

# **Attachment 1**

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**PROFESSIONAL SERVICES AGREEMENT**

This PROFESSIONAL SERVICES AGREEMENT (“Agreement”) is dated effective \_\_\_\_\_ (“Effective Date”) by and between \_\_\_\_\_, a corporation located at \_\_\_\_\_ (“Contractor”), and Central City Concern, a nonprofit corporation located at 232 NW 6th Avenue, Portland, Oregon 97209 (“CCC”).

WHEREAS, CCC desires to obtain the professional services of Contractor \_\_\_\_\_; and

WHEREAS, Contractor is willing to provide such Services, as that term is defined herein, in the capacity of an independent contractor licensed to conduct business in the State of Oregon.

NOW, THEREFORE, the parties hereto agree as follows:

1. **Services.** Contractor shall render the services as outlined in Schedule A, attached hereto and incorporated by reference herein (the “Services”). In providing the Services the Contractor shall have access to such information of CCC as CCC shall determine in CCC’s sole discretion. Time is of the essence in the performance of this contract.

2. **Compensation.** As compensation for the Services, CCC agrees to compensate Contractor in accordance with Schedule B, attached hereto and incorporated by reference herein.

3. **Taxes.** CCC shall not withhold taxes from any payments made to Contractor, and Contractor will be solely responsible for paying all taxes resulting from the performance of the Services under this Agreement, including but not limited to income, social security, worker’s compensation, and employment insurance taxes.

4. **No Benefits.** CCC will not provide any benefits to Contractor, and Contractor will be solely responsible for obtaining Contractor’s own benefits, including but not limited to insurance, medical reimbursement, and retirement plans.

5. **Expenses.** CCC shall reimburse the Contractor for reasonable expenses incurred by Contractor in connection with the performance of the Services, provided that CCC’s prior written approval is obtained before the Contractor incurs any expense. At its sole option, CCC may provide certain equipment, facilities or services directly to Contractor rather than Contractor incurring expenses to provide the same.

6. **Independent Contractor.** Contractor will be an independent contractor of CCC. Contractor will not be an employee of CCC.

7. **No Agency Relationship.** This Agreement does not create an agency relationship between the parties and does not establish a joint venture or partnership between the parties. Contractor does not have the authority to bind CCC or to represent to any person that Contractor is an agent of CCC.

8. **Term.** The term of this Agreement shall commence on the Effective Date and continue until \_\_\_\_\_ (“Expiration Date”) or when completed, if the completion date occurs earlier, unless terminated earlier in accordance with Paragraph 19.

9. **CCC Representative.** CCC’s representative for matters related to this Agreement and the Services to be provided hereunder will be \_\_\_\_\_, or such other representative as CCC may designate from time to time (the “CCC Representative”). Contractor will receive instruction and direction from, and report to, the CCC Representative. Contractor will provide the CCC Representative with such

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information concerning the provision of the Services as the CCC Representative shall request from time to time.

10. **Intellectual Property Rights.** “Creative Work” means any work that Contractor creates or has created in connection with the Services. The Creative Work is, was, and will be specially ordered and commissioned for use by CCC, and is work made for hire for copyright purposes to the extent it qualifies as such under applicable law. Contractor assigns to CCC Contractor’s entire interest in the Creative Work, including but not limited to all copyrights, patent rights, trade secret rights, trademark rights, and other intellectual property proprietary rights in the Creative Work. Contractor assigns to CCC any moral rights that Contractor may have in the Creative Work, and waives any right to assert any moral rights in any portion of the Creative Work. Contractor will defend and indemnify CCC for, from and against any and all claims, actions, proceedings, damages, liabilities, and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney’s fees, resulting from or arising out of any claim that the Services or the Creative Work infringes any copyright, patent, or trademark, constitutes misappropriation of any trade secret, or violates any other intellectual or proprietary right of any person. Contractor shall not at any time adopt or use as its own any other work or mark that is confusingly similar to the Creative Work.

