

Department of Mental Health  
**TRANSMITTAL LETTER**

<b>SUBJECT</b> Inter-agency and Intra-agency Agreements		
<b>POLICY NUMBER</b> DMH Policy 801.1	<b>DATE</b> AUG 01 2005	<b>TL#</b> 76

**Purpose.** To describe the procedures for developing, controlling, and managing two types of documents used by DMH to memorialize inter-agency and intra-agency agreements: (1) memoranda of understanding, and (2) memoranda of agreement.

**Applicability.** Applies to those formal written agreements which DMH enters into with other District, federal agencies, or private entities (memoranda of understanding) and those that DMH components (MHA, DCCSA, and SEH) enter into with each other (memoranda of agreement) to supply, obtain, or share services, supplies, equipment, or staff.

**Policy Clearance.** Reviewed by affected responsible staff and cleared through appropriate MHA offices.

**Implementation Plans.** A plan of action to implement or adhere to this policy must be developed by designated responsible staff. If materials and/or training are required to implement this policy, these requirements must be part of the action plan. Specific staff should be designated to carry out the implementation and program managers are responsible for following through to ensure compliance. Action plans and completion dates should be sent to the appropriate authority. Contracting Officer Technical Representatives (COTRs) must also ensure that contractors are informed of this policy if it is applicable or pertinent to their scope of work. *Implementation of all DMH policies shall begin as soon as possible. Full implementation of this policy shall be completed within sixty (60) days after the date of this policy.*

**Policy Dissemination and Filing Instructions.** Managers/supervisors of DMH must ensure that staff are informed of this policy. Each staff person who maintains policy manuals must ensure that this policy is filed in the **DMH** Policy and Procedures Manual.

\*If any CMHS or DMH policies are referenced in this policy, copies may be obtained from the DMH Policy Support Division by calling (202) 673-7757.

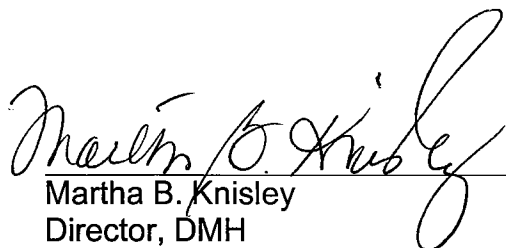
**ACTION**


**REMOVE AND DESTROY**

8010.1, Interagency and Intra-Agency Agreements

**INSERT**

DMH Policy 801.1

  
\_\_\_\_\_  
Martha B. Knisley  
Director, DMH

GOVERNMENT OF THE DISTRICT OF COLUMBIA  <b>DEPARTMENT OF MENTAL HEALTH</b>	<b>Policy No.</b> <b>801.1</b>	<b>Date</b> AUG 01 2005	<b>Page 1</b>
	<b>Supersedes</b> <b>8010.1, Interagency and Intra-Agency Agreements</b>		
<b>Subject: Inter-agency and Intra-agency Agreements</b>			

1. **Purpose.** To describe the procedures for developing, controlling, and managing two types of documents used by DMH to memorialize inter-agency and intra-agency agreements: (1) memoranda of understanding, and (2) memoranda of agreement.

2. **Applicability.** Applies to those formal written agreements which DMH enters into with other District, federal agencies, or private entities (memoranda of understanding) and those that DMH components (MHA, DCCSA, and SEH) enter into with each other (memoranda of agreement) to supply, obtain, or share services, supplies, equipment, or staff.

3. **Authority.** Mental Health Service Delivery Reform Act of 2001.

4. **Definitions.**

4a. Memoranda of Agreement (MOA) – a written intra-agency agreement used to describe the arrangements between DMH components (MHA, DCCSA, or SEH). A MOA outlines the established terms and requirements for staffing, services, or supplies relating to the operation of a specific program or programs.

4b. Memoranda of Understanding (MOU) - a written inter-agency agreement used to describe the arrangements between two or more government agencies (either District, federal agencies, or private entities) that outlines the established terms and requirements for staffing, services or supplies relating to the operation of a specific program or programs. An MOU with another District agency may or may not involve an Intra-District Transfer of Funds.

4c. MHA – Mental Health Authority.

4d. DCCSA - DC Community Services Agency.

4e. SEH – Saint Elizabeths Hospital.

5. **Responsibilities.**

5a. **Ownership and Development.**

(1) Unless initiated by the DMH Director, responsibility for MOUs and MOAs rests with the respective executive level manager (CEO at DCCSA and SEH, MHA deputy directors, and MHA senior staff in the Director's office, as applicable) who have purview over the program which initiates an MOU or MOA. However, responsibility for carrying out the requirements of the MOU or MOA or serving as contact person may be redelegated by the executive level manager to other program staff.

(2) The agency or MHA office within DMH that is responsible for managing/monitoring/overseeing/implementing DMH's responsibilities under a MOU is charged with developing, drafting, negotiating, finalizing, and renewing the MOU. (Responsibility for an MOU, for example, between DMH and the DC public schools "belongs" to the DMH Office of Policy and Planning, Division of Child and Youth Services. The same is true for DMH programs that establish intra-agency agreements (MOAs) between DMH components.

5b. All MOUs and MOAs must be reviewed and determined legally sufficient by the DMH Office of General Counsel.

5c. MOUs involving the transfer or receipt of Intra-District Funds must have funds transferred by the DMH Fiscal Officer after the MOU has been approved. The responsible manager shall ensure that funds are available prior to entering into the MOU.

## 6. Procedures.

### 6a. The Responsible Manager shall:

(1) **Prepare** a draft of the MOU by using the format in Exhibit 1 when the MOU involves Intra-District Transfer of Funds, or use Exhibit 2 when the MOU does not involve Intra-District Transfer of Funds. The worksheet in Exhibit 3 was developed to *assist* the responsible manager to accurately describe the basic terms of the agreement that must be incorporated into the draft MOU.

(2) **Prepare** a draft of the MOA by using the format in Exhibit 4 when the document being completed is an intra-agency agreement between DMH components (MHA, DCCSA, or SEH).

(3) **Consult** with the DMH Fiscal Officer regarding funding and, as needed, with other appropriate DMH managers (Director of Human Resources, etc.) or other government officials, as well as representatives of the other party to the MOU or MOA, during development of the draft MOU or MOA, as applicable.

(4) **Identify** source of funding and verify availability before entering into an MOU that involves costs, since the DMH Fiscal Officer can only transfer funds after the MOU is approved and signed. (See Section 6a(3) above regarding consultation with the DMH Fiscal Officer; and see Section 6a(10) below for costs related to MOAs.)

(5) **Forward** an electronic copy of the draft MOU or MOA to the Office of the General Counsel for review, comment, and for determination of legal sufficiency.

