



COUNTY OF HUMBOLDT

AGENDA ITEM NO.
C-27

For the meeting of: June 23, 2015

Date: April 10, 2015

To: Board of Supervisors

From: Phillip R. Crandall, Director *Asha George for Phil Crandall*
Department of Health and Human Services-Mental Health

Subject: Agreement with Diamond Drugs, Incorporated for Fiscal Years 2015-2016

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approves and authorizes the Chair to sign three (3) originals of the Agreement with Diamond Drugs, Incorporated for fiscal year 2015-16; and
2. Directs the Clerk of the Board to return two (2) signed originals to the Department of Health and Human Services (DHHS)-Contract Unit for forwarding to DHHS-Mental Health Administration.

SOURCE OF FUNDING:

Mental Health Fund

DISCUSSION:

On June 24, 2014 (item C-18), the Humboldt County Board of Supervisors approved awarding a contract to Diamond Drugs, Incorporated (Diamond Drugs) for pharmaceutical services, approved DHHS to negotiate a contract with Diamond Drugs for said services, and authorized the Director of DHHS to sign the contract upon approval of County Counsel and Risk Management. On June 30, 2015, DHHS-Mental Health and Diamond Drugs entered into an Agreement for pharmaceutical services for the period of July 1, 2014 through June 30, 2015. DHHS-Mental Health continues to require pharmacy services for fiscal year 2015-16.

Prepared by Diane Goldsmith Harger, MA Administrative Analyst II

CAO Approval *Amy Nissen*

REVIEW: Auditor *MSM* County Counsel *KP* Personnel _____ Risk Manager *Off.* Other _____

TYPE OF ITEM:
 Consent
 Departmental
 Public Hearing
 Other _____

PREVIOUS ACTION/REFERRAL:

Board Order No. C-18

Meeting of: 6/24/14

BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT
Upon motion of Supervisor *Bass* Seconded by Supervisor *Sundberg*
Ayes *Sundberg, Fennell, Bohm, Bass*
Nays _____
Abstain _____
Absent *Lorelace*

and carried by those members present, the Board hereby approves the recommended action contained in this Board report.

Dated: *June 23, 2015*
By: *Kathy Hayes*
Kathy Hayes, Clerk of the Board

DHHS Mental Health provides medications to County Mental Health Facilities including Sempervirens, Crisis Stabilization Unit, Medication Support Clinics, Humboldt County Correctional Facility (HCCF), Regional Facility (RF), and Juvenile Hall (JH).

Diamond Drugs, Inc. provides comprehensive pharmaceutical services for prescription and non-prescription items required at DHHS-Mental Health facilities. Diamond Drugs, Inc. delivers quality care for patients and clients by utilizing cost effective innovative technologies. Computerized Medication Administration Records, real time reports, and invoicing which streamlines service delivery and accountability. Additionally, Diamond Drugs, Inc. provides consultant pharmacists who are available continuously for emergency and routine consultations twenty-four (24) hours a day seven (7) days a week. Prior to filling prescription orders, Diamond Drugs, Inc. screens each patient's complete computerized medication profile to ensure safe and therapeutic medication administration.

Diamond Drugs, Inc. also works with the DHHS-Mental Health staff and the Pharmacy and Therapeutics Committee to evaluate additions or deletions of the DHHS-Mental Health psychotropic formulary. Diamond Drugs Inc. provides quarterly medication usage reports accompanied with graphs, cost comparisons, and drug indication for particular drug classes.

DHHS-Mental Health recommends that the Board approves and authorizes the Chair to sign three (3) originals of the Agreement with Diamond Drugs, Inc. for fiscal year 2015-16.

FINANCIAL IMPACT:

The maximum value of this agreement is not to exceed \$200,000.00 (Two Hundred Thousand Dollars). The expenditure appropriation related to this Agreement been included in the FY 2015-16 proposed budgets for DHHS-Mental Health Jail Programs, Mental Health Services Act, Sempervirens / Psychiatric Emergency Services and Medication Support, budget units 1170-427, 1170-477, 1170-495 and 1170-498 respectively.

This Agreement supports the Board's Strategic Framework by protecting vulnerable populations and creating opportunities for improved health and safety.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

Your Board could choose not to approve the Agreement, however this is not recommended by DHHS.

ATTACHMENTS:

1. Diamond Drugs, Incorporated Service Agreement for the period of July 1, 2015 through June 30, 2016 (Three (3) originals)

**AGREEMENT
BY AND BETWEEN
HUMBOLDT COUNTY
AND
DIAMOND DRUGS, INCORPORATED**

FOR FISCAL YEAR 2015-2016

This Agreement, made and entered into this 23rd day of June, 2015, at Eureka, California, by and between Humboldt County, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and Diamond Drugs, Incorporated, aka Diamond Pharmacy Services, and/or Diamond Medical Supply, Diamond, RemedyRepack, SapphireHealth, and InnovaScript hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, COUNTY through its Department of Health and Human Services (DHHS)-Mental Health desires to provide pharmacy services; and

WHEREAS, CONTRACTOR offers these services; and

WHEREAS, CONTRACTOR is a licensed pharmacy possessing all requisite professional licenses and Drug Enforcement Agency (DEA) registration to provide medications in the State of California and contracts to provide services to mental health patients;

WHEREAS, CONTRACTOR in accordance with provisions of Chapter 9 of Division 2 of the Business and Professions Code, is a non-resident pharmacy licensed by the State of California;

WHEREAS, COUNTY wishes to obtain services from CONTRACTOR on behalf of itself and/or its clients;

NOW THEREFORE BE IT AGREED:

1. DESCRIPTION OF SERVICES:

CONTRACTOR agrees to provide all of the services set forth in Exhibit A, attached hereto and incorporated by reference. Said exhibit describes the work to be performed by CONTRACTOR under this Agreement.

COUNTY RESPONSIBILITIES

- A. To pay to CONTRACTOR all fees for services rendered as outlined in Exhibit B to this Agreement.
- B. To furnish all legally required medication and product order information to CONTRACTOR for any Formulary and Non-Formulary Medications prescribed for COUNTY'S patients.

2. NO TERMS NOT INCLUDED:

This Agreement contains all the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in its entirety any and all prior agreements of the parties.

3. TERM:

The term of this Agreement shall be from July 1, 2015 and shall continue through June 30, 2016, unless sooner terminated as provided herein.

4. TERMINATION:

A. Breach of Contract -- COUNTY may immediately suspend or terminate this Agreement in whole or in part, where in its sole discretion, the determination is made that there is:

- i. An illegal or improper use of funds;
- ii. A failure to comply with any term of this Agreement;
- iii. A substantially incorrect or incomplete report submitted;
- iv. Loss of licensure;
- v. Charges to Medi-Cal Beneficiaries other than any authorized share of cost payments;
- vi. Failure to comply with COUNTY's Utilization Review procedures;
- vii. Failure to abide by applicable Grievance and/or Quality Improvement Committee decisions;
- viii. Failure to maintain adequate levels of insurance as specified in the section entitled INSURANCE REQUIREMENTS;
- ix. Failure to comply with State or Federal law;
- x. Where termination is recommended by the Peer Review Sub-committee;
- xi. Filing of a bankruptcy petition;
- xii. Practice or Business closure; and
- xiii. Improperly performed service

B. Without Cause -- This Agreement may be terminated by either party without cause as follows:

- i. If terminated by CONTRACTOR, termination shall require sixty (60) days advance written notice of such intent to terminate. The notice shall state the effective date of the termination.
- ii. COUNTY may terminate this Agreement without cause upon thirty (30) days written notice; except that COUNTY shall take into consideration the welfare of COUNTY's clients and make allowance for the treatment needs of its clients.

5. NOTICES:

Any and all notice(s) required to be given pursuant to the terms of this Agreement may be given personally or by registered mail addressed to either COUNTY or CONTRACTOR at the following addresses:

COUNTY: DHHS-Mental Health
Attention: Mental Health Director
720 Wood Street
Eureka, California 95501

CONTRACTOR: Diamond Pharmacy Services Medical Supply, Incorporated
645 Kolter Drive
Indiana, PA 15701

6. ATTORNEY FEE ON BREACH:

CONTRACTOR and COUNTY each agree that in the event any action, suit or proceeding be commenced to complete the performance of this Agreement or to seek damages for breach thereof, it will pay reasonable attorney's fees (including reasonable value of services rendered by County Counsel) to the prevailing party, to be awarded and fixed by the court, and to be taxed as cost and to be included in the judgment thereon rendered.

