



## **COMMUNITY INFORMATION EXCHANGE** **PARTICIPATION AGREEMENT**

For good and valuable consideration, the sufficiency of which is hereby acknowledged, Info Line of San Diego, dba 2-1-1 San Diego and the “Participant” named at the signature page, each a “Party” and collectively, the “Parties” hereby enter into this Participation Agreement upon the terms and conditions provided herein.

<p><b>Effective Date:</b> July 1<sup>st</sup> 2020 <b>Termination Date:</b> June 30th of 2021 <b>First Renewal Date:</b> July 1st of the year immediately following the Effective Date. <b>Annual Fee:</b></p>
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### **TERMS AND CONDITIONS OF PARTICIPATION**

#### **1.0 INTRODUCTION.**

**1.1 Role of 2-1-1 San Diego as the Facilitator for Community Information Exchange.** 2-1-1 San Diego operates a 2-1-1 information hotline (Call Center) in the San Diego and Imperial County. Call Center services are designed to help members of the general public (“Clients”) to connect with community resources to assist Clients obtain medical care, mental health services, housing, food, clothing, government benefits, among other things. 2-1-1 San Diego has expanded its referral services to include direct referral of Clients to community resources and access to the Community Information Exchange Database. The Community Information Exchange database (the “Database”) will serve as a directory of participating professionals, agencies and businesses providing services that relate to the social determinants of health. The database will also serve as a source of information about the Client’s social determinants of health and current needs and will be used to help the Client access community resources suitable to address those needs. Information maintained in the Database consists of information provided by the Client (“self-reported”) and information that has been created and entered into the Database by Referral Partners. Participants are cautioned to verify the information accessed from the Database; 2-1-1 San Diego does not assume any responsibility or liability for its inaccuracy.

**1.2 Level of Access and Administration of Participation Agreements, Generally.** In order to protect the privacy and security of Client Data, 2-1-1 San Diego will only permit Participants that have entered into a Participation Agreement on terms and conditions substantially similar to those stated herein to access the Database. A Participant’s level of access to the Database will be limited to the extent necessary to protect the privacy and security of Client Data.

**Tier 3 (Integrated Partner):** Tier 3 Integrated Partners will have the ability to log on to the CIE Database and access Client Data, receive or decline referrals from other Tier 3 Partner made through the



CIE Database, consent Clients into the CIE Database, share information related to Client details, needs, status and outcomes, and receive Client related Alerts. These abilities are customizable and optional for

each Tier 3 Partner. Depending on the technology deployed in the Tier 3 Partner's facility, Tier 3 Partners may establish an interoperable connection to the CIE Database in order to access and share their Client's information. Participation Agreement: 0517 rev.0618 Page 2 of 13.

**1.3 Participant Policies and Procedures.** From time to time, 2-1-1 San Diego may adopt, amend, repeal and replace policies and procedures that pertain to use of the Database and processing of referrals (hereafter, "Policies and Procedures"). The Policies and Procedures will provide guidance to Participants on such topics as security measures required to protect Client Data, notifying 2-1-1 San Diego in the event the Participant experiences a Security Breach, referral acceptance/rejection response times and outcome reporting requirements, among other things. The Policies and Procedures may be posted on the 2-1-1 San Diego website at [www.211sandiego.org](http://www.211sandiego.org), and are hereby incorporated in this Agreement by this reference as if fully set forth. 2-1-1 San Diego may modify, amend or replace the Participant Policies and Procedures, in its reasonable discretion, from time to time, and the change or modification shall be deemed effective and binding upon Participant on the date indicated, but not less than sixty (60) days from the date Participant receives the modified Policies. Material modifications to the Policies and Procedures shall require the prior approval of the 2-1-1 San Diego Board of Directors. In the event 2-1-1 San Diego adopts a new, or modifies an existing, policy or procedure in a way that materially changes Participant's obligations, liability or ability to participate in the Database, then Participant may terminate this Agreement as provided below for Early Termination. Modifications to the Policies and Procedures that are required by Applicable Law shall not be deemed a material change and will be adopted and implemented by Participant as soon as practicable.

## **2.0 TERM AND TERMINATION.**

**2.1 Term.** The "Term" of this Agreement shall commence on the Effective Date and terminate on the Termination date indicated on the cover page unless terminated early or renewed as provided herein.

**2.2 Renewal Term.** The Term shall automatically renew July 1<sup>st</sup> of the year immediately following the Effective Date, without notice, and thereafter, each time for a period of three years, unless either Party hereto notifies the other in writing, of its intent not to renew, not less than thirty (30) days prior to the Termination Date.