(6) **Make** any necessary revisions to the draft MOU or MOA upon receipt of comments or questions from the Office of the General Counsel.

(7) **Forward** an electronic copy of the revised final version of the MOU or MOA back to the Office of the General Counsel for certification of legal sufficiency by obtaining his/her signature on the MOU or MOA.

(8) Next, **obtain** the signature of the DMH Director on the final MOU (see Section 7a below) and if required, on the MOA (see Section 7b below).

(9) After the MOU is approved by both parties to the agreement (director of each department or designees), **forward** the approved MOU to the DMH Fiscal Officer if there is an Intra-District Transfer of Funds involved so that funds can be transferred (if DMH is transferring funds), and that the necessary accounting procedures are in place to transfer or accept funds. Also, **obtain** the signature of the DMH Fiscal Officer on the MOU.

(10) After a MOA has been approved, **submit** a memorandum along with supporting documentation to the DMH Fiscal Officer addressing any required financial transactions (e.g., transfer of costs), as applicable.

(11) **Provide** copies of the fully signed MOU or MOA to the DMH Director and the other signatories.

6b. The DMH Office of General Counsel shall:

- **Review and determine** whether the draft MOU or MOA is legally sufficient.
- **Forward** comments or questions to the responsible manager when the MOU or MOA is not legally sufficient so that necessary revisions can be made and returned for signature.
- **Sign and attest** to the legal sufficiency of the final MOU or MOA, and return the MOU or MOA to the manager who generated it.

6c. The DMH Fiscal Officer shall:

- **Provide** information to managers regarding funding sources as requested during development of a MOU.
- **Complete** any necessary accounting procedures to transfer or receive funds, **transfer** funds based on the MOU approved by both department directors/designees, **sign** the MOU and return to the responsible manager.
- **Perform** necessary financial transactions related to approved MOAs as requested by the responsible manager.

7. **Approval.**

7a. The DMH Director will sign off on all MOUs for the DMH, unless signatory authority is specifically delegated by the DMH Director to an executive level manager (CEO at DCCSA or SEH, an MHA deputy director, or MHA senior staff member in the Director's office).

7b. MOAs will generally be signed only by the affected CEO or MHA executive level manager since the MOAs are internal to DMH. During legal sufficiency review of the MOA, the Office of General Counsel will consult with the DMH Director to determine if the Director needs to sign off on the MOA. If not, the Director's signature block should be deleted from the MOA form.

7c. The Director shall sign the MOU or MOA only if the DMH Office of General Counsel has determined the document to be legally sufficient.

8. **Monitoring and Oversight.** All MOUs and MOAs shall be monitored by the responsible manager for implementation of activities as delineated within the MOU or MOA.

8a. The Responsible Manager shall:

- **Monitor** the services performed by the District, federal agency, or private entity in compliance with the MOU requirements; and **ensure** that DMH meets its obligations under MOUs and MOAs;
- **Serve** as contact for the MOU or MOA;
- **Submit** quarterly status reports to the DMH Fiscal Officer on financial activities of the arrangement, and **maintain** sufficient documentation of these activities in file; and
- **Provide** reports to the DMH Director and other interested parties at least quarterly or more frequently as requested by the Director that identify progress to date in line with the MOU or MOA, barriers to implementation, and other issues significant to the conduct of activities.

8b. The DMH Fiscal Officer. When Intra-District Transfer of Funds are involved, the DMH Fiscal Officer shall:

- **Monitor** all financial aspects of the arrangement, and
- **Provide** instructions to the responsible manager on information to be included in the quarterly financial status reports.

9. **Renewal.** The responsible manager shall renew the MOU or MOA at least ninety (90) days prior to the expiration of the term of the arrangement if it is to be renewed. An MOU or MOA can be extended by a simple one page agreement or it can be totally revised and a new agreement entered into if there are substantial changes in terms. The same approvals for the original MOU or MOA are required on renewals. (See Section 6a(7), (8) and (9))

10. **Termination Procedures.** The responsible manager shall submit a final progress report to facilitate the close of the MOU or MOA within thirty (30) days of the date of expiration of the MOU or MOA. This report shall be submitted to all signatories on the original MOU or MOA and to the respective executive level manager (CEO or MHA deputy director) over the program that initiated the MOU or MOA.

The DMH Fiscal Officer in conjunction with the responsible manager shall review expenditure documentation, as applicable, to ensure that all financial activities have been completed appropriately and the expenditures are reflected properly in DMH accounts.

11. **Non DMH Agreements.** A MOU originating outside of the DMH does not have to follow the DMH format precisely, but responsible managers must review to ensure that the key elements are included: introduction, authority, services and scope of work, responsibilities of each party, term of the agreement (reasons for termination), funding provisions and privacy compliance if applicable. All MOUs, including those originating outside DMH require a legal sufficiency review by the Office of the General Counsel and, if the transfer of funds is required, review by the DMH Fiscal Officer to ensure that DMH has taken required actions to comply with the District's requirements for Intra-District Transfers of Funds.

12. Inquiries. Inquiries regarding this policy may be addressed to the DMH Office of General Counsel.

Exhibits are as follows: (Information on these exhibits is addressed in Section 6a(1) & (2) of the policy.)

Exhibit 1 – MOU Regarding **Intra-District Funding** Between the DMH and *Other District/Federal Agency*

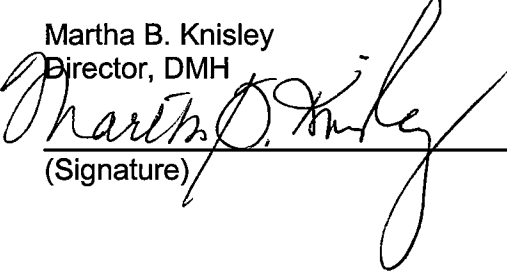
Exhibit 2 – MOU Between the DMH and *Other District/Federal Agency*

Exhibit 3 - Worksheet for Developing a MOU

Exhibit 4 – Memorandum of Agreement Between *DMH Components*

Approved by:

Martha B. Knisley  
Director, DMH

  
(Signature)

8/1/05  
(Date)

**MEMORANDUM OF UNDERSTANDING  
REGARDING INTRA-DISTRICT FUNDING  
BETWEEN THE DEPARTMENT OF MENTAL HEALTH AND**

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**REGARDING**

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1. **Introduction.**

This Memorandum of Understanding Regarding \_\_\_\_\_ (“Agreement”) is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “Effective Date”) by and between the District of Columbia Department of Mental Health (“DMH”) [Mental Health Authority (“MHA”)/Saint Elizabeths Hospital (the “Hospital”)/District of Columbia Community Services Agency (“DCCSA”) and \_\_\_\_\_ (“DXX”) (collectively sometimes referred to as the “Parties” and each individually sometimes referred to as a “Party”). *[Note: When preparing MOUs involving either the Hospital or the DCCSA, it may be necessary to change some of the references to DMH that are found throughout this MOU to either the Hospital or to the DCCSA, in order to clearly describe the obligations of the parties. The reference to DMH in the Introduction and paragraph 2, the authority of the Parties needs to be included in all MOUs]. (It is not necessary to list the components of DMH in the description of DMH in section 1 or in section 2, if not relevant to the terms of the agreement.)*