11. **Confidentiality.** “Confidential Information” means all information related to CCC that is received or accessed by Contractor, including but not limited to individually identifiable health information, business models, customer and supplier lists, marketing plans, financial and technical information, trade secrets, know-how, ideas, designs, drawings, specifications, techniques, programs, systems, processes, and computer software. “Representatives” mean directors, officers, managers, employees, subcontractors, agents, consultants, advisors and other authorized representatives. Contractor agrees to maintain the security and confidentiality of such Confidential Information in a manner consistent with state and federal laws and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996, Title 42 of the Code of Federal Regulations, the Health Information Technology for Economic and Clinical Health Act, and the Oregon Identity Theft Protection Act (ORS 646A.600 to 646A.628). Contractor will not use Confidential Information for any purpose without CCC’s specific prior written authorization. Except as otherwise provided, Contractor will not disclose Confidential Information to any person without CCC’s specific prior written authorization. Contractor will promptly notify CCC of any unauthorized use or disclosure of Confidential Information, or any other breach of this Paragraph 11, and assist CCC in every reasonable way to retrieve any Confidential Information that was used or disclosed by Contractor or Contractor’s Representatives without CCC’s specific prior written authorization and to mitigate the harm caused by the unauthorized use or disclosure. Upon CCC’s request or the termination of Contractor’s independent contractor relationship with CCC, Contractor will promptly return to CCC all materials furnished by CCC containing Confidential Information, together with all copies and summaries of Confidential Information in the possession or under the control of Contractor. The obligations of this Section survive termination of this Agreement.

12. **Equitable Relief.** Contractor acknowledges that the remedies available at law for any breach of Paragraph 11 by Contractor will, by their nature, be inadequate. Accordingly, CCC may obtain injunctive relief or other equitable relief to restrain a breach or threatened breach of Paragraph 11 or to specifically enforce Paragraph 11, without proving that any monetary damages have been sustained.

13. **No Conflicting Agreements.** Contractor represents and warrants to CCC that it is not subject to, and agrees that while this Agreement remains in effect, Contractor will not enter into any agreements or arrangements that preclude fulfillment by Contractor of its obligations to CCC under this Agreement.

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14. **Quality of the Services.** Contractor warrants to CCC that Contractor will provide the Services with reasonable care, skill and diligence and in accordance with applicable professional standards customary for services similar to the contracted Services. Contractor warrants to CCC that the Services will be performed by qualified personnel in a professional manner, in accordance with the specifications set forth on Schedule A.

15. **Compliance with Laws.** Contractor agrees to use Contractor’s best efforts to comply in all material respects with all applicable laws in providing the Services.

16. **Indemnification.** Contractor will defend, indemnify and hold CCC and each of its present and future directors, officers, employees, agents, and authorized representatives harmless for, from, and against any and all claims, actions, proceedings, damages, losses, expenses, demands, liabilities, suits, fines, judgments and expenses of every kind, whether known or unknown, including but not limited to reasonable attorney’s fees, costs and expenses incidental thereto which may be suffered by, accrued against, charged to or recoverable from any third party, by reason of any claim arising out of or relating to any act or error or omission, or misconduct of Contractor, its officers, directors, agents, employees or subcontractors under or on connection to this Agreement; provided, however, that Contractor has no indemnification obligations under this section to the extent that such losses, damages, liabilities, or related expenses arise from CCC’s gross negligence or willful misconduct.

17. **Insurance.** The Contractor shall obtain and maintain, and shall cause any and all subcontractors to obtain and maintain insurance policies (including malpractice insurance, if applicable) that provide adequate coverage for all risks normally insured against by a person carrying on a similar business in a similar location, and for any risks to which Contractor is normally exposed, including but not limited to the minimum requirements listed below. At its sole discretion, CCC will determine if the limits are adequate. By the Effective Date of this Agreement and throughout the entire term of the Agreement, Contractor agrees to name CCC as an additional insured on all of Contractor’s policies deemed relevant to the Services by CCC, and shall include any related endorsements in the insurance documents it supplies to CCC. Contractor further agrees to provide CCC with updated certificates of insurance any time during the term of this Agreement that Contractor’s insurance policies are renewed and 30 days’ prior notice if Contractor’s policies relevant to this Agreement are cancelled or otherwise terminated.

Contractor shall carry insurance with the following minimum requirements:

**a. Commercial General Liability**

General Aggregate (other than Prod/Comp Ops Liability)	\$2,000,000
Products/Completed Operations Aggregate	\$2,000,000
Each Occurrence	\$1,000,000

- Central City Concern named as **Additional Insured** on form CG 20 37 or equivalent.
- **Include by Endorsement:** Central City Concern, its agents, officers, directors, officials, and employees are Additional Insureds by endorsement with respect to Contractor’s services to be provided under this Contract. Indicate form number on Certificate and attach indicated form.
- **Include Primary, Non-Contributory Endorsement**
- **Include Waiver of Subrogation Endorsement**

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**b. Workers' Compensation**

State Statutory Limits

**c. Automobile Liability**

Owned, Hired and Non-Owned Vehicles

\$1,000,000

**Certificate Holder is:** **Central City Concern**  
**232 NW 6<sup>th</sup>**  
**Portland, OR 97209**

18. **Governmental Authorizations.** Contractor will obtain and maintain all licenses, permits, registrations, and other governmental authorizations required to conduct Contractor's business and perform the Services.

