

AGREEMENT

THIS AGREEMENT is entered into by and between Jose Gary B. Nadala, MD, (hereinafter referred to as "the Contractor") and the County of Lancaster, Nebraska (hereinafter referred to as "the County").

WHEREAS, the County, through the Mental Health Crisis Center (hereinafter referred to as "Crisis Center") presently provides mental health services to citizens of Lancaster County;

WHEREAS, the County is desirous of the professional services of a Psychiatrist on an as needed, on call, basis to provide backup coverage for the Mental Health Crisis Center ("Crisis Center");

WHEREAS, Contractor is a Psychiatrist who is qualified to provide the County with the services of a Doctor of Medicine with psychiatric specialization and he wishes to contract with the County for the provision of these services; and

WHEREAS, the County and the Contractor desire to set forth their understanding in writing;

NOW, THEREFORE, in consideration of the mutual covenants contained herein, it is agreed between the parties as follows:

1) Term. The length of this Agreement shall be from September 1, 2019, through August 31, 2020, unless terminated by either party pursuant to Paragraph 11 of this Agreement.

2) Purpose. The purpose of this Agreement is to provide a Doctor of Medicine with psychiatric specialization to assist in the provision of psychiatric services at the Crisis Center.

3) Responsibilities. Upon request by the County, the Contractor shall provide the County with psychiatric services for the Crisis Center. Contractor will provide coverage over a twenty-four hour (24) time period when contacted and requested by the Director of the Crisis Center.

4) Licensing. The Contractor agrees that he is and will continue to be a duly licensed Psychiatrist, licensed to practice in the State of Nebraska the services for which the County is being provided. The Contractor further warrants that should he lose his license, he will immediately notify the County and the Crisis Center. Should the Contractor lose his license or be de-certified, the parties agree that the County may terminate this Agreement immediately.

5) Compensation.

A. The County will pay the Contractor Seven Hundred and Seventy Dollars (\$770.00) per twenty-four (24) hour time period of coverage. These amounts are only to be paid upon presentment of a statement for reimbursement and documentation that services have been provided pursuant to this Agreement.

Statements will be submitted to the County for review prior to any payment for services.

- B. The Contractor agrees that he shall not be paid until services have been provided to the County. The parties agree that compensation is not, nor shall it be deemed, a retainer.
- C. It is understood and agreed that the amount stated above shall represent total reimbursement for the services provided under the terms of this contract. Neither the County nor the Crisis Center shall be responsible for the direct payment of any wages, insurance or fringe benefits, including but not limited to vacation, overtime, retirement benefits, workers' compensation insurance and unemployment insurance.

6) Independent Contractor. It is the express intent of the parties that this Agreement shall not create an employer-employee relationship. Employees of the Contractor shall not be deemed to be employees of the County and employees of the County shall not be deemed to be employees of the Contractor. The Contractor and the County shall be responsible to their respective employees for all salary and benefits. Neither the Contractor's employees nor the County's employees shall be entitled to any salary or wages from the other party or to any benefits made to their employees, including, but not limited to, overtime, vacation, retirement benefits, workers' compensation, sick leave, or injury leave. Contractor shall also be responsible for maintaining workers' compensation insurance, unemployment insurance for its employees, and for payment of all federal, state, local, and any other payroll taxes with respect to its employees' compensation.

7) Assignment. Contractor shall not assign its duties and responsibilities under this Agreement without the express written permission of the County. Any assignment without the express written permission of the County shall be absolutely void.

8) Hold Harmless. Contractor shall indemnify and hold harmless the County, its agents, employees and representatives from all claims, demands, suits, actions, payments, liability, judgments and expenses (including court-ordered attorney's fees), arising out of or resulting from the performance of this Agreement that results in bodily injury, sickness, disease, death, civil rights liability, or damage to or destruction of tangible property, including the loss of use resulting therefrom, and is caused in whole or in part by the Contractor, its employees, agents, or representatives, either directly or indirectly employed by them. This section will not require Contractor to indemnify or hold harmless the County for any losses, claims, damages and expenses arising out of or resulting from the negligence of the County.