**2.3 Right of Early Termination.** Either Party may terminate this Agreement early; (i) no cause, or (ii) immediately, in the event of a material breach of the privacy or security of Client Data, or (iii) a breach of the Confidentiality provisions stated herein, or (iv) in the event a Party fails to cure a material breach of this Agreement, to be effective within thirty (30) days of receipt of Notice specifically describing the cited reason deemed by the either party within writing.



**2.4 Effect of Termination.** Access to the Database and Services shall cease immediately upon Termination of this Agreement, and Participant will not be permitted to access, submit or retrieve any Data from the Database or obtain other Services under this Agreement. Notwithstanding Termination, Participant's duties and obligations to; (i) protect the privacy and security of Client Data, and (ii) return, destroy, or secure, store and securely maintain Client Data retrieved from the Database prior to Termination shall survive Termination. Client Data entered into the Database by Participant up through the date of Termination will continue to be used and maintained by 2-1-1 San Diego following Termination in compliance with its Notice of Privacy Practices and Applicable Laws.

### **3.0 FEES AND PAYMENT.**

**3.1 Participation Fees.** As consideration for the Referral Services, and depending on the Tier Level assigned to Participant, access to the Database and Client Data, Participant shall pay a "Participation Fee" in the amount indicated on the Cover Page to this Agreement. The Annual Fee may be prorated monthly through July 1<sup>st</sup> of the year in which this Agreement is executed. Participant shall pay Fees within thirty (30) days of receipt of invoice. 2-1-1 San Diego may modify or use a different fee structure or formula for calculating fees and the amount of the annual or other Fees from time to time, but Fee Changes shall not occur more often than once in any calendar year. Changes to Fees shall become effective and binding on Participant after not less than sixty (60) days Notice to Participant. All Fees payable shall be non-refundable in the event of an early Termination.

**3.2 Internet Access to the Database.** Participants will be permitted access to the Database and access to segments of Client Data according to the Participant type and data access permissions assigned to the Participant's Authorized Users by logging onto the web portal using unique login credentials.

### **4.0 PARTICIPATION IN COMMUNITY INFORMATION EXCHANGE.**

(Section 4 applies to Participants who will be entering Client information into the *Customize the CIE Database*).

**4.1 Access to the Database and Use of Client Data.** Participant hereby grants 2-1-1 San Diego a fully-paid, non-exclusive, royalty-free, right and license to host, use, copy, store, maintain, and disclose Participant's profile and directory information, and Client Data and to share some or all of Participant's information and Client Data with other Participants, subject to the other Participant's Tier level and "need to know".

**4.2 Client Data.** Participant shall use reasonable care to ensure the accuracy, currency and completeness of Participant's profile and directory information and its Client Data, including Client demographic information (collectively "Data") and shall promptly correct or update such Data if Participant discovers the Data is incorrect, incomplete or has changed.

**4.3 Client Consent/Authorization.** Participant is solely responsible for (i) accurately documenting its Client's Consent or revocation of Consent or Written Authorization, when required by Applicable Law, to disclose protected health information to 211 San Diego and other Participants, (ii) protecting Client Data in its control from unlawful use or disclosure, and (iii) notifying 2-1-1 San Diego immediately of any changes or restrictions on a Client's Consent or Authorization, or (iv) of a Security Breach. Participant shall not disclose or permit another Participant or 2-1-1 San Diego to access Client Data unless Participant



is permitted or required to disclose Client Data as a matter of law, or the Client who is the subject of the Data has given Participant Consent or Authorization (if required by Law) to share the Client's data with other Participants participating in the Community Information Exchange. When a Client's written Authorization is required for disclosure of Client Data, Participant will promptly provide 2-1-1 San Diego with an electronic copy of the Client's written Authorization prior to uploading or disclosing the Client's Data to 2-1-1 San Diego. Participant shall immediately notify 2-1-1 San Diego if its Client revokes Consent or Authorization to share Client Data or if Participant has agreed to a restriction on the disclosure of Client Data. Participant warrants and represents that the Client's Consent or written Authorization will conform to the requirements of Federal and State law.