19. **Termination.** This Agreement shall terminate upon the earliest to occur of the following:

- (a) the Expiration Date set forth in Paragraph 8;
- (b) upon written agreement of the parties;
- (c) upon the dissolution of Contractor;
- (d) upon 30 days' notice by a party to the other party; and

(e) upon notice by CCC to Contractor if: (1) Contractor engages in any form of dishonesty or conduct involving moral turpitude related to Contractor's independent contractor relationship with CCC or that otherwise reflects adversely on the reputation or operations of CCC; (2) Contractor fails to materially comply with any applicable law related to Contractor's independent contractor relationship with CCC; (3) continuous repeated problems occur in connection with performance of Contractor's duties; or (4) Contractor materially breaches this Agreement and fails to cure the breach within 20 days after CCC notifies Contractor of the breach.

20. **No Assignment.** This Agreement is personal to Contractor and Contractor may not assign or delegate any of Contractor's rights or obligations under this Agreement to any person without the prior written consent of CCC, which CCC may withhold in its sole discretion. An assignment includes but is not limited to a transfer or encumbrance – or series of related transfers or encumbers – of 50% or more of the shares or other ownership interests of a party regardless of whether the transfer or encumbrance occurs voluntarily or involuntarily, by operation of law, or because of any act or occurrence. Any attempt to assign, transfer, or subcontract any of the rights, duties, or obligations of this Agreement shall be held to be invalid, illegal, or unenforceable; the validity, legality, and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.

21. **Binding Effect.** This Agreement will be binding on the parties and their respective heirs, personal representatives, successors, and permitted assigns, and will inure to their benefit.

22. **Amendment.** This Agreement may only be amended by a written document signed by the party against whom enforcement is sought.

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23. **Construction.** The parties agree and acknowledge that the rule of construction that ambiguities in a written agreement are to be construed against the party preparing or drafting the agreement shall not be applicable to the interpretation of this Agreement.

24. **Notices.** All notices or other communications required or permitted to be given hereunder shall be given to the parties at the addresses set forth below or to such other addresses as the parties may from time to time designate by notice to the other party. All notices shall be in writing and shall be served or given by registered or certified mail, postage prepaid, or by actual delivery. Notice shall be effective on the date of actual delivery or on date which delivery is refused.

25. **Waiver.** No waiver will be binding on a party unless it is in writing and signed by the party making the waiver. A party's waiver of a breach of a provision of this Agreement will not be a waiver of any other provision or a waiver of a subsequent breach of the same provision.

26. **Severability.** If a provision of this Agreement is determined to be unenforceable in any respect, the enforceability of the provision in any other respect and of the remaining provisions of this Agreement will not be impaired.

27. **Further Assurances.** The parties will sign other documents and take other actions reasonably necessary to further effect and evidence this Agreement.

28. **No Third-Party Beneficiaries.** The parties do not intend to confer any right or remedy on any third party.

29. **Termination.** The termination of this Agreement, regardless of how it occurs, will not relieve a party of obligations that have accrued before the termination.

30. **Survival.** All provisions of this Agreement that would reasonably be expected to survive the termination of this Agreement will do so.

31. **Attachments.** Any exhibits, schedules, addenda, and other attachments referenced in this Agreement are part of this Agreement. If any conflict exists between any exhibits, schedules, addenda, or other attachments and this Agreement, this Agreement takes precedence except that if any conflict exists between the Business Associate Agreement between the parties (at Exhibit 1 and incorporated by reference herein) the Business Associate Agreement shall take precedence.

32. **Remedies.** The parties will have all remedies available to them at law or in equity. All available remedies are cumulative and may be exercised singularly or concurrently.

33. **Governing Law.** This Agreement shall be governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement. Each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

34. **Equal Opportunity.** This contractor and subcontractor shall abide by the requirements of 41 CFR 60-300.5(a) and 41 CFR 60-741(a). These regulations prohibit discrimination against qualified individuals and protected veterans on the basis of disability or veteran status and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities and protected veterans.

35. **Debarment and Suspension.** As required by Executive Orders 12549 and 12689 and applicable Uniform Administrative Requirements regarding Debarment and Suspension, by signature of

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this Contract the CONTRACTOR certifies to the best of its knowledge and belief, that neither it nor its principals:

- a. Are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency;
- b. Have within a three-year period preceding this proposal been convicted or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- c. Are presently indicted or otherwise criminally or civilly charged by a government entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph (1)(B) of this certification; and,
- d. Have within a three-year period preceding this application/proposal had one or more public transactions (Federal, State, or local) terminated for cause or default.

Where the CONTRACTOR is unable to certify to any of the statements in this certification, such CONTRACTOR shall provide an explanation to CCC.

