

SERVICE AGREEMENT

THIS SERVICE AGREEMENT (hereinafter referred to as the "AGREEMENT") is entered into this ____th day of _____, 2009, between the San Mateo Health Commission, hereinafter referred to as "HPSM", and the County of San Mateo Health System, Behavioral Health and Recovery Services, hereinafter referred to as "BHRS."

WHEREAS, HPSM has entered into and will maintain contracts with the Managed Risk Medical Insurance Board for the Healthy Families line of business, the San Mateo County Children's Health Initiative for the Healthy Kids line of business, and the San Mateo County Public Authority, the County of San Mateo and the City of San Mateo for the HealthWorx line of business.

WHEREAS, BHRS has developed expertise in arranging for and managing delivery of mental health and substance abuse recovery services to the low-income beneficiaries served by these three programs.

WHEREAS, HPSM seeks a delegated mental health and substance abuse recovery service benefit administrator to arrange for and manage the delivery of mental health and substance abuse recovery services to its Healthy Families, Healthy Kids, and HealthWorx members.

NOW THEREFORE, in consideration of the mutual promises and agreement herein contained, HPSM and BHRS hereby agree as follows:

ARTICLE 1 DEFINITIONS

- 1.1 Benefit Plans. The term "Benefit Plans" shall mean the scope of benefits indicated in the Healthy Families, Healthy Kids, and HealthWorx programs' Evidence of Coverage (Attachments A, B, and C), respectively, as they are updated on an annual basis and which include Claims processing parameters and other information specifying healthcare coverage for HPSM Members, as those parameters currently exist or may be amended in the future. HPSM will provide BHRS with certain information relating to such Benefit Plan ("Benefit Plan Information") including, but not limited to the names of the HPSM Members entitled to services and other parameters of the Benefit Plan as BHRS may reasonably request from time-to-time.
- 1.2 Case Management. The term "Case Management" shall mean the coordination and follow up by the Primary Care Physician of all services deemed necessary to provide the HPSM Member medically necessary and appropriate health care.
- 1.3 Commission. The term "Commission" shall mean the San Mateo Health Commission.
- 1.4 Contracted Hospital. The term "Contracted Hospital" shall mean a licensed hospital which has entered into an agreement with HPSM to provide Covered Services to HPSM Members.

- 1.5 Contracted Medical Group. The term "Contracted Medical Group" shall mean a medical group or independent practice association which has entered into an agreement with HPSM to provide Covered Services to HPSM Members.
- 1.6 Contracted Physician. The term "Contracted Physician" shall mean a physician who is duly licensed to practice medicine or osteopathy under California law and who has contracted with HPSM or is employed by or contracts with a Contracted Medical Group to provide Covered Services to HPSM Members.
- 1.7 Contracted Provider. The term "Contracted Provider" shall mean a Contracted Physician, Contracted Hospital, Contracted Medical Group or other licensed health facility or health professional which has entered into an agreement with HPSM to provide Covered Services to HPSM Members.
- 1.8 Copayment and Deductible. The term "Copayment and Deductible" shall mean cost sharing charges for Covered Services.
- 1.9 Covered Services. The term "Covered Services" shall mean those health care services, equipment and supplies, which an HPSM Member is entitled to receive under the Healthy Families, Healthy Kids, or HealthWorx programs, respectively, and which are set forth in the respective programs' Evidences of Coverage (Attachments A, B, and C).
- 1.10 Delegated Entity. The term "Delegated Entity" shall mean a First Tier Entity with whom HPSM has contracted to perform specified delegated functions on HPSM's behalf in accordance with state, local, and federal laws, rules, and guidelines, as well as in accordance with HPSM policies and procedures.
- 1.11 Downstream Entity. The term "Downstream Entity" shall mean any party that enters into an acceptable written arrangement below the level of the arrangement between HPSM and a First Tier Entity. These written arrangements continue down to the level of the ultimate provider of health and/or administrative services.
- 1.12 Emergency. The term "Emergency" shall mean a medical condition manifesting itself by acute symptoms of sufficient severity (including severe pain) such that a prudent layperson, with an average knowledge of health and medicine could reasonably expect the absence of immediate medical attention to result in 1) serious jeopardy to the health of the individual, or in the case of a pregnant woman, the health of the woman or her unborn child; 2) serious impairment to bodily functions; or 3) serious dysfunction of any bodily organ or part.
- 1.13 Evidence of Coverage. The term "Evidence of Coverage" shall mean the document issued by HPSM to an HPSM Member that sets forth the HPSM's Covered Services under each of its respective lines of business.
- 1.14 First Tier Entity. The term "First Tier Entity" shall mean any party that enters into a written arrangement with HPSM to provide administrative services or health care services for a Medicare eligible individual.
- 1.15 Formulary. The term "Formulary" shall mean the list of prescription drugs and medications that are recommended by HPSM for routine use and which will be

dispensed through Contracted Pharmacies.

- 1.16 HPSM Members. The term “HPSM Members” shall mean those individuals who are enrolled in HPSM’s Healthy Families, Healthy Kids, and/or HealthWorx lines of business who are entitled to receive Covered Services.
- 1.17 Identification Cards. The term “Identification Cards” (“ID Cards”) shall mean printed identification cards containing information about the benefits to which the HPSM Members are entitled.
- 1.18 Medically Appropriate. The term “Medically Appropriate” means services and medical supplies which are required for prevention, diagnosis, or treatment of sickness or injury, and which are:
 - 1.18.1 Consistent with the symptoms of a medical condition or treatment of a medical condition;
 - 1.18.2 Appropriate with regard to standards of good medical practice and generally recognized by the medical scientific community as effective;
 - 1.18.3 Not solely for the convenience of the HPSM Member or provider of the service or medical supplies; and
 - 1.18.4 The most cost effective of the alternative levels of service or medical supplies which can be safely provided to the HPSM Member in HPSM’s judgment.
- 1.19 Non-Covered Services. The term “Non-Covered Services” means those services and supplies that HPSM is not required to provide to HPSM Members pursuant to each program’s respective Evidence of Coverage.
- 1.20 Non-Participating Provider. The term “Non-Participating Provider” means a provider of health care services or equipment that does not have a contract with HPSM to provide such services or equipment to HPSM Members.
- 1.21 Participating Providers. The term “Participating Providers” shall mean those individuals or organizations which contract directly with HPSM or BHRS to provide health care services or equipment for HPSM Members.
- 1.22 Primary Care Provider (PCP). The term “Primary Care Provider” or “PCP” means a Participating Provider selected by an HPSM Member to render first contact medical care and certain Covered Services.
- 1.23 PCP Assignment. The term “PCP Assignment” refers to the process by which an HPSM Member is assigned by HPSM to a PCP for provision of certain Covered Services, or to the PCP assigned for a particular HPSM Member.
- 1.24 Referral. The term "Referral" shall mean the process by which a Contracted Physician directs an HPSM Member to a Non-Contracted Provider.
- 1.25 Referral Provider. The term "Referral Provider" shall mean a Contracted Physician who is professionally qualified to practice his/her designated specialty and whose agreement with HPSM includes responsibility for providing Covered Services in his/her designated specialty.

