

36318

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement ("Agreement"), is entered into by and between HMG LA Pathways [Unifying Agency], *City of Long Beach* ("Covered Entity"), Los Angeles County Children and Families First Proposition 10 Commission (AKA First 5 LA) ("Business Associate"), and VIVA Social Impact Partners ("Sub-Business Associate"), sometimes collectively referred to as the "Parties." This Agreement shall be effective upon its signing by all Parties.

1. Definitions.

- (a) "Breach" shall mean the impermissible, unlawful or unauthorized acquisition, use, access, or Disclosure of Protected Health Information ("PHI") (defined below) which compromises the security or privacy of PHI as set forth in the HIPAA interim final rule of 2009 and the HIPAA Omnibus Rule of 2013.
- (b) "Business Associate" and "Sub-Business Associate" shall have the meaning given to the term business associate under HIPAA (45 CFR 160.103). It includes a third party that performs functions for or on behalf of Covered Entity or another Business Associate and has access to Covered Entity's PHI and uses such PHI in the performance of its functions.
- (c) "Covered Entity" shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes any health plan, health care clearing house, or health care provider who transmits any health information in electronic form in a manner described under the HIPAA regulations.
- (d) "Data Aggregation" shall have the meaning given to such term under HIPAA (45 CFR 164.501) and shall include, with respect to PHI created or received by a Business Associate in its capacity as the Business Associate of a Covered Entity, the combining of such PHI by the Business Associate with the PHI received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.
- (e) "Disclosure" shall have the meaning given to such term under HIPAA (45 CFR 160.103), and includes the release, transfer, provision of access to, or divulging in any manner of information outside the entity or Individual holding the information.
- (f) "HIPAA" shall mean the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005, and regulations promulgated thereunder by the U. S. Department of Health & Human Services, as amended from time to time, including the Final Omnibus Rule of 2013.
- (g) "De-identified" PHI or "Not Individually Identifiable" Health Information shall have the meaning given to such term under HIPAA (45 CFR 164.502, 164.514), and includes health information that does not identify an Individual and with respect to which there is no reasonable basis to believe that the information can be used to identify an Individual.
- (h) "Individual" shall have the meaning given to such term under HIPAA (45 CFR 160.103), and shall mean the person who is the subject of PHI.
- (i) "Minimum Necessary" shall have the meaning given such term under HIPAA (45 CFR 164.502).

- (j) "Protected Health Information" ("PHI") shall have the meaning given to such term under HIPAA (45 CFR 160.103). It includes any Individually identifiable health information, whether oral or recorded in any form or medium, limited to the information created or received by Business Associate or Sub-Business Associate from or on behalf of Covered Entity (i) that relates to the past, present or future physical or mental health condition of Individual; (ii) the provision of health care to Individual; (iii) or past, present or future payment for the provision of health care to Individual.
- (k) "Required by Law" shall have the meaning given such term under HIPAA (45 CFR 164.103), which meaning includes a mandate contained in law that compels an entity to make a use or Disclosure of PHI and that is enforceable in a court of law. Required by law includes, but is not limited to, court orders and court-ordered warrants; subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information; a civil or an authorized investigative demand; Medicare conditions of participation with respect to health care providers participating in the program; and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- (l) "Secretary" shall mean the Secretary of the Department of Health and Human Services or her/his designee.
- (m) "Secured" shall mean protection of PHI by a technology or methodology, which renders the data unreadable, unusable, or indecipherable to unauthorized individuals and is consistent with guidance published by the Secretary.
- (n) "Security Incident" shall have the meaning given such term under HIPAA (45 CFR 164.304), which meaning includes any accidental, malicious or natural act that:
 - (1) Results in a Breach of any of Covered Entity's data;
 - (2) Adversely impacts the functionality of the Covered Entity's information network;
 - (3) Permits unauthorized access to Covered Entity's information network;
 - (4) Impacts the integrity of Covered Entity's files or databases including, but not limited to:
 - a) Interface failures;
 - b) Inadequate testing or change control procedures; or
 - c) Other failures, which result in the deletion or unauthorized changes to an electronic database.
 - (5) Involves the loss or loss of control of an information technology resource owned or controlled by Covered Entity;
 - (6) Involves the use of Covered Entity's technology resources for illegal purposes or to launch attacks against other individuals or organizations; or
 - (7) Involves a "Breach" of PHI.
- (o) "Standard Transaction" shall have the meaning given such term under HIPAA (45 CFR 162.103), and includes a transaction that complies with an applicable standard and associated operating rules adopted under Part 162.