36. **Arbitration.** Except as otherwise provided, any controversy or claim arising out of this Agreement will be settled by arbitration before a single arbitrator in Portland, Oregon. If the parties agree on an arbitrator, the arbitration will be held before the arbitrator selected by the parties. If the parties do not agree on an arbitrator, each party will designate an arbitrator and the arbitration will be held before a third arbitrator selected by the designated arbitrators. Each arbitrator will be an attorney knowledgeable in the area of business law. The arbitration will be conducted in accordance with the then-current rules of Arbitration Service of Portland. The resolution of any controversy or claim as determined by the arbitrator will be binding on the parties. A party may seek from a court an order to compel arbitration, or any other interim relief or provisional remedies pending an arbitrator's resolution of any controversy or claim. Any such action or proceeding – or any action or proceeding to confirm, vacate, modify, or correct the award of the arbitrator – will be litigated in courts located in Multnomah County, Oregon. For the purposes set forth in this Paragraph, each party consents and submits to the jurisdiction of any local, state, or federal court located in Multnomah County, Oregon.

37. **Attorney's Fees.** If any arbitration or litigation is instituted to interpret, enforce, or rescind this Agreement, including but not limited to any proceeding brought under the United States Bankruptcy Code, the prevailing party on a claim will be entitled to recover with respect to the claim, in addition to any other relief awarded, the prevailing party's reasonable attorney's fees and other fees, costs, and expenses of every kind, including but not limited to the costs and disbursements specified in ORCP 68 A(2), incurred in connection with the arbitration, the litigation, any appeal or petition for review, the collection of any award, or the enforcement of any order, as determined by the arbitrator or court.

38. **Entire Agreement.** This Agreement contains the entire understanding of the parties regarding the subject matter of this Agreement and supersedes all prior and contemporaneous negotiations and agreements, whether written or oral, between the parties with respect to the subject matter of this Agreement.

39. **Signatures.** This Agreement may be signed in counterparts. Electronic or facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile

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transmission, shall be the same as delivery of an original. All signatories to this Agreement warrant that they are legally authorized to bind the organizations with which they work to the terms of this Agreement.

40. **Additional Terms.** Those terms contained in Attachment 1 to this Agreement are incorporated by reference herein subject to the limitations contained in Paragraph 31 to this Agreement.

**Signatures**

For: \_\_\_\_\_

For: Central City Concern

Signature: \_\_\_\_\_

Signature: \_\_\_\_\_

Print Name: \_\_\_\_\_

Print Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

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

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



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**SCHEDULE A**

**SERVICES**

- A. Contractor shall provide the professional \_\_\_\_\_ services for CCC's \_\_\_\_\_ as detailed in Exhibit 1 to this Agreement and incorporated by reference herein ("Services").
- B. Contractor shall provide Services on days and at times that have been mutually agreed upon in advance.
- C. Any and all Services shall be 1) performed by individuals who are qualified; and 2) completed in a manner that is consistent with industry standards.
- D. Time is of the essence for all Services performed under this Agreement.

**SCHEDULE B**

**COMPENSATION**

EIN: \_\_\_\_\_

Compensation for Contractor shall be paid as follows:

- A. Cost of Services, including all time, labor, and materials, shall not exceed \$XXX without the prior written authorization of CCC.
- B. Contractor shall invoice Central City Concern, Accounts Payable, 232 NW 6<sup>th</sup> Avenue, Portland, Oregon 97209 or [AP@cccconcern.org](mailto:AP@cccconcern.org) for all Services.
- C. Payment terms for all Services are Net 30 from the date an invoice is received by CCC.

## **Business Associate Agreement**

This Business Associate Agreement (the “Agreement”), is entered into between Central City Concern, Inc. (the “Covered Entity”) and [REDACTED] (the “Business Associate”) and is effective as of the Effective Date below.

### **Recitals**

A. Business Associate provides certain services to Covered Entity (the “Services”) which sometimes may involve (i) the creation, receipt, maintenance, transmission, or use of Protected Health Information (as defined below) and Electronic Protected Health Information, (as defined below) by Business Associate, or (ii) the disclosure of Protected Health Information and Electronic Protected Health Information by Covered Entity (or another business associate of Covered Entity) to Business Associate. Accordingly, the creation, receipt, transmission, or maintenance of Protected Health Information and Electronic Protected Health Information by Business Associate is subject to the Privacy, Security, Breach Notification, and Enforcement rules promulgated pursuant to the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) at 45 C.F.R. Parts 160 and 164. This Agreement is intended to document the business associate assurances required by the HIPAA Privacy Regulations (at 45 C.F.R. § 164.504(e)), and the HIPAA Security Regulations (at 45 C.F.R. § 164.314(a)).