2. **Authority of the Parties.**

A. **Authority of DMH.** DMH is the agency within the Government of the District of Columbia (the “District”) responsible for developing a system of care for persons with mental illness *[conform DMH purpose to those set forth in the Establishment Act. Note that the Act includes requirements that DMH operate Saint Elizabeths Hospital and that it operate a core services agency].* DMH operates in accordance with the requirements of the Mental Health Establishment Amendment Act of 2001 (the “Act”) which is required to be construed in a manner consistent with all outstanding orders of the United States District Court in Dixon, et al. v. Williams, et al., including the Final Plan adopted by the District Court in its April 2, 2001 order (the “Dixon Plan”). The Act and the Dixon Plan *[authorize or require]* DMH to *[specify the work that DMH is authorized or required to perform relating to the development of the system of care or other authorized purpose which is covered or affected by the MOU]. [Note that the Dixon Plan also includes requirements for the operation of Saint Elizabeths Hospital and the DC Community Services Agency.]*

B. **Authority of DXX.** DXX is the agency within the District or federal government (or private entity) responsible for *[specify the agency purpose as described in its enabling legislation that relates to the work that DXX will be performing in connection with the MOU].* DXX operates in accordance with the requirements of the *[specify the name of DXX’s enabling legislation]* (the “\_\_\_\_\_ Act”). The \_\_\_\_\_ Act *[authorizes or requires]* DXX to *[identify the specific work that DXX is authorized or required to perform which is covered or affected by the MOU].*

3. **Overview, Program Goals and Objectives.**

DMH/DXX has a critical need for \_\_\_\_\_. *[Specify the services that are being provided and the reason that the services are needed. If the purpose of providing the services is to further a specified DMH goal, including achievement of the exit criteria, affirmatively state that in this section.]*

4. **Services and Scope of Work.**

In order to achieve the goals and objectives described in paragraph 3 of this MOU, DMH and DXX have agreed that DMH shall provide \_\_\_\_\_ as further described in paragraph 4.A below. DMH and DXX have further agreed that DXX shall provide \_\_\_\_\_ as further described in paragraph 4.B below.

A. **Obligations and Responsibilities of DMH.**

DMH shall be responsible for *[describe DMH's general obligations and responsibilities under the MOU.]*

1. **Contact Person.** \_\_\_\_\_ (name and title) shall be the DMH employee responsible for managing the DMH staff and resources identified to provide the services required by this MOU. *[include the telephone number, fax number, email address, and mailing address for the contact person if different from the person who will receive notice under the MOU.]*

2. **Staffing.** DMH shall provide \_\_\_\_\_ full-time/part-time staff to provide the services required by this MOU. *[include details about staff qualifications, degrees, credentials, number of hours that will be devoted to the performance of duties relating to the MOU.]*

3. **Resources.** DMH shall provide the following resources to fulfill its obligations under this MOU:

- 3.1 Resource A.
- 3.2 Resource B.
- 3.3 Resource C.

4. **Services.** DMH shall provide the following services to DXX:

- 4.1 Service A
- 4.2 Service B
- 4.3 Service C

5. **Program and Financial Records.** DMH shall maintain program and financial records regarding the services provided under this MOU at \_\_\_\_\_. DMH shall retain a copy of all books, records, documents and



other documents pertaining to the services provided under this MOU, in such detail as will properly reflect all costs, direct and indirect, labor, materials, equipment, supplies and other items for a three (3) year period after the termination of this MOU, except that in the case of an audit or investigation relating to the services provided under this MOU, records shall be retained until the audit or investigation has been completed.

**B. Obligations and Responsibilities of DXX.**

DXX shall be responsible for *[describe DXX's general obligations and responsibilities under the MOU.]*

1. Contact Person. (name and title)\_\_\_\_\_ shall be the DXX employee responsible for managing the DXX staff and resources identified to provide the services required by this MOU. *[include the telephone number, fax number, email address, and mailing address for the contact person if different from the person who will receive notice under the MOU.]*

2. Staffing. DXX shall provide \_\_\_\_\_ full-time/part-time staff to provide the services required by this MOU. *[include details about staff qualifications, degrees, credentials, number of hours that will be devoted to the performance of duties relating to the MOU.]*

3. Resources. DXX shall provide the following resources to fulfill its obligations under this MOU:

- 3.1 Resource A.
- 3.2 Resource B.
- 3.3 Resource C.

4. Services. DXX shall provide the following services to DMH:

- 4.1 Service A
- 4.2. Service B
- 4.3. Service C

5. Program and Financial Records. DXX shall maintain program and financial records regarding the services provided under this MOU at \_\_\_\_\_. DXX shall retain a copy of all books, records, documents and other documents pertaining to the services provided under this MOU, in such detail as will properly reflect all costs, direct and indirect, labor, materials, equipment, supplies and other items for a three (3) year period after the termination of this MOU, except that in the case of an audit or investigation relating to the services provided under this MOU, records shall be retained until the audit or investigation has been completed.

6. Reporting/Incident Reports. DXX shall provide DMH with periodic *[weekly, monthly, quarterly]* reports regarding the services provided under this MOU

within \_\_\_ days after the end of each week/month/quarter. DXX shall also comply with DMH's policy regarding reporting of unusual and major unusual incidents with respect to the reporting of accidents and injuries incurred by DMH-enrolled consumers during the receipt of services from DXX.

C. **Mutual Obligations of DMH and DXX.**

The Parties shall do everything within their respective powers to coordinate and cooperate with each other toward the mutual goal of compliance with all applicable federal and District laws.

5. **Term of Agreement.**

The term of this Agreement shall begin on the Effective Date and end on September 30, 200\_\_, unless terminated sooner in accordance with the provisions of paragraph 8 on Termination. This Agreement may be renewed for subsequent, consecutive fiscal year terms by the mutual written agreement of the Parties.

6. **Intra-District Funding Provisions.**

A. **Cost of Services.**

The estimated cost of services that will be provided under this MOU is \$\_\_\_\_\_. This estimate is based upon the following:

1. The number of consumers affected;
2. The amount of material, office supplies/equipment/space required;
3. The salaries of staff involved; and
4. Any other applicable costs.

