

LOCAL INITIATIVE HEALTH AUTHORITY FOR LOS ANGELES COUNTY
d/b/a
L.A. CARE HEALTH PLAN

NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT

This Non-Disclosure and Confidentiality Agreement (the “**Agreement**”) is entered into as of the date set forth on the signature page hereof by and between The Local Initiative Health Authority for Los Angeles County d.b.a L.A. Care Health Plan (“**L.A. Care**”), and _____ (“**Subcontractor**”) (each a “**Party**,” or collectively the “**Parties**”).

WHEREAS, Subcontractor is in the process of submitting an application to L.A. Care for the possible award of a contract by L.A. Care to either participate in the potential Dual Eligible Coordinated Care Demonstration proposed by the California Department of Health Care Services, or to obtain the necessary contractual relationship from L.A. Care to satisfy the Medicare Improvements for Patients and Providers Act (“**MIPPA**”), which requires that D-SNPs have a Medicaid contract for their area of operation; and

WHEREAS, L.A. Care and Subcontractor have significant interest in protecting the confidentiality of its Confidential Information and Proprietary Information.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, and intending to be bound hereby, the Parties hereto agree as follows:

1. **Purpose.** This Agreement is intended to shield L.A. Care’s ability to administer L.A. Care’s business, to safeguard L.A. Care’s Confidential Information and Proprietary Information, and to protect against any unauthorized disclosure, distribution or use of such Confidential Information and Proprietary Information.
2. **Confidential Information.** Confidential Information includes without limitation any materials, information (whether written or verbal), records, writings (whether in physical or electronic form) or data that is marked “**confidential**”, relates to trade secrets, member information, peer review, protected health information, member rates, member information, provider rates, or is protected by attorney-client, attorney work-product, trade secrets, closed session and/or other privileges, or protected from disclosure by applicable provisions of State or Federal law, including without limitation the California Welfare and Institutions Code and California Public Records Act (Government Code § 6250 *et seq.*).
3. **Proprietary Information.** Proprietary Information includes without limitation, **L.A. Care’s and/or Subcontractor’s computer programs and codes, business plans, customer/member lists and information, member rate information, member information, financial records, partnership arrangements, business and strategic information and plans, and licensing plans or that is marked confidential** or that due to its character and nature, a reasonable person under like circumstances would treat as confidential.
4. **Exclusions.** Confidential Information does not include information that L.A. Care or Subcontractor, as applicable, can demonstrate:

(a) Was in the Party's possession prior to it being furnished under the terms of this Agreement, provided the source of that information was not known by the receiving Party to be bound by a confidentiality agreement or other continual, legal or fiduciary obligation of confidentiality to the other Party;

(b) Is now, or hereafter becomes, through no act or failure to act on the part of the receiving Party, generally known to the public;

(c) Is rightfully obtained by the receiving Party from a third party, without breach of any obligation to the other Party;

(d) Is independently developed by receiving Party without use of or reference to the Confidential Information of L.A. Care or Subcontractor, as applicable; or

(e) Is a public record or information, not exempt from disclosure pursuant to applicable laws, including without limitation the California Public Records Act.

5. Subcontractor's Obligations. To the extent permitted under applicable laws, Subcontractor hereby agrees:

(a) Not to use Confidential Information and Proprietary Information therein except at the express direction of L.A. Care and for L.A. Care's administrative use for which it was intended;

(b) Not to disclose Confidential Information to any third party or person, (except to authorized L.A. Care employees, agents, or consultants who are intended recipients of such information) without the express written permission of L.A. Care. The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, trust, public agency or individual.