7. PAYMENT:

COUNTY will reimburse CONTRACTOR for services pursuant to this Agreement not to exceed the maximum amount of Two Hundred Thousand Dollars (\$200,000.00). All costs incurred above the maximum amount will be the responsibility of the CONTRACTOR. It shall be the responsibility of CONTRACTOR to notify COUNTY in writing, at least six weeks prior to the date upon which CONTRACTOR estimates that the maximum amount will be reached. Specific payment terms and conditions are set forth in Exhibit B, attached hereto and incorporated herein by reference.

CONTRACTOR shall submit invoices to County of Humboldt-DHHS Mental Health Financial Services 507 F Street Eureka, CA 95501 by the tenth (10th) working day for each month for medications dispensed in the preceding month. The invoice shall include copies of all billing receipts for the preceding month. Invoices shall contain the following information for each prescription filled:

- A. Eligible recipient's name or "house stock";
- B. Service Date;
- C. Prescription number;
- D. Drug description, name, strength, and dosage form;
- E. Quantity dispensed;
- F. Prescriber's name;
- G. Net prescription billing;
- H. Pharmacist wholesale cost per 100 or per pint;
- I. Total cost to COUNTY.

If State, Federal or County funding are reduced or deleted, the maximum reimbursement shall be reduced or deleted.

CONTRACTOR shall hold harmless the State of California, and Medi-Cal Beneficiaries in the event COUNTY cannot or will not pay for services rendered by CONTRACTOR pursuant to the terms of this Agreement.

8. NO WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of the CONTRACTOR. Neither shall such payment impair or prejudice any remedy available to COUNTY with respect to the breach or default. COUNTY shall have the right to demand of the CONTRACTOR the repayment of any funds disbursed to the CONTRACTOR under this Agreement, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement. The CONTRACTOR shall promptly refund any such funds upon demand.

9. AUDIT AND RECORD RETENTION:

- A. CONTRACTOR shall be subject to the examination and audit of the State Auditor General for a period of three (3) years after final payment under this Agreement pursuant to Government Code Section 8546.7. CONTRACTOR shall hold COUNTY harmless for any liability resulting from said audit.
- B. CONTRACTOR shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses. The foregoing constitutes "records" for the purpose of this provision.
- C. CONTRACTOR's facility or office or such part thereof as may be engaged in the performance of this Agreement and its records shall be subject at all reasonable times to inspection, audit, and reproduction.
- D. CONTRACTOR agrees that the State Department of Health Care Services, the State Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. CONTRACTOR agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.
- E. CONTRACTOR shall preserve and make available his/her records (1) for a period of three (3) years from the date of final payment under this Agreement, and

(2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement or by subparagraphs (1) or (2) below.

(1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.

(2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-(3) year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three (3)-year period, whichever is later.

F. CONTRACTOR shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code section 10115.10, if applicable.

G. CONTRACTOR may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, CONTRACTOR must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

10. INSPECTION RIGHTS

CONTRACTOR shall make all books and records pertaining to the goods and services furnished under the terms of this Agreement available for inspection, examination, or copying: fiscal audits, program compliance, review of client complaints, or copying:

By COUNTY, the State Department of Health Care Services, the United States Department of Health and Human Services, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives.

At all reasonable times at CONTRACTOR's normal place of business or at such other mutually-agreeable location in California.

In a form maintained in accordance with the general standards and COUNTY standards applicable to such book or record keeping.

For a term of at least three (3) years from the close of the State Department of Health Care Services fiscal year in which this Agreement was in effect. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this Agreement including working papers, reports, financial records and books of account, client records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for clients.

11. REPORTING:

CONTRACTOR agrees to provide COUNTY with any reports that may be required by

County, State or Federal agencies for compliance with this Agreement.

12. MONITORING:

CONTRACTOR agrees to extend to the DHHS-Mental Health Director, the State Department of Health Care Services or their designees, the right to review and monitor records, programs or procedures, at any time, in regards to clients, as well as the overall operation of CONTRACTOR'S programs in order to ensure compliance with the terms and conditions of this Agreement.

CONTRACTOR will allow COUNTY to monitor the services provided under this Agreement and cooperate with a corrective action plan if deficiencies are identified

13. ASSIGNMENT:

Neither party shall assign its obligations under this Agreement without the prior written consent of the other party. Any assignment by CONTRACTOR in violation of this provision shall be void and shall be cause for immediate termination of this Agreement.

14. SUBCONTRACTING:

CONTRACTOR shall not subcontract services without prior written permission by COUNTY and such assignment or delegation of this Agreement shall be void. In the event that CONTRACTOR sees the need to subcontract services and COUNTY grants written permission to CONTRACTOR to proceed with such undertaking, CONTRACTOR shall ascertain that all subcontractors possess and maintain the necessary licensing or certification. CONTRACTOR shall ensure that all subcontractors are subject to the applicable terms and conditions of this Agreement including, but not limited to, the privacy, security, and confidentiality requirements.

15. RELATIONSHIP OF PARTIES:

It is understood that this is an Agreement by and between two independent contractors and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture, or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including but not limited to overtime, retirement benefits, worker's compensation and injury leave or other leave benefits.

16. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

CONTRACTOR certifies by its signature below that CONTRACTOR is not a Nuclear Weapons Contractor, in that CONTRACTOR is not knowingly or intentionally engaged in the research, development, production, or testing of nuclear warheads, nuclear weapons systems, or nuclear weapons components as defined by the Nuclear Free Humboldt County Ordinance. CONTRACTOR agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this Agreement if it determines that the foregoing certification is false or if CONTRACTOR becomes a Nuclear Weapons Contractor.

17. COMPLIANCE WITH LAWS:

CONTRACTOR agrees to comply with all applicable local, State and Federal laws and regulations, including but not limited to the Americans with Disabilities Act. CONTRACTOR further agrees to comply with any applicable Federal, State and local licensing standards or criteria established locally or by the State or Federal governments. This Agreement shall be governed by and construed in accordance with all laws and regulations and COUNTY's contractual obligations under any Mental Health Managed Care contract COUNTY has with the State Department of Health Care Services. CONTRACTOR agrees to comply with all provisions applicable to subcontractors in any Mental Health Managed Care contract COUNTY has with the State Department of Health Care Services.

18. VENUE AND APPLICABLE LAW:

This Agreement shall be construed in accordance with the laws of the State of California and COUNTY's contractual obligations under any Mental Health Managed Care contract COUNTY has with the State Department of Health Care Services. Any dispute arising hereunder or relating to this Agreement shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to Code of Civil Procedure Sections 394 and 395.

19. REFERENCE TO LAWS AND RULES:

In the event any law, regulation or policy referred to in this Agreement is amended during the term hereof, the parties agree to comply with the amended provision as of the effective date of such amendment.

20. NONDISCRIMINATION:

- A. Consistent with the requirements of applicable federal or state law, such as but not limited to Title 42, Code of Federal Regulations, section 38.6(d)(3) and (4), CONTRACTOR shall not engage in any unlawful discriminatory practices in the admission of clients, assignments of accommodations, treatment, evaluation, employment or personnel, or in any other respect on the basis of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics) mental or physical handicap or disability (including HIV status and AIDS), military service, or any other classifications protected by federal, state, or local laws or ordinances. CONTRACTOR shall not discriminate against clients on the basis of health status or need for health care services, pursuant to Title 42, Code of Federal Regulations, section 438.6(d)(3).
- B. During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee or applicant for employment because of race, religion or religious creed, color, age (over 40), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national

origin, ancestry, marital status, medical condition (including cancer and genetic characteristics) mental or physical handicap or disability (including HIV status and AIDS), military service, or any other classifications protected by federal, state, or local laws or ordinances. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. CONTRACTOR shall comply with the Disabilities Act of 1990, the Fair Employment and Housing Act (Government Code, Section 12900 et seq.), and the applicable regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285 et seq.). CONTRACTOR shall ensure that the evaluation and treatment of their employees and applicants for employment are free of such discrimination. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5, Division 4 of Title 2, California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as it set forth in full. CONTRACTOR shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- C. CONTRACTOR agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or the State Department of Health Care Services, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- D. CONTRACTOR shall, in all solicitations or advancements for employees placed by or on behalf of the CONTRACTOR, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- E. CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of CONTRACTOR's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- F. CONTRACTOR shall comply with all the provisions of and furnish all information and reports required by Section 5043 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as

amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity, and as supplemented by regulation at 41 Code of Federal Regulations part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, and of the rules, regulations, and relevant orders of the Secretary of Labor. pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

- G. CONTRACTOR shall furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 Code of Federal Regulations part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 12973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- H. In the event of CONTRACTOR's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and CONTRACTOR may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 Code of Federal Regulations part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- I. Notwithstanding other provisions of this section, CONTRACTOR may require a determination of medical necessity pursuant to Title 9, California Code of Regulations, section 1820.205, Section 1830.205 or Section 1830.210, prior to providing covered services to a client.