2. Purpose.

The Help Me Grow LA Pathways Project (“HMG LA Pathways Project”) aims to provide early identification and intervention services to children by strengthening and expanding referral pathways in the community to ensure all children identified with a delay or at risk of a delay can effectively access appropriate and timely services. Covered Entity, with a collaborative of agencies, is tasked with identifying, implementing, and refining strategies to better connect children with early identification and intervention services and supports within a geographic region over a three-year period. To accomplish this task, Business Associate and Sub-Business Associate (the entity assigned to provide Technical Assistance to Covered Entity), intend to utilize Covered Entity’s records and de-identified data and analyze them for the purposes of achieving the goals of the HMG LA Pathways Project. The data analysis will be used to develop aggregated, statistical, de-identified (non-personally identifiable / not individually identifiable) information. In no event shall the use of these records or any resulting findings and reports be used in published research without express written consent of Covered Entity and/or Business Associate.

Monetary costs related to data sharing will be covered by Business Associate as specified in the grant agreement. This Business Associate Agreement does not replace the HMG LA Pathways grant agreement and the Covered Entity and Business Associate will adhere to all of the terms of said grant agreement.

3. Scope of Work.

Within a commercially reasonable time following written request and in accordance with requested timelines, the Covered Entity will provide agreed upon data inputs via the electronic data collection template (Excel file) supportive of the HMG LA Pathways Project’s evaluation plan to Sub-Business Associate, including aggregate and disaggregate data and information related to the referral pathways and pilot approaches related to HMG LA and the HMG LA Pathways project. The Business Associate and Sub-Business Associate will omit requesting data on PHI. As such, the electronic dataset shall be reviewed prior to release by Covered Entity to ensure that PHI is not included. The data will be shared via secured accounts including e-mail, Google Drive or SharePoint. Data will be shared with other Unifying Agencies for the purposes of cross-learning and discussion and may be shared for limited evaluation purposes with the Los Angeles County Department of Public Health as part of their contract with the Business Associate for HMG LA. Any other access will not be permitted. Business Associate and Sub-Business Associate shall not permit any person or entity not bound by this agreement, including contractors not stated above, with access to any aggregated and disaggregated datasets that are used for this project unless mutually agreed upon in written form by all Parties of this agreement.

Covered Entity shall, if approved to do so, consolidate and share de-identified data in a way that is consistent with the terms of Data Use Approval Form, subject to any conditions of approval. Covered Entity shall not share, distribute, disseminate or release any data covered by this Agreement without the prior approval of a Data Use Approval Form in the form attached as Exhibit E to Covered Entity’s Agreement with Business Associate. Exhibit E is intended for use between the Covered Entities, the Business Associate, and the Sub-Business Associate (on behalf of the Business Associate). Covered Entities are responsible for de-identifying all datasets, removing PHI, and creating final non-personally identifiable datasets for analysis before sending to the Business Associate and/or Sub-Business Associate. In the case that they do receive any personally identifiable data, Business Associate and Sub-Business Associate shall: 1) secure such personally identifiable data against any

further inadvertent disclosure or use; 2) notify Covered Entity in writing of such receipt within twenty-four (24) hours of discovery; 3) comply with any lawful instruction of Covered Entity as to destruction or return of personally identifiable data in the recipient's possession, and 4) cooperate with Covered Entity in the investigation of any such disclosure. The findings and reports generated by Sub-Business Associate related to HMG LA and the HMG LA Pathways project will be jointly owned by the Business Associate and Covered Entity.

4. Term and Termination.

(a) **Term.** This Agreement will be effective for the duration of the HMG LA Pathways project (i.e., from July 1, 2022 – June 30, 2025), unless the HMG LA Pathways Project, the Grant Agreement, or this Agreement is earlier terminated.

(b) **Termination Upon Breach of Provisions.** If Business Associate or Sub-Business Associate fails to comply in a material way with any of their respective obligations under this Agreement, or otherwise Breaches any term of this Agreement, notwithstanding any other provision of this Agreement, Covered Entity shall have the option to do either of the following:

- Immediately terminate this Agreement and other agreements, including the Grant Agreement, between the Parties by providing written notice to the other Party(ies); or
- Alternatively, provide written notice to Business Associate or Sub-Business Associate of the opportunity to cure the Breach within ten (10) business days, to the extent that the Breach is curable. If Business Associate or Sub-Business Associate does not cure the Breach within the time specified, or if the Breach is not curable, Covered Entity may terminate this Agreement, including, but not limited to, any obligations it may have to provide data and other information to Business Associate and Sub-Business Associate under the Agreement.

