

**CALIFORNIA MENTAL HEALTH SERVICES AUTHORITY
PARTICIPATION AGREEMENT
COVER SHEET**

1. Humboldt County ("Participant") desires to participate in the Program identified below.

Name of Services: Inter-Member Transfer(s)

2. California Mental Health Services Authority ("CalMHSA") and Member Participants' acknowledge that the services will be governed by CalMHSA's Joint Powers Agreement and its Bylaws, and by this Participation Agreement. The following exhibits are intended to clarify how the provisions of those documents will be applied to this Program.

- Exhibit A Program Services Description
- Exhibit B General Terms and Conditions
- Exhibit C Member County-Specific Scope and Funding

3. **Term of Services:** Upon execution until terminated by Participant.

4. **Deposit:** The initial deposit amount is \$39,205.93 plus a 5% admin fee in the amount of \$1,960.30, for a total amount of \$41,166.23 payable upon execution of this Agreement.

Replenishment of Funds: Once the initial funding amount of \$39,205.93 is reduced to 20%, CalMHSA will issue a request for replenishment of funds. The 5% admin fee (of the annual funding amount) will be invoiced annually prior to July 1 of each year.

5. **Authorized Signatures:**

CalMHSA

Signed: _____ Name (Printed): Amie Miller, PsyD., LMFT

Title: Executive Director Date: _____

Participant: Humboldt County

Signed: _____ Name (Printed): _____

Title: _____ Date: _____

**EXHIBIT A
PROGRAM SERVICES DESCRIPTION**

I. Name of Program –Inter-Member Transfer(s)

II. Program Overview

Under the Welfare and Institution Code § 14717.1, responsibility for providing or arranging for specialty mental health services shall promptly transfer from the county of original jurisdiction to the county in which a foster child resides, subject to any exceptions established pursuant to that section. This is known as “presumptive transfer.” Counties have agreed that the county of original jurisdiction (sending county) remains responsible for reimbursing the receiving county for specialty mental health services provided or arranged by the receiving county. Under this program, CalMHSA acts as a fiscal agent for participating counties to make and receive transfer payments of county match dollars.

III Program Process

- A. A funding structure shall be developed based on funding by each participant, as well as timing. It is deemed that an annual funding mechanism would be ideal, especially if through the State Controllers Officer. However, it may be such that quarterly transfers from the counties’, would be the initial process.
- B. All members shall have funding on deposit, no matter what the net expected funding level is anticipated. As such a minimum annual amount to be funded by any member shall be defined.
- C. Triggers shall be defined for the initiation of the funding process. With this trigger, processes shall be in place to discern the amount of payment and by such date.
- D. The mechanics of transferring funds shall be the same for each receiving and paying member.

**EXHIBIT B
GENERAL TERMS AND CONDITIONS**

I. Definitions

The following words as used throughout this Participation Agreement shall be construed to have the following meaning, unless otherwise apparent from the context in which they are used:

- A. CalMHSA** – California Mental Health Services Authority, a Joint Powers Authority (JPA) created by counties in 2009 at the instigation of the California Mental Health Directors Association to jointly develop and fund mental health services and education programs.
- B. County (Sending)** – A Sending County, is one that is transferring foster youth to facility located outside of its jurisdiction.
- C. County (Receiving)** – A Receiving County is one in which a foster youth is being placed in a facility located within their county jurisdiction.
- D. Member** – A County, City or JPA of two or more Counties, that has joined CalMHSA and executed the CalMHSA Joint Powers Agreement.
- E. Participant** – Any Member participating in the Program and a member of CalMHSA
- F. Program Services** – The program identified in Exhibit A.
- G. Vendor** – Vendor or supplier providing specialty mental health services to foster youth.
- H. Child** – Foster youth receiving specialty mental health services.
- I. HIPAA** – The Health Insurance Portability and Accountability Act which:
 - Provides the ability to transfer and continue health insurance coverage for millions of American Workers and their families when they change or lose their jobs;
 - Mandates industry-wide standards for health care information on electronic billing and other processes;
 - Requires the protection and confidential handling of protected health information.