B. **Funds.**

DXX/DMH shall transfer funds in the amount of \_\_\_\_\_ to cover the cost of \_\_\_\_\_ after the MOU is approved.

C. **Denial of Payment.**

DMH/DXX reserves the right to deny payment to DXX/DMH for services not provided by DXX/DMH pursuant to the terms of this MOU.

D. **Monthly Review.**

Pursuant to the Financial Review Process ("FRP") mandated by the Office of the Chief Financial Officer of the District of Columbia, all services provided under this MOU shall be reported

monthly in the Purchasing Agency FRP submission to the Office of Budget and Planning by DMH/DXX.

E. **Dispute Resolution.**

The Parties shall work diligently and in good faith to strengthen inter-agency collaboration to provide \_\_\_\_\_ *[insert a brief description of the activities covered by the MOU]* in the District. Disputes that can not be resolved between the representatives from DMH and DXX directly involved in the activities covered by this MOU shall be referred to the Director of DMH and the Director of DXX. The decision of the Directors shall be binding. If the Directors can not resolve the issues arising under this MOU, all adjustments and/or disputes shall be resolved by the D.C. Office of Financial Operations and Systems.

7. **Privacy Compliance.**

DMH and DXX shall, at various times during the duration of this Agreement, each act as a "covered entity" and as each other's "business associate," as those terms are defined in 45 CFR 160.103. DMH and DXX shall comply with the requirements of the "Reciprocal Covered Entity and Business Associate Clause", which is marked as Exhibit A and incorporated herein by reference. The obligations of DMH and DXX under the Reciprocal Covered Entity and Business Associate Clause shall be dictated by the role of each Party in connection with any particular interaction. *[This paragraph can be removed from an MOU that does not involve the exchange of protected health information, and the remaining paragraphs renumbered accordingly.]*

8. **Termination.**

This Agreement may be terminated by either Party for the following reasons:

- 8.1 Lack of funding;
- 8.2 Lack of Congressionally approved budget;
- 8.3 Changes in applicable law;
- 8.4 Changes in a District or federal policy affecting the services described in this Agreement;
- 8.5 Changes in the structure or the nature of the program covered by this MOU;
- 8.6 Elimination of the program or services covered by this MOU; or
- 8.7 Failure of the other Party to comply with District laws, rules or regulations.

9. **Notices.**

Any notice required pursuant to this Agreement shall be in writing and shall be deemed to have been delivered and given for all purposes (a) on the delivery date if delivered by confirmed facsimile or delivered personally to the Party to whom the notice is addressed; (b) one (1) business day after deposit with a commercial overnight carrier with written verification of receipt; or (c) five (5) business days after the mailing date, whether or not actually received, if sent by US Mail, return receipt requested, postage and charges prepaid or any other means of

rapid mail delivery for which a receipt is available. Notice shall be sent to the following addresses:

DXX:

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Telephone: (202) \_\_\_\_\_  
 Facsimile: (202) \_\_\_\_\_  
 Email: \_\_\_\_\_  
 Attention: \_\_\_\_\_

Department of Mental Health:

64 New York Avenue, NE  
 4<sup>th</sup> Floor  
 Washington, DC 20002  
 Telephone: (202) 67 \_\_\_\_\_  
 Facsimile: (202) 67 \_\_\_\_\_  
 Email: \_\_\_\_\_@dc.gov  
 Attention: *[Name and title of Person Responsible for MOU][Note: the address and contact information should be changed to that of the Hospital, the DCCSA, or MHA deputy director or senior staff, as appropriate.]*

10. **Term.**

This MOU shall take effect on the Effective Date and shall remain in effect until terminated by one party or by mutual agreement, in accordance with paragraph 8, above. Either Party may terminate this MOU at any time, upon ninety (90) days written notice to the other Party.

11. **Entire Agreement.**

This MOU contains the entire understanding of the Parties with respect to the matters contained herein, and supercedes any and all other agreements between the parties relating to the matters contained herein. No oral or written statements not specifically incorporated or referenced herein shall be of any force or effect.

12. **Modifications.**

This MOU may only be amended by a written instrument signed by both Parties.

13. **Headings; Counterparts.**

The headings in this MOU are for purposes of reference only and shall not limit or define the meaning of any provision hereof. This MOU may be executed in any number of counterparts,

each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

**14. No Joint Venture or Third Party Beneficiaries.**

Nothing contained in this MOU shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between the Parties except as specifically stated herein. This MOU is made for the benefit of the parties hereto and not for the benefit of any third party.

**15. Notice of Claims.**

Each Party shall promptly inform the other Party of any information related to the provision of services under this MOU, which could reasonably lead to a claim, demand or liability of or against the other Party or the District by any third party.

**16. Authority of the Parties.**

By executing this MOU, each Party represents to the other party that it is authorized to enter into this Agreement, that the person signing on its behalf is duly authorized to execute this MOU and that no other signatures are necessary.

**IN WITNESS WHEREOF**, the undersigned hereby execute this MOU on behalf of their respective organizations as of the Effective Date.

Director, DXX	Director, Department of Mental Health <sup>1</sup>
_____	_____
Name	Name
_____	_____
Signature	Signature

**APPROVED AS TO LEGAL SUFFICIENCY**

**APPROVED AS TO LEGAL SUFFICIENCY**

\_\_\_\_\_  
Signature of General Counsel  
DXX

\_\_\_\_\_  
Signature of General Counsel  
Department of Mental Health

<sup>1</sup> If signatory authority is specifically delegated by the DMH Director to the respective CEO at DCCSA or SEH, or a MHA deputy director, or MHA senior staff member in the Director's office, then the block for the DMH Director must be revised to reflect that manager's name and title. Note that all MOUs require legal sufficiency review by the Office of the General Counsel, and if funding is involved the manager shall verify with the Chief Financial Officer that funds are available prior to entering into a MOU.

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AUG 01 2005

**DMH Policy 801.1**

Exhibit 1-6a(1)

Page 8 of 8

**Transfer of Funds by DXX/DMH After MOU Approval.**

DXX/DMH shall transfer \_\_\_\_\_ dollars (\$ \_\_\_\_\_) to DMH/DXX through an Intra-District Budget Modification as invoiced by DMH/DXX and approved by DXX/DMH within \_\_\_\_ days after the Effective Date of this MOU.