9) Severability. If any portion of the Agreement is held invalid, the remainder hereof shall not be affected thereby, if such remainder would then continue to conform to the terms and requirements of applicable law.

10) Equal Employment Opportunity. In connection with the carrying out of the activities

provided herein, the Contractor shall not discriminate against an employee or applicant for employment because of race, color, religion, sex, disability, national origin, age, marital status, or receipt of public assistance, or any other basis prohibited by applicable state or federal law.

11) Termination. This Agreement may be terminated at any time by either party giving thirty (30) days written notice. Should the Contractor breach this Agreement, the County will notify the Contractor of the breach in writing and the Contractor will have ten (10) days to cure. If the breach is not cured within ten (10) days, the County may, at its discretion, terminate the contract immediately upon written notice to the Contractor.

12) Governing Law. This Agreement shall be construed in accordance with and governed by the laws of the State of Nebraska without respect to its conflict of laws principles.

13) Release of Information. The Contractor agrees to keep any and all information obtained in the performance of this Agreement confidential as required by law. The Contractor agrees that it shall be compliant with the Health Insurance Portability and Accountability Act of 1996 and implementing regulations pertaining to confidentiality of health information. The Contractor agrees to comply with the terms of Attachment "A," which is attached hereto and incorporated by this reference.

14) Insurance.

Malpractice and Professional Liability Insurance. The Contractor shall purchase and maintain during the term of this Agreement, Malpractice and Professional Liability Insurance for the Physician with base insurance coverage of \$500,000 per occurrence and an aggregate limit of \$1,000,000 and shall qualify for maximum qualification under the Nebraska Medical and Hospital Liability Act, Neb. Rev. Stat. § 44-2801 et. seq.

Workers' Compensation Insurance: The Contractor does not maintain Workers' Compensation Insurance and thus Contractor agrees that Contractor alone will perform all obligations outlined in the Agreement and will not delegate any obligations to a third party.

15) Employee Verification. In accordance with Neb. Rev. Stat. § 4-108 through § 4-114, Contractor agrees to register with and use a federal immigration verification system to determine the work eligibility status of new employees performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. § 1324a, otherwise known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee pursuant to the Immigration Reform and Control Act of 1986. Contractor shall not discriminate against any employee or applicant for employment to be employed in the performance of this section pursuant to the requirements of state law and 8 U.S.C. § 1324b. Contractor shall require any subcontractor to comply with the provisions of this section.

16) Forbearance Not Waiver. County's failure or neglect to enforce any of its rights under this Agreement will not be deemed to be a waiver of County's rights.

17) Entire Agreement. The Parties hereby agree that this Agreement constitutes the entire understanding of the parties and supersedes all prior contracts, agreements and negotiations between the parties regarding the subject matter of this Agreement whether verbal or written. This Agreement may be modified, altered, or amended only by written instrument executed by both parties subsequent to the execution of this Agreement.

18) Third Parties. This Agreement is not intended to, and does not, create any rights or benefits on behalf of any person, whether an individual or an entity, other than the parties to this Agreement. County shall not be obligated or liable hereunder to any person, whether an individual or an entity, other than Contractor.

EXECUTED this 26 day of August, 2019, by Contractor.

BY: Mary Madala
NAME: Jose Gary B. Nadala
TITLE: Psychiatrist

EXECUTED this _____ day of _____, 2019, by Lancaster County, Nebraska.

BY: THE BOARD OF COUNTY
COMMISSIONERS OF LANCASTER
COUNTY, NEBRASKA

APPROVED AS TO FORM
this ____ day of _____, 2019.

Deputy County Attorney for
PAT CONDON, County Attorney

Attachment "A"

Business Associate Addendum

Covered Entity, Lancaster County Mental Health Crisis Center, and Business Associate, Dr. Jose Gary B. Nadala, are parties to the Agreement to which this Addendum is attached (the "Agreement"), whereby Business Associate agrees to perform certain services or business associate functions for or on behalf of Covered Entity.