**ARTICLE 2
DUTIES TO BE PERFORMED BY HPSM**

- 2.1 HPSM Member Eligibility. HPSM shall provide up-to-date information on the eligibility status of HPSM Members via its HPSM Web Claims system. Eligibility information provided shall be in accordance with HPSM's best available information. However, if retroactive changes are made to individual members' eligibility, final eligibility status information shall be honored by BHRS.
- 2.2 Benefit Plan Information. HPSM will deliver to BHRS detailed Benefit Plan Information. Such information shall contain all of the elements required by BHRS so that BHRS may verify, price, and pay the Claims submitted by Participating Providers, as well as prepare the various reports as described in Exhibit A. In addition, HPSM shall provide any Benefit Plan Information changes to BHRS within thirty (30) days of the date such changes shall become effective (the "change date").
- 2.3 Notification Requirements. HPSM will review all reports, statements, and invoices provided by BHRS and shall notify BHRS in writing of any errors or objections within ninety (90) days of receipt. Specifically, this shall also apply to all service requests, benefit change requests, and any operation change requests. Until HPSM notifies BHRS in writing of any errors or objections, BHRS will be entitled to rely on the information contained in the reports, statements, and invoices. If HPSM does not notify BHRS in writing of any errors or objections within the ninety (90) day period, the information contained therein will be deemed accurate, complete, and acceptable to HPSM, and thereafter BHRS shall have no liability related thereto. This does not apply with respect to any undercharges or underpayments of HPSM. BHRS shall document and retain supporting documentation for audit purposes. If HPSM notifies BHRS within the ninety (90) day period of any errors or objections, BHRS shall compensate HPSM for any verifiable errors or objections. Nothing in this article will absolve BHRS of any liability of errors, discrepancies, objections, or omissions identified under Section 5.3 of this contract.

**ARTICLE 3
DUTIES TO BE PERFORMED BY BHRS**

- 3.1 Provision of Services to HPSM. BHRS shall provide to HPSM the services listed in Exhibit A, attached hereto and incorporated herein as referenced. These services shall be provided at the agreed upon rates described in Exhibit B, attached hereto and incorporated herein as referenced.
- 3.2 Compliance with Laws and Regulations. BHRS shall comply with all applicable federal, state, and local laws, regulations, reporting requirements, and with HPSM's policies and procedures and contractual obligations with the California Department of Managed Health Care, including, but not limited to, Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act, Federal criminal law, the False Claims Act (31 U.S.C. §3729 et.seq.) and the Anti-Kickback statute (section 1128B(b) of the Act), HIPAA, and the HIPAA administrative simplification rules at 45 CFR Part 160, 162, and 164. BHRS

agrees to include the requirements of this section in its contracts with any Downstream Entity, and to require any Downstream Entity to comply accordingly.

ARTICLE 4 PAYMENT DUE BHRS AND TO HEALTH CARE PROVIDERS

- 4.1 Payment to Health Care Providers. BHRS shall process and issue payments to health care providers based on approved claims for Covered Services provided to HPSM Members.
- 4.2 Payment of Health Care Costs. BHRS shall electronically submit claims to HPSM for reimbursement of health care costs paid under this Agreement. HPSM shall issue payment according to Exhibit B for adjudicated claims to BHRS within thirty (30) calendar days from the date of submission.
- 4.3 No Member Liability. BHRS agrees that neither BHRS nor any of its Downstream Entities, in any circumstances, including, but not limited to nonpayment by HPSM shall bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against any HPSM member for services performed under this Agreement, with the exception of allowed copayments as detailed in each program's respective Evidence of Coverage (Attachments A, B, and C). This provision shall survive the termination of this Agreement for any reason and shall be construed to be for the benefit of HPSM members.

ARTICLE 5 RECORDS

- 5.1 Maintenance of Records. BHRS shall maintain, and require any of its Downstream Entities, contractors, or subcontractors to maintain, documentation of all activity conducted under this Agreement, including Claims processed, for a minimum of ten (10) years. Such documentation, including books and records, shall be in a format and media deemed appropriate by BHRS and HPSM, and sufficient to accommodate periodic auditing of records to evaluate the quality, appropriateness, and timeliness of services performed by BHRS under this Agreement. The records shall be accessible to HPSM upon thirty (30) days prior written notice for annual audits, or sooner if required by the circumstances or state or local oversight agencies.
- 5.2 Use of Information. BHRS and HPSM may use, reproduce, or adapt information obtained in connection with this Agreement, including Claims data information and eligibility information, in any manner they deem appropriate, except that each party and its agents, employees, and contractors shall maintain the confidentiality of this information to the extent required by applicable Law, including the provisions of the Health Insurance Portability and Accountability Act of 1996, Subtitle F – Administrative Simplification, (referred to in this Agreement as "HIPAA"), and may not use the information in any way prohibited by Law. Each party shall be solely responsible for its own use of the information, and shall indemnify and hold the other party harmless for, from and against any and all costs, losses, and damages incurred by such other party as a result of such use.

- 5.3 Right to Audit Claims and Business Records. BHRS agrees to permit access to, inspection, and audit by HPSM, the California Department of Managed Health Care, the California Department of Health Services, the United States Department of Health and Human Services, the Centers for Medicare and Medicaid Services, the Comptroller General of the United States, and or their designees, at all reasonable times of all facilities, books, records and documents maintained or utilized by BHRS in the performance of this Agreement.

HPSM and representatives of a regulatory or accreditation agency may each inspect and audit, at least once annually, BHRS's business records that directly relate to billings made to HPSM for Claims. BHRS may inspect and audit, or cause to be inspected and audited, once annually, the books and records of HPSM directly relating to this Agreement, including the existence and number of Members. HPSM and BHRS shall fully cooperate with and assist and provide information to representatives of each other, independent accountants hired by either party, and representatives of any regulatory or accreditation agency, to conduct any such inspection or audit. To the extent that HPSM and/or BHRS have control of the following, such audits shall be at the auditing party's sole expense and shall only be made during normal business hours, following thirty (30) days written notice, without undue interference to the audited party's business activity, and in accordance with reasonable audit practices. Where a regulatory or accreditation agency imposes demands that do not meet the above standards for conducting an audit, HPSM and BHRS will cooperate with the requirements of the auditing agency to the extent possible. An audit of BHRS's records may be conducted at BHRS's office where such records are located and shall be limited to transactions over the ten (10) year period preceding such audit unless the document retention period is extended according to applicable law. If a completed audit reveals a discrepancy in the results and the previous calculations of the audited party, then the auditing party shall deliver written notice setting forth in reasonable detail the basis of such discrepancy. The parties shall use reasonable efforts to resolve the discrepancy within thirty (30) days following delivery of the notice, and such resolution shall be final, binding, and conclusive upon the parties. Upon a final and conclusive determination of a discrepancy revealed by an audit procedure under this Agreement, the party that owes money shall pay such sums to the other party within thirty (30) days of the delivery of the conclusive audit findings.