**4.4 Scope of Participation.** Participant shall not use or disclose, or permit others to use or disclose Client Data, or access the Database for any purpose other than to provide the types of services described in the Participant's profile as published in the Database, to refer a Client to another Participant, or for a lawfully permitted use in compliance with Applicable Laws. Participant shall not (i) sell, view, access, use, download or disclose Client Data retrieved from the Database, except to the extent necessary in connection with the provision of services and payment for services provided by Participant to a Client. Participant shall not provide access to the Database or to Client Data via or obtained from the Database to third parties who are not Participants of the Database, or use or disclose Client Data in connection with any marketing, fundraising or other activity not permitted by Applicable Laws.

**4.5 Revocable License to Display Participant's Trademark/Logo.** The Parties hereto grant the other a fully-paid, non-exclusive, royalty-free right and license to display the other's Trademark and Logo on its website and on other media in connection with the party's efforts to educate the general public, Clients, and other existing and potential Participants about the Participant's enrollment with the Community Information Exchange, and the benefits of participating in the program. Upon termination, all right and license to display the Trademark or Logo of the other Party shall immediately terminate.

## **5.0 PARTICIPANT'S USE OF THE HOSTED SYSTEM.**

**5.1 Minimum Necessary Use of Client Data.** Whether Client Data is obtained through the Database, or directly from 2-1-1 San Diego or another Participant, Participant shall implement safeguards to limit the information accessed, retrieved, or requested to the minimum necessary to deliver and obtain payment for the services provided to the Client, for referral or for other lawful purposes consistent with Applicable Law.

**5.2 Web-Services Participants: Internet Connection to the Database.** Participant, at Participant's sole cost and expense, will use commercially reasonable efforts to obtain and maintain a secure internet connection to the Database with an internet browser and computer equipment and software that meets or exceeds the minimum configuration and security requirements and specifications recommended by 2-1-1 San Diego. 2-1-1 San Diego may upgrade or adopt new or different specifications for connecting to the Database from time to time and will notify Participant of any material changes to its specifications not less than thirty (30) days in advance if feasible. 2-1-1 San Diego shall not be liable for any lack of connectivity or loss in functionality in the event Participant utilizes hardware or software or an internet browser that does not meet 2-1-1 San Diego's recommended specifications.



**5.3 Authorized Users.** Participant shall limit access to the Database to the number of System Software licenses granted to Participant from time to time. Participant shall conduct ongoing monitoring of the licenses to ensure that the number of Authorized Users registered under Participant to use the Database does not exceed the number of licenses issued. Participant shall train its Authorized Users on the proper use of Client Data and the means and methods for protecting Client Data from unlawful disclosure before allowing such Authorized User to access the Database. In addition, Participant shall implement and train its Authorized Users on network privacy and cultural competence on a regular basis, not less than annually. Participant shall immediately notify 2-1-1 San Diego and the vendor issuing the end user license (e.g. Unite US) of any changes to an Authorized User's status or access rights.

**5.4 Participant Security Requirements.** Participant shall, at its sole cost and expense, implement, maintain and update as needed, internal security systems, specifications and monitoring procedures to ensure that its computer servers, software and internet connections meet or exceed the security standards and specifications established by 2-1-1 San Diego, and Applicable Law and regularly monitor its electronic record database, systems and Personnel to protect the privacy and security of Client Data in compliance with this Agreement and Applicable Laws.

**5.5 Participant's Limited Use of the Database, Documentation.** Participant shall not (and it shall not permit others) to; (i) interfere with or disrupt the Database, (ii) sell, assign, license, sub-license or otherwise provide access to the Database or documentation related to the Database to anyone other than those employees, agents or contractors who have a need to know, "Authorized User(s)"; (iii) use the Database or its documentation, or Client Data for the purposes of providing commercial use in a service bureau, timesharing, remote batch, or similar commercial operations with third parties, (iv) by reverse engineering or by other process, create or attempt to create, or recreate the Database, (v) copy, modify, or distribute any portion of the Database or any documentation related to the Database or Client Data other than in connection with the delivery of services or referral of Clients to other Participants, (vi) transfer or assign any of its rights hereunder; (vii) create any derivative works based on the Database or its documentation, or (viii) export, re-export, divert or transfer the Database or its documentation outside the United States.

**5.6 Participant Profile.** Participant shall continuously maintain up-to-date registration and profile information that accurately describes the programs and services offered by the Participant to Clients, eligibility requirements for such programs and contact information for processing referral requests submitted to Participant by 2-1-1 San Diego, other Participants or Clients through the Database.

