

**MEMORANDUM OF UNDERSTANDING**

**Between**

**The County of Fresno**

**And**

**UPholdings**

**THIS MEMORANDUM OF UNDERSTANDING** hereinafter referred to as “MOU” or “Agreement” is made and entered into this 6<sup>th</sup> day of August , 2019 by and between the **County of Fresno**, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and **UPholdings** (on behalf of its partners, subsidiaries, or assignees), whose address is 900 W. Jackson Blvd., Suite #2W, Chicago, Illinois, hereinafter referred to as “UPholdings.”

**WHEREAS**, the State of California, Housing and Community Development (HCD) has made available No Place Like Home (NPLH) Competitive and Noncompetitive funding to California counties.

**WHEREAS**, The County of Fresno will compete with other California counties for up to \$93 million during four (4) annual HCD NPLH Competitive Allocation funding rounds for the purpose of developing permanent supportive housing for adults, transitional age youth, or children and their families who reside within Fresno County who are Homeless, Chronically Homeless or At-Risk of Chronic Homelessness as a result of their serious mental illness and/or severe emotional disturbance and are in need of mental health services; and

**WHEREAS**, UPholdings, among other things, coordinates financing, develops and manages supportive housing developments in Fresno County, and;

**WHEREAS**, UPholdings represents that it is a qualified developer in Fresno County; and

**WHEREAS**, the parties desire to enter into this MOU, wherein the parties will strive to develop, operate and maintain new permanent supportive housing projects for residents of Fresno County living with severe mental illness and/or serious emotional disturbances and who are Homeless, Chronically Homeless, or At-Risk of Chronic Homelessness, all in accordance with the HCD NPLH program Guidelines; Welfare and Institutions Code Sections 5849 and 5890; and other future supportive housing funding sources, as identified.

1 NOW, THEREFORE, in consideration of the recitals set forth above, which are incorporated  
2 herein by this reference, and the mutual covenants and undertakings contained herein, the receipt and  
3 sufficiency of which is hereby acknowledged, the parties agree as follows:

4 **1. PURPOSE**

5 The COUNTY and UPholdings desire to develop, operate and maintain permanent supportive  
6 housing opportunities in accordance with permanent supportive housing funding source program  
7 guidelines and regulations. To do so, the COUNTY and UPholdings will research and pursue permanent  
8 supportive housing development opportunities.

9 **2. RESPONSIBILITIES**

10 A. UPholdings shall be responsible to:

11 (1) Under the direction of COUNTY, prepare any future, agreed upon HCD  
12 NPLH, or other permanent supportive housing funding sources, permanent supportive housing  
13 Application(s). The HCD NPLH permanent supportive housing Application, or any additional permanent  
14 supportive housing Applications would include UPholdings as the developer, property manager and  
15 owner. However, any role or responsibility of UPholdings in the development of any permanent  
16 supportive housing program Application related to this MOU shall be determined by COUNTY.  
17 Notwithstanding the aforementioned term, UPholdings shall be permitted to develop other permanent  
18 supportive housing projects, without the consent of the COUNTY or in partnership with the COUNTY,  
19 when such projects do not require a financing source predicated on the COUNTY being a co-applicant or  
20 sponsor of such financing. Any permanent supportive housing Application mutually agreed upon by  
21 both DBH and UPholdings, to be completed by UPholdings in the role of development sponsor / co-  
22 applicant with COUNTY, shall be approved by the COUNTY and such approval shall not be  
23 unreasonably withheld. Any prepared Application(s) by UPholdings as COUNTY'S development  
24 sponsor / co-applicant shall comply with all state fair housing laws, regulations and directives as required  
25 by the identified funding source. As part of any permanent supportive housing program Application,  
26 both COUNTY and UPholdings shall research and identify potential development sites to be funded with  
27 HCD NPLH or other applicable funding sources or identify other funding sources that can be utilized  
28 and/or leveraged to provide for the development of permanent supportive housing units.

1 (2) Maintain supportive housing resource information for use by individuals  
2 housed, family members and/or support systems of individuals and supportive services staff to assist in  
3 the identification and utilization of appropriate supportive housing resources in the community.

4 (3) Make reasonable efforts to complete all program-reporting requirements  
5 specific to each funding source for any permanent supportive housing developments resulting from this  
6 MOU.

7 (4) Provide property management services, either directly or through a  
8 subcontract with a qualified organization, for permanent supportive housing projects developed as a  
9 result of this MOU. Services may include, but not be limited to rent collection, property maintenance and  
10 repairs.

11 B. The COUNTY shall be responsible to:

12 (1) Assign appropriate staff to participate in the planning and permanent  
13 supportive housing development process with the UPholdings.

14 (2) Provide timely consideration of all permanent supportive housing  
15 Applications presented by the UPholdings.

16 (3) Report required permanent supportive housing program information to the  
17 State of California HCD, and any other identified funding sources, as related to any permanent supportive  
18 housing developments as a result of this MOU.

19 (4) Upon request from UPholdings, provide all necessary or relevant  
20 demographic information regarding the specified target populations to be served by permanent supportive  
21 housing developments as a result of this MOU.

22 (5) Ensure an adequate number of eligible, certified tenant referrals made to  
23 permanent supportive housing projects developed by the UPholdings under this MOU. Such referrals  
24 must meet the tenant eligibility requirements established for any given permanent supportive housing  
25 development as mandated by the funding source target population definition and as determined by Fresno  
26 County's Behavioral Health Director or designee, or by other funding sources, as applicable.