B. This Agreement will govern the terms and conditions under which Covered Entity may disclose or have disclosed to Business Associate, and Business Associate may create, receive, maintain, transmit, or use Protected Health Information and Electronic Protected Health Information on behalf of Covered Entity.

C. This Agreement amends agreements between the Parties to the extent each is respectively, a business associate or a covered entity, as defined in 45 CFR 160.103, whether or not this Agreement is incorporated by reference, including any oral or written agreements existing between the Parties as of the Effective Date of this Agreement, and such terms shall apply to any future written and oral agreements between the Parties whether or not this Agreement is incorporated by reference.

### **Agreement**

1. **Definitions.** Capitalized terms used in this Agreement, but not otherwise defined in this Agreement, shall have the same meanings as those terms in the HIPAA Privacy and Security, Regulations at 45 C.F.R. Part 160 and 164. Unless otherwise stated, a reference to a “Section” is to a Section in this Agreement. For purposes of this Agreement, the following terms shall have the following meanings.

1.1 **Breach.** “Breach” shall have the same meaning as the term “breach” in 45 C.F.R. § 164.402.

1.2 Designated Record Set. “Designated Record Set” shall have the same meaning as the term “designated record set” in 45 C.F.R. § 164.501.

1.3 Electronic Protected Health Information or EPHI. “Electronic Protected Health Information” or “EPHI” shall have the same meaning as the term “electronic protected health information” in 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

1.4 Individual. “Individual” shall mean the person who is the subject of Protected Health Information as provided in 45 C.F.R. § 160.103 and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

1.5 Individually Identifiable Health Information. “Individually Identifiable Health Information” shall have the same meaning as the term “individually identifiable health information” in 45 C.F.R. § 160.103.

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

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

1.8 Secretary. “Secretary” shall mean the Secretary of the federal Department of Health and Human Services or that person’s designee.

1.9 Security Incident. “Security Incident” shall have the same meaning as the term “security incident” in 45 C.F.R. § 164.304.

1.10 Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in 45 C.F.R. § 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

## 2. Permitted Uses and Disclosures by Business Associate.

2.1 General. Except as otherwise specified in this Agreement, Business Associate may use or disclose PHI to perform its obligations for, or on behalf of, Covered Entity provided that Business Associate uses and discloses PHI in the following manner:

2.1.1 consistent with minimum necessary principles, as Required by Law; and

2.1.2. would not violate 45 C.F.R. 164 Subpart E if done by Covered Entity, except as specified in paragraphs 2.2 and 2.3 of this section.

2.2 Other Permitted Uses. Except as otherwise limited by this Agreement, Business Associate may use PHI it receives or creates in its capacity as a business associate of Covered Entity, if necessary:

2.2.1 for the proper management and administration of Business Associate;

2.2.2 to carry out the legal responsibilities of Business Associate; or

2.2.3 to provide Data Aggregation services to Covered Entity which relate to the health care operations of Covered Entity in accordance with the HIPAA Privacy Regulations.

2.3 Other Permitted Disclosures. Except as otherwise limited by this Agreement, Business Associate may disclose to a third party PHI it receives or creates in its capacity as a business associate of Covered Entity for the proper management and administration of Business Associate, provided that:

2.3.1 The disclosure is Required By Law; or

2.3.2 Business Associate obtains reasonable assurances from the third party to whom the information is disclosed that (i) the PHI will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the third party, and (ii) the third party notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

2.4 De-Identified Information. Health information that has been de-identified in accordance with the requirements of 45 C.F.R. §§ 164.514 and 164.502(d) and is therefore not Individually Identifiable Health Information (“De-Identified Information”) is not subject to the provisions of this Agreement. Covered Entity may disclose PHI to Business Associate to use for the purpose of creating De-Identified Information, whether or not the De-Identified Information is to be used by Covered Entity.

### 3. Obligations and Activities of Business Associate Regarding PHI.

3.1 Limitations on Uses and Disclosures. Business Associate will not use or further disclose PHI other than as permitted or required by this Agreement or as Required By Law.

3.2 Safeguards. Business Associate will use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by this Agreement.

3.3 Mitigation. Business Associate will mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate or subcontractor or agent of a Business Associate in violation of the requirements of this Agreement.

3.4 Reporting. Business Associate will report to Covered Entity any use or disclosure of the PHI not provided for by this Agreement of which it becomes aware.

3.5 Agents and Subcontractors. Business Associate will ensure that any agent, including any subcontractor, to whom Business Associate provides PHI that was created for or received from or on behalf of Covered Entity, has executed an agreement containing substantially the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information. Business Associate will ensure only those who reasonably need to know such information in order to perform Services receive such information and, in such case, only the minimum amount of such PHI is disclosed as is necessary for such performance.