I. Definitions. Terms used but not otherwise defined in this Addendum shall have the meanings set forth in the HIPAA Privacy Rule, unless otherwise defined herein:

- a. *Business Associate Agreement or Addendum* means all agreements or addendum, whether now in effect or hereafter entered into, between Covered Entity and Business Associate for the performance of Business Associate Functions by Business Associate.
- b. *Business Associate Functions* means functions performed by Business Associate on behalf of Covered Entity which involves the creation of, access to, use or disclosure of, Protected Health Information by Business Associate, its agents or contractors.
- c. *Electronic Protected Health Information (EPHI)* means electronic protected health information, as defined in 45 C.F.R. § 160.103, which is transmitted by electronic media or maintained in electronic media by Business Associate in the performance of one or more Business Associate Functions for or on behalf of Covered Entity.
- d. *Electronic Media* means electronic media as defined in § 160.103.
- e. *HIPAA* means the administrative simplification provisions of the Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. 1320d to 1320d-7.
- f. *Individual* means the same 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 § 164.502(g).
- g. *Protected Health Information (PHI)* means protected health information, as defined in 45 C.F.R. § 160.103, which is created, obtained or used by Business Associate in the performance of one or more Business Associate Functions for or on behalf of Covered Entity.
- h. *Regulations* mean the final Regulations implementing the privacy provisions of HIPAA, as amended from time to time. The Regulations are presently codified at 45 C.F.R. Parts 160 and 164.

- i. *Required by Law* means the same as the term “required by law” in 45 C.F. R. § 164.103.
- j. *Secretary* means the Secretary of the Department of Health and Human Services or his designee.
- k. *“HITECH”* means Title XII of the American Recovery and Reinvestment Act of 2009 (“ARRA”), called the Health Information Technology for Economic and Clinical Health (“HITECH”) Act, which codifies and expands on many of the requirements promulgated by the Department of Health and Human Services (“DHHS”) pursuant to the HIPAA to protect the privacy and security of PHI.
- l. *Breach* means the same as the term “breach” in § 164.402.

II. Purpose. The Lancaster County Mental Health Crisis Center is a Covered Entity under HIPAA and Dr. Jose Nadala is its Business Associate with respect to the Agreement. Business Associate will have access to PHI in order to perform its functions on behalf of Covered Entity. HIPAA requires Covered Entity to obtain satisfactory written contractual assurances from its business associates. The purpose of this Business Associate Addendum is to obtain satisfactory written contractual assurances from Business Associate that Business Associate will appropriately safeguard such PHI in accordance with 45 C.F. R. § 164.314(a)(2), § 164.502(e)(1) and § 164.504(e)(1) of the Regulations and provide the notification in accordance with 45 C.F. R. § 164.410.

III. Permitted Uses and Disclosures by Business Associate. Business Associate shall only use and disclose PHI for the following purposes:

- a. To perform Business Associate Functions.
- b. As needed for the proper management and administration of Business Associate and to carry out the legal responsibilities of Business Associate.
- c. To provide data aggregation services relating to the health care operations of the Covered Entity.

IV. Special Conditions on Disclosure for Business Associate’s Purposes. Before Business Associate may disclose PHI to another party for a reason described in subparagraph III(b), one of the following two conditions must be met either:

- a. The disclosure must be required by law; or
- b. Business Associate must obtain reasonable assurances from the person to whom the PHI is disclosed that such person will safeguard the PHI and further use and disclose it only as required by law or for the purpose for which Business Associate disclosed it to such person; and such person must agree in writing to notify Business Associate of

any instances of which it is aware in which the confidentiality of PHI has been breached.