21. MEDICAL RECORD:

- A. CONTRACTOR shall maintain for each client who has received services, a legible medical record, kept in detail consistent with appropriate medical and professional practice and requirements of the State Health and Welfare Agency, which permits effective internal professional review, external medical audit process, and which facilitates an adequate system for follow-up treatment. CONTRACTOR agrees to maintain and preserve, until three (3) years after termination of this Agreement and final payment, to permit the State Department

of Health Care Services or COUNTY or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this Agreement and to allow interviews of any employees who might reasonably have information related to such records.

- B. CONTRACTOR shall maintain such books and records as are necessary to disclose how CONTRACTOR discharged its obligations under this Agreement. These books and records shall identify the quantity of covered services provided under this Agreement, the quality of those services, the manner and amount of payment made for those services, the clients who received services, the manner in which the CONTRACTOR administered the provision of specialty mental health services and the cost thereof.
- C. Such books and records shall include, but are not limited to, all physical records originated or prepared pursuant to performance under this Agreement including: working papers, reports submitted to COUNTY or the State Department of Health Care Services, financial records, all medical and treatment records, medical charts and prescription files, and other documentation pertaining to services rendered to clients. These books and records shall be maintained for a minimum of three (3) years after the final payment is made and all pending matters closed, or, in the event CONTRACTOR has been notified that the COUNTY, State Department of Health Care Services, United States Department of Health and Human Services, or the Comptroller General of the United States or their duly authorized representatives, have commenced an audit or investigation of the contract, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later.

22. CONFIDENTIALITY OF RECORDS:

CONFIDENTIALITY - CONTRACTOR shall protect the confidentiality of all clients and shall comply with applicable laws and regulations, including, but not limited to, Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health & Safety Code sections 1280.15 and 1280.18 as applicable; the California Information Practices Act as applicable; Title 42 Section 431.300 et seq. and Title 45 Section 205.50 of the Code of Federal Regulations; the United States Health Information Portability and Accountability Act of 1996 ("HIPAA"); the United States and the Health Information Technology and Clinical Health Act (HITECH).

COUNTY and CONTRACTOR acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. CONTRACTOR agrees to promptly enter into negotiations concerning an amendment to this Agreement embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations.

CONTRACTOR shall further comply with the applicable privacy, security, and confidentiality requirements under any Mental Health Managed Care contract and Mental Health Performance contract COUNTY has with the State Department of Health Care Services.

CONTRACTOR shall protect from unauthorized disclosure the names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available to CONTRACTOR or are disclosed to CONTRACTOR as a result of services performed under this Agreement, except for statistical information not identifying any such person.

For purposes of these subsections, identifying information shall include, but not be limited to, name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print, or a photograph. Such identifying information shall not be used for any purpose other than carrying out CONTRACTOR's duties and obligations hereunder.

CONTRACTOR shall promptly transmit to COUNTY all requests for disclosure of such identifying information not emanating from a client/patient or person whose name or identifying information become available to CONTRACTOR or is disclosed to CONTRACTOR as a result of services performed under this Agreement.

CONTRACTOR shall use or disclose only the minimum amount of Protected Health Information "PHI" necessary to accomplish the intended purpose of this Agreement. CONTRACTOR shall not use or disclose PHI in any manner that would constitute a breach of this Agreement or a violation of local, state or federal law.

CONTRACTOR shall comply with the accounting requirements of 45 Code of Federal Regulations section 164.528 and any associated regulations or informal guidance Issued by the U.S. Department of Health and Human Services, Office of Civil Rights, all as may be amended or changed from time to time.

CONTRACTOR shall only use, store, disclose, or access PHI in compliance with this Agreement and all applicable local, state and federal laws, regulations, rules and standards.

CONTRACTOR shall not download PHI to any personal device, including, but not limited to, flash drives, cell phones, iPads, or tablets without the prior written approval of COUNTY.

If CONTRACTOR has reason to believe that PHI transmitted pursuant to this Agreement may have been accessed, disclosed, or acquired in breach of the terms and conditions herein, CONTRACTOR shall immediately take all actions necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the suspected breach. CONTRACTOR shall give highest priority to immediately mitigating and remediating the suspected breach, and shall devote such resources as may be required to accomplish that goal. In addition, CONTRACTOR shall cooperate with COUNTY's mitigation and remediation efforts, including providing any and all information necessary to enable COUNTY to fully understand the nature and scope of the suspected breach, including, but not limited to, identification of each individual whose unsecured PHI may have been improperly accessed, acquired, or disclosed. In the event that CONTRACTOR's assistance is required to reinstall software, such assistance shall be provided at no cost to COUNTY and in accordance with COUNTY's policies and standards.

CONTRACTOR shall notify COUNTY, by telephone call and/or e-mail, immediately after discovering a suspected breach of PHI in computerized form, if the PHI was, or is reasonably believed to have been acquired by an unauthorized person.

CONTRACTOR shall notify COUNTY, by telephone call or e-mail, within twenty four (24) hours after discovering any other suspected security incident, intrusion, loss or unauthorized use or disclosure of PHI in violation of this Agreement or any applicable local, state or federal law. A breach shall be treated as discovered by CONTRACTOR as of the first day on which such breach is known thereto (including any employee, officer, or other agent thereof) or reasonably should have been known thereby.

To the extent deemed warranted, the CONTRACTOR shall provide notice to any or all individuals affected by the suspected breach. CONTRACTOR shall pay the full costs associated with notifying the impacted individuals, which may include, but are not limited to, the costs to retain an outside consulting firm to undertake the notification effort. In addition, CONTRACTOR shall consult with COUNTY regarding the steps required to notify impacted individuals and any other persons, media outlets or governmental agencies, and must supply COUNTY with the following information:

A brief description of the circumstances surrounding the suspected breach, including the date of occurrence and discovery thereof, if known.

A description of the types of unsecured PHI that were involved in the suspected breach (such as the full name, Social Security number, date of birth, home address, account number, or disability code of all affected third parties).

A brief description of what CONTRACTOR is doing to remediate the breach, mitigate losses and protect against any further breaches.

CONTRACTOR agrees to timely prepare accurate and complete performance records relating to the use and disclosure of PHI transmitted pursuant to this Agreement, and to maintain and preserve said records for at least three (3) years from the date of expiration or termination of this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising there from.

CONTRACTOR shall make itself available to the State Department of Health Care Services at no cost to testify as witnesses, or otherwise, in the event of any litigation or administrative proceedings being commenced against the State Department of Health Care Services, its directors, officers or employees based upon claimed violations of HIPAA, or the HIPAA regulations, which involves inactions or actions by COUNTY, except where COUNTY or CONTRACTOR is a named adverse party.

All workforce members who assist in the performance of functions or activities on behalf of CONTRACTOR, or access or disclose Personal Health Information "PHI," Personal Information "PI," or Personal Identifying Information "PII," must complete information privacy and security training, at least annually, at their own expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These

certifications must be retained for a period of six (6) years following termination of this Agreement.

Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.

All persons that will be working with PHI, PII, or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to PHI, PII, or PI. The statement must be renewed annually. CONTRACTOR shall retain each person's written confidentiality statement for inspection for a period of six (6) years following termination of this Agreement.

Before a member of the workforce may access PHI, PII, or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years.

All workstations and laptops that store PHI, PII, or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the California Department of Health Care Services Information Security Office.

COMPUTER SECURITY REQUIREMENTS - Servers containing unencrypted PHI, PII, or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.

Only the minimum necessary amount of PHI, PII, or PI required to perform necessary business functions may be copied, downloaded, or exported.