ARTICLE 6 INDEMNIFICATION

- 6.1 Mutual Indemnification. HPSM and BHRS shall indemnify and hold harmless each other from and against all third party claims, demands, losses, damages and reasonable expenses, arising from or in connection with the performance of the terms of this Agreement, except to the extent that such claims, demands, losses, damages and expenses result from the negligence of the other.
- 6.2 Concurrent Negligence. In the event of concurrent negligence of HPSM, its officers and/or employees, and BHRS, its officers and/or employees, then the liability for any and all claims for injuries or damage to persons and/or property which arise out of terms and conditions of this Agreement shall be apportioned according to the California theory of comparative negligence.

ARTICLE 7 NON-DISCRIMINATION

7.1 Non-Discrimination.

- 7.1.1 BHRS shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
- 7.1.2 *General non-discrimination.* No person shall, on the grounds of race, color, ethnicity, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, claims experience, medical history, evidence of insurability, genetic information, source of payment, or political affiliation be denied any benefits or subject to discrimination under this Agreement. BHRS shall implement procedures to ensure that HPSM Members are not discriminated against in the delivery of health care services consistent with the benefits covered under Healthy Families, Healthy Kids, or HealthWorx based on any of these factors.
- 7.1.3 *Equal employment opportunity.* BHRS shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. BHRS's equal employment policies shall be made available to HPSM upon request.
- 7.1.4 *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject BHRS to penalties, to be determined by the HPSM Executive Director, including but not limited to:
- 7.1.4.1 termination of this Agreement;
 - 7.1.4.2 disqualification of BHRS from bidding on or being awarded a contract with HPSM for a period of up to 3 years;
 - 7.1.4.3 liquidated damages of \$2,500 per violation;
 - 7.1.4.4 imposition of other appropriate contractual and civil remedies and sanctions, as determined by the Executive Director.

To effectuate the provisions of this section, the Executive Director or his/her designee shall have the authority to examine BHRS's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to BHRS under the Service Agreement or any other Service Agreement between BHRS and HPSM.

BHRS shall report to HPSM the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations

within 30 days of such filing, provided that within such 30 days such entity has not notified BHRS that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. BHRS shall provide HPSM with a copy of their response to the Complaint when filed.

7.1.5 *Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, BHRS shall comply with the San Mateo County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

7.1.6 Where applicable, BHRS shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

7.1.7 *Jury Service.* BHRS shall comply with the San Mateo County Ordinance with respect to provision of jury duty pay to employees and have and adhere to a written policy that provides that its employees shall receive from BHRS, on an annual basis, no less than five days of regular pay for actual jury service in San Mateo County. The policy may provide that employees deposit any fees received for such jury service with BHRS or that BHRS deduct from the employees' regular pay the fees received for jury service.

ARTICLE 8 CONFIDENTIALITY

8.1 Confidential Information. The term "Confidential Information" means information of a confidential or proprietary nature relating to the subject matter described in this Agreement which is taken from or disclosed by one party (the "Disclosing Party") to the other (the "Receiving Party"). Confidential Information includes, but is not limited to, matters of a technical nature such as trade secrets, methods, compositions, data and know-how, designs, systems, processes, computer programs, files and documentation, similar items or research projects, and any information derived therefrom; matters of a business nature, such as the terms of this Agreement (including any pricing terms and contract terms which must be subject to a protective order), marketing, sales, strategies, proposals, and lists of actual or potential HPSM Members, Participating Providers as well as any other information that is designated by either party as confidential.

8.2 Treatment of Confidential Information. Subject to the California Public Records Act and related state and federal legislation, the Receiving party agrees: (i) to hold the Disclosing Party's Confidential Information in strict confidence and to take reasonable precautions to protect such Confidential Information (including, without limitation, all precautions Receiving Party employs with respect to its own confidential materials); (ii) not to divulge any such Confidential Information or any information derived therefrom to any third party unless required in the performance of the Receiving Party's duties under this Agreement or pursuant to controlling law; (iii) not to make any use whatsoever at any time of such Confidential Information except for the purpose of this Agreement and will not use it for its own or any third party's benefit; and (iv) not to copy, analyze,

transcribe, transmit, decompile, disassemble or reverse engineer any such Confidential Information, and not use such Confidential Information in any patent application. The confidentiality obligations of this Section 8.2 shall not apply to information which, as evidenced in writing:

- 8.2.1 is or becomes publicly known by Receiving Party through no breach of this Agreement;
- 8.2.2 is learned by the Receiving Party from a third party entitled to disclose it;
- 8.2.3 is rightfully obtained by the Receiving Party prior to this Agreement; or
- 8.2.4 is required by law to be disclosed.

The confidential obligations contained in the foregoing clauses (i), (ii), (iii) and (iv) shall be perpetual. Receiving Party may make disclosures required by law or court order provided Receiving Party uses diligent, reasonable efforts to afford the Disclosing Party the opportunity to limit disclosure and to obtain confidential treatment or a protective order.

- 8.3 No Transfer Or Right Or Title. Receiving Party acknowledges that it shall not acquire any rights or title to any Confidential Information merely by virtue of its use or access to such Confidential Information hereunder. Neither the execution of this Agreement nor the furnishing of any Confidential Information hereunder shall be construed as granting, either expressly or by implication, or otherwise, the Receiving Party any license under any invention or patent now or hereafter owned by or controlled by the Disclosing Party. Each party agrees that it may not be adequately compensated for damages arising from a breach or threatened breach of any of the covenants contained in this Article 8 by the other party, and each party shall be entitled to injunctive relief and specific performance in addition to all other remedies. None of the information that may be submitted or exchanged by the parties shall constitute any representation, warranty, assurance, guarantee, or inducement by a party to the other with respect to the infringement of patents, copyrights, trademarks, trade secrets, or any other rights of third persons.

ARTICLE 9 EXCLUSIVITY

- 9.1 Exclusivity. HPSM agrees that BHRS shall be the sole and exclusive agent providing administration services for behavioral health and recovery services provided to HPSM Members during the term of this Agreement.