**5.7 Referral Requests.** As the Community Information Exchange facilitator, 2-1-1 San Diego may, but shall not be required to refer Clients to Participant ("Referral Request"). In the event a Client is referred to Participant by 2-1-1 San Diego or another Participant, Participant shall promptly respond to a Referral Request in the manner and within the timeframe specified by 2-1-1 San Diego in the Referral Request or as specified in the Policies and Procedures, as applicable. If no timeframe is specified, Participant shall respond to the Referral Request within two business day of receipt of the Referral Request. Participant's failure to respond to a Referral Request three times in any consecutive four week period shall initiate an opportunity for 2-1-1 and partner meeting to discuss timeframes.





## **6.0 SERVICES AND ADMINISTRATION.**

**6.1 Database Operations.** 2-1-1 San Diego will; (i) maintain and operate the Database including Participant directory and profile and Client Data and facilitate the electronic storage and exchange of Client Data with other Participants according to the other Participant's Tier access, (ii) provide user support to Participant and its Authorized User(s) via a helpdesk, (iii) comply with Applicable Law. 2-1-1 San Diego may contract with subcontractors to maintain and upgrade the Database from time to time, operate the Database, and provide support services, among other things. In each such case, 2-1-1 San Diego will require its subcontractors to (i) maintain the confidentiality of all Client Data and other proprietary information relating to Participant, (ii) execute a Confidentiality Agreement containing at a minimum the same restrictions and conditions that apply to 2-1-1 San Diego, if applicable, whenever such person or entity may have access to, view, receive, transmit or disclose PHI execute a Business Associate Agreement, (iii) implement security measures to protect the Client Data from unlawful use or disclosure, and (iv) require its contractors, employees and agents to comply with Applicable Laws

**6.2 Database Availability.** 2-1-1 San Diego shall operate and maintain the Database in a workman-like manner consistent with commercially reasonable industry standards. 2-1-1 San Diego shall provide Participant with access to the exchange 24 hours per day, 7 days per week during the Term, subject to downtime. 2-1-1 San Diego will, to the extent reasonably possible, (except in the event of Force Majeure), provide advance written notice of downtime(s) either by sending Participant a downtime alert by email, or by posting the information on 2-1-1 San Diego's website. Notwithstanding the foregoing, Participant acknowledges and agrees that the Database's availability is provided on an "As Is, As Available" basis. Downtime shall not constitute a material breach of this Agreement unless downtime exceeds a total of seven consecutive days or fifteen days within any consecutive sixty (60) day period, excluding Force Majeure and scheduled maintenance.

**6.3 Support Services.** 2-1-1 San Diego, either directly or through a subcontractor, will provide support services to assist Participant with registering Authorized Users to use the Database, (the "Database Helpdesk") and other administrative matters. The Database Helpdesk will be available on the dates and at the times posted on the 2-1-1 San Diego website. 2-1-1 San Diego may change the level of support, and its availability or cost, from time to time, provided, however, Participant shall be notified of any material changes not less than thirty (30) days in advance.

**6.4 Database Records.** 2-1-1 San Diego will maintain records of the dates, times and the specific client records accessed by Authorized Users if, as and for the period of time required by Applicable Law. Within thirty days of a written reasonable request, 2-1-1 San Diego may provide Participant a copy of a Data access audit log.

**6.5 Security of Client Data.** 2-1-1 San Diego shall establish, implement and maintain commercially reasonable security measures to ensure the privacy and security of Client Data while at rest in the Database and during its transmittal to and from Participants through the Database.

**6.6 Disaster Recovery.** 2-1-1 San Diego will establish, implement and update a disaster recovery plan which addresses the retrieval of lost, or corrupted Client Data in the event of Force Majeure, or a



Breach or Security Incident. Notwithstanding the foregoing, 2-1-1 San Diego shall not be liable, under any theory, for lost, corrupted, irretrievable, inaccurate or incomplete Data.

