

## **BUSINESS ASSOCIATE AND QUALIFIED SERVICE ORGANIZATION AGREEMENT**

This Business Associate and Qualified Service Organization Agreement (“BAQSOA” or “Agreement”), effective as of the 1<sup>st</sup> day of October, 2020 (the “Effective Date”), is entered into by and among **El Paso MHMR d/b/a Emergence Health Network**, the local governmental authority for mental health, and intellectual and developmental disability services, in El Paso County, Texas, (“EHN” or “Covered Entity”) and El Paso County Juvenile Probation Department (“Business Associate”).

**WHEREAS**, Business Associate is currently providing services to EHN under existing contracts or agreements, whether written or oral, and may enter into future contracts or agreements, whether written or oral, with EHN (the “*Underlying Contract*”);

**WHEREAS**, Business Associate may have access to, create, receive, maintain or transmit Protected Health Information (“PHI”), as hereafter defined, from EHN as necessary for Business Associate to perform its obligations under the Underlying Contract;

**WHEREAS**, the relationship between EHN and Business Associate is such that the Parties believe Business Associate is a “business associate” within the meaning of the HIPAA Privacy Rule;

**WHEREAS**, EHN operates a federally assisted Part 2 program in Texas that must comply with the Federal Confidentiality of Alcohol and Drug Abuse Patient Records law and regulations, 42 USC § 290dd-2 and 42 CFR Part 2 (collectively, “Part 2”);

**WHEREAS**, Business Associate is also a Qualified Service Organization (“QSO”) under Part 2 and must agree to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information;

**WHEREAS**, the Parties desire to set forth the terms and conditions pursuant to which PHI, provided to Business Associate by Covered Entity, will be handled between themselves and third parties; and

**WHEREAS**, the obligations set forth in this Agreement are in addition to any other federal or state laws which pertain to information related to EHN’s operations or patients/participants/consumers;

**NOW THEREFORE**, in consideration of the promises and mutual covenants and agreements of the parties as set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

### **Section 1: Definitions**

For purposes of this Agreement:

**1.1 “Access”** shall mean the ability or the means necessary to read, write, modify, or communicate data/information or otherwise use any system resource.

**1.2 “Administrative Safeguards”** shall mean administrative actions, and policies and procedures, to manage the selection, development, implementation, and maintenance of security measures to protect Electronic Protected Health Information and to manage the conduct of Business Associate’s workforce in relation to the protection of that information.

**1.3 “Availability”** shall mean the property that data or information is accessible and useable upon demand by an authorized person.

**1.4 “Breach”** shall have the meaning given for such term in the Breach Notification Rules.

**1.5 “Breach Notification Rules”** shall mean Section 13402 of HITECH and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time.

**1.6 “Confidentiality”** shall mean the property that data or information is not made available or disclosed to unauthorized persons or processes.

**1.7 “Electronic Protected Health Information” or “ePHI”** shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103.

**1.8 “HIPAA”** means the Administrative Simplification Provisions, Sections 261 through 264, of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, as modified and amended by the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009, Public law 111-5.

**1.9 “HIPAA Regulations”** shall mean the Privacy Rule and the Security Rule at 45 C.F.R. parts 160, 162 and 164.

**1.10 “HITECH”** shall mean the Health Information Technology for Economic and Clinical Health Act, found in Title XIII of the American Recovery and Reinvestment Act of 2009, Public Law 111-005.

**1.11 “Individual”** shall have the same meaning as the term "individual" in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

**1.12 “Information System”** shall mean an interconnected set of information resources under the same direct management control that shares common functionality. A system normally includes hardware, software, information, data, applications, communication, and people.

**1.13 “Integrity”** shall mean the property that data or information have not been altered or destroyed in an unauthorized manner.

**1.14 “Privacy Rule”** shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 and Part 164.

**1.15 “Protected Health Information” or “PHI”** shall have the same meaning as the term "protected health information" in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of EHN.

**1.16 “Physical Safeguards”** shall mean physical measures, policies, and procedures to protect the Business Associate’s electronic Information Systems and related buildings and equipment, from natural and environmental hazards, and unauthorized intrusion.