All electronic files that contain PHI, PII, or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

All workstations, laptops and other systems that process and/or store PHI, PII, or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.

All workstations, laptops and other systems that process and/or store PHI, PII, or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.

All users must be issued a unique user name for accessing PHI, PII, or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word

Passwords must not be stored in readable format on the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

When no longer needed, all PHI, PII, or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the California Information Security Office.

The system providing access to PHI, PII, or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.

All systems providing access to PHI, PII, or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.

The system must maintain an automated audit trail which can identify the user or system process which alters PHI, PII, or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If PHI, PII, or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.

The system providing access to PHI, PII, or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.

All data transmissions of PHI, PII, or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI, PII, or PI in motion such as website access, file transfer, and E-Mail.

All systems involved in accessing, holding, transporting, and protecting PHI, PII, or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI, PII, or PI must have at least an annual system risk assessment/security review which provides assurance that

administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.

All systems processing and/or storing PHI, PII, or PI must have a routine procedure in place to review system logs for unauthorized access.

All systems processing and/or storing PHI, PII, or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI, PII, or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.

CONTRACTOR must have established documented procedures to backup PHI to maintain retrievable exact copies of PHI, PII, or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore PHI, PII, or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of data.

PHI, PII, or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. PHI, PII, or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.

Visitors to areas where PHI, PII, or PI is contained shall be escorted and PHI, PII, or PI shall be kept out of sight while visitors are in the area.

PHI, PII, or PI must be disposed of through confidential means, such as cross cut shredding and pulverizing.

Only the minimum necessary PHI, PII, or PI may be removed from the premises of CONTRACTOR except with express written permission. PHI, PII, or PI shall not be considered "removed from the premises" if it is only being transported from one of CONTRACTOR's locations to another of CONTRACTOR's locations.

Faxes containing PHI, PII, or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.

Mailings containing PHI, PII, or PI shall be sealed and secured from damage or inappropriate viewing of such PHI, PII, or PI to the extent possible. Mailings which include 500 or more individually identifiable records of PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission to use another method is obtained.

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23. INSURANCE REQUIREMENTS:

- A. THIS CONTRACT SHALL NOT BE EXECUTED BY COUNTY and the CONTRACTOR is not entitled to any rights, unless certificates of insurances, or other sufficient proof that the following provisions have been complied with, and such certificate(s) are filed with the Clerk of the Humboldt County Board of Supervisors.
- B. Without limiting CONTRACTOR'S indemnification obligations provided for herein, CONTRACTOR shall and shall require any of its subcontractors to take out and maintain, throughout the period of this Agreement and any extended term thereof, the following policies of insurance placed with insurers authorized to do business in California and with a current A.M. Bests rating of no less than A:VII or its equivalent against injury/death to persons or damage to property which may arise from or in connection with the activities hereunder of CONTRACTOR, its agents, officers, directors employees, licensees, invitees, assignees or subcontractors:
1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000.00) per occurrence for any one (1) incident, including, personal injury, death and property damage. If a general aggregate limit is used, either the general aggregate limit shall apply separately to this project or the general aggregate shall be twice the required occurrence limit.
 2. Automobile/Motor liability insurance with a limit of liability of not less than One Million Dollars (\$1,000,000.00) combined single limit coverage. Such insurance shall include coverage of all "owned", "hired", and "non-owned" vehicles or coverage for "any auto".
 3. Workers Compensation and Employer's Liability Insurance providing worker's compensation benefits as required by the Labor Code of the State of California. Said policy shall contain or be endorsed to contain a waiver of subrogation against COUNTY, its officers, agents, and employees. In all cases, the above insurance shall include Employers Liability coverage with limits of not less than One Million Dollars (\$1,000,000.00) per accident for bodily injury and disease.
 4. Professional liability insurance/errors and omission coverage in an amount no less than One Million Dollars (\$1,000,000.00) for each occurrence (Three Million Dollars [\$3,000,000.00] general aggregate). Said insurance shall be maintained for the statutory period during which the professional may be exposed to liability. CONTRACTOR shall require that the aforementioned professional liability insurance coverage language be incorporated into its contract with any other entity with which it contracts for professional services.
 5. Insurance notices sent to:
County of Humboldt

Attn: Risk Management
825 5th Street, Room 131
Eureka, CA 95501

- C. **Special Insurance Requirements.** Said policies shall unless otherwise specified herein be endorsed with, the following provisions:
- (1) The Comprehensive General Liability Policy shall provide that the COUNTY, its officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by or on behalf of CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to the COUNTY, its officers, officials, employees, and volunteers. Said policy shall also contain a provision stating that such coverage:
 - a. Includes contractual liability.
 - b. Does not contain exclusions as to loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, commonly referred to "XCU Hazards".
 - c. Is primary insurance as regards to County of Humboldt.
 - d. Does not contain a pro-rata, excess only, and/or escape clause.
 - e. Contains a cross liability, severability of interest or separation of insureds clause.
 - (2) The policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under Section 5. It is further understood that CONTRACTOR shall not terminate such coverage until it provides COUNTY with proof satisfactory to COUNTY that equal or better insurance has been secured and is in place.
 - (3) The inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
 - (4) For claims related to this project, the CONTRACTOR'S insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to CONTRACTOR'S insurance and will not be called upon to contribute with it.
 - (5) Any failure to comply with reporting or other provisions of the Parties, including breach of warranties, shall not affect coverage provided to COUNTY, its officers, officials, employees, and volunteers.
 - (6) CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement by COUNTY. The endorsements shall be on forms as

approved by the COUNTY's Risk Manager or COUNTY Counsel. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000) shall be disclosed to and approved by COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost of said insurance. COUNTY is also hereby authorized with the discretion to deduct the cost thereof from the monies owed to CONTRACTOR under this Contract.

- (7) COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered and CONTRACTOR shall be required to purchase additional coverage to meet the aggregate limits set forth above.

24. HOLD HARMLESS/INDEMNIFICATION AGREEMENT:

- A. CONTRACTOR shall indemnify, defend and hold harmless COUNTY and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with CONTRACTOR'S duties and obligations under this Agreement and any amendments hereto.
- B. COUNTY shall indemnify, defend and hold harmless CONTRACTOR and its officers, officials, employees and volunteers, from any and all claims, demands, losses, damages, and liabilities of any kind or nature, including attorney's fees, which are caused by any negligent or willful acts of misconduct or omissions (either directly or through or by its officers, agents or employees) in connection with COUNTY's duties and obligations under this Agreement and any amendments hereto.
- C. Notwithstanding paragraphs A and B, in the event that CONTRACTOR and COUNTY are both held to be negligently or willfully responsible, CONTRACTOR and COUNTY will bear their proportionate share of liability as determined in any such proceeding. Each side will bear their own costs and attorney's fees.
- D. Acceptance of insurance, if required by this Agreement, does not relieve CONTRACTOR from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by CONTRACTOR's operations regardless if any insurance is applicable or not.

25. MEDIA RELEASE:

All press releases and informational material related to this Agreement shall receive approval from COUNTY prior to being released to the media (television, radio, newspapers, Internet). In addition, CONTRACTOR shall inform COUNTY of requests for interviews by media related to this Agreement prior to such interviews taking place.

COUNTY reserves the right to have a representative present at such interviews. All notices required by this provision shall be given to the Director of the Humboldt County Department of Health and Human Services or his designee.

26. PROTOCOLS:

Both parties recognize that a number of protocols must be negotiated to make this Agreement specific. In regard to all such protocols, they shall be agreed to by COUNTY and the DHHS-Mental Health Director and CONTRACTOR.

27. DRUG FREE WORKPLACE CERTIFICATION:

By signing this Agreement, CONTRACTOR hereby certifies that CONTRACTOR will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and will provide a drug-free workplace by doing all of the following:

- A. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations, as required by Government Code Section 8355(a)(1).
- B. Establish a Drug-Free Awareness Program, as required by Government Code Section 8355(a)(2) to inform employees about all of the following:
 - i. The dangers of drug abuse in the workplace,
 - ii. CONTRACTOR's policy of maintaining a drug-free workplace,
 - iii. Any available counseling, rehabilitation and employee assistance programs, and
 - iv. Penalties that may be imposed upon employees for drug abuse violations.
- C. Provide as required by Government Code Section 8355(a)(3) that every employee who works on the Agreement:
 - i. Will receive a copy of CONTRACTOR's drug-free policy statement, and
 - ii. Will agree to abide by the terms of CONTRACTOR's statement as a condition of employment on the Agreement or grant.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and CONTRACTOR may be ineligible for award of future State contracts if the Department determines that any of the following has occurred: (1) CONTRACTOR has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

28. PATIENTS' RIGHTS:

The parties to this Agreement shall comply with applicable laws, regulations and State policies relating to patients' rights.