## **7.0 WARRANTY DISCLAIMER; RELEASE OF LIABILITY.**

**7.1 WARRANTY DISCLAIMER.** 2-1-1 SAN DIEGO IS NOT RESPONSIBLE FOR AND SHALL NOT BE LIABLE FOR THE CONTENT, USE OR DISCLOSURE OF CLIENT DATA COLLECTED, STORED, ACCESSED, RETRIEVED OR TRANSMITTED THROUGH THE DATABASE TO OR FROM A PARTICIPANT. PARTICIPANT ACKNOWLEDGES THAT THE CLIENT DATA VIEWED OR ACCESSED THROUGH THE DATABASE IS EITHER SELF REPORTED BY THE CLIENT, OR COMES FROM ANOTHER PARTICIPANT AND THAT SUCH CLIENT DATA MAY NOT BE COMPLETE, ACCURATE OR UP-TO-DATE. PARTICIPANT AND ITS AUTHORIZED USERS ARE SOLELY RESPONSIBLE FOR CONFIRMING THE COMPLETENESS, ACCURACY AND TIMEFRAME OF ALL CLIENT DATA RETRIEVED FROM THE DATABASE, AND FOR THE USE OR OMISSION OF SUCH CLIENT DATA IN CONNECTION WITH A CLIENT'S CARE OR COORDINATION OF CARE AND RELATED SERVICES. 2-1-1 SAN DIEGO WILL USE COMMERCIALY REASONABLE EFFORTS TO MAKE CLIENT DATA AVAILABLE TO THE PARTICIPANT IF, WHEN, AND TO THE EXTENT THE DATABASE SOFTWARE IS ABLE TO MATCH UP THE RECORDS FOR SUCH CLIENT IN THE DATABASE OF OTHER PARTICIPANT(S) PARTICIPATING IN THE DATABASE AND TO NOTIFY PARTICIPANT(S) WHENEVER IT DISCOVERS DUPLICATE OR INAPPROPRIATELY LINKED CLIENT RECORDS. ACCESS TO THE DATABASE, THE DATABASE ITSELF, AND THE DATA VIEWED OR RETRIEVED THEREFROM IS LICENSED "AS IS" AND "AS AVAILABLE." 2-1-1 SAN DIEGO DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES OF ANY KIND AS THEY MAY PERTAIN TO THE FUNCTIONALITY OF THE DATABASE OR THE ACCURACY, COMPLETENESS OR TIMELINESS OF THE DATA INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

**7.2 Carrier Lines and Internet Security.** Participant acknowledges that access to the Database will be provided over various telecommunications facilities and lines, and that Client Data may be transmitted over local exchange and internet backbone carrier lines and through routers, switches, and other devices owned, maintained, and serviced by third-party carriers, utilities, and internet service providers (collectively, "carrier lines"), all of which are beyond 2-1-1 San Diego's control. Neither 2-1-1 San Diego nor Participant shall be liable for the integrity, privacy, security, confidentiality, and use of Data as it transits carrier lines, or for any delay, failure, interruption, interception, loss, transmission or corruption of any Data attributable to transmission on the carrier lines.

**7.3 RELEASE OF LIABILITY** PARTICIPANT IS SOLELY RESPONSIBLE FOR AND HEREBY RELEASES 2-1-1 SAN DIEGO, ITS OFFICERS, DIRECTORS, EMPLOYEES AND AGENTS OF AND FROM ALL LIABILITY ARISING OUT OF ANY AND ALL ACTS OR OMISSIONS, TAKEN OR MADE BY PARTICIPANT, IN RELIANCE ON THE DATABASE OR 2-1-1 REFERRAL SERVICES, CLIENT DATA, DISCLOSURE OF CLIENT DATA, OR THE FAILURE OF PARTICIPANT TO OBTAIN A CLIENT'S CONSENT OR AUTHORIZATION TO DISCLOSE A CLIENT'S DATA TO 2-1-1 SAN DIEGO AND OTHER PARTICIPANTS WHEN REQUIRED TO DO SO UNDER THIS AGREEMENT OR APPLICABLE LAW.



**7.4 LIMITATION OF LIABILITY.** EXCLUDING CLAIMS FOR INDEMNITY, AND NOT WITHSTANDING ANYTHING TO THE CONTRARY STATED ELSEWHERE IN THIS AGREEMENT TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE AGGREGATE LIABILITY OF 2-1-1 SAN DIEGO TO PARTICIPANT, REGARDLESS OF THEORY OF LIABILITY OR CHARACTERIZATION OF DAMAGES, SHALL BE LIMITED TO AN AMOUNT THAT IS EQUAL TO ONE-HALF THE ANNUAL AGGREGATE PARTICIPATION FEE OR FIFTY THOUSAND DOLLARS, WHICHEVER IS LESS.

## **8.0 INDEMNIFICATION.**

**8.1 INDEMNIFICATION.** 2-1-1 San Diego and Participant shall each indemnify, defend and hold the other harmless (the "Indemnitor") from and against any damages, cost or expense incurred by the other (the "Indemnitee") for third party claims resulting from a Security Breach caused solely by the Indemnitor's acts or omissions, whether or not negligent or intentional. For purposes hereof, the term "Security Breach" shall have the meaning set forth in Section 9.1.2.