**1.17 “Qualified Service Organization” or “QSO”** shall have the same meaning as the term “qualified service organization” in 42 C.F.R. § 2.11.

**1.18 “Required By Law”** shall have the same meaning as the term “required by law” in 45 C.F.R. § 164.103.

**1.19 “Secretary”** shall mean the Secretary of the Department of Health and Human Services or his/her designee.

**1.20 “Security Safeguards”** shall mean all of the Administrative, Physical, and Technical Safeguards in an Information System.

**1.21 “Security Incident”** shall mean the attempted or successful unauthorized Access, use, disclosure, modification, or destruction of information or interference with system operations in an Information System.

**1.22 “Technical Safeguards”** shall mean the technology and the policy and procedures for its use that protect Electronic Protected Health Information and control Access to it.

**1.23 “Unsecured PHI”** shall have the same meaning given for such term in the Breach Notification Rules.

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the HIPAA Regulations or the Breach Notification Rules, as applicable.

## **Section 2: Obligations and Activities of Business Associate**

**2.1** Business Associate agrees to use and/or disclose the PHI only as permitted or required by this Agreement or as Required By Law.

**2.2** Business Associate agrees to use appropriate safeguards to maintain the security of the PHI and to prevent use or disclosure of PHI other than as provided for by this Agreement, which will in no event be any less than the stricter of any applicable HIPAA Regulations or the means which Business Associate uses to protect its own confidential information. Business Associate agrees to implement Security Safeguards that reasonably and appropriately protect the Confidentiality, Integrity, and Availability of the ePHI that Business Associate creates, receives, maintains, or transmits on behalf of EHN and that are in accord with any applicable HIPAA Regulations.

**2.3** Business Associate agrees to promptly report to EHN any use or disclosure of PHI that is not permitted by this Agreement or of any Security Incident of which Business Associate becomes aware.

**2.4** Business Associate agrees to ensure that any agent, including an authorized subcontractor, that receives, uses, or has access to PHI in the performance of the Underlying Contract agrees, in writing, to the same restrictions and conditions on the use and/or disclosure of such PHI that apply to Business Associate through this Agreement.

**2.5** Business Associate agrees to ensure that any agent, including an authorized subcontractor, to whom it provides ePHI agrees to implement reasonable and appropriate Security Safeguards to protect such ePHI.

**2.6** Business Associate agrees to document any disclosures of PHI by Business Associate or its agents or authorized subcontractors, and information related to such disclosures, as would be required for EHN to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

**2.7** Business Associate agrees to provide to EHN information collected in accordance with Section 2.6 of this Agreement within fifteen (15) days of a request by EHN, as necessary to permit EHN to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F.R. § 164.528.

**2.8** Business Associate agrees to make available PHI in a designated record set, within fifteen (15) days of EHN's request, to EHN or, as directed by EHN, to an individual in order to meet the requirements under 45 C.F.R. § 164.524, relating to an individual's right to inspect and obtain a copy of PHI relating to such individual.

**2.9** Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set as EHN directs or agrees to pursuant to 45 C.F.R. § 164.526 within thirty (30) days of EHN's request.

**2.10** Except for a disclosure permitted under Section 3.1.d of this Agreement, if Business Associate believes it has a legal obligation to disclose any PHI, it will notify EHN as soon as reasonably practical after it learns of such obligation, and in any event at least five (5) business days prior to the proposed release, as to the legal requirement pursuant to which it believes the PHI must be released. If EHN objects to the release of such PHI, Business Associate will allow EHN to exercise any legal rights or remedies Business Associate might have to object to the release of the PHI, and Business Associate agrees to provide such assistance to EHN, at EHN's expense, as EHN may reasonably request in connection therewith.

**2.11** Business Associate agrees to make its internal practices, policies and procedures, books and records relating to the use and disclosure of PHI available to the Secretary for purposes of determining EHN's compliance with the HIPAA Regulations. Business Associate agrees to provide EHN with prompt written notice of any request received from the Secretary for access to such documents.

**2.12** Business Associate, at its sole expense, agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

**2.13** Business Associate agrees to report to EHN any use or disclosure of PHI not provided for by this Agreement of which it becomes aware as soon as reasonably possible and in any event within five (5) days of the date on which it becomes aware of the use/disclosure.