II. Responsibilities

A. Responsibilities of CalMHSA:

1. Act solely as the fiscal and administrative agent to facilitate transfer of funds between Participants in compliance with instructions from and authorization by Participants, without any responsibility for validation or control over the funded services or activities.
2. Establish a banking pool that includes an individual interest-bearing account for each county. Any interest accrued will be credited to the county. All transactions in and out of the account will be provided regularly to each county.
3. Establish written internal control procedures to ensure understanding and sound accounting controls, including items such as defining a trigger for a transaction, the rate of payment, timing of payment, depositing of funds and reporting.

4. Management of and accounting for funds received consistent with the requirements of any applicable laws, regulations, guidelines and/or contractual obligations.
5. Keep all necessary records and provide regular fiscal reports to Participants and/or other public agencies with a right to such reports.
6. Compliance with CalMHSA's Joint Powers Agreement and Bylaws.
7. HIPAA/PHI – To the extent there is privileged information shared between agencies, which is subject to protection under the HIPAA/PHI Act, CalMHSA shall implement all necessary measures in compliance with the Act.

B. Responsibilities of Participant:

1. Transfer of funds for the Program as specified in Exhibit C, County-Specific Scope and Funding, including administrative fee.
2. Participants are required to provide a timely, continuous contribution based on actual usage, in order to comply with the all contractual obligations. Due to the nature of the program and the specialty of services being provided to youth, contributions are due fifteen (15) days from date of notice to replenish.
3. Identification of a representative authorized to act for Participant and receive notices on behalf of Participant with regard to the Program.
4. Cooperate by providing CalMHSA and the other participating counties (and any other parties deemed necessary) with requested information and assistance in order to fulfill the purpose of the Program.
5. Any and all assessments, creation of individual case plans, and providing or arranging services.
6. Compliance with applicable laws, regulations, guidelines, contractual agreements, CalMHSA's JPA Agreement, and Bylaws.
7. Instructions for and authorization of transfers to be made by CalMHSA.
8. Indemnification as described in Section VI.
9. HIPAA/PHI – To the extent there is privileged information shared between agencies, which is subject to protection under the HIPAA/PHI Act, County/Member shall implement all necessary measures in compliance with the Act.

III. Duration, Term and Amendment

- A. The Program is of indefinite duration and will continue as long as Participants wish to act together to conduct the Program. However, the obligation of any Member to pay funds is limited to the periods and amounts stated in Exhibit C, County-Specific Scope and Funding.

- B. This Agreement may be supplemented, amended or modified only by the mutual agreement of CalMHSA and the Participant, expressed in writing and signed by authorized representatives of both parties.
- C. Any Participant may withdraw from the Program upon six (6) months' written notice. Notice shall be deemed served on the date of mailing.

IV. Withdrawal, Cancellation and Termination

- A. The withdrawal of a Participant from the Program shall not automatically terminate its responsibility for its share of the expenses and liabilities of the Program. The contributions of current and past Participants are chargeable for their respective share of unavoidable expenses and liabilities arising during the period of their participation
- B. Upon cancellation, termination or other conclusion of the Program, any funds remaining undisbursed after CalMHSA satisfies all obligations arising from the operation of the Program shall be distributed back to the participating counties proportionally based on the amount by which deposits made to the account of the Participant exceed the payments disbursed from the account of the Participant.

V. Fiscal Provisions

- A. Participants will share in the costs of planning, administration and evaluation in the same proportions as their overall contributions, which are included in the amount stated on first page of this Agreement.
- B. Fees for the cost of performing these services will be based on the time extended to perform the core services that are applicable to all Participants, no matter how frequent or the amount of transfers. These services include, reporting, reconciling, investing, banking, communication, and overall program management. The cost for the transactional services—processing and recording of payments—will be based on frequency. The same transactional cost is applicable to both the paying and receiving participants.
- C. The total fees will be based on the above and the number of participants. An allocation formula will be developed to incorporate the two types of costs—core and transactional.
- D. Participants are required to provide a timely, continuous contribution based on actual usage, in order to comply with the all contractual obligations. Due to the nature of the program and the specialty of services being provided to youth, contributions are due fifteen (15) days from date of notice to replenish.