27 (6) Ensure the commitment and coordination of the appropriate level of case  
28 management or other types of supportive services are available on a timely basis to meet the behavioral

1 health needs for individuals of any permanent supportive housing projects developed under this MOU.  
2 These services will be voluntary and flexible and meet the needs as determined by the individuals.

3 C. In collaboration, both COUNTY and UPholdings shall be responsible to:

4 (1) No less than quarterly, representatives from COUNTY, UPholdings and  
5 other interested and invited participants will meet to discuss any potential new development projects,  
6 review any previous work accomplished and assess the working relationship between all parties. The  
7 COUNTY and UPholdings shall mutually agree upon the location of the permanent supportive housing  
8 developments proposed for permanent supportive housing program Applications.

9 (2) In the event a permanent supportive housing Application is completed by  
10 UPholdings, that it be appropriately submitted to the applicable funding source and meet all legal  
11 requirements, including the provisions of Welfare and Institutions Code Sections 5847 and 5848  
12 regarding postings and 30-day public comment requirement (W&I Code 5848(b)). Additionally, if a  
13 permanent supportive housing Application is completed and submitted to a funding source, ensure all  
14 appropriate parties are informed of the submittal, including the Fresno County Behavioral Health Board  
15 and Fresno County Board of Supervisors.

16 (3) In the event a permanent supportive housing Application is funded, County  
17 and UPholdings shall work collaboratively to ensure all necessary documents, including any other MOUs  
18 as required by the funding source, are executed to establish the role of the UPholdings as the qualified  
19 developer/borrower/property manager or any combination thereof, and to establish the role of the  
20 COUNTY as the mental health supportive service provider, for any funded permanent supportive housing  
21 development.

22 **3. TERM**

23 This MOU shall commence July 1, 2019, and shall terminate on the 30th day of June  
24 2022. This MOU may be extended for two (2) additional consecutive twelve (12) month periods; July 1,  
25 2022 through June 30, 2023 and July 1, 2023 through June 30, 2024, upon the written approval of both  
26 parties no later than sixty (60) days prior to the first day of the next twelve (12) month extension period.  
27 The Department of Behavioral Health ("DBH") Director or his/her designee is authorized to execute  
28 such written approval on behalf of COUNTY based upon UPholdings satisfactory performance.

1           **4.     TERMINATION**

2           A.     Breach of Contract

3                     Either party may immediately suspend or terminate this MOU in whole or in  
4 part, where in the determination by one of the parties there is:

- 5                     1.     An illegal or improper use of funds;  
6                     2.     A failure to comply with any term of this MOU;  
7                     3.     A substantially incorrect or incomplete report submitted to the  
8                             COUNTY; or  
9                     4.     Improperly performed service.

10          B.     Without Cause

11                     This MOU may be terminated by either of the parties as to their involvement in  
12 this MOU, upon the giving of a thirty (30) day advance written notice of an intention to terminate from  
13 one party to the other.

14           **5.     COMPENSATION**

15                     The services performed in accordance with the terms and conditions as stated in this  
16 MOU shall be performed without any monetary compensation by either party, with exception to any  
17 compensation that may be payable to either party in relation to the development of a specific project, or  
18 the proceeds therefrom, whether from such money is payable as a fee, project cash flow, the result of a  
19 refinancing, or transaction of a similar nature.

20           **6.     MODIFICATION**

21                     Any matters of this MOU may be modified from time to time by the written consent of all  
22 the parties without, in any way, affecting the remainder.

23                     Notwithstanding the above, minor changes, as determined by COUNTY's Department  
24 of Behavioral Health Director or his or her designee may be made with the written approval of  
25 COUNTY's Department of Behavioral Health Director or designee and Upholdings. Minor changes  
26 may include, but are not limited to, changes that will not significantly alter the responsibilities  
27 identified in this MOU, and changes to addresses to which notices are to be sent.

1           **7. INDEPENDENT CONTRACTOR**

2           In performance of the work, duties, and obligations assumed by UPholdings under this  
3 MOU, it is mutually understood and agreed that UPholdings, including any and all of UPholdings  
4 officers, agents, and employees will at all times be acting and performing as an independent contractor,  
5 and shall act in an independent capacity and not as an officer, agent, servant, employee, joint venturer,  
6 partner, or associate of the COUNTY. Furthermore, COUNTY shall have no right to control or supervise  
7 or direct the manner or method by which UPholdings shall perform its work and function. However,  
8 COUNTY shall retain the right to administer this MOU so as to verify that UPholdings is performing its  
9 obligations in accordance with the terms and conditions thereof.

10           UPholdings and COUNTY shall comply with all applicable provisions of law and the  
11 rules and regulations, if any, of governmental authorities having jurisdiction over matters which are  
12 directly or indirectly the subject of this MOU.

13           Because of its status as an independent contractor, UPholdings shall have absolutely no  
14 right to employment rights and benefits available to COUNTY employees. UPholdings shall be solely  
15 liable and responsible for providing to, or on behalf of, its employees all legally-required employee  
16 benefits. In addition, UPholdings shall be solely responsible and hold COUNTY harmless from all  
17 matters relating to payment of UPholdings employees, including compliance with Social Security,  
18 withholding, and all other regulations governing such matters. It is acknowledged that during the term of  
19 this MOU, UPholdings may be providing services to others unrelated to the COUNTY or to this MOU.