\_\_\_\_\_  
Signature of Chief Financial Officer /Date  
DXX

\_\_\_\_\_  
Signature of Chief Financial Officer/Date  
Department of Mental Health

**MEMORANDUM OF UNDERSTANDING**  
**BETWEEN THE DEPARTMENT OF MENTAL HEALTH AND**  


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**REGARDING**

(THIS MOU **DOES NOT** CONTAIN FUNDS TRANSFER PROVISIONS)

1. **Introduction.**

This Memorandum of Understanding Regarding \_\_\_\_\_ (“MOU”) is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (the “Effective Date”) by and between the District of Columbia Department of Mental Health (“DMH”) [Mental Health Authority (“MHA”)/Saint Elizabeths Hospital (the “Hospital”)/District of Columbia Community Services Agency (“DCCSA”) and \_\_\_\_\_ (“DXX”) (collectively sometimes referred to as the “Parties” and each individually sometimes referred to as a “Party”). *[Note: When preparing MOUs involving either the Hospital or the DCCSA, it may be necessary to change some of the references to DMH that are found throughout this MOU to either the Hospital or to the DCCSA, in order to clearly describe the obligations of the parties. The reference to DMH in the Introduction and paragraph 2, the authority of the Parties needs to be included in all MOUs]. ( It is not necessary to list the components of DMH in the description of DMH in section 1 or in section 2, if not relevant to the terms of the agreement.)*

2. **Authority of the Parties.**

**A. Authority of DMH.** DMH is the agency within the Government of the District of Columbia (the “District”) responsible for developing a system of care for persons with mental illness *[conform DMH purpose to those set forth in the Establishment Act. Note that the Act includes requirements that DMH operate Saint Elizabeths Hospital and that it operate a core services agency].* DMH operates in accordance with the requirements of the Mental Health Establishment Amendment Act of 2001 (the “Act”) which is required to be construed in a manner consistent with all outstanding orders of the United States District Court in Dixon, et al. v. Williams, et al., including the Final Plan adopted by the District Court in its April 2, 2001 order (the “Dixon Plan”). The Act and the Dixon Plan *[authorize or require] DMH to [specify the work that DMH is authorized or required to perform relating to the development of the system of care or other authorized purpose which is covered or affected by the MOU]. [Note that the Dixon Plan also includes requirements for the operation of Saint Elizabeths Hospital and the DC Community Services Agency.]*

**B. Authority of DXX.** DXX is the agency within the District or federal government (or private entity) responsible for *[specify the agency purpose as described in its enabling legislation that relates to the work that DXX will be performing in connection with the MOU].* DXX operates in accordance with the requirements of the *[specify the name of DXX’s enabling legislation]* (the “\_\_\_\_\_ Act”). The \_\_\_\_\_ Act *[authorizes or requires] DXX to [identify the specific work that DXX is authorized or required to perform which is covered or affected by the MOU].*

3. **Overview, Program Goals and Objectives.**

DMH/DXX has a critical need for \_\_\_\_\_. *[Specify the services that are being provided and the reason that the services are needed. If the purpose of providing the services is to further a specified DMH goal, including achievement of the exit criteria, affirmatively state that in this section.]*

4. **Services and Scope of Work.**

In order to achieve the goals and objectives described in paragraph 3 of this MOU, DMH and DXX have agreed that DMH shall provide \_\_\_\_\_ as further described in paragraph 4.A below. DMH and DXX have further agreed that DXX shall provide \_\_\_\_\_ as further described in paragraph 4.B below.

A. **Obligations and Responsibilities of DMH.**

DMH shall be responsible for *[describe DMH's general obligations and responsibilities under the MOU.]*

1. **Contact Person.** \_\_\_\_\_ (name and title) \_\_\_\_\_ shall be the DMH employee responsible for managing the DMH staff and resources identified to provide the services required by this MOU. *[include the telephone number, fax number, email address, and mailing address for the contact person if different from the person who will receive notice under the MOU.]*

2. **Staffing.** DMH shall provide \_\_\_\_\_ full-time/part-time staff to provide the services required by this MOU. *[include details about staff qualifications, degrees, credentials, number of hours that will be devoted to the performance of duties relating to the MOU.]*

3. **Resources.** DMH shall provide the following resources to fulfill its obligations under this MOU:

- 3.1 Resource A.
- 3.2 Resource B.
- 3.3 Resource C.

4. **Services.** DMH shall provide the following services to DXX:

- 4.1 Service A
- 4.2 Service B
- 4.3 Service C

5. **Program and Financial Records.** DMH shall maintain program and financial records regarding the services provided under this MOU at \_\_\_\_\_. DMH shall retain a copy of all books, records, documents and



other documents pertaining to the services provided under this MOU, in such detail as will properly reflect all costs, direct and indirect, labor, materials, equipment, supplies and other items for a three (3) year period after the termination of this MOU, except that in the case of an audit or investigation relating to the services provided under this MOU, records shall be retained until the audit or investigation has been completed.

**B. Obligations and Responsibilities of DXX.**

DXX shall be responsible for [describe DXX's general obligations and responsibilities under the MOU.]

1. Contact Person. (name and title)\_\_\_\_\_ shall be the DXX employee responsible for managing the DXX staff and resources identified to provide the services required by this MOU. *[include the telephone number, fax number, email address, and mailing address for the contact person if different from the person who will receive notice under the MOU.]*

2. Staffing. DXX shall provide \_\_\_\_\_ full-time/part-time staff to provide the services required by this MOU. *[include details about staff qualifications, degrees, credentials, number of hours that will be devoted to the performance of duties relating to the MOU.]*

3. Resources. DXX shall provide the following resources to fulfill its obligations under this MOU:

- 3.1 Resource A.
- 3.2 Resource B.
- 3.3 Resource C.

4. Services. DXX shall provide the following services to DMH:

- 4.1 Service A
- 4.2 Service B
- 4.3 Service C

5. Program and Financial Records. DXX shall maintain program and financial records regarding the services provided under this MOU at \_\_\_\_\_. DXX shall retain a copy of all books, records, documents and other documents pertaining to the services provided under this MOU, in such detail as will properly reflect all costs, direct and indirect, labor, materials, equipment, supplies and other items for a three (3) year period after the termination of this MOU, except that in the case of an audit or investigation relating to the services provided under this MOU, records shall be retained until the audit or investigation has been completed.

6. Reporting/Incident Reports. DXX shall provide DMH with periodic *[weekly, monthly, quarterly]* reports regarding the services provided under this MOU

within \_\_\_ days after the end of each week/month/quarter. DXX shall also comply with DMH's policy regarding reporting of unusual and major unusual incidents with respect to the reporting of accidents and injuries incurred by DMH-enrolled consumers during the receipt of services from DXX.

C. **Mutual Obligations of DMH and DXX.**

The Parties shall do everything within their respective powers to coordinate and cooperate with each other toward the mutual goal of compliance with all applicable federal and District laws.

5. **Term of MOU.**

The term of this MOU shall begin on the Effective Date and end on \_\_\_\_\_, (if no costs are involved, does not have to be linked to the fiscal year) unless terminated sooner in accordance with the provisions of paragraph 7 on Termination. This MOU may be renewed for a subsequent, consecutive one (1) year term by the mutual written agreement of the Parties.