Covered Entity shall also have the option to immediately stop all further disclosures of data to Business Associate or Sub-Business Associate if Covered Entity reasonably determines that Business Associate or Sub-Business Associate has failed to comply in a material way with its obligations under this Agreement.

In the event that termination of this Agreement is not feasible, Business Associate and/or Sub-Business Associate hereby acknowledge that the Covered Entity may be required to report the breach to the Secretary of the U.S. Department of Health and Human Services or other governmental authority if required by applicable law, notwithstanding any other provision of this Agreement to the contrary.

5. HIPAA Assurances.

In the event Business Associate or Sub-Business Associate creates, receives, maintains, or otherwise is exposed to personally identifiable or aggregate patient or other medical information defined as PHI, Business Associate or Sub-Business Associate shall:

(a) Comply with all of the obligations required of a Business Associate and Sub-Business Associate under all applicable laws, including, but not limited to the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act") and the

regulations thereunder (including 45 C.F.R. Sections 164.308, 164.310, 164.312, and 164.316;

(b) Not use or further Disclose the PHI other than as required or permitted by law;

(c) Not use or further disclose the PHI in a manner that had Covered Entity done so, would violate the requirements of HIPAA;

(d) Use appropriate safeguards (including implementing administrative, physical, and technical safeguards for electronic PHI) to protect the confidentiality, integrity, and availability of and to prevent the use or disclosure of the PHI other than as provided for by this Agreement;

(e) Comply with each applicable requirements of 45 C.F.R. Part 162 if the Business Associate conducts Standard Transactions for or on behalf of the Covered Entity;

(f) Promptly mitigate, to the extent practicable, any harmful effect of a use or Disclosure of PHI by Business Associate or Sub-Business Associate in violation of this Agreement;

(g) Report promptly to Covered Entity any Security Incident, or Breach, or other use or receipt via 1) secure such personally identifiable data against any further inadvertent disclosure or use; 2) notify Covered Entity in writing of such receipt within twenty-four (24) hours of discovery; 3) comply with any lawful instruction of Covered Entity as to destruction or return of personally identifiable data in the recipient's possession, and 4) cooperate with Covered Entity in the investigation of any such disclosure. Business Associate and Sub-Business Associate shall cooperate in good faith with one another and Covered Entity, both in the investigation of any Security Incident, Breach or other use or Disclosure of PHI not provided for by this Agreement, and in the determination of which Party shall provide any Breach notification;

(h) Ensure that any subcontractors or agents who receive or are exposed to PHI (whether in electronic or other format) agree in a written contract with Business Associate and/or Sub-Business Associate to all requirements under HIPAA for a Business Associate with the same restrictions and conditions that apply to Business Associate and/or Sub-Business Associate with respect to such information, and that such agents or subcontractors implement reasonable and appropriate safeguards for the protection of PHI which shall be no less than those required of Business Associate and/or Sub-Business Associate at Section 5(d), above;

(i) In accordance with HIPAA requirements under 45 CFR Section 164.528, account for PHI Disclosures made in the six (6) year period prior to the date on which the accounting is requested. Accountings shall include: (i) dates of Disclosure, (ii) names of the entities or persons who received the PHI, (iii) a brief description of the PHI Disclosed, and (iv) a brief statement of the purpose and basis of such Disclosure; and

(j) Make its internal practices, books, and records, including its policies and procedures, that relate to the use, Disclosure or security of PHI available to any lawfully appointed investigator for purposes of determining compliance with HIPAA.

6. Data Security.

Business Associate and Sub-Business Associate shall i) make reasonable efforts to limit any data they receive from Covered Entity to the Minimum Necessary to accomplish the intended purpose of any use, Disclosure, or request; ii) prevent use or Disclosure, unauthorized access, modification, destruction and dissemination of PHI, iii) ensure the data are kept secure and confidential, and iv)

maintain the integrity, completeness and accuracy of data.

7. No Third Party Beneficiaries.

The parties agree that the terms of this Agreement shall apply only to themselves and are not for the benefit of any third party beneficiaries. None of the Parties intend to create or establish any third party beneficiary status or right (or the equivalent thereof), and no such third party shall have any right to enforce or enjoy any benefit created or established by the provisions and covenants in this Agreement.