20           **8. ASSIGNMENT RIGHTS**

21           Neither party shall assign, transfer or subcontract this MOU nor their rights or duties  
22 under this MOU without the prior written consent of the other party with the exception of an affiliate or  
23 limited partnership within a tax credit transaction. Notwithstanding the aforementioned, UPholdings may  
24 assign its rights, obligations, and interest in this MOU to any entity it wholly owns or controls without the  
25 consent of the County. Any transferee, assignee, or subcontractor will be subject to all applicable  
26 provisions of this Agreement, and all applicable State and Federal regulations. UPholdings will be  
27 required to assume full responsibility for all services and activities covered by this Agreement, whether  
28 or not UPholdings is providing those services directly. Further, COUNTY will consider UPholdings to

1 be the sole point of contact with regard to contractual matters, including payment of any and all charges  
2 to subcontractor resulting from this Agreement. Any subcontractor utilized by UPholdings to fulfill the  
3 Responsibilities of UPholdings shall be subject to the same terms and conditions that UPholdings is  
4 subject to under this Agreement.

5 **9. NON-DISCRIMINATION**

6 During the performance of this MOU UPholdings shall not unlawfully discriminate  
7 against any employee or applicant for employment, or recipient of services, because of race, religion,  
8 color, national origin, ancestry, physical disability, medical condition, marital status, age or gender,  
9 pursuant to all applicable State of California and Federal statutes and regulations.

10 **10. DISCLOSURE – CRIMINAL HISTORY AND CIVIL ACTIONS**

11 UPholdings is required to disclose if any of the following conditions apply to them, their  
12 owners, officers, corporate managers and partners:

13 A. Within the three-year period preceding the MOU award, they have been  
14 convicted of, or had a civil judgment rendered against them for:

- 15 1. Fraud or a criminal offense in connection with obtaining, attempting to  
16 obtain, or performing a public transaction or contract under a public transaction;
- 17 2. Violation of a federal or state antitrust statute;
- 18 3. Embezzlement, theft, forgery, bribery, falsification, or destruction of  
19 records; or
- 20 4. False statements or receipt of stolen property.

21 B. Within a three-year period preceding this MOU, they have had a public  
22 transaction terminated for cause or default.

23 Disclosure of the above information will not automatically eliminate UPholdings from  
24 further business consideration. The information will be considered as part of the determination of  
25 whether to continue and/or renew the MOU and any additional information or explanation that  
26 UPholdings elects to submit with the disclosed information will be considered. If it is later  
27 determined the UPholdings failed to disclose required information, any MOU awarded to UPholdings  
28

1 may be immediately voided and terminated for material failure to comply with the terms and  
2 conditions of the MOU.

3 **11. COMPLAINTS**

4 For any complaint from tenants residing in a multifamily project developed in accordance with  
5 this MOU, UPholdings shall log such complaints. UPholdings shall make available to COUNTY a copy  
6 of the complaint concerning any tenants in a format and timeframe that is mutually agreed upon by both  
7 parties. UPholdings shall provide details and attach documentation of each tenant complaint.

8 UPholdings shall post signs at permanent supportive housing developments resulting from this MOU  
9 that informs tenants of their right to file a complaint or grievance with the UPholdings which is a  
10 component of the tenant's rights grievance procedure associated with each tenant's formal signed lease  
11 with the UPholdings.

12 **12. NOTICES**

13 The persons have authority to give and receive notices under this MOU and their  
14 addresses include the following:

15 **COUNTY**

16 Director, Fresno County  
17 Department of Behavioral Health  
18 4441 E. Kings Canyon  
Fresno, CA. 93702

**UPHOLDINGS**

Jessica Berzac  
UPholdings  
900 W. Jackson Blvd., Suite #2W  
Chicago, IL 60607

19 Any and all notices between the COUNTY and the UPholdings provided for or permitted under  
20 this MOU or by law shall be in writing and shall be deemed duly served when personally delivered to one  
21 of the parties, or in lieu of such personal service, when deposited in the United States Mail, postage  
22 prepaid, addressed to such party

23 **13. SEVERABILITY**

24 The provisions of this MOU are severable. The invalidity or unenforceability of any one  
25 provision in the MOU shall not affect the other provisions.

26 **14. HOLD HARMLESS**

27 UPholdings agrees to indemnify, save, hold harmless, and at COUNTY's request,  
28 defend the COUNTY, its officers, agents and employees from any and all costs and expenses,

1 including attorney fees and court costs, damages, liabilities, claims and losses occurring or resulting to  
2 COUNTY in connection with the performance, or failure to perform, by UPholdings, its officers,  
3 agents or employees under this MOU, and from any and all costs and expenses, including attorney  
4 fees and court costs, damages, liabilities, claims and losses occurring or resulting to any person, firm  
5 or corporation who may be injured or damaged by the performance, or failure to perform, of  
6 UPholdings, its officers, agents or employees under this MOU. In addition, UPholdings agrees to  
7 indemnify COUNTY for Federal, State of California and/or local audit exceptions resulting from  
8 noncompliance herein on the part of the UPholdings.

9 COUNTY agrees to indemnify, save, hold harmless, and at UPholdings request, defend  
10 UPholdings, its officers, agents and employees from any and all costs and expenses, including attorney  
11 fees and court costs, damages, liabilities, claims and losses occurring or resulting to UPholdings in  
12 connection with the performance, or failure to perform, by COUNTY and/or its officers, agents or  
13 employees under this MOU and from any and all costs and expenses, including attorney fees and court  
14 costs, damages, liabilities, claims and losses occurring or resulting to any person, firm or corporation who  
15 may be injured or damaged by the performance, or failure to perform, of COUNTY and/or its officers,  
16 agents or employees under this MOU. In addition, COUNTY agrees to indemnify UPholdings for  
17 Federal, State of California and/or local audit exceptions resulting from noncompliance herein on the part  
18 of the COUNTY and/or its contracted providers.