ARTICLE 10 TERM AND TERMINATION

- 10.1 Term. This Agreement shall have an Effective Date of January 1, 2009 and shall be for a term of three (3) years, ending December 31, 2011. Termination shall have no effect upon the rights and obligations of the parties arising out of any transactions occurring prior to the effective date of such termination. This agreement supercedes the current agreement.

- 10.2 Termination With Cause. This Agreement may be terminated at anytime by either party based on a material breach of any terms or conditions herein stated provided that thirty (30) days' advance written notice of such material breach shall be given to the other party and such party shall have the opportunity to cure such material breach during such thirty (30) day notice period.
- 10.3 Effect of Termination. If this Agreement is terminated pursuant to this Article 10: (i) all further obligations of the parties under this Agreement shall terminate (but not such party's obligation to make payments arising prior to the termination of this Agreement or any obligation surviving the termination hereof); (ii) all Confidential Information provided by either party shall, except for Confidential Information required by law to be retained by a party, be immediately returned by a Receiving Party (as defined in Section 8.1), or such Receiving Party shall certify to the Disclosing Party that such materials have been destroyed; (iii) neither party shall be relieved of any obligation or liability arising from any prior breach of such party or any provision of this Agreement; and (iv) the parties shall, in all events, remain bound by and continue to be subject to the provisions set forth in Sections 5.1, 5.2, 5.3, 6.1, 6.2, 8.1, 8.2, 8.3, 11.1, 11.7, 11.9, 11.10, 11.12, 11.13, 11.17, 11.18, 11.19, 12.1, 12.2, and 12.3.

ARTICLE 11 GENERAL PROVISIONS

- 11.1 Use of BHRS Software. HPSM acknowledges that BHRS owns, or possesses license rights (including off-the-shelf vendor agreements) from certain third parties to the entire software system used by BHRS in processing Claims and preparing reports including computer programs, system and program documentation, and other documentation relating thereto (collectively, including certain license rights, the "BHRS Software System"), and that BHRS Software System is the exclusive and sole property of BHRS. HPSM disclaims any rights to BHRS Software System as described above (including access to any applicable source codes), any procedures or forms developed by BHRS, as well as development or modification of BHRS Software System as a result of any customization performed by any party.
- 11.2 Insurance. Each party shall obtain (to the extent not already possessed) and maintain, with respect to the activities in which such party engages pursuant to this Agreement, professional liability (errors and omissions) insurance in amounts reasonable and customary for the nature and scope of business engaged in by such party and comprehensive liability insurance. Upon request, either party shall promptly deliver to the other party evidence of such insurance. Each party agrees to notify the other party immediately upon such party's receipt of any notice canceling, suspending or reducing the coverage limits of its professional liability insurance or comprehensive liability insurance.
- 11.3 Successors and Assigns. Neither this Agreement nor any of the rights, interests or obligations hereunder shall be assigned by either party hereto (whether by operation of law or otherwise) without the prior written consent of the other party hereto. Subject to the preceding sentence, this Agreement shall be binding upon, inure to the benefit of and be enforceable by the parties and their respective successors and permitted assigns. Notwithstanding anything to the contrary contained in this Agreement

(including this Section 11.3), no consent shall be required and this Agreement will apply to, be binding in all respects upon, and inure to the benefit of any successors of HPSM to this Agreement resulting from a Change of Control. A "Change of Control" shall occur if as a result of one or a series of related transactions: (i) all or substantially all the assets of SMMC are disposed of to any entity not wholly owned and controlled by HPSM, outside the ordinary course of business; (ii) SMMC effects a merger with one or more other entities in which HPSM is not the surviving entity; or (iii) HPSM engages in a transaction that results in any entity holding securities possessing a majority of the voting power that does not hold such voting power as of the time of this Agreement. HPSM shall provide BHRS with thirty (30) days' advance written notice in the event of any transaction(s) resulting in a Change of Control, as well as an Officer's Certificate from the successor entity, agreeing to be bound by the terms and conditions of this Agreement.

- 11.4 Waiver. Any term or condition of this Agreement may be waived at any time by the party that is entitled to the benefit thereof, but no such waiver shall be effective unless set forth in a written instrument duly executed by or on behalf of the party waiving such term or condition. No waiver by any party of any term or condition of this Agreement, in any one or more instances, shall be deemed to be or construed as a waiver of the same or other term or condition of this Agreement on any future occasion.
- 11.5 Severability. In the event that any provision of this Agreement shall be determined to be invalid, unlawful, void or unenforceable to any extent, the remainder of this Agreement, and the application of such provision other than those as to which it is determined to be invalid, unlawful, void or unenforceable, shall not be impaired or otherwise affected and shall continue to be valid and enforceable to the fullest extent permitted by law.
- 11.6 Further Assurances. Each party hereto shall execute and cause to be delivered to each other party hereto such instruments and other documents, and shall take such other actions, as such other party may reasonably request (at or after the date hereof) for the purpose of carrying out or evidencing any of the transactions contemplated by this Agreement.
- 11.7 Choice of Law. This Agreement shall be construed, interpreted, and governed according to the laws of the State of California without regard to its conflict of laws and rules.
- 11.8 Force Majeure. The performance obligations of BHRS and/or HPSM respectively hereunder shall be suspended to the extent that all or part of this Agreement cannot be performed due to causes which are outside the control of BHRS and/or HPSM, and could not be avoided by the exercise of due care, including but not limited to acts of God, acts of a public enemy, acts of a sovereign nation or any state or political subdivision or any department or regulatory agency thereof or entity created thereby, acts of any person engaged in a subversive or terrorist activity or sabotage, fires, floods, earthquakes, explosions, strikes, slow-downs, lockouts or labor stoppage, freight embargoes, or by any enforceable law, regulation or order. The foregoing shall not be considered to be a waiver of any continuing obligations under this Agreement, and as soon as conditions cease, the party affected thereby shall fulfill its obligations as set forth under this Agreement. In order to benefit from the provisions of this Section 11.8, the party claiming force majeure must notify the other reasonably promptly in writing of the force majeure condition. If any event of force majeure, in the reasonable judgment

of the parties, is of a severity or duration such that it materially reduces the value of this Agreement, then this Agreement may be terminated without liability or further obligation of either party (except for any obligation expressly intended to survive the termination of this Agreement and except for all amounts that have become or will become due and payable hereunder).

