individual whose PHI or PII has been, or is reasonably believed by Contractor to have been, accessed, acquired, used, or disclosed during the Event;
  - (ii) A brief description of what happened, including the date of the Event and the date of discovery of the Event;

- (iii) A description of the types of PHI or PII involved in the Event (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
  - (iv) Any steps Individuals should take to protect themselves from potential harm resulting from the Event;
  - (v) A brief description of what Contractor is doing to investigate the Event, to mitigate harm to Individuals, and to protect against any further Events; and
  - (vi) Contact procedures for North Sound BHO or Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, Web site, or postal address.
- 3.4 **Subcontractors.** Contractor shall ensure any Subcontractor whom Contractor permits to create, receive, maintain, or transmit PHI or PII on behalf of North Sound BHO, agrees in writing: (i) to the same restrictions and conditions that apply through this Agreement to Contractor; and (ii) to comply with the requirements of the Security Rule that apply to Business Associates.
- 3.5 **Restrictions.** Contractor agrees to comply with any requests for restrictions on certain uses and disclosures of PHI or PII of which North Sound BHO informs Contractor.
- 3.6 **Access.** At the request of North Sound BHO, within ten (10) business days, unless a shorter time period is requested, in the manner, form, and format requested by North Sound BHO, Contractor shall make available PHI and PII so that North Sound BHO may respond to an Individual's request for access to PHI and PII in accordance with the Standards for Privacy of individually identifiable Health Information (the "**Privacy Rule**") and other Law. In the event an Individual request from Contractor access to PHI or PII, Contractor, to the extent permitted by Law, shall forward the request to North Sound BHO within two (2) business days.
- 3.7 **Amendment.** At the request of North Sound BHO, in a reasonable time and manner and in the form and format requested by North Sound BHO, Contractor shall make amendments to PHI and PII so that North Sound BHO may respond to an Individual's request for an amendment by North Sound BHO in accordance with the Privacy Rule and other Law. In the event an Individual request from Contractor any amendments, Contractor shall forward the request to North Sound BHO within two (2) business days.
- 3.8 **Accounting of Disclosures.** Contractor shall document any disclosures that are required to be in an accounting of disclosures under the Privacy Rule and, upon request, shall provide information required to be included in an accounting of disclosures to North Sound BHO to permit North Sound BHO to comply with the Privacy Rule and other Law. In the event an Individual request from Contractor, an accounting of disclosures, to the extent permitted by law, Contractor shall forward the request to North Sound BHO within two (2) business days.
- 3.9 **Disclosures to the Secretary.** Contractor agrees that it will make its internal practices, books, and records available to the Secretary of the United States Department of Health and Human Services (the "**Secretary**"), for the purpose of determining North Sound BHO's and Contractor's compliance with HIPAA, and to North Sound BHO for the purpose of determining Contractor's compliance with this Agreement and HIPAA, in a time and manner designated by the Secretary or North Sound BHO. Contractor: (i) immediately shall notify North Sound BHO of any requests from the Secretary pertaining to an investigation of Contractor's or North Sound BHO's compliance with HIPAA; (ii) cooperate with North Sound BHO in responding to the Secretary's request; and (iii) provide to North Sound BHO a copy of all documents provided to the Secretary.

- 3.10 **Part 2 Information.** To the extent that, in performing services for or on behalf of North Sound BHO under the Service Contract, Contractor uses, discloses, maintains, or transmits Part 2 Information, Contractor acknowledges and agrees that: (a) in creating, receiving, maintaining, transmitting, using, or disclosing Part 2 information, it is fully bound by Part 2; and (b) if necessary, it will resist in judicial proceedings any efforts to obtain access to Part 2 Information except as permitted by Part 2. Contractor acknowledges that any unauthorized disclosure of Part 2 Information may be a federal criminal offense.
- 3.11 **Covered Entity Obligations.** To the extent that Contractor is to carry out one or more of North Sound BHO obligations under the Privacy Rule, Contractor shall comply with the requirements of the Privacy Rule that apply to North Sound BHO in the performance of the obligations.
- 3.12 **On-Site Services.** Contractor agrees that, while present at any North Sound BHO facility and/or when accessing North Sound BHO's computer network(s), it and all of its Workforce, agents, and Subcontractors at all times will comply with any network access and other security practices, policies, and procedures established by North Sound BHO including, without limitation, those established pursuant to HIPAA.
- 3.13 **No Sale of PHI.** Contractor agrees that it will not directly or indirectly receive remuneration in exchange for any PHI or PII without the written authorization of each applicable Individual, except when expressly permitted by the Privacy Rule.
- 3.14 **No Impermissible Marketing or Fundraising Communication.** Contractor agrees that it will not engage in Marketing or fundraising communications that would not be permitted by North Sound BHO under HIPAA.
- 3.15 **Mitigation.** Contractor agrees to mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI or PII by Contractor in breach of this Agreement, failure to comply with applicable Law, and any Event, as defined in Section 3.3.
- 3.16 **Compliance with Applicable Law.** Contractor shall comply with applicable Law. Contractor shall not act or fail to act in a manner that causes North Sound BHO to not be in compliance with applicable Law.

IV. **OBLIGATIONS OF NORTH SOUND BHO.** North Sound BHO shall not request Contractor to act in a manner that is not permissible under HIPAA.

V. **TERM AND TERMINATION.**

- 5.1 **Term.** The term of this Agreement shall be effective as of the Effective Date and shall terminate upon the expiration or termination of the Service Contract.
- 5.2 **Termination.** Upon North Sound BHO's knowledge of a material breach by Contractor of its obligations under this Agreement, North Sound BHO may notify Contractor, and Contractor shall have thirty (30) days from receipt of that notice to cure the breach or end the violation. Notwithstanding anything to the contrary in the Service Contract, if Contractor fails to cure the breach or end the violation within the designated time period, then North Sound BHO immediately may terminate the Service Contract upon notice.