19 **15. INSURANCE**

20 Without limiting the COUNTY's right to obtain indemnification from UPholdings or any third  
21 parties, UPholdings, at its sole expense, shall maintain in full force and effect the following insurance  
22 policies or a program of self-insurance, including but not limited to, an insurance pooling arrangement  
23 or Joint Powers MOU (JPA) throughout the term of this MOU:

24 A. **Commercial General Liability**

25 Commercial General Liability Insurance with limits of not less than One Million Dollars  
26 (\$1,000,000) per occurrence and an annual aggregate of Two Million Dollars (\$2,000,000). This  
27 policy shall be issued on a per occurrence basis and can be achieved by an umbrella insurance policy.  
28

1 COUNTY may require specific coverage including completed operations, product liability, contractual  
2 liability, Explosion, Collapse, and Underground (XCU), fire legal liability or any other liability  
3 insurance deemed necessary because of the nature of the MOU.

4 B. Automobile Liability

5 Comprehensive Automobile Liability Insurance with limits of not less than One Million Dollars  
6 (\$1,000,000) per accident for bodily injury and for property damage. Coverage should include owned  
7 and non-owned vehicles used in connection with this MOU.

8 C. Professional Liability

9 Upholdings does not anticipate to employ any licensed professional staff (*e.g.* Ph.D., R.N.,  
10 L.C.S.W., L.M.F.T.) to provide services. But if Upholdings does employ any licensed professional,  
11 Upholdings will provide Professional Liability Insurance with limits of not less than One Million  
12 Dollars (\$1,000,000) per occurrence, Three Million Dollars (\$3,000,000) annual aggregate.

13 D. Worker's Compensation

14 A policy of Worker's Compensation Insurance as may be required by the California Labor  
15 Code.

16 Additional Requirements Relating to Insurance

17 Upholdings shall obtain endorsements to the Commercial General Liability insurance  
18 naming the COUNTY, its officers, agents and employees, individually and collectively, as additional  
19 insured, but only insofar as the operations under this MOU are concerned. Such coverage for  
20 additional insured shall apply as primary insurance and any other insurance, or self-insurance,  
21 maintained by the COUNTY, its officers, agents and employees shall be excess only and not  
22 contributing with insurance provided under the Upholdings policies herein. This insurance shall not  
23 be cancelled or changed without a minimum of thirty (30) days advance written notice given to  
24 COUNTY.

25 Upholdings hereby waives its right to recover from COUNTY, its officers, agents, and  
26 employees any amounts paid by the policy of worker's compensation insurance required by this MOU.  
27  
28

1 Upholdings is solely responsible to obtain any endorsement to such policy that may be necessary to  
2 accomplish such waiver of subrogation, but Upholdings waiver of subrogation under this paragraph is  
3 effective whether or not Upholdings obtains such an endorsement.

4           Within thirty (30) days from the date Upholdings signs this MOU, Upholdings shall  
5 provide certificates of insurance and endorsements as stated above for all of the foregoing policies, as  
6 required herein, to the County of Fresno, Department of Behavioral Health, 515 S. Cedar Avenue,  
7 Fresno CA. 94702, Attention: Staff Analyst - Housing, stating that such insurance coverages have  
8 been obtained and are in full force; that the COUNTY, its officers, agents and employees will not be  
9 responsible for any premiums on the policies; that for such worker's compensation insurance  
10 Upholdings has waived its right to recover from the COUNTY, its officers, agents, and employees any  
11 amounts paid under the insurance policy and that waiver does not invalidate the insurance policy; that  
12 such Commercial General Liability insurance names the COUNTY, its officers, agents and employees,  
13 individually and collectively, as additional insured, but only insofar as the operations under this MOU  
14 are concerned; that such coverage for additional insured shall apply as primary insurance and any  
15 other insurance, or self-insurance, maintained by the COUNTY, its officers, agents and employees,  
16 shall be excess only and not contributing with insurance provided under Upholdings policies herein;  
17 and that this insurance shall not be cancelled or changed without a minimum of thirty (30) days  
18 advance, written notice given to COUNTY.

19           In the event Upholdings fails to keep in effect at all times insurance coverage as herein  
20 provided, the COUNTY may, in addition to other remedies it may have, suspend or terminate this  
21 MOU upon the occurrence of such event.

22           All policies shall be with admitted insurers licensed to do business in the State of  
23 California. Insurance purchased shall be from companies possessing a current A.M. Best, Inc. rating of  
24 A FSC VIII or better.

25           **16.    CONFIDENTIALITY**

26           Any service performed by Upholdings under this MOU shall be in strict conformance with all  
27 applicable Federal, State of California (including the California Public Records Act) and/or local laws  
28 and regulations relating to confidentiality.