6. **Privacy Compliance.**

DMH and DXX shall, at various times during the duration of this MOU, each act as a "covered entity" and as each other's "business associate," as those terms are defined in 45 CFR 160.103. DMH and DXX shall comply with the requirements of the "Reciprocal Covered Entity and Business Associate Clause", which is marked as Exhibit A and incorporated herein by reference. The obligations of DMH and DXX under the Reciprocal Covered Entity and Business Associate Clause shall be dictated by the role of each Party in connection with any particular interaction. *[This paragraph can be removed from an MOU that does not involve the exchange of protected health information, and the remaining paragraphs renumbered accordingly.]*

7. **Termination.**

This MOU may be terminated by either Party for the following reasons:

- 7.1 Lack of funding;
- 7.2 Lack of Congressionally approved budget;
- 7.3 Changes in applicable law;
- 7.4 Changes in a District or federal policy affecting the services described in this MOU;
- 7.5 Changes in the structure or the nature of the program covered by this MOU;
- 7.6 Elimination of the program or services covered by this MOU; or
- 7.7 Failure of the other Party to comply with District laws, rules or regulations.

8. **Notices.**

Any notice required pursuant to this MOU shall be in writing and shall be deemed to have been delivered and given for all purposes (a) on the delivery date if delivered by confirmed facsimile or delivered personally to the Party to whom the notice is addressed; (b) one (1) business day

after deposit with a commercial overnight carrier with written verification of receipt; or (c) five (5) business days after the mailing date, whether or not actually received, if sent by US Mail, return receipt requested, postage and charges prepaid or any other means of rapid mail delivery for which a receipt is available. Notice shall be sent to the following addresses:

DXX:

\_\_\_\_\_  
\_\_\_\_\_  
Telephone: (202) \_\_\_\_\_  
Facsimile: (202) \_\_\_\_\_  
Email: \_\_\_\_\_  
Attention: \_\_\_\_\_

Department of Mental Health:

64 New York Avenue, NE  
4<sup>th</sup> Floor  
Washington, DC 20002  
Telephone: (202) 67 \_\_\_\_\_  
Facsimile: (202) 67 \_\_\_\_\_  
Email: \_\_\_\_\_@dc.gov  
Attention: *[Name and title of Person Responsible for MOU][Note: the address and contact information should be changed to that of the Hospital, the DCCSA, or MHA deputy director or senior staff, as appropriate.]*

9. **Term.**

This MOU shall take effect on the Effective Date and shall remain in effect until terminated by one party or by mutual agreement, in accordance with paragraph 7 above. Either Party may terminate this MOU at any time, upon ninety (90) days written notice to the other Party.

10. **Entire Agreement.**

This MOU contains the entire understanding of the Parties with respect to the matters contained herein, and supercedes any and all other agreements between the parties relating to the matters contained herein. No oral or written statements not specifically incorporated or referenced herein shall be of any force or effect.

11. **Modifications.**

This MOU may only be amended by a written instrument signed by both Parties.

12. **Headings; Counterparts.**

The headings in this MOU are for purposes of reference only and shall not limit or define the meaning of any provision hereof. This MOU may be executed in any number of counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same document.

13. **No Joint Venture or Third Party Beneficiaries.**

Nothing contained in this MOU shall be deemed or construed by the Parties or by any third party to create the relationship of principal and agent, partnership, joint venture or any association between the Parties except as specifically stated herein. This MOU is made for the benefit of the parties hereto and not for the benefit of any third party.

14. **Notice of Claims.**

Each Party shall promptly inform the other Party of any information related to the provision of services under this MOU, which could reasonably lead to a claim, demand or liability of or against the other Party or the District by any third party.

15. **Authority of the Parties.**

By executing this MOU, each Party represents to the other party that it is authorized to enter into this MOU, that the person signing on its behalf is duly authorized to execute this MOU and that no other signatures are necessary.

**IN WITNESS WHEREOF**, the undersigned hereby execute this MOU on behalf of their respective organizations as of the Effective Date.

Director, DXX	Director, Department of Mental Health <sup>1</sup>
_____	_____
Name	Name
_____	_____
Signature	Signature

**APPROVED AS TO LEGAL SUFFICIENCY**

**APPROVED AS TO LEGAL SUFFICIENCY**

\_\_\_\_\_  
Signature of General Counsel  
DXX

\_\_\_\_\_  
Signature of General Counsel  
Department of Mental Health

\_\_\_\_\_  
If signatory authority is specifically delegated by the DMH Director to the respective CEO at DCCSA or SEH, or a MHA deputy director, or MHA senior staff member in the Director's office, then the block for the DMH Director must be revised to reflect that manager's name and title. Note that all MOUs require legal sufficiency review by the Office of the General Counsel.

**WORKSHEET FOR DEVELOPING  
 A MEMORANDUM OF UNDERSTANDING**

Paragraph Numbers/MOU	Question	Answers
1.	What is the name of the other party?	
1.	<p>Is the other party another agency of the District government, federal agency, or a private entity?</p> <p><b>If the agreement is with a component of DMH, use an MOA (Exhibit 4).</b></p> <p><b>If another agency of the District government or a federal agency, use an MOU (Exhibit 1-funds transfer; or Exhibit 2-no funds transfer).</b></p> <p>If a third party, consider whether a grant agreement or a contract is the more appropriate instrument for documenting the terms of the agreement between the parties.</p>	
2.A.	<p>Identify the DMH statutory purpose(s) that is furthered by the execution of the MOU. Include the statutory purpose in paragraph 2.A. Authority of DMH. (See D.C. Code §7-1131.03 and the Dixon exit criteria for additional options. Some alternatives are listed below.)</p> <ul style="list-style-type: none"> <li>• Developing a system of care for adults</li> <li>• Developing a system of care for children</li> <li>• Ensuring that persons with mental illness are treated in the most integrated system that can be accommodated</li> <li>• Fostering the development of high quality, comprehensive, cost effective, and culturally competent mental health services and mental health supports, based on recognized local needs, especially for persons with serious mental illness and children with serious emotional disturbances</li> <li>• Promoting mental health and awareness of mental health issues</li> <li>• Ensuring that services provided to mental health consumers meet standards established by DMH for the operation of mental health services and mental health supports</li> <li>• Developing and implementing strategies to eliminate barriers and improve access to mental health services and mental health supports for consumers</li> <li>• Ensuring the participation of consumers, families, employees, providers, and advocates of mental health services and mental health supports in the planning, delivery, monitoring and evaluation of those services and supports</li> </ul>	
2.B.	Obtain and include information from the other party to the MOU that identifies the statutory purpose(s) that is furthered by the execution of the MOU. Include this information in paragraph 2.B. Authority of DXX.	