**8.2 ADDITIONAL REQUIREMENTS.** The Indemnitee shall give Indemnitor prompt written notice of any Claim asserted against the Indemnitee, however, the failure to provide such Notice shall not relieve the Indemnitor of its obligations hereunder, except to the extent a Court of competent jurisdiction determines such failure materially and adversely prejudiced the Indemnitor. Upon receipt of such notice, the Indemnitee shall tender defense to the Indemnitor, who shall, at its sole cost and expense, retain legal counsel and defend the Indemnitee with counsel reasonably satisfactory to Indemnitee. The Indemnitor may not settle such litigation or proceeding without the express consent of the Indemnitee, which consent shall not be unreasonably withheld, conditioned or delayed. The provisions set forth herein for indemnity, as to third parties, shall not serve as a waiver of any defense or immunity otherwise available and shall not preclude the Indemnitor from asserting every defense or immunity that the Indemnitor could assert on its own behalf. All remedies provided by law, or in equity shall be cumulative and not in the alternative.

## **9.0 INSURANCE.**

**9.1 Participant's Insurance.** Unless otherwise agreed, Participant, at its sole cost and expense, shall obtain and keep in force, an insurance policy or policies, or self-insure in an amount sufficient to cover any liability it incurs for breach of this Agreement, Applicable Law or other act or omission giving rise to a claim for indemnity. Such policies shall provide, at a minimum, coverage of the following types and amounts set forth below and in each case waiving the right of the insurer to subrogation. Participant shall increase the limits of cyber liability coverage within ninety (90) days of 2-1-1 San Diego's written reasonable request.

**9.2 Comprehensive or Commercial Form General Liability.** (Blanket Contractual Liability, Broad Form Property Damage, Personal Injury included) with minimum limits as follows:

Coverage Modules	Limit
Each Occurrence	\$1,000,000
Products/Completed Operations Aggregate	\$1,000,000





Personal and Advertising Injury	\$1,000,000
Cyber Liability with Extortion Coverage	\$1,000,000
Professional Liability	\$1,000,000
General Aggregate	\$2,000,000

**9.3 Professional Liability for IT Technology including Cyber Risk.** Technology, professional liability, data protection, privacy, and cyber liability and extortion insurance policy shall provide coverage for the following risks, among others: financial loss, as well as all costs, including damages 2-1-1 San Diego is obligated to pay a third party, which are associated with any Security Incident or Breach or loss of Data, regardless of cause (including, without limitation, negligence or gross negligence and unlawful third party acts), and resulting or arising from acts, errors, or omissions in connection with the performance of this and associated Agreements. Costs to be covered by this insurance policy shall include without limitation: (a) costs to notify individuals whose personal Data might have been lost or compromised; (b) costs to provide credit monitoring and credit/identity restoration services to individuals whose personal Data might have been lost or compromised; (c) costs associated with third party claims arising from a Security Breach or loss of personal Data, including litigation costs and settlement costs; and (d) any investigation, enforcement or similar miscellaneous costs incurred in relation to a Security Breach. "Security Breach" means (1) the failure of Participant to properly secure, transmit, handle, manage, store, backup, destroy or otherwise control, or the unauthorized use or disclosure by Participant of: (a) Data in any format, or (b) third party proprietary information in any format specifically identified as confidential and protected under a confidentiality agreement or similar contract; (c) a violation of Participant's privacy policy, (d) violation of Applicable Laws; or (e) any other act, error, or omission by Participant that is reasonably likely to result in the unauthorized disclosure of Data.

**9.4. Other Insurance Requirements.** Participant shall furnish 2-1-1 San Diego with certificates of insurance and additional insured endorsements evidencing compliance with all requirements prior to registering Authorized Users with the Database and/or within five (5) business days of a written request therefore. If the above insurance is written on a claims-made form, it shall have a retroactive date of placement prior to or coinciding with the Effective Date of this Agreement and continue for a minimum of three (3) years following Termination. The coverage specified above shall be primary with respect to indemnities owed to the other party under this Agreement. Such insurance shall be with insurers with at least an A.M. Best's Insurance Guide rating of "A-VII" or maintained through adequate programs of self-insurance. The insurance policies shall provide that the insurance company notify 2-1-1 San Diego in writing at least thirty (30) days in advance if Participant's insurance coverage is to be canceled, modified or changed so as not to comply with the requirements of this Agreement. If Participant is self-insured, Participant shall provide written evidence satisfactory to 2-1-1 San Diego, not less than sixty (60) days in advance, should Participant be or become unable to cover liability claims in the amounts stated herein.