1           **17.    HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT**

2           A.     The parties to this MOU shall be in strict conformance with all applicable  
3 Federal and State of California laws and regulations, including but not limited to Sections 5328,  
4 10850, and 14100.2 *et seq.* of the Welfare and Institutions Code, Sections 2.1 and 431.300 *et seq.* of  
5 Title 42, Code of Federal Regulations (CFR), Section 56 *et seq.* of the California Civil Code, Sections  
6 11977 and 11812 of Title 22 of the California Code of Regulations, and the Health Insurance  
7 Portability and Accountability Act (HIPAA), including but not limited to Section 1320 D *et seq.* of  
8 Title 42, United States Code (USC) and its implementing regulations, including, but not limited to  
9 Title 45, CFR, Sections 142, 160, 162, and 164, and The Health Information Technology for  
10 Economic and Clinical Health Act (HITECH) regarding the confidentiality and security of patient  
11 information and the Genetic Information Nondiscrimination Act (GINA) of 2008 regarding the  
12 confidentiality of genetic information.

13                     Except as otherwise provided in this MOU, UPholdings, as Business Associates of  
14 COUNTY, may use or disclose Protected Health Information (PHI) to perform functions, activities or  
15 services for or on behalf of COUNTY, as specified in this MOU, provided that such use or disclosure  
16 shall not violate the HIPAA, USC 1320d *et seq.* The uses and disclosures of PHI may not be more  
17 expansive than those applicable to COUNTY, as the “Covered Entity” under the HIPAA Privacy Rule  
18 (45 CFR 164.500 *et seq.*), except as authorized for management, administrative or legal responsibilities  
19 of the Business Associate.

20           B.     UPholdings, including its subcontractors, agents, and employees, shall protect,  
21 from unauthorized access, use, or disclosure of names and other identifying information concerning  
22 persons receiving services pursuant to this MOU, except where permitted in order to carry out data  
23 aggregation purposes for health care operations [45 CFR Sections 164.504 (e)(2)(i), 164.504  
24 (3)(2)(ii)(A), and 164.504 (e)(4)(i)]. This pertains to any and all persons receiving services pursuant to  
25 a COUNTY funded program. UPholdings shall not use such identifying information for any purpose  
26 other than carrying out UPholdings obligations under this MOU.

27           C.     UPholdings, including its subcontractors, agents, and employees, shall not  
28 disclose any such identifying information to any person or entity, except as otherwise specifically

1 permitted by this MOU, authorized by law, or authorized by the client/patient.

2 D. For purposes of the above sections, identifying information shall include, but not  
3 be limited to name, identifying number, symbol, or other identifying particular assigned to the  
4 individual, such as finger or voice print, or a photograph.

5 E. For purposes of the above sections, genetic information shall include genetic  
6 tests of family members of an individual or individual, manifestation of disease or disorder of family  
7 members of an individual, or any request for or receipt of, genetic services by individual or family  
8 members. Family member means a dependent or any person who is first, second, third, or fourth  
9 degree relative. For purposes of the above sections, identifying information shall include, but not be  
10 limited to name, identifying number, symbol, or other identifying particular assigned to the individual,  
11 such as finger or voice print, or a photograph.

12 F. Upholdings shall provide access, at the request of COUNTY, and in the time and  
13 manner designated by COUNTY, to PHI in a designated record set (as defined in 45 CFR Section  
14 164.501), to an individual or to COUNTY in order to meet the requirements of 45 CFR  
15 Section 164.524 regarding access by individuals to their PHI.

16 Upholdings shall make any amendment(s) to PHI in a designated record set at the  
17 request of COUNTY, and in the time and manner designated by COUNTY in accordance with 45 CFR  
18 Section 164.526.

19 Upholdings shall provide to COUNTY or to an individual, in a time and manner  
20 designated by COUNTY, information collected in accordance with 45 CFR Section 164.528, to permit  
21 COUNTY to respond to a request by the individual for an accounting of disclosures of PHI in  
22 accordance with 45 CFR Section 164.528.

23 G. Upholdings shall report to COUNTY, in writing, any knowledge or reasonable  
24 belief that there has been unauthorized access, viewing, use, disclosure, or breach of PHI not permitted  
25 by this MOU, and any breach of unsecured PHI of which it becomes aware, immediately and without  
26 reasonable delay and in no case later than two (2) business days of discovery. Immediate notification  
27 shall be made to COUNTY's Information Security Officer and Privacy Officer and COUNTY's  
28 Department of Behavioral Health HIPAA Representative, within two (2) business days of discovery.

1 The notification shall include, to the extent possible, the identification of each individual whose  
2 unsecured PHI has been, or is reasonably believed to have been, accessed, acquired, used, disclosed, or  
3 breached. Upholdings shall take prompt corrective action to cure any deficiencies and any action  
4 pertaining to such unauthorized disclosure required by applicable Federal and State Laws and  
5 regulations. Upholdings shall investigate such breach and is responsible for all notifications required  
6 by law and regulation or deemed necessary by COUNTY and shall provide a written report of the  
7 investigation and reporting required to COUNTY's Information Security Officer and Privacy Officer  
8 and COUNTY's Department of Behavioral Health HIPAA Representative. This written investigation  
9 and description of any reporting necessary shall be postmarked within the thirty (30) working days of  
10 the discovery of the breach to the addresses below:

<u>County of Fresno</u>	<u>County of Fresno</u>	<u>County of Fresno</u>
Dept. of Behavioral Health HIPAA Representative (559) 600-9180 4441 E. Kings Canyon Fresno, CA 93702	Dept. of Public Health Privacy Officer (559) 600-3200 1221 Fulton Mall Fresno, CA 93728	Information Technology Services Information Security Officer (559) 600-5800 2048 N. Fine Street Fresno, CA 93727

15 H. Upholdings shall make its internal practices, books, and records relating to the  
16 use and disclosure of PHI received from COUNTY, or created or received by Upholdings on behalf of  
17 COUNTY, available to the United States Department of Health and Human Services upon demand.