29. CERTIFICATION REGARDING ENVIRONMENTAL TOBACCO SMOKE:

Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), requires that

smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by Federal programs either directly or through State or local governments, by Federal grant, contract, loan or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such Federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable Federal funds is Medicare or Medicaid; or facilities where Women, Infants and Children Program (WIC) coupons are redeemed. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to One Thousand Dollars (\$1,000.00) for each violation and/or the imposition of an administrative compliance order on the responsible entity.

By signing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act.

30. UTILIZATION REVIEW:

COUNTY, through its DHHS-Mental Health Director, may designate a person(s) to perform a utilization and/or professional standards review of all patients for which it is expected to make reimbursement.

31. AMENDMENT:

This Agreement may be amended at any time during the term of this Agreement upon the written mutual consent of both parties.

32. NOTIFICATION IN CHANGE IN OWNERSHIP AND CONTROL

In the event of a change in CONTRACTOR's ownership or control, within thirty five (35) days, or upon request of COUNTY, CONTRACTOR, shall notify COUNTY of any change in ownership or control and provide information as requested by COUNTY. The disclosures to be provided shall include, but not be limited to:

- i. The name and address of any person (individual or corporation) with an ownership or control interest in CONTRACTOR. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
 - a. Date of birth and Social Security Number (in the case of an individual);
 - b. Other tax identification number (in the case of a corporation with an ownership or control interest in CONTRACTOR or in any subcontractor in which CONTRACTOR has a 5 percent or more interest);
 - c. Whether the person (individual or corporation) with an ownership or control interest in CONTRACTOR is related to another person with ownership or control interest in the same or any other COUNTY

contractor as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which CONTRACTOR has a 5 percent or more interest is related to another person with ownership or control interest in CONTRACTOR as a spouse, parent, child, or sibling;

- d. The name of any other disclosing entity in which CONTRACTOR has an ownership or control interest; and
- e. The name, address, date of birth, and Social Security Number of any managing employee of CONTRACTOR.

33. DISCLOSURES RELATED TO BUSINESS TRANSACTIONS

Within thirty five (35) days, upon request by COUNTY, in accordance with 42 Code of Federal Regulations sections 455.101 through 455.106, CONTRACTOR shall submit disclosures regarding certain business transactions. The following information must be disclosed:

- i. The ownership of any subcontractor with whom CONTRACTOR has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
- ii. Any significant business transactions between CONTRACTOR and any wholly owned supplier, or between CONTRACTOR and any subcontractor, during the 5-year period ending on the date of the request.

34. DISCLOSURES RELATED TO PERSONS CONVICTED OF CRIMES

Upon request by COUNTY, CONTRACTOR shall submit disclosures regarding its owners, persons with controlling interest, agents, and managing employees' criminal convictions related to federal health care programs pursuant to 42 Code of Federal Regulations section 455.106(a)(1) and (2). CONTRACTOR shall submit the following disclosures:

- i. The identity of any person who is a managing employee of CONTRACTOR who has been convicted of a crime related to federal health care programs (42 Code of Federal Regulations section 455.106(a)(1), (2)); and
- ii. The identity of any person who is an agent of CONTRACTOR who has been convicted of a crime related to federal health care programs. (42 Code of Federal Regulations section 455.106(a)(1), (2)). For this purpose, the word "agent" has the meaning described in 42 Code of Federal Regulations section 455.101.

35. FEDERAL HEALTH CARE PROGRAM EXCLUSION

CONTRACTOR shall not employ or contract with providers or other individuals and entities excluded from participation in Federal health care programs (as defined in section 1128B(F) of the Social Security Act) under either Section 1128, 1128A, or 1156 of the Social Security Act. Federal financial participation is not available for amounts expended for providers excluded by Medicare, Medicaid or the State Children's Insurance Program, except for emergency services.

CONTRACTOR hereby warrants that neither it nor any of its staff members is restricted or excluded from providing services under any health care program funded by the Federal government, directly or indirectly, in whole or in part.

CONTRACTOR shall screen all staff employed or retained to provide services related to this Agreement to ensure that they are not designated as "Ineligible" or "Excluded" as defined hereunder. Screening shall be conducted against both the California "Medi-Cal Suspended and Ineligible List", and the United States, Health and Human Services, Office of Inspector General "List of Excluded Individuals/Entities" or any other list pursuant to 42 C.F.R. 438.214(d). CONTRACTOR shall screen prospective staff prior to hire or engagement.

CONTRACTOR shall screen all current staff at least monthly, and shall notify COUNTY in writing that CONTRACTOR and CONTRACTOR'S staff are eligible to participate in federally funded programs. This notification shall be performed by completing the Organizational Provider Employee Screening form (QI 67)

CONTRACTOR and staff shall be required to disclose to COUNTY immediately any debarment, exclusion or other event that makes CONTRACTOR or any staff person an Ineligible or Excluded person. If the CONTRACTOR becomes aware that a staff member has become an Ineligible or Excluded person, CONTRACTOR shall remove such individual from responsibility for, or involvement with, business or health care operations related to this Agreement.

CONTRACTOR shall indemnify and hold COUNTY harmless against any and all loss or damage COUNTY may suffer arising from any Federal exclusion of CONTRACTOR or its staff members from such participation in a Federally funded health care program.

Failure by CONTRACTOR to meet the requirements of this section shall constitute a material breach of Agreement upon which COUNTY may immediately terminate or suspend this Agreement.

36. NOTIFICATION OF LITIGATION

COUNTY shall be informed by CONTRACTOR within forty-eight (48) hours of notification of professional litigation.

37. CLEAN AIR / POLLUTION

For Contracts of amounts in excess of \$100,000 (unless exempt under 40 Code of Federal Regulations section 15.5): CONTRACTOR agrees to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 U.S.C. 1857(h)) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 Code of Federal Regulations part 15). Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 USC 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

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38. INTELLECTUAL PROPERTY RIGHTS

CONTRACTOR shall comply with all applicable Intellectual Property Rights Provisions in any Mental Health Managed Care contract COUNTY has with the State Department of Health Care Services as follows:

A. Ownership

- i. Except where the State Department of Health Care Services has agreed in a signed writing to accept a license, the State Department of Health Care Services shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by CONTRACTOR or the State Department of Health Care Services and which result directly or indirectly from this Agreement.
- ii. For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - a. For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- iii. In the performance of this Agreement, CONTRACTOR will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, CONTRACTOR may access and utilize certain of the State Department of Health Care Services' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein,

CONTRACTOR shall not use any of the State Department of Health Care Services' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of the State Department of Health Care Services. Except as otherwise set forth herein, neither CONTRACTOR nor the State Department of Health Care Services shall give any ownership interest in or rights to its Intellectual Property to the other Party. If during the term of this Agreement, CONTRACTOR accesses any third-party Intellectual Property that is licensed to the State Department of Health Care Services, CONTRACTOR agrees to abide by all license and confidentiality restrictions applicable to the State Department of Health Care Services in the third-party's license agreement.

- iv. CONTRACTOR agrees to cooperate with the State Department of Health Care Services in establishing or maintaining the State Department of Health Care Services' exclusive rights in the Intellectual Property, and in assuring the State Department of Health Care Services' sole rights against third parties with respect to the Intellectual Property. If CONTRACTOR enters into any agreements or subcontracts with other parties in order to perform this Agreement, CONTRACTOR shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to the State Department of Health Care Services all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, CONTRACTOR, or the State Department of Health Care Services and which result directly or indirectly from this Agreement or any subcontract.
- iv. CONTRACTOR further agrees to assist and cooperate with the State Department of Health Care Services in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce the State Department of Health Care Services' Intellectual Property rights and interests.

B. Retained Rights / License Rights

- i. Except for Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or the State Department of Health Care Services and which result directly or indirectly from this Agreement, CONTRACTOR shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. CONTRACTOR hereby grants to the State Department of Health Care Services, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute, and dispose CONTRACTOR's Intellectual

Property resulting from this Agreement, unless CONTRACTOR assigns all rights, title and interest in the Intellectual Property as set forth herein.