**9.5 2-1-1 San Diego Insurance.** 2-1-1 San Diego shall obtain and keep in force, at all times during the Term of this Agreement, insurance covering 2-1-1 San Diego's activities as contemplated by this Agreement, including, but not limited to coverage minimums as stated in Section 9.1.1 and 9.1.2. 2-1-1 San Diego shall provide Participant with a certificate of coverage within ten (10) business days of a written request therefore.



## 10.0 DEFINITIONS.

**10.1 Rules of Interpretation.** If, and to the extent there is a conflict between the definition given a term by this Participation Agreement and the BA Agreement or other attachment, the definition stated in the BA Agreement or attachment shall govern. The following terms are defined by HIPAA and incorporated herein as if fully restated: "Business Associate Agreement," "Breach," "Permitted Use" "Protected Health Information" and "Security Incident."

**"Applicable Law"** means all laws which govern the subject matter of this Agreement, including without limitation all federal, state and local laws which govern the privacy and security of personally identifiable information under State Law and protected health information under both State and Federal Laws and Regulations. Applicable Laws include without limitation the Health Insurance Portability And Accountability Act of 1966 and the regulations promulgated there under at 45 CFR Parts 160 and 164, ("HIPAA"), the Health Information Technology For Economic and Clinical Health Act, Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 ("HITECH"), and California Civil Code Sections 56.10 et seq., the California Medical Information Act, ("CMIA") and California Civil Code Sections 1798.80 et seq.

**"Authorized User"** means an individual Participant or an individual designated by a Participant to access and use the Database, including without limitation, an employee or Business Associate of the Participant.

**"Authorization"** means and refers to a written authorization satisfying the requirements of 45 CFR Section 164.508, 42 CFR Part 2, and/or California Civil Code Section 56.11, or other Applicable Law that requires a patient's express written permission for the disclosure of health information including certain types of sensitive healthcare information such as drug or alcohol abuse information by a federal or state program, or HIV Test Results.

**"Client"** means an individual receiving health care, mental health, or social services or government benefits from a Participant or referral services from 2-1-1 San Diego whose information will be shared pursuant to this Agreement with other Participants. Client does not mean or include those clients whose information is not entered into the Database.

**"Client Data"** means the protected information relating to a Client, including without limitation, personally identifiable information and protected health information; name, address, telephone number, financial information, health condition and other information relevant to the provision of services.

**"Community"** means 2-1-1 San Diego and all Participants registered to use the Database, collectively.

**"Consent"** means and refers to a Client's express permission for a Participant to use or disclose the Client's Data to 2-1-1 San Diego and other Participants.



**"Database"** means the software and hardware systems owned and operated by 2-1-1 San Diego and the processes and procedures, collectively, that enables access, retrieval, use, disclosure and exchange of Participant and Client Data between 2-1-1 San Diego and the Participants through the Database.

**"Participant"** means an individual or entity that has entered into a Participation Agreement with 2-1-1 San Diego. References to Participant include its employees, agents, contractors and Authorized Users if and to the extent such individual accesses the Database or Client Data.

**"Permitted Use"** means all activities in connection with submitting, viewing, accessing, using, disclosing and exchanging, and retrieving Client Data for the purpose of providing treatment, payment, healthcare operations, public health, the determination of eligibility for government or other benefits, care coordination including information and referral and program enrollment assistance or other activities performed for or on behalf of a Client or Participant and as permitted by Applicable Law.

## **11.0 GENERAL PROVISIONS.**

**11.1 No Exclusion.** The Parties each warrant and represent that neither they nor any of their Related Parties have been placed on the sanctions list issued by the office of the Inspector General of the Department of Health and Human Services pursuant to the provisions of 42 U.S.C. 1320a(7), or have been excluded from government contracts by the General Services Administration. A Party will provide the other immediate notice in the event either is placed on the sanctions list.

**11.2 Severability.** If any provision of this Agreement is determined to be invalid or unenforceable, such provision shall be changed so as to best accomplish the objectives of the Parties within the limits of

applicable law, provided, however, if that is not possible or feasible, such provision will be severed from this Agreement to the extent of such determination without affecting the validity or enforceability of such remaining provisions.

**11.3 Governing Laws.** This Agreement is governed by and shall be interpreted in accordance with the laws of the State of California without regard to its conflict of law provisions. The parties waive any objections and agree to the venue and personal jurisdiction of the courts of the State of California and the federal courts situated in San Diego County over any action arising out of or relating to this Agreement.