18 I. Safeguards

19 Upholdings shall implement administrative, physical, and technical safeguards as  
20 required by 45 CFR 164.308, 164.310, and 164.312 that reasonably and appropriately protect the  
21 confidentiality, integrity, and availability of PHI, including electronic PHI, that it creates, receives,  
22 maintains or transmits on behalf of COUNTY; and to prevent access, use or disclosure of PHI other  
23 than as provided for by this MOU. Upholdings shall develop and maintain a written information  
24 privacy and security program that includes administrative, technical and physical safeguards  
25 appropriate to the size and complexity of Upholdings operations and the nature and scope of its  
26 activities. Upon COUNTY's request, Upholdings shall provide COUNTY with information  
27 concerning such safeguards.

28 Upholdings shall implement strong access controls and other security safeguards

1 and precautions in order to restrict logical and physical access to confidential, personal (e.g., PHI) or  
2 sensitive data to authorized users only. Said safeguards and precautions shall include the following  
3 administrative and technical password controls for all systems used to process or store confidential,  
4 personal, or sensitive data:

5 1. Passwords must not be:

6 a. Shared or written down where they are accessible or recognizable  
7 by anyone else; such as taped to computer screens, stored under keyboards, or visible in a work area;

8 b. A dictionary word; or

9 c. Stored in clear text

10 2. Passwords must be:

11 a. Eight (8) characters or more in length;

12 b. Changed every ninety (90) days;

13 c. Changed immediately if revealed or compromised; and

14 d. Composed of characters from at least three of the following four  
15 groups from the standard keyboard:

16 1) Upper case letters (A-Z);

17 2) Lowercase letters (a-z);

18 3) Arabic numerals (0 through 9); and

19 4) Non-alphanumeric characters (punctuation symbols).

20 Upholdings shall implement the following security controls on each workstation  
21 or portable computing device (e.g., laptop computer) containing confidential, personal, or sensitive  
22 data:

23 1. Network-based firewall and/or personal firewall;

24 2. Continuously updated anti-virus software; and

25 3. Patch management process including installation of all operating  
26 system/software vendor security patches.

27 Upholdings shall utilize a commercial encryption solution that has received FIPS  
28 140-2 validation to encrypt all confidential, personal, or sensitive data stored on portable electronic

1 media (including, but not limited to, compact disks and thumb drives) and on portable computing  
2 devices (including, but not limited to, laptop and notebook computers).

3 UPholdings shall not transmit confidential, personal, or sensitive data via e-mail  
4 or other internet transport protocol unless the data is encrypted by a solution that has been validated by  
5 the National Institute of Standards and Technology (NIST) as conforming to the Advanced Encryption  
6 Standard (AES) Algorithm.

7 J. Mitigation of Harmful Effects

8 UPholdings shall mitigate, to the extent practicable,  
9 any harmful effect that is known to UPholdings of an unauthorized access, viewing, use, disclosure, or  
10 breach of PHI by UPholdings or its subcontractors in violation of the requirements of these provisions.

11 K. UPholdings Subcontractors

12 UPholdings shall ensure that any of its contractors, including subcontractors, if  
13 applicable, to whom UPholdings provides PHI received from or created or received by UPholdings on  
14 behalf of COUNTY, agree to the same restrictions and conditions that apply to UPholdings with  
15 respect to such PHI; and to incorporate, when applicable, the relevant provisions of these provisions  
16 into each subcontract or sub-award to such agents or subcontractors.

17 L. Employee Training and Discipline

18 UPholdings shall train and use reasonable measures to ensure compliance with  
19 the requirements of these provisions by employees who assist in the performance of functions or  
20 activities on behalf of COUNTY under this MOU and use or disclose PHI and discipline such  
21 employees who intentionally violate any provisions of these provisions, including termination of  
22 employment.

23 M. Termination for Cause

24 Upon the knowledge by any party of a material breach of these provisions by one  
25 of the other parties, the affected party shall either:

26 1. Provide an opportunity for the party that caused the breach to cure the  
27 breach or end the violation and terminate this MOU if that party does not cure the breach or end the  
28 violation within the time specified by the affected party; or

1                   2.       Immediately terminate this MOU if any party has breached a material  
2 term of these provisions and cure is not possible.

3                   3.       If neither cure nor termination is feasible, the COUNTY Privacy Officer  
4 or the UPholdings designee(s) shall report the violation to the Secretary of the U.S. Department of  
5 Health and Human Services.

6                   N.       Judicial or Administrative Proceedings

7                   Any party may terminate this MOU in accordance with the terms and conditions  
8 of this MOU as written hereinabove, if: (1) Any party is found guilty in a criminal proceeding for a  
9 violation of the HIPAA Privacy or Security Laws or the HITECH Act; or (2) a finding or stipulation  
10 that COUNTY or UPholdings has violated a privacy or security standard or requirement of the  
11 HITECH Act, HIPAA; or other security or privacy laws in an administrative or civil proceeding in  
12 which COUNTY and UPholdings is a party.