- 11.9 Entire Agreement; No Third Party Beneficiaries. This Agreement, including the Exhibits: (i) constitutes the entire agreement among the parties with respect to the subject matter hereof and supersedes all prior agreements and understandings, both written and oral, among the parties with respect to the subject matter hereof; and (ii) is intended solely for the benefit of each party hereto and their respective successors or permitted assigns, and it is not the intention of the parties to confer third party beneficiary rights, and this Agreement does not confer any such rights, upon any other third party.
- 11.10 Use of Name. Neither party shall use the other party's name, trade or service mark, logo, or the name of any affiliated company in any advertising or promotional material, presently existing or hereafter established, except in the manner and to the extent permitted by prior written consent of the other party.
- 11.11 Notice. Any notice required or permitted by this Agreement, unless otherwise specifically provided for in this Agreement, shall be in writing and shall be deemed given: (i) one (1) day following delivery to a nationally reputable overnight courier; (ii) one (1) day following receipt by facsimile during the receiving party's business hours with written confirmation thereof; or (iii) three (3) days after the date it is deposited in the United States mail, postage prepaid, registered or certified mail, or hand delivered addressed as follows:

To: Health System Jean Fraser, Chief
San Mateo County Health System
225 37th Avenue
San Mateo, CA 94403

To: BHRS Louise Rogers, Director
Behavioral Health and Recovery Services
225 West 37th Ave
San Mateo, CA 94403

To: HPSM Maya Altman, Executive Director
Health BHRS of San Mateo
701 Gateway Blvd., Suite 400
South San Francisco, CA 94080

Any party may at any time change its address for notification purposes by mailing a notice stating the change and setting forth the new address.

- 11.12 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, all of which shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart. This Agreement may be executed and delivered by facsimile and upon

such delivery the facsimile signature will be deemed to have the same effect as if the original signature had been delivered to the other party. The original signature copy shall be delivered to the other party by express overnight delivery. The failure to deliver the original signature copy and/or the nonreceipt of the original signature copy shall have no effect upon the binding and enforceable nature of this Agreement.

- 11.13 Independent Contractors. HPSM and BHRS are independent entities and nothing in this Agreement shall be construed or be deemed to create a relationship of employer and employee or principal and agent or franchiser and franchisee or any relationship, fiduciary or otherwise, other than that of independent parties contracting with each other solely for the purpose of carrying out the provisions of this Agreement. Nothing in this Agreement is intended to be construed, or be deemed to create, any rights or remedies in any third party, including but not limited to an HPSM Member. Nothing in this Agreement shall be construed or deemed to confer upon BHRS any responsibility for or control over the terms or validity of the Covered Services. BHRS shall have no final discretionary authority over or responsibility for HPSM's administration. Further, because BHRS is not an insurer or HPSM sponsor, BHRS shall have no responsibility for: (i) any funding of HPSM or CareAdvantage benefits; or (ii) any insurance coverage relating to HPSM or any BHRS contract of HPSM or HPSM Members, except as described in Exhibit A.
- 11.14 Consent to Amend. This Agreement or any part or section of it may be amended at any time during the term of this Agreement only by mutual written consent of duly authorized representatives of BHRS and HPSM.
- 11.15 Headings. The headings of Articles, Sections and Exhibits contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.
- 11.16 Compliance with Laws and Regulations. This Agreement will be in compliance with all pertinent federal and state statutes and regulations. If this Agreement, or any part hereof, is found not to be in compliance with any pertinent federal or state statute or regulation, then the parties shall renegotiate the Agreement for the sole purpose of correcting the non-compliance.
- 11.17 Construction.
- 11.17.1 For purposes of this Agreement, whenever the context requires: the singular number shall include the plural, and vice versa; the masculine gender shall include the feminine and neuter genders; the feminine gender shall include the masculine and neuter genders; and the neuter gender shall include the masculine and feminine genders.
- 11.17.2 The parties hereto agree that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not be applied in the construction or interpretation of this Agreement.
- 11.17.3 As used in this Agreement, the words "include" and "including," and variations thereof, shall not be deemed to be terms of limitation, but rather shall be deemed to be followed by the words "without limitation."

- 11.17.4 Except as otherwise indicated, all references in this Agreement to “Articles,” “Sections” and “Exhibits” are intended to refer to Articles of this Agreement, Sections of this Agreement and Exhibits to this Agreement.
- 11.18 Remedies Cumulative; Specific Performance. The rights and remedies of the parties hereto shall be cumulative (and not alternative). The parties to this Agreement agree that to the extent permitted by applicable law, in the event of any breach or threatened breach by any party to this Agreement of any covenant, obligation or other provision set forth in this Agreement for the benefit of any other party to this Agreement, such other party shall be entitled (in addition to any other remedy that may be available to it) to: (i) a decree or order of specific performance to enforce the observance and performance of such covenant, obligation or other provision; and (ii) an injunction restraining such breach or threatened breach. Neither party shall be required to provide any bond or other security in connection with any such decree, order or injunction or in connection with any related action or legal proceeding.
- 11.19 HIPAA Compliance. For the purposes of this Agreement, BHRS is deemed to be a “Business Associate” of HPSM as such term is defined in the Privacy Standard of the Federal Register, published on December 28, 2000 (Business Associate Requirements, Exhibit C, attached hereto and incorporated herein as referenced). The parties will endeavor to comply with all applicable regulations published pursuant to HIPAA, as of the effective enforcement date of each standard. In addition, without limiting any other provision of this Agreement:
- 11.19.1 all services provided by BHRS under this Agreement will be provided in such a manner as to enable HPSM to remain at all times in compliance with all HIPAA regulations applicable to HPSM, to the extent that HPSM’s compliance depends upon the manner in which such services are performed by BHRS;
- 11.19.2 all software, application programs and other products licensed or supplied by BHRS under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that HPSM’s use of such software, application programs and other products and associate documentation from BHRS, when utilized by HPSM in the manner as directed by BHRS, will fully comply with the HIPAA regulations applicable to HPSM. In the event any amendment to this Agreement is necessary for HPSM to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, HPSM and BHRS will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations; and
- 11.19.3 all software, application programs, eligibility lists or other member-specific information and other products licensed or supplied by HPSM under this Agreement will contain such characteristics and functionality (including as applicable, but not limited to, the ability to accept and securely transmit data using the standard HIPAA transaction sets) as necessary to ensure that BHRS’s use of such software, application programs and other products and

associate documentation from HPSM, when utilized by BHRS in the manner as directed by HPSM, will fully comply with the HIPAA regulations applicable to BHRS. In the event any amendment to this Agreement is necessary for BHRS to comply with the HIPAA regulations as they relate to this Agreement or its subject matter, including, but not limited to, requirements pertaining to Business Associate agreements, BHRS and HPSM will negotiate in good faith and amend this Agreement accordingly, with such amendment to be effective prior to the date compliance is required under each standard of the HIPAA regulations.