Paragraph Numbers/MOU	Question	Answers
	<p>If the other party is a District government agency or federal agency, identify the express statutory purpose(s) furthered by the execution of the MOU. (Refer to the agency's enabling legislation and/or an applicable court order).</p> <p>If the other party is not a government agency, there may be language in the governing documents, mission statement, by-laws or some similar document that describes the purpose(s) furthered by this MOU.</p>	
3.	<p>What are the program goals and objectives of the MOU? Include a narrative description in paragraph 3 of the MOU.</p> <p>Identify the purpose(s) that require the execution of the MOU.</p> <p>For example:</p> <p>The purpose of the MOU is to establish the terms and conditions under which the parties shall work to establish or expand opportunities for housing/supported employment for consumers.</p>	
4.	<p>Include a general description of the services that will be covered by the MOU in paragraph 4.</p>	
4.A.1	<p>Paragraph 4.A.1 should identify the person at DMH that will be the contact or person managing the services. Who is the DMH contact person? Include full name, title, mailing address, telephone number, fax number and email address. Note that the contact person may also be the person receiving notice under paragraph 9 (On the MOU form with Intradistrict funding provisions) or paragraph 8 (On the MOU form with <b>no funds</b> transfer provisions).</p>	
4.A.2	<p>Paragraph 4.A.2 should identify the number of DMH staff that will be providing services and some degree of detail about the staff that will be involved.</p>	
4.A.3	<p>Paragraph 4.A.3 should identify any resources that DMH is providing, such as technical support, software, office supplies, office equipment, office space, etc.</p>	
4.A.4	<p>Paragraph 4.A.4 should specifically describe the services that DMH will be providing.</p>	
4.A.5	<p>Paragraph 4.A.5 identifies the location where records relating to the services provided under the MOU will be stored.</p>	
4.B.1 Obtain information from the other party to the MOU to complete items 4.B.1 thru 4	<p>Paragraph 4.B.1 should identify the person at the other agency that will be the contact or person managing the services. Who is the other agency's contact person? Include full name, title, mailing address, telephone number, fax number and email address. Note that the contact person may also be the person receiving notice under paragraph 9 (On the MOU form with Intradistrict funding provisions) or paragraph 8 (On the MOU form with <b>no funds</b> transfer provisions).</p>	

Paragraph Numbers/MOU	Question	Answers
4.B.2	Paragraph 4.B.2 should identify the number of the other agency's staff that will be providing services and some degree of detail about the staff that will be involved.	
4.B.3	Paragraph 4.B.3 should identify any resources that the other agency is providing, such as technical support, software, office supplies, office equipment, office space, etc.	
4.B.4	Paragraph 4.B.4 should specifically describe the services that the other agency will be providing.	
4.B.5	Paragraph 4.B.5 identifies the location where records relating to the services provided under the MOU will be stored.	
4.B.6	Paragraph 4.B.6 requires the other agency to comply with DMH's policy about incident reporting. It should be deleted if the other agency is not providing direct services to consumers.	
5.	Include the date the Agreement begins and ends based on fiscal year timeframes (if no costs are involved, it does not have to be linked to the fiscal year).	
6. Exhibit 1 only	<p>If the other party to the MOU is another agency of the District government or a federal agency, does the MOU require the transfer of funds? If yes, use the MOU form with Intradistrict funding provisions. If no, use the MOU form with no funds transfer provisions.</p> <p>If yes, will funds be transferred from DMH to the other party?</p> <p>If yes, will funds be transferred from the other party to DMH?</p>	
6.A.	List the total estimated cost of services. Insert amount in paragraph 6.A.	
6.B	If DMH is transferring the funds, insert the amount of funds that will be transferred?	
7.	Paragraph 7 (or 6, of Exhibit 2) about privacy compliance and Exhibit A may be deleted from an MOU that does not involve the exchange of protected mental health information. Note that the contact person may also be the person receiving notice under paragraph 9 (of the MOU with Intradistrict funding provisions) or paragraph 8 (of the MOU with no funds transfer).	
9.	Contact information for both parties to the MOU needs to be included in Paragraph 9, Notices. Note that the contact person may also be the person receiving notice under paragraph 9 (of the MOU with Intradistrict funding provisions) or paragraph 8 (of the MOU with no funds transfer).	
<b>Transfer of Funds</b>	After the MOU is approved, the respective chief fiscal officer must certify transfer of funds and the amount and shall address other details as appropriate: lump sum or installments; if, installments, amount and frequency of the transfers, and etc.	
Exhibit A	Exhibit A requires that the parties negotiate terms regarding amendment of and access to records. See sections (2)(g) and (h) of Exhibit A.	

**MEMORANDUM OF AGREEMENT**  
**BETWEEN \_\_\_\_\_ AND**

**REGARDING**

**1. Introduction.**

This Memorandum of Agreement Regarding \_\_\_\_\_ (“Agreement”) is effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 200\_\_ (“Effective Date”) by and between the DMH component (First Party) \_\_\_\_\_ [Mental Health Authority/Saint Elizabeths Hospital/Community Services Agency and DMH component (Second Party) \_\_\_\_\_ (“First Party” or “Second Party” must be replaced by the actual organization names).

**2. Overview, Program Goals and Objectives.**

First Party/Second Party has a critical need for \_\_\_\_\_. *[Specify the services that are being provided and the reason that the services are needed. If the purpose of providing the services is to further a specified DMH goal, including achievement of the exit criteria, affirmatively state that in this section.]*

**3. Services and Scope of Work.**

In order to achieve the goals and objectives described in paragraph 2 of this MOA, First Party and Second Party have agreed that First Party shall provide \_\_\_\_\_ as further described in paragraph 4 below. First Party and Second Party have further agreed that Second Party shall provide \_\_\_\_\_ as further described in paragraph 5 below.

**4. Responsibilities of First Party.**

First Party shall be responsible for *[describe First Party’s general obligations and responsibilities under the MOA.]*

- a. Contact Person. (name and title) is First Party’s employee responsible for managing First Party staff and resources identified to provide the services required by this MOA. *[include the telephone number, fax number, email address, and mailing address for the contact person.]*
- b. Staffing. First Party shall provide \_\_\_\_\_ full-time/part-time staff to provide the services required by this MOA. *[include details about staff qualifications, number of hours that will be devoted to the performance of duties relating to the MOA.]*
- c. Resources. First Party shall provide the following resources to fulfill its obligations under this MOA: Resource A, Resource B, Resource C.



- d. Services. First Party shall provide the following services to Second Party: Service A, Service B, Service C.