13                   O.       Effect of Termination

14                   Upon termination or expiration of this MOU for any reason, UPholdings shall  
15 return or destroy all PHI received from COUNTY (or created or received by UPholdings on behalf of  
16 COUNTY) that UPholdings still maintain in any form, and shall retain no copies of such PHI. If  
17 return or destruction of PHI is not feasible, UPholdings shall continue to extend the protections of  
18 these provisions to such information, and limit further use of such PHI to those purposes that make the  
19 return or destruction of such PHI infeasible. This provision shall apply to PHI that is in the possession  
20 of subcontractors or agents, if applicable, of UPholdings. If UPholdings destroy the PHI data, a  
21 certification of date and time of destruction shall be provided to the COUNTY by UPholdings.

22                   P.       Disclaimer

23                   COUNTY makes no warranty or representation that compliance by UPholdings  
24 with these provisions, the HITECH Act, HIPAA or the HIPAA regulations will be adequate or  
25 satisfactory for UPholdings own purposes or that any information in UPholdings possession or control,  
26 or transmitted or received by UPholdings, is or will be secure from unauthorized access, viewing, use,  
27 disclosure, or breach. UPholdings is solely responsible for all decisions made by UPholdings  
28 regarding the safeguarding of PHI.

1 Q. Amendment

2 The parties acknowledge that Federal and State laws relating to electronic data  
3 security and privacy are rapidly evolving and that amendment of these provisions may be required to  
4 provide for procedures to ensure compliance with such developments. The parties specifically agree  
5 to take such action as is necessary to amend this MOU in order to implement the standards and  
6 requirements of HIPAA, the HIPAA regulations, the HITECH Act and other applicable laws relating  
7 to the security or privacy of PHI. COUNTY may terminate this MOU upon thirty (30) days written  
8 notice in the event that UPholdings do not enter into an amendment providing assurances regarding the  
9 safeguarding of PHI that COUNTY in its sole discretion deems sufficient to satisfy the standards and  
10 requirements of HIPAA, the HIPAA regulations and the HITECH Act.

11 R. No Third-Party Beneficiaries

12 Nothing express or implied in the terms and conditions of these provisions is  
13 intended to confer, nor shall anything herein confer, upon any person other than COUNTY or  
14 UPholdings and their respective successors or assignees, any rights, remedies, obligations or liabilities  
15 whatsoever.

16 S. Interpretation

17 The terms and conditions in these provisions shall be interpreted as broadly as  
18 necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws.  
19 The parties agree that any ambiguity in the terms and conditions of these provisions shall be resolved  
20 in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.

21 T. Regulatory References

22 A reference in the terms and conditions of these provisions to a section in the  
23 HIPAA regulations means the section as in effect or as amended.

24 U. Survival

25 The respective rights and obligations of UPholdings as stated in this Section shall  
26 survive the termination or expiration of this MOU.

27 V. No Waiver of Obligations

28 No change, waiver or discharge of any liability or obligation hereunder on any

1 one or more occasions shall be deemed a waiver of performance of any continuing or other obligation,  
2 or shall prohibit enforcement of any obligation on any other occasion.

3 **18. DATA SECURITY**

4 For the purpose of preventing the potential loss, misappropriation or inadvertent access,  
5 viewing, use or disclosure of COUNTY data including sensitive or personal client information; abuse  
6 of COUNTY resources; and/or disruption to COUNTY operations, individuals and/or agencies that  
7 enter into a contractual relationship with the COUNTY for the purpose of providing services under  
8 this MOU must employ adequate data security measures to protect the confidential information  
9 provided to Upholdings by the COUNTY, including but not limited to the following:

10 A. Upholdings -Owned Mobile, Wireless, or Handheld Devices

11 Upholdings may not connect to COUNTY networks via personally-owned  
12 mobile, wireless or handheld devices, unless the following conditions are met:

- 13 1) Upholdings has received authorization by COUNTY for
- 14 telecommuting purposes;
- 15 2) Current virus protection software is in place;
- 16 3) Mobile device has the remote wipe feature enabled; and
- 17 4) A secure connection is used.

18 B. Upholdings -Owned Computers or Computer Peripherals

19 Upholdings may not bring Upholdings -owned computers or computer  
20 peripherals into the COUNTY for use without prior authorization from the COUNTY's Chief  
21 Information Officer, and/or designee(s), including but not limited to mobile storage devices. If data is  
22 approved to be transferred, data must be stored on a secure server approved by the COUNTY and  
23 transferred by means of a Virtual Private Network (VPN) connection, or another type of secure  
24 connection. Said data must be encrypted.

25 C. COUNTY-Owned Computer Equipment

26 Upholdings or anyone having an employment relationship with the COUNTY  
27 may not use COUNTY computers or computer peripherals on non-COUNTY premises without prior  
28 authorization from the COUNTY's Chief Information Officer, and/or designee(s).

1 D. Upholdings may not store COUNTY's private, confidential or sensitive data on  
2 any hard-disk drive, portable storage device, or remote storage installation unless encrypted.

3 E. Upholdings shall be responsible to employ strict controls to ensure the integrity  
4 and security of COUNTY's confidential information and to prevent unauthorized access, viewing, use  
5 or disclosure of data maintained in computer files, program documentation, data processing systems,  
6 data files and data processing equipment which stores or processes COUNTY data internally and  
7 externally.

8 F. Confidential client information transmitted to one party by the other by means of  
9 electronic transmissions must be encrypted according to Advanced Encryption Standards (AES) of  
10 128 BIT or higher. Additionally, a password or pass phrase must be utilized.

11 G. Upholdings is responsible to immediately notify COUNTY of any violations,  
12 breaches or potential breaches of security related to COUNTY's confidential information, data  
13 maintained in computer files, program documentation, data processing systems, data files and data  
14 processing equipment which stores or processes COUNTY data internally or externally.