- ii. Nothing in this provision shall restrict, limit, or otherwise prevent CONTRACTOR from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that CONTRACTOR's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of the State Department of Health Care Services or third party, or result in a breach or default of any provisions of this Section or result in a breach of any provisions of law relating to confidentiality.

C. Copyright

- i. CONTRACTOR agrees that for purposes of copyright law, all works [as defined above] of authorship made by or on behalf of CONTRACTOR in connection with CONTRACTOR's performance of this Agreement shall be deemed "works made for hire". CONTRACTOR further agrees that the work of each person utilized by CONTRACTOR in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of CONTRACTOR or that person has entered into a written agreement with any such person that: (1) all work performed for CONTRACTOR shall be deemed a "work made for hire" under the Copyright Act and (2) that person shall assign all right, title, and interest to the State Department of Health Care Services to any work product made, conceived, derived from, or reduced to practice by CONTRACTOR or the State Department of Health Care Services and which result directly or indirectly from this Agreement.
- ii. All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or the State Department of Health Care Services and which result directly or indirectly from this Agreement, shall include the State Department of Health Care Services' notice of copyright, which shall read in 3mm or larger typeface: "© [*Enter Current Year e.g., 2010, etc.*], California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

D. Patent Rights

With respect to inventions made by CONTRACTOR in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, CONTRACTOR hereby grants to the State Department of Health Care Services a license as described under Section B.

of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then CONTRACTOR agrees to assign to the State Department of Health Care Services, without additional compensation, all its right, title and interest in and to such inventions and to assist the State Department of Health Care Services in securing United States and foreign patents with respect thereto.

E. Third-Party Intellectual Property

Except as provided herein, CONTRACTOR agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of CONTRACTOR or third party without first: (1) obtaining the State Department of Health Care Services' prior written approval; and (2) granting to or obtaining for the State Department of Health Care Services, without additional compensation, a license, as described in Section B of this provision, for any of CONTRACTOR's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and the State Department of Health Care Services determines that Intellectual property should be included in or is required for CONTRACTOR's performance of this Agreement, CONTRACTOR shall obtain a license under terms acceptable to the State Department of Health Care Services.

F. Warranties

- i. CONTRACTOR represents and warrants that:
 - a. It is free to enter into and fully perform this Agreement.
 - b. It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
 - c. Neither CONTRACTOR's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or the State Department of Health Care Services and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by CONTRACTOR.
 - d. Neither CONTRACTOR's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.

- e. It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
 - f. It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to the State Department of Health Care Services in this Agreement.
 - g. It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 - h. It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way CONTRACTOR's performance of this Agreement.
- ii. The State Department of Health Care Services makes no warranty that the Intellectual Property resulting from this Agreement does not infringe upon any patent, trademark, copyright or the like, now existing or subsequently issued.

G. Intellectual Property Indemnity

- i. CONTRACTOR shall indemnify, defend and hold harmless the State Department of Health Care Services and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not CONTRACTOR is a party to any pending or threatened litigation, which arise out of or are related to (1) the incorrectness or breach of any of the representations, warranties, covenants or agreements of CONTRACTOR pertaining to Intellectual Property; or (2) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of the State Department of Health Care Services' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR

or the State Department of Health Care Services and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. The State Department of Health Care Services reserves the right to participate in and/or control, at CONTRACTOR's expense, any such infringement action brought against the State Department of Health Care Services.

- ii. Should any Intellectual Property licensed by CONTRACTOR to the State Department of Health Care Services under this Agreement become the subject of an Intellectual Property infringement claim, CONTRACTOR will exercise its authority reasonably and in good faith to preserve the State Department of Health Care Services' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to the State Department of Health Care Services. The State Department of Health Care Services shall have the right to monitor and appear through its own counsel (at CONTRACTOR's expense) in any such claim or action. In the defense or settlement of the claim, CONTRACTOR may obtain the right for the State Department of Health Care Services to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, the State Department of Health Care Services shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- iii. CONTRACTOR agrees that damages alone would be inadequate to compensate the State Department of Health Care Services for breach of any term of these Intellectual Property provisions by CONTRACTOR. CONTRACTOR acknowledges the State Department of Health Care Services would suffer irreparable harm in the event of such breach and agrees the State Department of Health Care Services shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

H. Federal Funding

In any agreement funded in whole or in part by the federal government, the State Department of Health Care Services may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental

purposes and to have and permit others to do so.

I. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement.

39. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT OF 1996 (HIPAA)

The "County of Humboldt HIPAA Business Associate Agreement," a copy of which is attached hereto and identified as Exhibit C is hereby incorporated into this Agreement.

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[Signature page follow]

IN WITNESS WHEREOF, the parties hereto have entered into this Agreement as of the day and date first above written.

ATTEST:

KATHY HAYES

Clerk of the Board of Supervisors of the County of Humboldt, State of California

By: *Jan H. Howell, Deputy*

APPROVED AS TO INSURANCE:

Daniel J. Fells
Risk Manager

COUNTY OF HUMBOLDT:

Estelle Pennell
Chair, of the Board of Supervisors

CONTRACTOR:

Joan R. Zilner
Name Joan R. Zilner
President
Title

Mark J. Zilner
Name Mark J. Zilner
Secretary / Chief Operating Officer
Title

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND*
- (2) SECRETARY, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.*

EXHIBIT A DESCRIPTION OF SERVICES
FOR AGREEMENT WITH DIAMOND DRUGS, INC.
FOR FISCAL YEAR 2015-16

CONTRACTOR shall provide the following services described below in a manner consistent with the terms and provisions of this Agreement.

1. Pharmaceutical Services and Medical Supplies

CONTRACTOR shall provide comprehensive pharmaceutical services for prescription and non-prescription items required at COUNTY sites. Provided items include, but are not limited to pharmacist services, record keeping, reports, billing, medical supplies, and medications for topical, oral, and injectable use, inhalers, and suppositories. Generic substitutions and/or brand name medications, whichever are most cost effective, will be provided when available and approved by COUNTY prescribers. Only Federal Drug Administration (FDA) approved drugs, biologicals, and other related items will be sent to the facilities.

All medications will be labeled patient specific or stock based on prescribers as described in Paragraph 4(D) below and dispensed in full compliance with all current and future local, state, and federal laws, regulations, provisions, and court orders. CONTRACTOR will also provide consultant pharmacists who are available to COUNTY continuously for emergency and routine consultations twenty-four (24) hours a day, seven (7) days a week.

CONTRACTOR shall provide medical supplies as ordered on an occasional, as desired by COUNTY basis. CONTRACTOR has an online ordering and pricing system. Pricing information is also available by telephone to Customer Service. Medical supplies are delivered or shipped by ground or when possible, medical supply and sundry orders will be delivered or shipped with medication orders. CONTRACTOR pays shipping charges. COUNTY pays actual shipping cost for items that exceed size and weight restrictions.

2. Prescription Monitoring Services

Prior to filling prescription orders, CONTRACTOR'S clinical pharmacists shall screen each patient's complete computerized medication profile to ensure safe and therapeutic medication administration. CONTRACTOR shall screen for:

- Duplicate therapy
- Drug interactions
- Excessive/sub-therapeutic dosages
- A summary of all new and changed orders
- Patient drug allergies
- Medications that are being reordered too soon
- Medications ordered past the designated stop date
- Overall prescription order accuracy

CONTRACTOR shall alert DHHS-Mental Health (DHHS-MH) Medical staff via phone or fax of such occurrences prior to delivering or shipping the order.

3. Formulary Implementation and Management

CONTRACTOR shall utilize the existing DHHS-MH psychotropic formulary and shall work in conjunction with the COUNTY'S medical and mental health staff and the Pharmacy and Therapeutics Committee to evaluate additions or deletions of medications. CONTRACTOR will provide quarterly medication usage reports accompanied with graphs, cost comparisons, and drug indication for particular drug classes. The formulary will be reviewed and updated by COUNTY, if necessary, on a quarterly basis.

4. Ordering and Delivery or Shipping of Medications

A. Ordering

COUNTY may place orders by phone, electronic ordering, or fax via CONTRACTOR'S toll-free number. CONTRACTOR agrees to provide the following: daily drug order sheet samples necessary for transmitting new order, reorders, changes, stop order, or discontinued orders, double peel- off labels for reordering, and any other supplies and materials required for ordering medications. CONTRACTOR also agrees to designate a pharmacy technician at CONTRACTOR'S location dedicated to processing COUNTY'S orders.