5. **Responsibilities of Second Party.**

Second Party shall be responsible for [describe Second Party's general obligations and responsibilities under the MOA.]

a. Contact Person. \_\_\_\_\_ (name and title) \_\_\_\_\_ is Second Party's employee responsible for managing Second Party staff and resources identified to provide the services required by this MOA. *[include the telephone number, fax number, email address, and mailing address for the contact person.]*

b. Staffing. Second Party shall provide \_\_\_\_\_ full-time/part-time staff to provide the services required by this MOA. *[include details about staff qualifications, number of hours that will be devoted to the performance of duties relating to the MOA.]*

c. Resources. Second Party shall provide the following resources to fulfill its obligations under this MOA: Resource A, Resource B, Resource C.

d. Services. Second Party shall provide the following services to First Party: Service A, Service B, Service C.

6. **Program and Financial Records**. Both Parties shall maintain program and financial records regarding the services provided under this MOA for a three (3) year period after the termination of this MOA.

7. **Term of Agreement**.

The term of this Agreement shall begin on the Effective Date and end on \_\_\_\_\_ (if no costs are involved, does not have to be linked to a fiscal year), unless terminated sooner as described in paragraph 9. This Agreement may be renewed by the mutual written agreement of the Parties.

8. **Financial**. After this agreement is approved, any required financial transactions (e.g., transfer of costs) shall be submitted in memorandum to the DMH Fiscal Officer with supporting documents).

9. **Termination**.

This Agreement may be revoked by one Party or by mutual agreement for reasons such as lack of funding, changes in the structure or the nature of the program covered by this MOA, elimination of the program or services covered by this MOA, etc. Either Party may revoke this Agreement at any time, upon ninety (90) days written notice to the other Party.

10. **Authority of the Parties.**

By executing this Agreement, each Party represents to the other Party that it is authorized to enter into this Agreement, that the person signing on its behalf is duly authorized to execute this Agreement.

The undersigned hereby execute this Agreement on behalf of their respective organizations as of the Effective Date.

<p>First Party</p> <p>Name &amp; Title: _____</p> <p>Signature: _____</p>	<p>Second Party</p> <p>Name &amp; Title: _____</p> <p>Signature: _____</p>
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**FINAL APPROVAL**

\* **Director, Department of Mental Health**

\_\_\_\_\_  
**Signature**

\_\_\_\_\_

**APPROVED AS TO LEGAL SUFFICIENCY**

\_\_\_\_\_  
General Counsel  
Department of Mental Health

\*During legal sufficiency review of the MOA, the Office of General Counsel will consult with the DMH Director to determine if the Director needs to sign off on the MOA. If not, the Director's signature block should be deleted from the MOA form.

**EXHIBIT A**  
**RECIPROCAL COVERED ENTITY AND BUSINESS ASSOCIATE CLAUSE**

In connection with the "Memorandum of Understanding Regarding \_\_\_\_\_" (hereinafter referred to as the "Agreement") each of the DXX and the DMH will be acting as a "covered entity" and as each other's "business associate," as those terms are defined in 45 CFR 160.103, and as such, each is required to satisfy the obligations set forth below as dictated by the role of each party in connection with any particular interaction.

(1) Definitions

(a) *Designated Record Set* means:

1. A group of records maintained by or for Covered Entity that is:

- (i) The medical records and billing records about individuals maintained by or for a covered health care provider;
- (ii) The enrollment, payment, claims adjudication, and case or medical management record systems maintained by or for a health plan; or
- (iii) Used, in whole or in part, by or for Covered Entity to make decisions about individuals.

2. For purposes of this paragraph, the term *record* means any items, collection, or grouping of information that includes Protected Health Information and is maintained, collected, used, or disseminated by or for Covered Entity.

(b) *Individual* shall have the same meaning as the term "individual" in 45 CFR 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR 164.502(g).

(c) *Privacy Rules*. "Privacy Rules" shall mean the requirements and restrictions contained in Standards for Privacy of Individually Identifiable Health Information at 45 CFR part 160 and part 164, subparts A and E, except to the extent District of Columbia laws (in particular, the Mental Health Information Act of 1978) have preemptive effect by operation of 45 CFR part 160, subpart B.

(d) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR 164.501, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(e) *Required By Law*. "Required By Law" shall have the same meaning as the term "required by law" in 45 CFR 164.501, except to the extent District of Columbia laws (in particular, the Mental Health Information Act of 1978) have preemptive effect by operation of 45 CFR part 160, subpart B.

(f) *Secretary*. "Secretary" shall mean the Secretary of the Department of Health and Human Services or his designee.

(2) Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or disclose Protected Health Information other than as permitted by the Agreement, this Clause or as Required By Law.

(b) Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Clause.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Clause.

(d) Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Clause of which it becomes aware.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner as set forth in the Agreement, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 CFR 164.524.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that Covered Entity directs or agrees to pursuant to 45 CFR 164.526 at the request of Covered Entity or an Individual, and in the time and manner [*Insert negotiated terms for amendment*].

(h) Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to the Covered Entity, or to the Secretary, in a time and manner [*Insert negotiated terms for access*] or designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rules.

(i) Business Associate agrees to document such disclosures of Protected Health Information 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 Protected Health Information in accordance with 45 CFR 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in time and manner as set forth in the Agreement, information collected in accordance with Section (2)(i) above, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 CFR 164.528.

(3) Permitted Uses and Disclosures by Business Associate

(a) *Refer to underlying Agreement:*

Except as otherwise limited in this Clause, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Agreement, provided that such use or disclosure would not violate the Privacy Rules if done by Covered Entity or the minimum necessary policies and procedures of Covered Entity.

(b) Except as otherwise limited in this Clause, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Clause, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Clause, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 CFR 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with § 164.502(j)(1).

(4) Obligations of Covered Entity

(a) Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

(b) Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

(5) Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rules if done by Covered Entity.

(6) Term and Termination

(a) *Term.* The requirements of this Privacy Compliance Clause shall be effective as of the date of the Agreement, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, 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 Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach of this Clause by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate the contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;
2. Immediately terminate the contract if Business Associate has breached a material term of this Privacy Compliance Clause and cure is not possible; or
3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

(c) *Effect of Termination.*

1. Except as provided in paragraph (2) of this section, upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
2. In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon determination by the Contracting Officer that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

(7) Miscellaneous

(a) *Regulatory References.* A reference in this Clause to a section in the Privacy Rules means the section as in effect or as amended.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Clause from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rules.

(c) *Survival.* The respective rights and obligations of Business Associate under Section (6) of this Clause shall survive termination of the contract.

(d) *Interpretation.* Any ambiguity in this Clause shall be resolved to permit Covered Entity to comply with the Privacy Rules.