- 11.20 Cultural Competence. BHRS shall ensure that all services, both clinical and non-clinical, are accessible to all CareAdvantage members and are provided in a culturally competent manner, including those with limited English proficiency or reading skills and those with diverse cultural backgrounds.

ARTICLE 12 COMPLIANCE WITH LAWS AND REGULATIONS

- 12.1 BHRS understands and agrees that HPSM is responsible for the monitoring and oversight of all duties of BHRS under this Agreement, and that HPSM has the authority and responsibility to: (i) implement, maintain and enforce HPSM's policies governing BHRS's duties under this Agreement; (ii) conduct audits, inspections and/or investigations in order to oversee BHRS's performance of duties described in this Agreement; (iii) require BHRS to take corrective action if HPSM or an applicable federal or state regulator determines that corrective action is needed with regard to any duty under this Agreement; and/or (iv) revoke the delegation of any duty, if BHRS fails to meet HPSM standards in the performance of that duty. BHRS shall cooperate with HPSM in its oversight efforts and shall take corrective action as HPSM determines necessary to comply with the laws, accreditation agency standards, HPSM policies governing the duties of BHRS or the oversight of those duties.
- 12.2 BHRS agrees to furnish medical records and/or ensure that Participating Providers furnish medical records that may be required to obtain any additional information or corroborate the encounter data.
- 12.3 If BHRS gives Confidential Information including Protected Health Information, as defined in 45 CFR §164.501, received from HPSM, or created or received by BHRS on behalf of HPSM, to any of its Downstream Entities, including agents or subcontractors, BHRS shall require the Downstream Entity to agree to the same restrictions and conditions that apply to BHRS under this Agreement. BHRS shall be fully liable to HPSM for any acts, failures or omissions of the Downstream Entity in providing the services as if they were BHRS's own acts, failures or omissions, to the extent permitted by law. BHRS further expressly warrants that its agents will be specifically advised of, and will comply in all respects with the terms of this Agreement.

The provisions of this Agreement shall bind and inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assignees. This Agreement constitutes the entire understanding between the parties hereto.

SAN MATEO HEALTH COMMISSION
d.b.a. HEALTH PLAN OF SAN MATEO

COUNTY OF SAN MATEO

BY
MAYA ALTMAN
EXECUTIVE DIRECTOR

BY
MARK CHURCH
PRESIDENT, BOARD OF
SUPERVISORS

DATE

DATE

EXHIBIT "A"
SCOPE OF SERVICES

In consideration of the payments set forth in Exhibit "B", BHRS shall provide the services as set forth in the corresponding Appendix referenced below.

- Appendix 1-A: Claims Processing and Data Management
- Appendix 1-B: Behavioral Health and Recovery Services Benefit
- Appendix 1-C: Provider Relations
- Appendix 1-D: Utilization and Medical Management
- Appendix 1-E: Customer Service
- Appendix 1-F: Grievances and Appeals
- Appendix 1-G: Quality Assessment and Improvement
- Appendix 1-H: Reporting

APPENDIX 1-A
CLAIMS PROCESSING AND DATA MANAGEMENT

1. Claims Processing. BHRS shall process claims for payment from Participating Providers, and Non-Participating Providers as needed, for authorized Covered Behavioral Health and Recovery Services on behalf of HPSM. Claims shall be processed at least twice per month.
2. Payment to Participating Providers. BHRS shall make payments to Participating Providers, and Non-Participating Providers as needed, for Covered Services to HPSM Members. BHRS shall not be obligated to pay Participating Providers (i) for services that are not Covered Services; or (ii) if Participating Providers fail to verify an individual's eligibility for Covered Services.
3. Encounter Data. BHRS shall submit encounter data in the form of claims to HPSM in electronic form. BHRS shall supply encounter data at least monthly, by the 10th of the month following the month of claim processing. BHRS will employ appropriate data security procedures to ensure rapid recovery and transmittal of all encounter data.
4. Certification of Data. BHRS agrees that by submitting any data to HPSM BHRS is certifying that the information is based on its best knowledge, information and belief available, and such information is accurate, complete and truthful.

APPENDIX 1-B
BEHAVIORAL HEALTH AND RECOVERY SERVICES BENEFIT

BHRS shall provide behavioral health and recovery services benefit to HPSM Members under this contract. The behavioral health and recovery services benefit shall be provided in accordance with standard Healthy Families, Healthy Kids, and HealthWorx rules and guidelines and HPSM policies and procedures.

The Healthy Families mental health and recovery services benefit for children with Serious Emotional Disturbance (SED) is administered and reimbursed by the State Department of Mental Health through a contract with BHRS. The services included in the contract between the State and BHRS are not included in this Agreement but are coordinated by BHRS and HPSM through a separate Healthy Families Memorandum of Understanding (MOU) between the HPSM and BHRS.

APPENDIX 1-C PROVIDER SERVICES

BHRS shall be responsible for maintaining and monitoring a network of behavioral health and recovery services providers that is sufficient to provide adequate access to and availability of covered behavioral health and recovery services. BHRS shall be responsible for credentialing and executing contracts with Participating Providers, as designated by HPSM, to provide behavioral health and recovery services to HPSM Members. Credentialing requirements will be waived if BHRS already has on file an up-to-date credentialing record. However, BHRS will re-credential the provider in accordance with the Participating Provider's existing credentialing schedule. BHRS's credentialing and re-credentialing process shall adhere to federal, state, and local laws, rules, and guidelines. HPSM shall at all times monitor the performance of BHRS and the network of behavioral health and recovery services providers and retains the right to approve, suspend, or terminate any arrangement set up by BHRS that in the opinion of HPSM does not contribute to the provision of good quality care to Members.

In contracting with Providers, BHRS shall ensure that each provider contract contain the following provisions.