5.3 **Effect of Termination.**

5.3.1 **Return or Destruction.** Except as provided in 5.3.1, upon termination of this Agreement, Contractor, within ten (10) days, shall return or destroy all PHI and PII. Any destruction shall be in a manner consistent with HIPAA and related guidance. This provision also shall apply to PHI and PII that is in the possession of Subcontractors or agents of Contractor. Neither Contractor nor its Subcontractors or agents shall retain copies of the PHI. Upon request, Contractor shall provide a certificate of appropriate destruction of the PHI and PII.

5.3.2 **Continued Protections.** In the event that Contractor determines that returning or destroying the PHI and PII is infeasible, Contractor shall provide within ten (10) days to North Sound BHO notification of the conditions that make return or destruction infeasible of PHI and PII. Upon mutual agreement of the Parties that return or destruction of PHI is infeasible and to the extent Contractor retains knowledge of the PHI and PII, Contractor shall extend the protections of this Agreement to the PHI and PII and limit further uses and disclosures of the PHI and PII to those purposes that make the return or destruction infeasible, for as long as Contractor maintains, or retains knowledge of, the PHI or PII.

VI. **MISCELLANEOUS.**

6.1 **Indemnification Obligation.** Notwithstanding anything to the contrary in the Service Contract, Contractor will indemnify, defend at North Sound BHO's request, and hold harmless North Sound BHO, its Workforce, County Authorities Executive Committee, Advisory Board, partners, agents, and Subcontractors, (collectively "**North Sound BHO Indemnified Parties**") from and against any and all claims, actions, investigations, proceedings, losses, liability, damages, costs, and expenses (including attorneys' fees, costs of defense, and costs of investigation, mitigation, remediation, and notification) incurred or suffered by an North Sound BHO Indemnified Party (collectively, "**Damages**") that arise out of or result from the following: (i) Contractor's breach of this Agreement, including any breach of any representation or warranty; (ii) any Event reported by Contractor under this Agreement; (iii) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (iv) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.

6.2 **No Limitations on Liability.** Notwithstanding any other provision of this Agreement or the Service Contract, in no event will any exclusions, disclaimers, waivers, or limitations of any nature whatsoever apply to any damages, liability, rights, or remedies arising from or in connection with: (i) Contractor's indemnification and defense obligations under this Agreement; (ii) Contractor's breach of this Agreement, including any breach of any representation or warranty; (iii) any Event reported by Contractor; (iv) any violation of Law by or caused by Contractor or its Workforce, agents, or Subcontractors; or (v) any negligent act or omission, willful misconduct, strict liability, or fraud by or of Contractor or its Workforce, agents, or Subcontractors.

6.3 **Ownership of Information.** The Parties agree that Contractor shall not have an ownership interest in PHI or PII or any derivations of the PHI or PII.

- 6.4 **Third Party Beneficiaries.** Notwithstanding anything to the contrary in the Service Contract or this Agreement, Individuals who are service recipients of North Sound BHO shall be third party beneficiaries to this Agreement. Subject to the foregoing, nothing in this Agreement shall confer upon any person other than the Parties and their respective successors or assigns, any rights, remedies, obligations, or liabilities whatsoever.
- 6.5 **Interpretation.** This Agreement shall be interpreted in a manner consistent with the Parties' intent to comply with HIPAA, Part 2, and other Law. Any ambiguity of this Agreement shall be resolved in favor of a meaning that permits the Parties to comply with HIPAA, Part 2, and other Law. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of HIPAA, HIPAA shall control. In the event of any inconsistency between this Agreement and the Service Contract or any other agreement between the Parties, the terms of this Agreement shall control. Nothing in this Agreement shall be construed as a waiver of any legal privilege or protection, including for trade secrets or confidential commercial information.
- 6.6 **Survival.** The obligations of Contractor under Sections 3.3, 3.6, 3.8, 3.10, 3.13, 3.15, 5.3, 6.1, 6.2, 6.3, and 6.4 of this Agreement shall survive the expiration, termination, or cancellation of this Agreement, the Service Contract, and/or the business relationship of the Parties, and shall continue to bind Contractor, its Workforce, agents, employees, subcontractors, successors, and assigns as set forth in this Agreement.
- 6.7 **Amendment.** This Agreement may be amended or modified only in a writing signed by the Parties. The Parties agree that they will negotiate amendments to this Agreement to conform to any changes in HIPAA and Part 2.
- 6.8 **Assignment.** Neither Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party.
- 6.9 **Independent Contractor.** None of the provisions of this Agreement are intended to create, nor will they be deemed to create, any relationship between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. No agency relationship is deemed created by this Agreement.
- 6.10 **Governing Law.** To the extent this Agreement is not governed exclusively by HIPAA, Part 2, or other Law, it will be governed by and construed in accordance with the laws of the State of Washington.
- 6.11 **No Waiver.** No change, waiver, or discharge of any liability or obligation under this Agreement on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 6.12 **Severability.** In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect.
- 6.13 **Notice.** Any notification required in this Agreement shall be made in writing to the representative of the Party who signed this Agreement or the person currently serving in that representative's position with the other Party.
- 6.14 **Entire Agreement.** This Agreement constitutes the entire understanding of the Parties with respect to its subject matter and supersedes all prior agreements, oral or written.

**BUSINESS ASSOCIATE AGREEMENT**

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IN WITNESS WHEREOF, the Parties have executed, through representatives with the authority to bind each Party, this Agreement effective as of the Effective Date day and year written above.

**NORTH SOUND BHO**

**WHATCOM COUNTY**

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

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

Title: Executive Director

Title: Director

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

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