**11.4 Force Majeure.** No Party shall be liable to the other for any failure to perform its obligations under this Agreement, where such failure results from any act of God or other cause beyond such party's reasonable control, including, without limitation, any mechanical, electronic, or internet communications failure, terrorist acts, cyber terrorism or malicious mischief.

**11.5 Notices.** Except as otherwise provided herein, all notices, requests, demands, and other communications required or permitted by this Agreement will be in writing and shall be deemed to have



been duly given, made and received on the date when delivered to the other Party at the address stated below the signature line when actually delivered by a nationally recognized courier service, or on the third business day following the day when deposited in the United States mail, certified, postage prepaid, return receipt requested. A Party may change its address for Notice, at any time, by giving Notice of such change as provided herein.

**11.6 No Agency, No Third Party Beneficiaries.** 2-1-1 San Diego provides the Database services to Participant but does not act as the Participant's agent. Participant will not be deemed an agent of another Participant as a result of participation in the Database. Nothing in this Agreement is intended to confer upon any third party any rights, remedies, or obligations.

**11.7 Modifications.** Except as specifically provided herein, no modification to the terms of this Agreement or the Business Associate Agreement shall be valid, unless in writing and signed by the parties hereto.

**11.8 Registered User Signatures and Signed Documents.** Upon registering with the Database, Participant acknowledges and agrees that its Authorized User is authorized to adopt as its signature an electronic identification consisting of symbols or codes that are to be affixed to or contained in an exchange of Data made by the Participant ("Signatures"). Any transmission or exchange of Data made pursuant to this Agreement shall be considered a "writing" or "in writing" and any such exchange when containing, or to which there is affixed, a Signature shall be deemed for all purposes: (a) to have been "signed" (a "Signed Documents") and (b) to constitute an original when printed from electronic files or records established and maintained in the normal course of business. Participant will not contest the validity or enforceability of Signed Documents under the provisions of any applicable law as they may relate to the requirement that certain agreements be in writing or signed by the party to be bound thereby. Signed Documents, if introduced as evidence on paper in any judicial, arbitration, mediation, or administrative proceedings will be admissible as between the parties to the same extent and under the same condition as other business records originated and maintained in paper form.

**11.9 Complete Agreement.** The terms of this Agreement and its Attachments and Exhibits collectively represent the entire understanding between the Parties and supersede all previous agreements, whether oral or in writing. The Attachments and/or Exhibits attached to this Agreement and identified in the Summary box on page one, are fully incorporated and made a part of this Agreement by this reference as if fully stated herein.

**11.10 Survival.** Notwithstanding any expiration or earlier termination of this Agreement, those provisions which by their meaning are intended to survive termination, including, or in addition to the following provisions of this Agreement relating to the following matters, shall survive termination in accordance with their terms: (Indemnification), (Representations and Warranties; Limitations), (Liability Limitations), (Survival), (Section 10 Definitions), (General Provisions) and Exhibit A (Business Associate Provisions). Termination of this Agreement by a Party shall not relieve the other Party hereto from any liability that at the time of termination already accrued to the other Party or which thereafter may accrue in respect of any act or omission of such Party prior to termination or any continuing obligation imposed by applicable law.



**11.11 Authorized Agent Signature.** By signing this Agreement, the undersigned represents and warrants that he or she has received and read a copy of this Agreement, inclusive of attachments and exhibits, and that he or she is either (a) the Participant or, (b) if the Participant is an organization, an individual acting on the Participant's behalf who is authorized to sign and enter into this Agreement.

**11.12 Counterpart Signatures and Facsimile Signatures.** This Agreement may be executed and delivered in counterparts, all of which taken together shall constitute one single agreement between the parties. A facsimile transmission of the executed signature page of this Agreement shall constitute due and proper execution and delivery of this Agreement.

#### **SIGNATURES:**

**Infoline of San Diego, dba 2-1-1 San Diego,  
and Community Information Exchange:**

Signature:

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

Title:

Date:

Address for Notice:

P.O. Box 420039

San Diego, CA 92142

Phone: 858-300-1237

Email: [ciepartners@211sandiego.org](mailto:ciepartners@211sandiego.org)

**Participant:**

Signature:

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

Title:

Date:

Address for Notice:

Line 1:

Line 2:

Phone:

Email:

#### **EXHIBIT A BUSINESS ASSOCIATE AGREEMENT**

**[The attached BAA applies to the parties only to the extent that a business associate relationship exists within the meaning of 45 CFR 160.103.]**