- Provider shall agree to safeguard HPSM Member privacy and confidentiality, consistent with all federal and state laws, and ensure accuracy of beneficiary medical, health, and enrollment information and records.
- Provider shall look only to BHRS for payment of Covered Services and shall at no time seek compensation from HPSM Members for Covered Services, except as related to approved copayments specified in the HPSM Member's. Such payment by BHRS shall be considered payment in full. Providers shall not hold HPSM Members responsible for any cost sharing except as explicitly stated in each Member's respective Evidence of Coverage. In addition, the Provider shall not invoice or balance bill an HPSM Member for the difference between the provider's billed charges and the reimbursement paid by BHRS for Covered Services.
- Provider shall agree that neither the Provider or any of its Downstream Entities in any circumstances, including, but not limited to nonpayment by BHRS, insolvency of BHRS, or breach of this Agreement, shall bill, charge, collect a deposit from, seek compensation, remuneration or reimbursement from, or have any recourse against HPSM Members or persons other than BHRS for services provided pursuant to this Agreement, except as allowed in each Member's respective Evidence of Coverage. At no time will Provider or any party with a claim against Provider for Covered Services provided to HPSM Members bill or otherwise seek compensation from HPSM Members for Covered Services except in the case when a third party payer is primarily responsible and has paid HPSM Member for a Covered Service.
- Provider shall at all times during the term of this Agreement comply with, and require any of its Downstream Entities comply with, all applicable federal, state and municipal laws, regulations, reporting requirements, HPSM's contractual obligations to its oversight agencies, all HPSM policies and procedures related to health service delivery, and all applicable rules and regulations of the their applicable licensing bodies. This includes compliance with Title VI of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, the Age Discrimination Act of 1975, the Americans with Disabilities Act, Federal criminal law, the False Claims Act (31 U.S.C. §3729 et.seq.) and the Anti-Kickback statute (section 1128B(b) of the Act),

and HIPAA administrative simplification rules at 45 CFR Part 160, 162, and 164. Provider shall also agree to audits and inspections by HPSM's oversight agencies and/or their designees and cooperate, assist, and provide information as requested. If at any time during the term of this Agreement, Provider shall have Provider's license to practice in the State of California suspended, conditioned or revoked, Provider's agreement with BHRS shall terminate immediately and become null and void without regard to whether or not such suspension, condition or revocation has been finally adjudicated. Provider agrees to include the requirements of this section in its contracts with any Downstream Entity.

- Provider shall agree: (1) not to differentiate or discriminate in his/her provision of Covered Services to HPSM Members because of race, color, national origin, ancestry, religion, sex, health status, marital status, sexual orientation, age, or other protected classes according to federal and state law; and (2) to render Covered Services to HPSM Members in the same manner, in accordance with the same standards and within the same time availability as offered to non-HPSM Members consistent with existing medical/ethical/legal requirements for providing continuity of care to any patient.
- Provider shall agree that Provider understands that BHRS has certain obligations including the credentialing of Provider, and that BHRS and HPSM will have the right to oversee and review the quality of care and services provided to HPSM Members by Provider. Provider shall agree to be accountable to cooperate and comply with BHRS and HPSM whenever BHRS, HPSM, and/or their Medical Directors impose such obligations on Provider. Obligations may include, but may not be limited to: on-site review, member transfer from or to referring facilities, cooperation with Healthcare Effectiveness Data Information Sets ("HEDIS") measurements and other internal and external quality review and improvement programs, and risk adjustment programs.
- BHRS shall agree to promptly pay Provider for all clean claims within sixty (60) calendar days.
- Provider shall ensure that all services, both clinical and non-clinical, are accessible to all HPSM Members and are provided in a culturally competent manner, including those with limited English proficiency or reading skills and those with diverse cultural backgrounds.
- Provider shall maintain records related to any services provided to HPSM Members for a minimum of ten (10) years.

BHRS will also engage in standard provider services activities with Participating Providers, including maintaining a Claims department responsible for responding to inquiries related to claims processing, claims submission, and claims payment and maintaining a Utilization Review department responsible for responding to inquiries related to prior authorization for Covered Services. Departments will be available to respond to provider inquiries during regular business hours, from 8:00 a.m. to 5:00 p.m. Monday through Friday.

**APPENDIX 1-D
UTILIZATION AND MEDICAL MANAGEMENT**

1. Prior Authorization Review. BHRS shall perform initial review of prior authorization requests for Covered Services as determined by the Benefit Plan. BHRS agrees that in performance of prior authorization requests, BHRS shall comply with the prior authorization policies and procedures, and guidelines used and approved by HPSM, including policies and procedures and guidelines required under federal laws, rules, and guidance for the Medicare program. BHRS shall make authorization decisions based on relevant documentation received.
2. Timeframes. BHRS shall make authorization decisions on all emergent and urgent authorizations within 72 hours of receipt of the information reasonably necessary to make a decision. BHRS shall make authorization decisions on all non-urgent authorizations within five (5) business days of receipt of the information reasonably necessary to make a decision.
3. Retroactive Authorizations. BHRS shall have a written process for reviewing retroactive authorizations for Covered Services and take action on all retroactive authorizations within thirty (30) calendar days of receipt of the information reasonably necessary to make a decision.
4. Notification of Decision. BHRS agrees that it shall notify the HPSM Member, Participating Provider, and/or Referring Provider of the specific benefits that were denied, modified, or deferred, in writing, by mail. BHRS agrees that such notification to HPSM Members shall be in English and Spanish and shall be provided within the same timeframes as those required for making the authorization decisions.
5. Utilization Management and Quality Review Programs. BHRS shall cooperate with, participate in, and comply with HPSM's Utilization Management and Quality Review Programs, including any revisions and updates that may occur upon review.

APPENDIX 1-E GRIEVANCES AND APPEALS

BHRS shall process HPSM Member complaints if an HPSM Member or applicant is dissatisfied with his/her experience accessing or utilizing behavioral health and/or recovery services under the CareAdvantage Program. BHRS will accept complaints in writing, by phone, or through BHRS's website.

Complaints include both appeals and grievances, as follows:

- Appeals. Appeals are complaints related to BHRS or HPSM's decision to deny a benefit to the member to which he/she believes he/she is entitled. Appeals are generated in response to a denied request for authorization. BHRS differentiates between standard Appeals and expedited Appeals. BHRS processes an Appeal on an expedited basis when the standard timeframe for processing an appeal could seriously jeopardize the participant's life, health, or ability to regain maximum function.
- Grievances. Grievances are complaints related to any other aspect of HSPM or BHRS operations, excluding Appeals. Examples of grievances are complaints related to quality of care, access problems, or provider interactions.

BHRS acknowledges receipt of all Appeals or Grievances within 5 business days. Standard Appeals and Grievances shall be resolved within 30 calendar days from the date of receipt. Expedited Appeals shall be resolved within 72 hours from the time of receipt.

APPENDIX 1-F
QUALITY ASSESSMENT AND IMPROVEMENT

BHRS shall provide the following quality assessment and improvement services:

- BHRS shall regularly monitor HPSM Members' access to care, including wait times for appointments and office wait times. Target timeframes for new patients for routine appointments for longstanding problems is 30 days; for urgent appointments for stable conditions is 72 hours; for urgent appointments for less stable issues is same day/next day (depending on clinician triage), and immediately for emergency situations.
- BHRS shall regularly review grievances and appeals to address any quality of care concerns that arise. A clinical staff member needs to review any issues involving clinical quality of care; a physician needs to review any issues involving medication management.
- BHRS shall regularly monitor utilization to protect against overutilization and underutilization of behavioral health and recovery services. Quarterly reports shall be made available to HPSM for review.
- BHRS shall develop at least one clinical and one non-clinical quality improvement project annually that demonstrate its commitment to QAI services. Over time, these should represent the different age ranges, if they are not applicable at one time to all age ranges. Periodic monitoring to demonstrate maintenance of improvement should occur, even after the projects have been closed. Quality reports shall be submitted to HPSM at least annually describing the plans, their methodology, their implementation and their outcomes, in a Plan/Do/Study/Act format, or comparable, to demonstrate improvements achieved over the year(s).