8. De-Identified Data.

Notwithstanding the provisions of this Agreement, Business Associate, Sub-Business Associate, and its subcontractors may disclose for the limited purposes of the HMG LA Pathways Project non-personally identifiable information during the Term provided that the disclosed information does not include a key or other mechanism that would enable the information to be identified. This section does not permit the disclosure of PHI.

9. Indemnity.

- (a) Business Associate shall promptly and fully defend, indemnify and hold harmless Covered Entity, its affiliates and respective officers, directors, agents and employees ("Indemnified Parties"), against any act or omission of Business Associate which gives rise to or results in any claim, demand, liability, loss, fine, penalty, assessment, cost, judgment and/or award, including attorney's fees, made or recovered against Indemnified Parties or issued in favor of a third party, or cost of notification or remediation relating to notification Required by Law for Individuals whose PHI or personal information has been inappropriately accessed or Disclosed.
- (b) Sub-Business Associate shall promptly and fully defend, indemnify and hold harmless Covered Entity, Business Associate, or their respective affiliates and respective officers, directors, agents and employees ("Indemnified Parties"), against any act or omission of Sub-Business Associate which gives rise to or results in any claim, demand, liability, loss, fine, penalty, assessment, cost, judgment and/or award, including attorney's fees, made or recovered against Indemnified Parties or issued in favor of a third party, or cost of notification or remediation relating to notification Required by Law for Individuals whose PHI or personal information has been inappropriately accessed or Disclosed.
- (c) In the event that any Party is Required by Law to notify Individuals whose PHI was inappropriately accessed, used, or Disclosed by Business Associate and/or Sub-Business Associate or their agents, and the PHI contains (i) the Individual's first initial or first name, last name, and social security number; (ii) the Individual's first initial or first name, last name, and driver's license or state identification card number; (iii) the Individual's first initial or first name, last name, account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an Individual's financial account; or (iv) any information which under federal or state law requires that credit monitoring be provided, then Covered Entity, Business Associate and Sub-Business Associate shall work together to structure a credit monitoring offering commensurate to the risk posed by the Breach. All costs and expenses of such credit monitoring and required notification shall be paid by Business Associate or Sub-Business

Associate, whichever is responsible for the inappropriate access, use or Disclosure of PHI, and the credit monitoring will extend for a minimum of one (1) year or longer as determined by the Covered Entity. In the event of a Breach of PHI by Business Associate or Sub-Business Associate or one of their agents, Business Associate or Sub-Business Associate, whichever is responsible for the Breach, will also be responsible for paying all costs, including legal fees, incurred in assuring compliance with the law with respect to such Breach.

- (d) The indemnity and hold harmless provisions set forth herein shall apply during the term of this Agreement and shall survive the Agreement's expiration, rescission, or termination, until such time as an action is barred by the relevant statute of limitations.

10. Insurance.

- (a) Business Associate and Sub-Business Associate, at their own expense, shall obtain and maintain at all times during the term of this Agreement the following policies of insurance with the minimum limits indicated below:
- (b) Commercial General Liability coverage with minimum limits of one million dollars (\$1,000,000) per occurrence and two million dollars (\$2,000,000) General Aggregate. Coverage shall be at least as broad as Insurance Services Office (ISO) Form CG 00 01 covering Commercial General Liability on an occurrence basis, including products and completed operations, property damage, bodily injury and personal and advertising injury. If the policy is on a claims-made basis, the retroactive and continuity dates must be before the effective date of this Agreement or the beginning of Business Associate's and Sub-Business Associate's performance of services under this Agreement. If the policy is on a claims-made basis, Business Associate and Sub-Business Associate shall maintain the insurance for three (3) years after the completion of Business Associate's and Sub-Business Associate's services under this Agreement and if the coverage is cancelled or non-renewed and not placed with another claims-made policy with a retroactive date prior to the effective date of this Agreement or the beginning of Business Associate's and Sub-Business Associate's performance of services under this Agreement, Business Associate and Sub-Business Associate must purchase extended reporting coverage for a minimum of three (3) years after the completion of Business Associate and Sub-Business Associate's services under this Agreement.
- (c) Cyber Liability Insurance covering claims based on a violation of the Privacy Rule or any applicable law or regulation concerning the privacy of patient information and claims based on obligations pursuant to this Agreement with coverage of not less than One Million Dollars (\$1,000,000) per occurrence.
- (d) Business Associate and Sub-Business Associate shall name Covered Entity as an "additional insured". Business Associate and Sub-Business Associate shall provide Covered Entity with certificates of insurance or other written evidence of the insurance policy or policies required herein prior to execution of this Agreement and other agreements between the Parties (or as shortly thereafter as is practicable), and as of each annual renewal of such insurance policies during the period of such coverage. Further, in the event of any modification, termination, expiration, non-renewal, or cancellation of any of such insurance policies, Business Associate and Sub-Business Associate shall give written notice thereof to Covered Entity not more than ten (10) days following Business Associate's or Sub-Business Associate's receipt of such notification. In the event Business Associate or Sub-Business Associate fails to procure, maintain, or pay for the insurance required under this