V. Obligations and Assurances of Business Associate. As an express condition of performing Business Associate functions, Business Associate agrees to:

- a. Use and/or disclose PHI only as permitted or required by this Agreement or as required by law.
- b. Use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for in this Agreement.
- c. Report to Covered Entity, within a reasonable time after discovery, any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity as requested by Covered Entity in mitigating any harmful effects of such unauthorized disclosure.
- d. Require that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- e. Provide access, at the request of Covered Entity, within a reasonable time after request, to PHI to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements of 45 C.F.R. 45 C.F. R. § 164.524 of the Regulations.
- f. Notify Covered entity within three (3) business days of a request by an individual to amend PHI maintained by Business Associate on behalf of Covered entity, direct the requesting individual to the Covered Entity in the handling of such request, and incorporate any amendment accepted by the Covered Entity in accordance with § 164.526 of the Regulations. Business Associate is not authorized to independently agree to an amendment of PHI.
- g. Document disclosure of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with 45 C.F. R. § 164.528 of the Regulations.
- h. Notify Covered Entity within three (3) business days of any request by an individual for an accounting of disclosures, direct the requesting individual to the Covered Entity in the handling of such request, and provide Covered Entity within ten (10) days thereafter with all information in its possession or in the possession of its agents, and contractors, which is needed to permit Covered Entity to respond to the request

for accounting in accordance with 45 C.F. R. § 164.528 of the Regulations. Business Associate agrees to retain necessary records from which to respond to the requests for an accounting.

- i. Make internal practices, books and records, including policies and procedures relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of Covered Entity available to the Secretary, within a reasonable time after request, or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.
- j. Implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the EPHI that Business Associate creates, received, maintains, or transmits on behalf of the Covered Entity as required by Subpart C of the Regulations.
- k. Ensure that any agent, including a subcontractor, to whom the Business Associate provides such EPHI agrees to implement reasonable and appropriate safeguards to protect EPHI.
- l. Report to Covered Entity, within a reasonable time after discovery, any security incident or breach regarding EPHI not provided for by this Agreement of which it becomes aware, together with any remedial or mitigating action taken or proposed to be taken with respect thereto. Business Associate shall cooperate with Covered Entity as requested by Covered Entity in mitigating any harmful effects of such security incident or breach.
- m. To comply with the security rules as required by HITECH, in a manner consistent with rules and regulations that may be adopted by relevant federal agencies, to keep all EPHI in a secure manner, as required under federal law.
- n. To comply with the confidentiality, disclosure, breach notification, compliance and re-disclosure requirements of HITECH and HIPAA.
- o. To comply with any and all regulatory requirements, which may arise in future to comply fully with HIPAA and HITECH, including but not limited to, restrictions on disclosures to health plans, clarified minimum necessary standards, expanded accounting requirements applicable to electronic health records, revised prohibitions on the sales of PHI, and updated marketing and fund raising restrictions.

VI. Notification by Business Associate following the Discovery of a Breach of PHI

- a. Business Associate shall notify the Covered Entity in writing following the discovery of a breach of PHI or EPHI. A breach shall be treated as discovered by a Business Associate as of the first day of which such breach is known to the Business Associate or, by exercising reasonable diligence, would have been known to the Business

Associate. A Business Associate shall be deemed to have knowledge of a breach if the breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the breach, who is an employee, officer, or other agent of the Business Associate.

- b. Except as provided in 45 C.F. R. § 164.412, the Business Associate shall provide the notification of breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach.
- c. The written notification of a breach shall include and provide the identification of each individual whose PHI or EPHI has been, or is reasonably believed by the Business Associate to have been accessed, acquired, used, or disclosed during the breach.
- d. The Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in notification to the individual affected by the breach under 45 C.F. R. § 164.404(c) at the time the notification is required or promptly thereafter as the information becomes available.

VII. Responsibility of the Covered Entity. Covered Entity agrees to:

- a. Notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of PHI.
- b. Notify Business Associate of any changes in, or revocation of, permission by individual to use or disclose PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.
- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

VIII. Term and Termination.

- a. *Term.* This Business Associate Addendum shall be effective on the Effective Date of the Agreement and shall continue in effect until all obligations of the parties have been met, including return or destruction of all PHI in Business Associate's possession (or in the possession of Business Associate's agents and/or contractors), unless sooner terminated as provided herein. It is expressly agreed that the terms and conditions of this Business Associate Addendum designed to safeguard PHI shall survive expiration or other termination of the Agreement, and shall continue in full force and effect until Business Associate has performed all obligations under this Business Associate Addendum.