HPSM acknowledges and agrees that it is the ultimate decision maker on quality assurance programs and that it agrees to the quality assurance services set forth herein.

APPENDIX 1-G REPORTING

BHRS shall supply such encounter, quality and cost data as HPSM may require to perform its disclosure, reporting, administrative, supervisory, and other functions required under HPSM's contracts with its oversight agencies and under applicable State and Federal laws and regulations or as requested. Standardized reports include the following (contingent upon services to be performed by BHRS under this Addendum).

Quarterly Reports:

- **Prior Authorization.** BHRS will report annually information about the use of the prior authorization tool, including but not limited to: (i) the number of requests denied due to the need for prior authorization; (ii) the number of prior authorizations requested; (iii) the number of prior authorizations approved.

- **Grievances and Appeals.** BHRS will report annually information about the receipt and processing of grievances and appeals, including detailed information on each case, including but not limited to the identify of the member, the member's complaint, the resolution, receipt and resolution dates, as well as summary data including but not limited to:
 - o The number of grievances received;
 - o The number of grievances resolved beyond 30 days;
 - o The number of appeals received;
 - o The number of appeals upheld;
 - o The number of appeals overturned;
 - o The number of appeals resolved beyond 30 days; and
 - o Any quality of care concerns identified through grievances and appeals.

Annual Reports:

BHRS shall provide other ad hoc reports as required by HPSM to conduct cost and quality analyses.

EXHIBIT "B"
PAYMENT

HPSM's payment to BHRS shall be based on claims submitted to HPSM for Covered Services provided to HPSM Members. Claims shall be paid in accordance with a mutually-agreed-upon fee schedule that shall be updated on a periodic basis. Payment for these claims shall reflect payment for both health care costs that BHRS has incurred in payments to Providers, as well as payment for administrative costs incurred by BHRS under this contract.

EXHIBIT “C”
HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA)
BUSINESS ASSOCIATE REQUIREMENTS

Definitions

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations section 160.103 164.304 and 164.501. (All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

- a. *Designated Record Set.* “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
- b. *Electronic Protected Health Information.* “Electronic Protected Health Information” (“EPHI”) means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- c. *Individual.* “Individual” shall have the same meaning as the term “individual” in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- d. *Privacy Rule.* “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.
- e. *Protected Health Information.* “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 164.501 and is limited to the information created or received by BHRS from or on behalf of HPSM.
- f. *Required By Law.* “Required by law” shall have the same meaning as the term “required by law” in Section 164.501.
- g. *Secretary.* “Secretary” shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- h. *Security Incident.* “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate
- i. *Security Rule.* “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

Obligations and Activities of BHRS

- a. BHRS agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. BHRS agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. BHRS agrees to mitigate, to the extent practicable, any harmful effect that is known to BHRS of a use or disclosure of Protected Health Information by BHRS in violation of the requirements of this Agreement.

- d. BHRS agrees to report to HPSM any use or disclosure of the Protected Health Information not provided for by this Agreement.
- e. BHRS agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by BHRS on behalf of HPSM, agrees to the same restrictions and conditions that apply through this Agreement to BHRS with respect to such information.
- f. If BHRS has protected health information in a designated record set, BHRS agrees to provide access, at the request of HPSM, and in the time and manner designated by HPSM, to Protected Health Information in a Designated Record Set, to HPSM or, as directed by HPSM, to an Individual in order to meet the requirements under Section 164.524.
- g. If BHRS has protected health information in a designated record set, BHRS agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that HPSM directs or agrees to make pursuant to Section 164.526 at the request of HPSM or an Individual, and in the time and manner designed by HPSM.
- h. BHRS agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by BHRS on behalf of, HPSM available to HPSM, or at the request of HPSM to the Secretary, in a time and manner designated by HPSM or the Secretary, for purposes of the Secretary determining HPSM's compliance with the Privacy Rule.
- i. BHRS agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for HPSM to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- j. BHRS agrees to provide to HPSM or an Individual in the time and manner designated by HPSM, information collected in accordance with Section (i) of this Schedule, to permit HPSM to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- k. BHRS shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that BHRS creates, receives, maintains, or transmits on behalf of HPSM.
- l. BHRS shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- m. BHRS shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- n. BHRS shall report to HPSM any Security Incident within 5 business days of becoming aware of such incident.
- o. BHRS shall make its policies, procedures, and documentation relating to the security and privacy of protected health information, including EPHI, available to the Secretary of the U.S. Department of Health and Human Services and, at HPSM's request, to HPSM for purposes of the Secretary determining HPSM's compliance with the HIPAA privacy and security regulations.

Permitted Uses and Disclosures by BHRS

Except as otherwise limited in this Schedule, BHRS may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, HPSM as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by HPSM.

Obligations of HPSM

- a. HPSM shall provide BHRS with the notice of privacy practices that HPSM produces in accordance with Section 164.520, as well as any changes to such notice.
- b. HPSM shall provide BHRS with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect BHRS's permitted or required uses and disclosures.
- c. HPSM shall notify BHRS of any restriction to the use or disclosure of Protected Health Information that HPSM has agreed to in accordance with Section 164.522.

Permissible Requests by HPSM

HPSM shall not request BHRS to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by HPSM, unless BHRS will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of BHRS.

Duties Upon Termination of Agreement

Upon termination of the Agreement, for any reason, BHRS shall return or destroy all Protected Health Information received from HPSM, or created or received by BHRS on behalf of HPSM. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of BHRS. BHRS shall retain no copies of the Protected Health Information.

In the event that BHRS determines that returning or destroying Protected Health Information is infeasible, BHRS shall provide to HPSM notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, BHRS shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as BHRS maintains such Protection Health Information.

Miscellaneous

- a. *Regulatory References.* A reference in this Schedule to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. *Amendment.* The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for HPSM to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.
- c. *Survival.* The respective rights and obligations of BHRS under this Schedule shall survive the termination of the Agreement.

- d. *Interpretation.* Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits HPSM to comply with the Privacy Rule.
- e. *Reservation of Right to Monitor Activities.* HPSM reserves the right to monitor the security policies and procedures of BHRS

BHRS's Signature

Date

BHRS's Name (Please Print)