**2.14** Business Associate acknowledges that Sections 164.308, 164.310, 164.312, and 164.316 of Title 45, Code of Federal Regulations, apply to Business Associate in the same manner that such sections apply to covered entities and are incorporated into this Agreement by reference. The additional requirements of HITECH that relate to security and to privacy that apply to covered entities also apply to Business Associate and are incorporated into this Agreement by reference. Business Associate agrees to implement the technical safeguards provided in guidance issued annually by the Secretary for carrying out the obligations under the Code of Federal Regulation sections cited above (in this Section 2.14) and the security standards in Subpart C of Part 164 of Title 45 of the Code of Federal Regulations.

**2.15** Business Associate may use and disclose Protected Health Information that Business Associate obtains or creates only if such use or disclosure, respectively, complies with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations. The additional requirements of Subtitle D of HITECH that relate to privacy and that apply to covered entities also apply to Business Associate and are incorporated into this Agreement by reference.

**2.16** Business Associate acknowledges that Section 164.504(e)(1)(ii) of Title 45, Code of Federal Regulations apply to Business Associate in the same manner that such section applies to covered entities, with respect to compliance with the standards in Sections 164.502(e) and 164.504(e) of Title 45, except that in applying such Section 164.504(e)(1)(ii) each reference to the Business Associate, with respect to a contract, shall be treated as a reference to the Covered Entity involved in such contract.

**2.17** Business Associate shall comply with Section 13402 of the HITECH Act and the regulations implementing such provisions, currently Subpart D of Title 45 of the Code of Federal Regulations, as such regulations may be in effect from time to time (collectively, the “Breach Notification Rules”).

- a. Except as provided in 45 C.F.R. § 164.412, Business Associate will give EHN notice of any Breach of Unsecured Protected Health Information without unreasonable delay, but in no case later than thirty (30) days after the first day on which the Breach is known, or by the exercise of reasonable diligence would have been known, to the Business Associate.
- b. The notice required by Section 2.17.a. above will be written in plain language and will include, to the extent possible or available, the following:
  - i. The identification of the individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired or disclosed during the Breach;

- ii. A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach;
- iii. A description of the types of Unsecured Protected Health Information that were involved in the Breach (such as whether the 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 who were subjects of the Breach should take to protect themselves from potential harm that may result from the Breach;
- v. A brief description of what the Business Associate is doing to investigate the Breach, to mitigate the harm to individuals, and to protect against further Breaches; and
- vi. Contact procedures for individuals to ask questions or learn additional information, including but not limited to the availability of a toll free telephone number, an email address, Web site, or postal address to ask questions and obtain answers related to the purposes of this Agreement.

**2.18** Business Associate shall secure all Protected Health Information by a technology standard that renders Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals and is consistent with guidance issued by the Secretary, as modified by the Secretary from time to time, specifying the technologies and methodologies that render Protected Health Information unusable, unreadable, or indecipherable to unauthorized individuals, including the use of standards developed under Section 3002(b)(2)(B)(vi) of the Public Health Service Act, as added by Section 13101 of HITECH.

**2.19** At EHN's discretion, EHN may require employees and permitted contractors who provide services on behalf of Business Associate to execute appropriate confidentiality or data use agreements.

**2.20** To the extent the Business Associate is to carry out one or more of covered entity's obligation(s) under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

### **Section 3: Permitted Uses and Disclosures by Business Associate**

**3.1** Business Associate may use and disclose PHI only as follows:

- a. Except as otherwise limited in this Agreement, Business Associate may use or disclose PHI as necessary to perform functions, activities, or services for EHN as specified in the Underlying Contract, provided that such use or disclosure would not violate the Privacy Rule if done by EHN.
- b. With respect to permitted disclosures under subsection 3.1.a above, unless otherwise specifically agreed to by the parties, Business Associate will not permit the disclosure of PHI to any person or entity other than such of its employees,

agents or subcontractors who must have access to the PHI in order for Business Associate to perform its obligations under an Underlying Contract and who agree to keep such PHI confidential as required by this Agreement.