- b. *Termination by Covered Entity.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may immediately terminate the Agreement. Alternatively, Covered Entity may choose to provide Business Associate with written notice of the existence of alleged material breach, and afford Business Associate an opportunity to cure the alleged material breach upon mutually agreeable terms.
- c. *Effect of Termination.*
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the PHI.
 - (2) In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction unfeasible. Upon written notice to Covered Entity that return or destruction of PHI is not feasible, Business Associate shall extend the protections of this Addendum to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction unfeasible, for so long as Business Associate maintains such PHI.

IX. Miscellaneous

- a. *Amendment.* The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996.
- b. *Survival.* The respective rights and obligations of Business Associate under Section V (c), (1) and (o), Section VI, and Section IX(d) of this Business Associate Addendum shall survive the termination of this Business Associate Addendum and the underlying Agreement.
- c. *Interpretation.* Any ambiguity in this Business Associate Addendum shall be resolved to permit Covered Entity to comply with the HIPAA Regulations.
- d. *Indemnification.* Each party agrees to indemnify and hold harmless, to the fullest extent allowed by law, the other party and their respective officers and employees, from and against all liability, judgments, losses, claims, damages, notification expenses and other expenses (including court-ordered attorneys' fees) resulting from a breach of PHI or EPHI, arising out of the acts or omissions of its officers or employees in performance of this Business Associate Addendum. Liability includes

any claims, damages, losses, notification expenses, and expenses arising out of or resulting from performance of this Business Associate Addendum that result in any claim for damage whatsoever.

Account Number: NE NADJ 2220

Date: 12/17/18 Initials: KELLYG

CERTIFICATE OF INSURANCE

ALLIED WORLD INSURANCE COMPANY
C/O: American Professional Agency, Inc.
95 Broadway, Amityville, NY 11701
800-421-6694

This is to certify that the insurance policies specified below have been issued by the company indicated above to the insured named herein and that, subject to their provisions and conditions, such policies afford the coverages indicated insofar as such coverages apply to the occupation or business of the Named Insured(s) as stated.

THIS CERTIFICATE OF INSURANCE NEITHER AFFIRMATIVELY NOR NEGATIVELY AMENDS, EXTENDS OR ALTERS THE COVERAGE(S) AFFORDED BY THE POLICY(IES) LISTED ON THIS CERTIFICATE.

Name and Address of Named Insured:

JOSE GARY B. NADALA, MD
2222 S 16TH ST STE 330
LINCOLN NE 68503

Additional Named Insureds:

Type of Work Covered: PROFESSIONAL PSYCHIATRIST
Location of Operations: N/A
(If different than address listed above)

Claim History:

Retroactive date is 01/01/2009

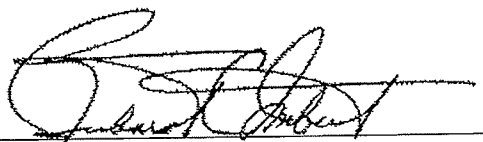
Coverages	Policy Number	Effective Date	Expiration Date	Limits of Liability
PROFESSIONAL/ LIABILITY	0001-4550	1/01/19	1/01/20	2,000,000 4,000,000

NOTICE OF CANCELLATION WILL ONLY BE GIVEN TO THE FIRST NAMED INSURED, WHO SHALL ACT ON BEHALF OF ALL INSURED(S) WITH RESPECT TO GIVING OR RECEIVING NOTICE OF CANCELLATION.

Comments:

This Certificate Issued to:

Name: JOSE GARY B. NADALA, MD
2222 S 16TH ST STE 330
Address: LINCOLN NE 68503


Authorized Representative