15 H. COUNTY shall provide oversight to Upholdings response to all incidents arising  
16 from a possible breach of security related to COUNTY's confidential client information provided to  
17 Upholdings. Upholdings will be responsible to issue any notification to affected individuals as required  
18 by law or as deemed necessary by COUNTY in its sole discretion. Upholdings will be responsible for all  
19 costs incurred as a result of providing the required notification.

20 **19. AUDITS AND INSPECTIONS**

21 Upholdings shall at any time during business hours, and as often as the COUNTY may  
22 deem necessary, make available to the COUNTY for examination all of its records and data with respect  
23 to the matters covered by this MOU. Upholdings shall, upon request by the COUNTY, permit the  
24 COUNTY to audit and inspect all such records and data necessary to ensure the Upholdings compliance  
25 with the terms of this MOU.

26 The COUNTY shall at any time during business hours, and as often as Upholdings may  
27 deem necessary, make available to Upholdings for examination all of its records and data with respect to  
28 the matters covered by this MOU. The COUNTY shall, upon request by Upholdings, permit Upholdings

1 to audit and inspect all such records and data necessary to ensure the COUNTY's compliance with the  
2 terms of this MOU.

3 If this MOU exceeds ten thousand dollars (\$10,000.00), CONTRACTOR shall be subject  
4 to the examination and audit of the Auditor General for a period of three (3) years after final payment  
5 under contract (Government Code Section 8546.7).

6 **20. DISCLOSURE OF SELF – DEALING TRANSACTIONS**

7 Only applicable if UPholdings is operating as a corporation (a for-profit or non-profit  
8 corporation) or UPholdings changes its status to operate as a corporation during this MOU.

9 Members of UPholdings shall disclose any self-dealing transactions that they are a party to  
10 while UPholdings is providing goods or performing services under this MOU. A self-dealing transaction  
11 shall mean a transaction to which UPholdings is a party and in which one or more of its directors has a  
12 material financial interest. Members of UPholdings shall disclose any self-dealing transactions that they  
13 are a party to by completing and signing a *Self-Dealing Transaction Disclosure Form* (Exhibit A) and  
14 submitting it to the COUNTY prior to commencing with the self-dealing transaction or immediately  
15 thereafter.

16 **21. NON-EXCLUSIVE MOU**

17 No provisions of this MOU shall preclude COUNTY from entering into other MOU's  
18 with other parties for supportive housing related programs and services.

19 **22. ENTIRE MOU**

20 This MOU and all exhibits constitutes the entire understanding between UPholdings and  
21 COUNTY with respect to the subject matter hereof and supersedes all previous arrangements,  
22 negotiations, proposals, commitments, writings, advertisements, publications, and understandings of  
23 any nature whatsoever unless expressly included in this MOU.  
24  
25  
26  
27  
28

1 IN WITNESS WHEREOF, the parties hereto have executed this MOU as of the day and  
2 year first hereinabove written.

3  
4

5 **UPHOLDINGS**

**COUNTY OF FRESNO**

6  
7   
8 (Authorized Signature)

9  
10   
11 Nathan Magsig,  
12 Chairman of the Board of Supervisors of  
13 the County of Fresno

14 Cullen J. Davis, manager  
15 Print Name & Title

16 900 W. Jackson Blvd. Suite 2W

17 Chicago, IL 60607

18 Mailing Address

19 **ATTEST:**  
20 Bernice E. Seidel  
21 Clerk of the Board of Supervisors  
22 County of Fresno, State of California

23  
24 By: Susan Bishop  
25 Deputy

26 **FOR ACCOUNTING USE ONLY:**

27 Fund: 0001/10000  
28 Organization: 56304710  
Account: 7295

## SELF-DEALING TRANSACTION DISCLOSURE FORM

In order to conduct business with the County of Fresno (hereinafter referred to as “County”), members of a contractor’s board of directors (hereinafter referred to as “County Contractor”), must disclose any self-dealing transactions that they are a party to while providing goods, performing services, or both for the County. A self-dealing transaction is defined below:

*“A self-dealing transaction means a transaction to which the corporation is a party and in which one or more of its directors has a material financial interest”*

The definition above will be utilized for purposes of completing this disclosure form.

### INSTRUCTIONS

- (1) Enter board member’s name, job title (if applicable), and date this disclosure is being made.
- (2) Enter the board member’s company/agency name and address.
- (3) Describe in detail the nature of the self-dealing transaction that is being disclosed to the County. At a minimum, include a description of the following:
  - a. The name of the agency/company with which the corporation has the transaction; and
  - b. The nature of the material financial interest in the Corporation’s transaction that the board member has.
- (4) Describe in detail why the self-dealing transaction is appropriate based on applicable provisions of the Corporations Code.
- (5) Form must be signed by the board member that is involved in the self-dealing transaction described in Sections (3) and (4).

<b>(1) Company Board Member Information:</b>			
<b>Name:</b>		<b>Date:</b>	
<b>Job Title:</b>			
<b>(2) Company/Agency Name and Address:</b>			
<b>(3) Disclosure (Please describe the nature of the self-dealing transaction you are a party to)</b>			
<b>(4) Explain why this self-dealing transaction is consistent with the requirements of Corporations Code 5233 (a)</b>			
<b>(5) Authorized Signature</b>			
<b>Signature:</b>		<b>Date:</b>	