- c. Except as otherwise limited in this Agreement, Business Associate may use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Except as otherwise limited in this Agreement, and after giving EHN advance notice as set forth above in Section 2.10, Business Associate may disclose PHI in its possession to a third party for the purpose of its proper management and administration or to fulfill any legal responsibilities of Business Associate, provided that (1) the disclosure is Required By Law or (2) Business Associate has obtained reasonable written assurances from the third party to whom the information is disclosed that it will remain confidential and be used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party (i.e., for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate) and the third party agrees to notify Business Associate of any instances of which it is aware in which the confidentiality of the PHI has been breached. Within fifteen (15) days of a disclosure Required By Law, Business Associate will notify EHN's Privacy Officer at 915-887-3410.
- e. If the Business Associate provides data aggregation services for EHN under the Underlying Contract, Business Associate may use and aggregate the PHI for purposes of providing the data aggregation services to EHN. Use of PHI for any other data aggregation is not permitted.
- f. Business Associate may use and disclose PHI that Business Associate obtains or creates only if such use or disclosure, respectively, complies with each applicable requirement of Section 164.504(e) of Title 45, Code of Federal Regulations.

**3.2** All other uses or disclosures of PHI not authorized by this Agreement are prohibited.

**3.3** As between EHN and Business Associate, EHN holds all right, title and interest in and to the PHI, and Business Associate does not hold, and will not acquire by virtue of this Agreement or by virtue of providing any services or goods to EHN, any right, title or interest in or to the PHI or any portion thereof. Except as otherwise specified in this Agreement or agreed to in writing by the parties, Business Associate will have no right to de-identify PHI or to create limited data sets from PHI for its own use or compile and/or distribute statistical analyses and reports utilizing aggregated data derived from the PHI or any other health and medical data obtained from EHN.

#### **Section 4: Obligations of EHN**

**4.1** EHN agrees to timely notify Business Associate of any changes to EHN's privacy or security practices and any individual restrictions on the use or disclosure of PHI applicable to or accepted by EHN to the extent that such changes or restrictions may impact Business Associate's use and/or disclosure of any PHI.

## **Section 5: Qualified Service Organization Agreement**

**5.1** EHN and Business Associate hereby agree that this Agreement constitutes a Qualified Service Organization Agreement (“QSOA”) as required by 42 CFR Part 2. Accordingly, information obtained by Business Associate relating to individuals who may have been diagnosed as needing, or who have received, substance use disorder treatment services shall be maintained and used only for the purposes intended under this Agreement and in conformity with all applicable provisions of 42 USC § 290dd-2 and the underlying federal regulations, 42 C.F.R. Part 2. This includes but is not limited to resisting any efforts in judicial proceedings to obtain access to the Protected Health Information, pursuant to 42 C.F.R. Part 2. Accordingly, except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, EHN provided that such use or disclosure would not violate the Confidentiality or Privacy Rules if done by EHN.

## **Section 6: Term and Termination**

**6.1 Term.** This Agreement shall be effective as of the Effective Date and shall continue in effect until terminated as provided in Section 5.2 or until all of the PHI provided by EHN to Business Associate, or created or received by Business Associate on behalf of EHN, is destroyed or returned to EHN.

**6.2 Termination For Cause.** In the event EHN determines that Business Associate has committed a material breach of this Agreement, EHN may either: (i) provide an opportunity for Business Associate to cure the breach or end the violation, provided that EHN may immediately terminate any Underlying Contract that require the use of PHI or ePHI if Business Associate does not cure the breach or end the violation within the time frame specified by EHN; (ii) immediately terminate any Underlying Contract that require the use of PHI or ePHI if Business Associate has breached a material term of this Agreement and EHN determines in its sole discretion that a cure is not possible; or (iii) if neither termination nor cure is feasible, EHN shall report the violation to the Secretary.

**6.3. Effect of Termination.** Upon the termination, for any reason, of this Agreement or an Underlying Contract that requires the use of PHI by Business Associate, Business Associate will promptly return to EHN or, at EHN’s sole option, destroy any PHI in its possession or control, or in the possession or control of its agents or subcontractors, and will retain no copies of such PHI. Upon EHN’s request, Business Associate shall certify to EHN that all PHI in its possession or control, or in the possession or control of its agents or subcontractors, has been returned or destroyed as required by this Agreement. If Business Associate and EHN agree that the destruction or return of the PHI is not reasonably feasible, Business Associate will extend the protections contained in this Agreement to such PHI and limit any further uses and/or disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI. Except in the case of non-feasibility or as otherwise agreed to in writing, any right or license that Business Associate has to use the PHI will terminate immediately upon the termination of this Agreement or the Underlying Contract allowing its use.