B. Delivery or Shipping

All orders received by CONTRACTOR Monday through Friday by 1:00 p.m. Pacific Standard Time (PST) will be delivered or shipped to COUNTY the same day or next day. All orders received by CONTRACTOR on Friday after 1:00 p.m. PST and before 9:00 a.m. PST on Saturday, will be delivered or shipped to COUNTY by the following Monday.

CONTRACTOR will notify the Facility in advance of any changes in the schedule for ordering and/or delivery or shipping due to holidays.

Each medication delivery or shipment from CONTRACTOR will contain detailed itemized packing slips as a method of checking all items. Reports will be sorted in the format requested by COUNTY and will include, but are not limited to:

- Medication Delivery or Shipment Report - printed alphabetically by patient and containing patient's name and number, date, medication name, strength, number of doses, prescription number, and stop date.
- Scheduled Items Report - containing all above information exclusively printed for controlled substances.

- Tracking - all same day or next day packages are tracked daily to ensure timely and accurate delivery and/or shipment.

C. Medication Administration System

In conjunction with DHHS-MH staff, CONTRACTOR will provide and implement a specialized delivery or shipment system for each COUNTY site that will meet the COUNTY'S need for safe, efficient, accountable, feasible, and cost-effective medication administration. Prescription and non-prescription medications will be dispensed in unit-dose, patient specific, tamper-proof blister cards. CONTRACTOR shall dispense all prescriptions generically, unless there is no generic substitute.

Controlled substances will be dispensed in blister cards for easy accountability. CONTRACTOR shall dispense controlled prescription items in quantities not to exceed 30 days' supply. Prescriptions may be ordered in smaller quantities. This is subject to California's Board of Pharmacy regulations and the instructions of the prescribing practitioner.

D. Labeling

Each prescription will be labeled individually, with the patient's name and identification number, medication name and strength, generic interchange information, quantity dispensed, manufacturer's name, lot number, expiration date, route and times of administration, directions, patient location, prescription number, prescriber name, dispense date, stop date, and pharmacist's initials in accordance with all federal, state, and local laws and regulations.

Auxiliary warnings will be placed on each prescription where appropriate for safe and effective medication use.

E. Starter Packs (on-site start doses)

CONTRACTOR will provide starter packs of certain medications needed to begin therapy for immediate administration until a patient-specific prescription is received. Medications and stock quantities for starter doses will be determined in conjunction with COUNTY. An accountability sheet will accompany each starter pack. The medication may be reordered when needed by the COUNTY.

5. Quarterly Destruction of Expired or Discontinued Medications

Registered Pharmacist will meet quarterly with DHHS-MH Director of Nurses or designee to destroy expired, discontinued, or contaminated controlled medications for all sites where DHHS-MH provides medications.

6. Documentation and Accountability

CONTRACTOR will maintain all appropriate documentation including, but not limited to, inventory records, patient profiles, copies of all prescriptions, etc. All documentation shall be open for review by appropriate COUNTY staff or appointed designee.

CONTRACTOR will provide and implement a record keeping system for drug accountability at COUNTY sites.

CONTRACTOR will maintain extensive patient profiles and provide an accurate pre-printed Medication Administration Record (MAR) once a month for each patient receiving medication, if requested and if not using an electronic MAR. The MAR will contain patient's name, allergies, diagnosis, physician's name, and current medication list with directions.

7. Protocols, Policies and Procedures

CONTRACTOR will assist in developing, implementing, updating, and monitoring of policies and procedures for safe and effective administration, control, and use of drugs. CONTRACTOR will provide COUNTY with a policy and procedure manual, updated yearly if necessary.

8. In-service Training and Continuing Education

CONTRACTOR will provide software, updates, training, and support needed to operate the eMAR software.

CONTRACTOR will provide customized in-service training during their inspections, when requested on a variety of topics as mutually agreed upon by COUNTY and CONTRACTOR. The in-service trainings will include at a minimum: information regarding adverse reaction, drug interactions, basic review of the formulary, new and/or revised pharmacy laws, new medications, medication pass, and medication accountability.

9. Utilization Data

CONTRACTOR will provide any requested computer generated reports for psychotropics and utilization data. If requested, all reports can be sorted in order or groupings, including by prescribing physician. Available reports include, but are not limited to, the following:

- Patient drug allergy and drug interaction alert
- Monthly drug usage per unit
- Drug utilization report
- Monthly psychotropic usage report
- Computerized Medication Administration Record (MAR), available to COUNTY no later than the 26th day of each month for the following month on all patients who have prescribed medications
- Formulary vs. non-formulary medications dispensed
- High to low usage by dollar amount
- High to low usage by quantity dispensed
- Medication breakdown listed by specific physician
- Medication classification report
- Cost containment recommendation report
- Side-effect and drug interaction report

- Stop date report
- Invoices containing drug name, National Drug Code, and charge
- Numerous customized management/cost containment reports
- Medications set to expire monthly
- FDA bulletins for recalled and black box medications

10. Pharmacy and Therapeutics Committee

CONTRACTOR may serve as a member of the Pharmacy and Therapeutics Committee during their inspections or via conference call. CONTRACTOR will also be available to provide consultation to the prescribing physicians and nurses in relation to pharmaceutical therapy.

11. Quarterly Inspections

CONTRACTOR may provide onsite inspections by a registered consultant pharmacist at COUNTY sites on a quarterly basis or as required. During these quarterly visits, CONTRACTOR may:

- A. Assist in developing, implementing, monitoring, and updating COUNTY'S policies, procedures, and protocols for the safe, effective control, administration, and use of medications complying with all regulations of the COUNTY site.
- B. Ensure the COUNTY site complies with all applicable state and federal regulations regarding procuring and administering pharmaceuticals.

Set-up a system to ensure that all pharmaceuticals are tracked and recorded to show accountability.
- C. Provide routine inspections to ensure that the site complies with all current pharmacy regulations.
- D. Conduct an overall inspection of the medications room at the site.
- E. Inspect the contents of the emergency medication kit and poison antidote kit and replace any outdated and/or deteriorated items.
- F. Ensure compliance with all federal, state, and local laws and regulations regarding the guidelines of the California State Board of Pharmacy.
- G. Provide the COUNTY with signed and dated documentation of quarterly inspections including recommendations made, corrective actions implemented or problems observed.
- H. Assist COUNTY in the accounting, reconciliation, and disposal of unused controlled substances as allowed by federal, state, and local laws and regulations. Count sheets will be provided for strict accountability of controlled medications and all documentation will be enforced as required by law.
- I. Inspect all areas relating to pharmacy including medication records, storage, and security.
- J. Provide continual assessment of recommendations for implementation. This function will be completed through written quarterly inspection reports that are provided to

the Medical Director and Director of Nursing for follow-up and evaluation of performance.

- K. Meet and discharge all other required responsibilities, as set forth in federal or state laws, statutes, or regulations presently enacted, or may hereafter be enacted, as well as provide other detailed services applicable to the COUNTY sites.

12. Technology and Data Requirements

- CONTRACTOR will host the software and hardware at their locations and will provide COUNTY a secure, HIPAA-compliant connection for COUNTY access to application and data.
- CONTRACTOR shall provide a right to use one year single software license for the electronic Medication Administration Record (eMAR) software application for storing, analyzing, and reporting pharmaceutical usage.
- CONTRACTOR is authorized to grant the software license. CONTRACTOR warrants that to the best of CONTRACTOR's knowledge the licensed software does not infringe upon or violate the United States patent rights of any third party and do not infringe upon or violate the copyright, or trade secret right of any third party.
- Software to be installed following the execution of this Agreement.
- CONTRACTOR will contact the DHHS Information Services with the information necessary to set up and install the software on server through COUNTY'S DHHS Information Services.
- CONTRACTOR will provide software, updates, initial and ongoing in-person training, and support needed to operate the eMAR software and HIPAA-compliant connection for COUNTY access to application and data.
- CONTRACTOR will ensure there is no limit to the number of users that can use the eMAR software application.
- CONTRACTOR will maintain and store transaction data as required by Federal and/or State regulations. If this Agreement is terminated, CONTRACTOR agrees to provide transaction history in an electronic format for COUNTY to continue using.
- CONTRACTOR will ensure phone and e-mail support during regular business hours, from 8 a.m. to 5 p.m. PST. 24/7 emergency support will be provided through an afterhours phone support system.
- eMAR software will manage onsite stock inventory barcoded by CONTRACTOR.
- All eMAR system downtime will be communicated through e-mail as well as a scrolling banner onsite at least seven (7) days in advance of the maintenance window.
- CONTRACTOR will provide ongoing in-person training as needed to operate the eMAR software.