section, Covered Entity shall have the right, but not the obligation, to obtain such insurance. Should that occur, Business Associate or Sub-Business Associate shall promptly upon written request (within 14 days) reimburse Covered Entity for the cost of the insurance, and failure to repay the cost with 14 days upon demand by Covered Entity shall constitute a material violation of this Agreement and other agreements between the Parties.

11. Amendment.

The parties agree to amend this Agreement to the extent reasonably necessary to allow either party to comply with the Privacy Standards, the Standards for Electronic Transactions, the Security Standards, or other relevant state or federal laws or regulations created or amended to protect the privacy of patient information. All such amendments shall be effective only if made in a writing that expressly amends this Agreement and that is signed by the parties.

12. Interpretation.

Each Party hereto has jointly reviewed this Agreement, and as a result, the rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the then most current version of HIPAA and the HIPAA privacy regulations, if applicable.

13. Conflict With Other Agreements.

This Agreement is intended to be construed in harmony with any other agreements between the Parties, but in the event that any provision in this Agreement conflicts with the provisions of any other agreement, the provisions in this Agreement shall be deemed to control and such conflicting provision or part thereof shall be deemed removed and replaced with the governing provision herein to the extent necessary to reconcile the conflict.

14. Applicable Law & Enforcement.

The Parties agree that this Agreement is made, executed and entered into and is intended to be governed, construed and performed in accordance with the laws of the State of California and the laws of the United States of America, and any action to enforce or for Breach of this Agreement shall be brought in the Los Angeles County Superior Court. In any litigation, arbitration or other proceeding by which one Party either seeks to enforce its rights under this Agreement (whether in contract, tort or both) or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded reasonable attorney fees, together with any costs or expenses, to resolve the dispute and to enforce the final judgment.

15. Integration.

This Agreement, together with the Grant Agreement, constitutes the entire agreement of the Parties regarding the subject matter hereof. If there is any inconsistency between this Agreement and the Grant Agreement, the provisions in this Agreement shall be deemed to control.

16. Waiver, Modification, and Amendment.

No Breach of this Agreement or of any provision herein may be waived except by an express written waiver executed by the Party waiving such Breach. Waiver of any one Breach shall not be deemed a waiver of any other Breach of the same or other provisions of this Agreement. This Agreement

may be amended, altered, modified, or otherwise changed in any respect or particular only by a writing duly executed by the Parties hereto or their authorized representatives.

17. Counterparts.

This Agreement may be executed in multiple counterparts, with each of the counterparts taken together deemed to be an original. The Parties hereto agree to the use of electronic signatures for this Agreement and any amendment as provided by California law.

[SIGNATURE PAGE FOLLOWS]

City of Long Beach

(Covered Entity):

Sign: Susana J. Jatum

Name and Title: Thomas B. Modica, City Manager

Date: 6-6-2022

Los Angeles County Children and Families
First Proposition 10 Commission (AKA First 5 LA)

(Business Associate):

Sign: John Wagner
DocuSigned by:
D3DDZC004ET1497...

Name and Title: Kim Belshé, Executive Director John Wagner Executive Vice President

Date: 2022-06-15 | 10:00 AM PDT

VIVA Social Impact Partners

(Sub-Business Associate):

Sign: Christina Collosi
DocuSigned by:
541BDC2F18864B7...

Name and Title: Christina Collosi, Managing Partner

Date: 2022-07-11 | 11:44 AM PDT

Sign: Nicole Tanner
DocuSigned by:
A43CD4B37BD942F...

Name and Title: Nicole Tanner, Managing Partner

Date: 2022-07-11 | 12:33 PM PDT

APPROVED AS TO FORM

5.23.2022
CHARLES PARKIN, City Attorney

By [Signature]
RICHARD ANTHONY
DEPUTY CITY ATTORNEY

EXECUTED PURSUANT
TO SECTION 301 OF
THE CITY CHARTER.