3.6 Access. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity, Business Associate will make such PHI available to Covered Entity or, as directed by Covered Entity to an Individual, that is necessary for Covered Entity to respond to Individuals' requests for access to PHI in accordance with 45 C.F.R. § 164.524. Business Associate will provide such PHI in an electronic format upon request by Covered Entity unless it is not readily producible in such format in which case Business Associate will provide Covered Entity a readable electronic format as agreed to by Covered Entity and Individual.

3.7 Amendment of PHI. Where PHI held by Business Associate is contained in a Designated Record Set, within fifteen (15) days of receiving a written request from Covered Entity or an Individual, Business Associate will make any requested amendment(s) or correction(s) to PHI in accordance with 45 C.F.R. § 164.526.

3.8 Disclosure Documentation. Business Associate will document its disclosures of PHI and information related to such disclosures as would be required for 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.

3.9 Accounting of Disclosures. Within thirty (30) days of receiving a request from Covered Entity, Business Associate will provide to Covered Entity information collected in accordance with Section 3.8 of this Agreement, as necessary to permit Covered Entity to make an accounting of disclosures of PHI about an Individual in accordance with 45 C.F.R. § 164.528.

3.10 Access to Business Associate's Internal Practices. Except to the extent that it violates or interferes with attorney-client privilege, the duty of client confidentiality, or the applicable rules of professional responsibility, Business Associate will make its internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of (a) PHI, including EPHI, created, used, disclosed, received, maintained, or transmitted by Business Associate on behalf of, Covered Entity; available to the Secretary or to Covered Entity, in a time and manner designated by the Secretary or reasonably specified by Covered Entity, for purposes of the Secretary determining Business Associate or Covered Entity's compliance with the HIPAA Privacy Regulations and HIPAA Security Regulations.

3.11 Breach Notification. Business Associate, following the discovery of a Breach of Unsecured Protected Health Information, shall notify Covered Entity of such breach. Except as otherwise required by law, Business Associate shall provide such notice without unreasonable delay, and in no case later than thirty (30) calendar days after discovery of the Breach.

3.11.1 Notice to Covered Entity required by this Section 3.11 shall include: (i) to the extent possible, the names of the individual(s) whose Unsecured Protected Health Information has been, or is reasonably believed by Business Associate to have been accessed, acquired, used or disclosed during the Breach; (ii) a brief description of what happened including the date of the Breach and the date of the discovery of the Breach, if known; (iii) a description of the types of Unsecured Protected Health Information that were involved in the Breach; (iv) a brief description of what Business Associate is doing or will be doing to investigate the Breach, to mitigate harm to the individual(s), and to protect against further Breaches; and (v) any other information that Covered Entity determines it needs to include in notifications to the individual(s) under 45 C.F.R. § 164.404(c).

3.11.2 After receipt of notice, from any source, of a Breach involving Unsecured Protected Health Information used, disclosed, maintained, or otherwise possessed by Business Associate or of a Breach, involving Unsecured Protected Health Information, for which the Business Associate is otherwise responsible, Covered Entity may in its sole discretion (i) require Business Associate, at Business Associate's sole expense, to use a mutually agreed upon written notice to notify, on Covered Entity's behalf, the individual(s) affected by the Breach, in accordance with the notification requirements set forth in 45 C.F.R. § 164.404, without unreasonable delay, but in no case later than sixty (60) days after discovery of the Breach; or (ii) elect to provide notice to the individual(s) affected by the Breach.

3.12 Remuneration in Exchange for PHI. Business Associate shall not directly or indirectly receive remuneration in exchange for any PHI unless Covered Entity notifies Business Associate that it obtained a valid authorization from the Individual specifying that the Individual's PHI may be exchanged for remuneration by the entity receiving such Individual's PHI.

3.13 Marketing. Business Associate must obtain or confirm that Covered Entity has obtained an authorization for any use or disclosure of PHI for marketing, as defined in 164.501.

#### 4. Obligations of Covered Entity.

4.1 Limited Disclosure Obligations. Covered Entity will limit the PHI provided to Business Associate to only that necessary to the representation of Covered Entity. Prior to the transmission of PHI to Business Associate, Covered Entity will notify Business Associate of the need to transmit PHI and will arrange with Business Associate for the proper and secure transmission of such PHI.