EXHIBIT B
INVOICING AND PAYMENT
FOR AGREEMENT WITH DIAMOND DRUGS, INC.
FOR FISCAL YEAR 2015-16

1. Compensation

For services rendered, the COUNTY will reimburse CONTRACTOR as follows:

A. Standard Prescriptions and Stock Pieces

Each prescription will be billed as follows:

1. Actual Acquisition Cost (AAC) up to \$9.99, AAC + 20%, Over the Counter (OTC) fee of \$4.50, Prescription (RX) fee of \$5.70
2. AAC up to \$20.00, AAC +20%, OTC and RX fee of \$4.00
3. AAC up to \$40.00, AAC +15%, OTC and RX fee of \$4.00
4. AAC up to \$80.00, AAC +12%, OTC and RX fee of \$4.00
5. AAC above \$80.00, AAC +10%, OTC and RX fee of \$4.00

Definitions:

- A. Actual Acquisition Cost (AAC): CONTRACTOR's direct, upfront cost of medications and medical supplies, equipment, and devices.
- B. Average Wholesale Price (AWP): The average wholesale price of a medication as published by Medispan.
- C. Maintenance Medications: Medications prescribed to a patient for the treatment of a long-term, chronic condition.
- D. Medical Supplies: Those items that are not regulated as prescription drugs by the FDA or DEA, and are not considered Over the Counter medications.
- E. Over the Counter: Those medications which do not require a prescription.
- F. Maintenance Medications will consist of fifteen (15) or thirty (30) day supply, and charges will be in accordance with the appropriate provision(s) above. CONTRACTOR reserves the right to increase the charges and dispensing fees of Maintenance Medications that are ordered in routine quantities less than a thirty (30) day supply.

Medications will not be sold below cost.

- G. CONTRACTOR agrees to pay for all medication shipping costs.
- H. Medical supplies and sundries ordered will be included in the maximum agreement amount. CONTRACTOR has an online ordering and pricing system. Pricing information is also available by telephone to Customer Service. Medical supplies and sundries are delivered or shipped by ground or when possible, medical supply and sundry orders will be delivered or shipped with medication orders. CONTRACTOR pays shipping charges. COUNTY pays actual shipping cost for items that exceed size and weight restrictions.
- I. Returned Medication Credit: Credit will be issued on full or partial blister cards at 100% of the Actual Acquisition Cost (AAC). There will be no credit with a \$1.50 value or less. Credit will be issued on returned, non-controlled tablets or capsules remaining in the original 30-dose blister card or sealed bottle which contains a single dose per bubble, provided the medications are returned prior to 3 months of expiration, have not been released to the patient population, do not contain writing or are adulterated, and are permitted for return by the California State Board of Pharmacy and the U.S. Food and Drug Administration (FDA).

Controlled medications and opened partial stock medications cannot be credited per Federal regulations.

Returns received by CONTRACTOR, during the term of the Agreement, by the 15th of the month will be credited on the next invoice for that calendar month. Credit memos will be deducted from payment of the oldest outstanding invoices. Upon Agreement termination, any desired returns must be made within fifteen (15) days of Agreement termination. CONTRACTOR will not return any items returned by COUNTY not eligible for credit.

2. Invoicing and Payment Provisions

- A. Invoicing: CONTRACTOR will bill in the format and in the manner required by COUNTY. Invoicing will occur electronically monthly through CONTRACTOR'S secure encrypted, HIPAA compliant, pass-word protected web-based file manager system. CONTRACTOR will provide separate invoicing for medications and medical supplies/sundries. Payment shall be made by check by COUNTY and received at CONTRACTOR within thirty (30) days of acceptable invoice.
- B. It is COUNTY'S responsibility to provide CONTRACTOR all appropriate and accurate patient and billing information prior to submitting orders.
- C. It is COUNTY'S responsibility to verify its invoices monthly to assure claims were billed to the proper department on a monthly basis and inform CONTRACTOR of any discrepancies within fifteen (15) days of receipt of invoices.
- D. Pay all invoices and other payments due to CONTRACTOR via check to:

Diamond Pharmacy Services Medical Supply, Incorporated
645 Kolter Drive

Indiana, PA 15701

E. Send all invoices to:

Department of Health and Human Services
Mental Health Financial Services
507 F Street
Eureka, CA 95501

EXHIBIT C
COUNTY OF HUMBOLDT
HIPAA BUSINESS ASSOCIATE AGREEMENT

Recitals:

- A. COUNTY, as a "Covered Entity" (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the "BUSINESS ASSOCIATE" (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI") (defined below).
- B. COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires COUNTY to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

The parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.

- j. **Protected Health Information or PHI** means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- k. **Protected Information** shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY's behalf.
- l. **Security Incident** shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- m. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- n. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **Obligations of Business Associate**

- a. **Permitted Uses.** BUSINESS ASSOCIATE shall use Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. [45 C.F.R. Sections 164.504(e)(2), 164.504(e)(4)(i)].
- b. **Permitted Disclosures.** BUSINESS ASSOCIATE shall disclose Protected Information only for the purpose of performing BUSINESS ASSOCIATE's obligations under the Agreement and as permitted or required under the Agreement, or as required by law. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. If BUSINESS ASSOCIATE discloses Protected Information to a third party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.1. of the

Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however this prohibition shall not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.
- d. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under state law [California Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(e)]. If BUSINESS ASSOCIATE maintains Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable COUNTY to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.

- g. **Amendment of PHI.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, within ten (10) days of a request by COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE and its agents and subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment or other documentation to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE must notify COUNTY in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- h. **Accounting of Disclosures.** Within ten (10) days of a request by COUNTY for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents and subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of the request forward it to COUNTY in writing.
- i. **Governmental Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall provide COUNTY a copy of any Protected Information and other documents and records that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- j. **Minimum Necessary.** BUSINESS ASSOCIATES, its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BUSINESS ASSOCIATE understands and agrees that the

definition of “minimum necessary” is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes “minimum necessary.”

- k. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- l. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.1408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)].
- m. **Breach Pattern or Practice by Business Associate’s Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if BUSINESS ASSOCIATE knows of a pattern or activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent’s obligations under the Agreement or other arrangement, BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of a subcontractor or agent that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the subcontractor or agent’s obligations under the Agreement or other arrangement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one of the reasonable steps to cure the breach or end the violation.
- n. **Audits, Inspection and Enforcement.** Within ten (10) days of a request by COUNTY, BUSINESS ASSOCIATE and its agents and subcontractors shall allow COUNTY or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BUSINESS ASSOCIATE has complied with this Agreement or maintains adequate security safeguards. BUSINESS ASSOCIATE shall notify COUNTY within five (5) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

3. **Termination**

- a. **Material Breach.** A breach by BUSINESS ASSOCIATE of any provision of this Agreement, as determined by COUNTY, shall constitute a material breach of the Agreement and shall provide grounds for *immediate* termination of the Agreement, any provision in the Agreement to the contrary notwithstanding. [45 C.F.R. Section 164.504(e)(2)(iii)].
- b. **Effect of Termination.** Upon termination of the Agreement for any reason, BUSINESS ASSOCIATE shall, at the option of COUNTY, return or destroy all Protected Information that BUSINESS ASSOCIATE or its agents or subcontractors still maintain in any form, and shall retain no copies of such Protected Information. If return or destruction is not feasible, as determined by COUNTY, BUSINESS ASSOCIATE shall continue to extend the protections of Section 2 of this Agreement to such information, and limit further use and disclosure of such PHI to those purposes that make the return or destruction of the information infeasible [45 C.F.R. Section 164.504(e)(ii)(2)(J)]. If COUNTY elects destruction of the PHI, BUSINESS ASSOCIATE shall certify in writing to COUNTY that such PHI has been destroyed in accordance with the Secretary's guidance regarding proper destruction of PHI.

4. **Interpretation.** Any ambiguity in this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act, and the HIPAA regulations.