## **Section 7: Indemnification**

**7.1** Business Associate shall indemnify, hold harmless and defend EHN from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement. The parties' respective rights and obligations under this Section 7 shall survive termination of the Agreement.

## **Section 8: Miscellaneous**

**8.1 Regulatory References.** A reference in this Agreement to a section in the HIPAA Regulations, HITECH, or the Breach Notification Rules means the section as in effect or as amended.

**8.2 Survival.** The respective rights and obligations of Business Associate and EHN under Section 6.3 and 7 of this Agreement will survive the termination of this Agreement.

**8.3 Other Confidentiality Obligations.** The parties acknowledge that this Agreement is intended to supplement any and all other confidentiality obligations that either party may have under this or any other agreement or applicable law.

**8.4 Underlying Contract.** The terms of this Agreement will govern the use of PHI under any Underlying Contract. Except as specified herein, all other terms of an Underlying Contract will continue in full force and effect. In the event of any conflict among the provisions of this Agreement and the Underlying Contract, the provisions of this Agreement will control.

**8.5 Amendment.** This Agreement may only be modified, or any rights under it waived, by a written agreement executed by both parties. The parties agree to amend this Agreement from time to time as is necessary for EHN to comply with the requirements of the HIPAA Regulations, the Breach Notification Rules, HITECH and any current or future regulations promulgated thereunder.

**8.6 Interpretation.** Any ambiguity in this Agreement will be resolved to permit EHN to comply with the HIPAA Regulations, the Breach Notification Rules, HITECH and any current or future regulations promulgated thereunder.

**8.7 Waiver.** Any failure of a party to exercise or enforce any of its rights under this Agreement will not act as a waiver of such rights.

**8.8 Notice.** Except as otherwise specified in this Agreement, any notice or requests for information to EHN or Business Associate under this Agreement shall be sent to:

### **Covered Entity:**

Chief Executive Officer  
Emergence Health Network  
P.O. Box 9997  
El Paso TX 79995-2997

with a copy to:

Legal Counsel  
Emergence Health Network  
P.O. Box 9997  
El Paso TX 79995-2997

**Business Assoc.:**

CS #2020-0574  
Roger Martinez  
Chief Juvenile Probation Officer  
6400 Delta Drive  
El Paso, TX 79905-5408

The notice provisions set forth in the Underlying Agreement, if any, shall continue in full force and effect with respect to all other notices arising under the Underlying Agreement.

**8.9 No Waiver of Sovereign Immunity.** The parties agree that EHN is engaged in a governmental function in connection with the Underlying Contract and this Agreement. As such, the parties recognize that EHN retains its full governmental immunity to suit and/or liability in connection with the Underlying Contract, this Agreement, and any amendments thereto. The parties further recognize and agree that claims against EHN are covered by the Texas Tort Claims Act to the maximum extent provided by law.

**8.10 Binding Effect.** The agreement shall be binding upon, and shall inure to the benefit of, the parties and their respective successors and permitted assigns.

**8.11 Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be illegal, invalid or unenforceable under present or future laws effective during the term of this Agreement, the legality, validity and enforceability of the remaining provisions shall not be affected thereby.

**8.12 Choice of Law and Forum.** This Agreement was entered into in El Paso County, Texas. Any dispute regarding this Agreement will be governed by the laws and regulations of the United States and/or State of Texas, as appropriate. Furthermore, any dispute regarding this Agreement shall be brought in El Paso County, Texas.

**AGREED TO AND ACKNOWLEDGED**

**COVERED ENTITY**

**El Paso MHMR d/b/a  
Emergence Health Network**

**BUSINESS ASSOCIATE**

**El Paso County Juvenile Probation Dept.**

By: \_\_\_\_\_  
Kristen Daugherty  
Chief Executive Officer

By: \_\_\_\_\_  
Roger Martinez  
Chief Juvenile Probation Officer

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

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