4.2 Requested Restrictions. Covered Entity shall notify Business Associate, in writing, of any restriction on the use or disclosure of PHI that Covered Entity has agreed to in accordance with 45 C.F.R. § 164.522, which permits an Individual to request certain restrictions

of uses and disclosures, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

4.3 Changes in or Revocation of Permission. Covered Entity will notify Business Associate in writing of any changes in, or revocation of, permission by an Individual to use or disclose PHI, to the extent that such changes or revocation may affect Business Associate's use or disclosure of PHI.

4.4 Permissible Requests by Covered Entity. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the HIPAA Privacy Regulations and HIPAA Security Regulations if done by Covered Entity, except to the extent that Business Associate will use or disclose PHI for Data Aggregation or management and administrative activities and legal responsibilities of Business Associate.

5. Security Restrictions on Business Associate.

5.1 General. Business Associate shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of the EPHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity as required by the HIPAA Security Regulations.

5.2 Agents; Subcontractors. Business Associate will ensure that any agent, including a subcontractor, to whom Business Associate provides EPHI, agrees to implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of such EPHI.

5.3 Reporting of Security Incidents. Business Associate shall report to Covered Entity any Security Incident affecting EPHI created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, of which Business Associate becomes aware. This Section constitutes notice to Covered Entity of routine and ongoing attempts to gain unauthorized access to Business Associate's information systems (each an "Unsuccessful Attack"), including but not limited to pings, port scans, and denial of service attacks, for which no additional notice shall be required provided that no such incident results in unauthorized access to Electronic PHI.

5.4 HIPAA Security Regulations Compliance. Business Associate agrees to comply with Sections 164.306, 164.308, 164.310, 164.312, and 164.316 of title 45, Code of Federal Regulations with respect to all EPHI.

6. Term and Termination.

6.1 Term. This Agreement shall take effect on the Effective Date (as defined below), and shall terminate when all of the PHI disclosed to Business Associate by Covered Entity or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section 6.

6.2 Termination for Cause. If Covered Entity determines that Business Associate has breached a material term of this Agreement, Covered Entity will provide written notice to Business Associate which sets forth Covered Entity's determination that Business Associate breached a material term of this Agreement, and Covered Entity may:

6.2.1 Provide written notice to Business Associate which provides an opportunity for Business Associate to cure the breach or end the violation, as applicable. If Business Associate does not cure the breach or end the violation within the time specified by Covered Entity, then Covered Entity may immediately thereafter terminate this Agreement; or

6.2.2 Immediately terminate this Agreement if Business Associate has breached a material term of this Agreement and cure is not possible.

6.2.3 If neither termination nor cure is feasible as provided in Sections 6.2.1 and 6.2.2 of this Agreement, Covered Entity will report the violation to the Secretary.

6.3 Effect of Termination.

6.3.1 Except as provided in Section 6.3.2 of this Agreement, upon termination of this Agreement, for any reason, Business Associate will return or destroy all PHI received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision also applies to PHI that is in the possession of subcontractors or agents of Business Associate. Business Associate will retain no copies of the PHI.

6.3.2 In the event that Business Associate determines that returning or destroying the PHI is infeasible, Business Associate will provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon reasonable determination that return or destruction of PHI is infeasible, Business Associate will extend the protections of this Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such PHI.

7. Qualified Service Organization Agreement. Covered Entity and Business Associate hereby acknowledge that Business Associate and its agents and employees have, as applicable, complied, and will comply, with 42 USC §290dd-2 and 42 CFR Ch. 1, part 2, §§2.11 et seq. (the "Federal Drug and Alcohol Regulations") in that:

7.1 The parties acknowledge that if Business Associate receives, processes, reviews, or otherwise deals with any Covered Entity patient records during the course of the Services Business Associate and its employees will be providing to Covered Entity, that each and every one of said employees will be fully bound by the Federal Drug and Alcohol Regulations;

7.2 Each of Business Associate's employees and agents will maintain Covered Entity's patient identifying information in accordance with federal and state confidentiality rules governing drug and alcohol treatment records;

7.3 Each of Business Associate's employees and agents will comply, as applicable,



with the limitations on disclosure, redisclosure and use set forth in 42 CFR Ch. 1, part 2, §§ 2.16 and 2.53; and

7.4 If necessary, each of Business Associate's employees and agents will resist in judicial proceedings any efforts to obtain access to patient records except as permitted by the Federal Drug and Alcohol Regulations.

## 8. Miscellaneous.

8.1 Regulatory References. A reference in this Agreement to a section in the HIPAA Privacy Regulations or the HIPAA Security Regulations means the section as in effect or as amended.

8.2 Amendment. If any new state or federal law, rule, regulation, or policy, or any judicial or administrative decision, affecting the use or disclosure of PHI is enacted or issued, including but not limited to any law or regulation affecting compliance with the requirements of the HIPAA Privacy Regulations or the HIPAA Security Regulations, the parties agree to take such action in a timely manner and as is necessary for Covered Entity and Business Associate to comply with such law, rule, regulation, policy or decision. If the parties are not able to agree on the terms of such an amendment, either party may terminate this Agreement on at least thirty (30) days' prior written notice to the other party.