6. L.A. Care's Obligations. To the extent permitted under applicable laws, L.A. Care hereby agrees:

(a) Not to use Confidential Information and Proprietary Information therein except at the express direction of Subcontractor and for Subcontractor's administrative use for which it was intended;

(b) Not to disclose Confidential Information to any third party or person without the express written permission of Subcontractor, except to Subcontractor's employees, agents, or consultants who are intended recipients of such information or as authorized by applicable laws, including without limitation the California Public Records Act (Government Code § 6250 *et seq.*). The term "person" as used in this Agreement shall be broadly interpreted to include, without limitation, any corporation, company, partnership, trust, public agency or individual.

7. Term. The term of this Agreement shall be two (2) years from the date of this Agreement; provided, however, that Parties' respective obligations of confidentiality and non-disclosure of Confidential Information and Proprietary Information exchanged within the term of this Agreement shall survive any such termination indefinitely, except as may be required by law. Either Party may terminate this Agreement, without cause, upon providing thirty (30) days prior written notice to the other party.

8. No Grant or License. It is further agreed that the furnishing of Confidential Information or

Proprietary Information to Subcontractor shall not constitute any grant or license to Subcontractor under any legal rights now or hereinafter held by L.A. Care.

9. No Obligation to Contact. Subcontractor agrees that this Agreement shall not be construed as creating any legal obligation of any kind whatsoever upon L.A. Care to proceed with or enter into any transaction or agreement.

10. Miscellaneous.

A. This Agreement will be governed and construed in accordance with the laws of California.

B. This Agreement and each Party's obligations hereunder shall be binding on the representatives, assigns, and successors of such party and shall inure to the benefit of the assigns and successors of such party, to the extent permitted under applicable laws; provided, however, that the rights and obligations of Parties hereunder are not assignable.

C. It is understood and agreed that no failure or delay by a Party in exercising any right, power or privilege hereunder shall operate as a waiver thereof, nor shall any single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any right, power or privilege hereunder.

D. This Agreement may be executed in counterparts, each of which shall constitute an original and all of which together shall constitute one and the same instrument. This Agreement expresses the full and complete understanding of the parties with respect to the subject matter hereof and supersedes all prior or contemporaneous proposals, agreements, representations and understandings, whether written or oral, with respect to the treatment and handling of L.A. Care's or Subcontractor's Confidential Information and Proprietary Information. This Agreement may not be amended or modified except in writing signed by each of the parties to the Agreement. This Agreement shall be construed as to its fair meaning and not strictly for or against either party. The headings hereof are descriptive only and not to be construed in interpreting the provisions.

E. Notices hereunder shall be in writing and sent to the Parties at the following addresses and to the attention of the persons named. All notices, requests, demands or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered to the party to whom notice is to be given either (i) by personal delivery (in which case such notice shall be deemed to have been duly given on the date of delivery), (ii) by next business day air courier service (e.g., Federal Express or other similar service) (in which case such notice shall be deemed given on the business day following deposit with the air courier service), or (iii) by United States mail, first class, postage prepaid, registered or certified, return receipt requested (in which case such notice shall be deemed to have been duly given on the third (3rd) day following the date of mailing), and properly addressed as follows:

To Subcontractor: _____

Attn: _____

To L.A. Care: 1055 West Seventh Street, 10th Floor
Los Angeles, California
Attention: John Wallace

F. If any action at law or suit in equity is brought to enforce or interpret the provisions of the Agreement or to seek money due hereunder, other damages or equitable relief, the prevailing party shall be entitled to reasonable attorneys' fees and reasonable costs, together with interest thereon at the highest rate provided by law, in addition to any and all other relief to which it may otherwise be entitled.

G. This Agreement shall, in all respects be interpreted, construed, enforced and given effect according to the laws of the State of California.

IN WITNESS WHEREOF, the Parties hereto have entered into this Agreement as of the date set forth below.

**LOCAL INITIATIVE HEALTH AUTHORITY
FOR LOS ANGELES COUNTY
dba L.A. CARE HEALTH PLAN (L.A. CARE)** (SUBCONTRACTOR)

By: _____
Name:
Title:

By: _____
Name:
Title:

Date: _____

Date: _____