8.3 Survival. The respective rights and obligations of Business Associate under Section 6.3 of this Agreement ("Effect of Termination") shall survive the termination of this Agreement.

8.4 Interpretation. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Privacy Regulations and the HIPAA Security Regulations. The section and paragraph headings of this Agreement are for the convenience of the reader only, and are not intended to act as a limitation of the scope or meaning of the sections and paragraphs themselves.

8.5 No Third Party Beneficiaries. Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person other than Business Associate and Covered Entity and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

8.6 Assignment. This Agreement shall not be assigned or otherwise transferred by either party without the prior written consent of the other, which consent shall not be unreasonably withheld; provided that no such consent shall be required for either party's assignment or transfer of this Agreement in connection with a sale or transfer of all or substantially all of the business or assets of the assigning party. This Agreement shall be binding on and inure to the benefit of the parties hereto and their permitted successors and assigns.

8.7 Entire Agreement. This Agreement constitutes the entire agreement between the parties as to its subject matter and supersedes all prior communications, representations, and agreements, oral or written, of the parties with respect to its subject matter.

8.8 Severability and Waiver. The invalidity of any term or provision of this Agreement will not affect the validity of any other provision. Waiver by any party of strict performance of any provision of this Agreement will not be a waiver of or prejudice any party's right to require strict performance of the same provision in the future or of any other provision of this Agreement.

8.9 Notices. Any notices permitted or required by this Agreement will be addressed as follows or to such other address as either party may provide to the other:

If to Covered Entity: Central City Concern  
Attn: Health and Compliance Officer  
232 NW 6<sup>th</sup> Avenue  
Portland, OR 97209

With Copy To: Central City Concern  
Attn: Director of Legal Affairs  
232 NW 6<sup>th</sup> Avenue  
Portland, OR 97209

If to Business Associate: Name of Business Associate: \_\_\_\_\_

Staff Contact #1

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Website: \_\_\_\_\_

Staff Contact #2

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Mailing Address: \_\_\_\_\_

Phone: \_\_\_\_\_

Fax: \_\_\_\_\_

Email: \_\_\_\_\_

Website: \_\_\_\_\_

8.10 Counterparts. This Agreement may be executed in multiple counterparts, all of which together will constitute one agreement, even though all parties do not sign the same counterpart. Electronic or facsimile transmission of any signed original document, and retransmission of any signed electronic or facsimile transmission, shall be the same as deliver of an original.

8.11 Effective Date. This Agreement will become effective on [REDACTED] or on the first day upon which Business Associate receives PHI from Covered Entity, whichever is earlier (“Effective Date”).

8.12 Venue and Choice of Law.

8.12.1 This Agreement shall be governed by the laws of the State of Oregon, without giving effect to any conflict-of-law principle that would result in the laws of any other jurisdiction governing this Agreement.

8.12.2 Each of the parties submits to the jurisdiction of any state or federal court sitting in Multnomah County, Oregon, in any action or proceeding arising out of or relating to this Agreement and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court.

8.13 Indemnification.

8.13.1 Business Associate shall indemnify and hold Covered Entity, its directors, officers, and employees, agents, and subcontractors (“Indemnified Party”) harmless from and against any and all actual losses, liabilities, fines, penalties, costs and expenses (including reasonable attorneys’ fees) arising out of, in whole or in part, or related to a breach of this Agreement that is caused by the acts or omissions of Business Associate or any of its employees, officers, directors, agents or contractors. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

8.13.2 Covered Entity shall indemnify and hold Business Associate, its directors, officers, and employees, agents, and subcontractors (“Indemnified Party”) harmless from and against any and all actual losses, liabilities, fines, penalties, costs and expenses (including reasonable attorneys’ fees) arising out of, in whole or in part, or related to a breach of this Agreement that is caused by the acts or omissions of Covered Entity or any of its employees, officers, directors, agents or contractors. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

8.14 Penalties. Business Associate shall be responsible for the full cost of all civil and criminal penalties assessed upon Business Associate as a result of the failure of Business Associate, its officers, directors, employees, contractors or agents to comply with this Agreement. This obligation shall survive the expiration or termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have caused this BUSINESS ASSOCIATE AGREEMENT to be duly executed as of the Effective Date.

**Central City Concern**

**[BUSINESS ASSOCIATE NAME]**

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

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

**Name:** \_\_\_\_\_

**Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Title:** \_\_\_\_\_

DRAFT