VI. Limitation of Liability and Indemnification

- A. CalMHSA is responsible only for transfer of funds between county accounts as instructed and authorized by Participants. CalMHSA is not liable for damages beyond the amount of any funds which it transfers without authorization or contrary to Participant's instructions.
- B. CalMHSA is not undertaking responsibility for assessments, creation of case or treatment plans, providing or arranging services, and/or selecting, contracting with, or supervising

providers (collectively, “mental health services”). To the fullest extent permitted by law, each party shall hold harmless, defend and indemnify the other party, including its governing board, employees and agents from and against any and all claims, losses, damages, liabilities, disallowances, recoupments, and expenses, including but not limited to reasonable attorney’s fees, arising out of or resulting from other’s negligence in the performance of its obligations under this Agreement, including the performance of the other’s subcontractors, except that each party shall have no obligation to indemnify the other for damages to the extent resulting from the negligence or willful misconduct of any indemnitee. Each party may participate in the defense of any such claim without relieving the other of any obligation hereunder.

This Participation Agreement does not anticipate CalMHSA performing any validation or verification of the accuracy of the data supplied. Those services may be appended if deemed necessary.

**EXHIBIT C
SCOPE AND FUNDING**

CalMHSA will be contracted to perform fund transfers on behalf of counties in order to allow foster children who are placed outside of their county of original jurisdiction to access specialty mental health services in a timely manner. The defined process is “presumptive transfer,” which means a prompt transfer of the responsibility for the provision of, or arranging and payment for SMHS from the county of original jurisdiction (sending county) to the county in which the foster child resides (receiving county), as provided for by Welfare and Institution Code § 14717.1.

PROGRAM ACTIVITIES AND PROCESS:

To fulfill the Participant’s obligations under Welfare and Institution Code § 14717.1, the Parties will undertake the following responsibilities.

- A. CalMHSA will create a banking pool that includes a ledger for each participating county that identifies and tracks all transactions.
- B. Counties provide an estimated annual (or quarterly) payment (which includes an administrative fee) to CalMHSA, of the non-Federal Financial Participation (FFP) portion of cost of services anticipated for SMHS, for their youth in foster care outside of their county. (Administrative Fee to be determined by CalMHSA)
- C. County with the youth placement and SMHS organizations (Receiving County):
 - 1. Receives a presumptive transfer and is required by statute to provide or arrange appropriate treatment services;
 - 2. Receives an assessment from the sending county and/or assesses the youth itself;
 - 3. Provides or contracts with organizations to provide SMHS to foster youth in their county
- D. Receiving county receives provider statement for services rendered, or prepares statement for services provided directly.
- E. Receiving county bills Medi-Cal.
- F. Receiving county obtains approval from Sending county for payment, upon receipt of approval this triggers invoice to CalMHSA with proof of services billed (Form 835), from sending county account, for the services provided by contract or by the receiving county.
- G. Receiving county reimburses the provider timely for services provided.
- H. CalMHSA reimburses receiving county with non-FFP match from sending county funds for services rendered.

INITIAL FUNDING AMOUNT

The initial deposit amount is \$39,205.93 plus a 5% admin fee in the amount of \$1,960.30, for a total amount of \$41,166.23.

EXHIBIT D
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** has the same meaning as the term “protected health information” at 45 C.F.R. § 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity. For convenience of the parties, Protected Health Information includes information: (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.

Terms used, but not otherwise defined in this Business Associate Agreement, have the same meaning as those terms in the HIPAA Regulations.

2. **Obligations of Business Associate**

a. **Permitted Uses.**

- a. 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.
- b. 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.
- c. 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)].
- d. BUSINESS ASSOCIATE may Use Protected Information for de-identification of the information if de-identification of the information is required to provide services under the Agreement.

- e. BUSINESS ASSOCIATE may provide Data Aggregation services relating to COUNTY'S Health Care Operations if such Data Aggregation services are necessary in order to provide Services

- 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 reasonable *written* assurances from such third party that the Protected Information will be held confidentially and used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the recipient and the recipient notifies Business Associate of any instances of which it is aware in which the confidentiality of the Protected Information has been breached.[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].

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)].

- e. **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) business 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.

- f. **Amendment of PHI.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, within ten (10) business 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) business 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)].
- g. **Accounting of Disclosures.** Within ten (10) business 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) business days of the request forward it to COUNTY in writing.
- h. **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 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.
- i. **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.”

- j. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- k. **Reporting of Unauthorized Use or Disclosure.** CONTRACTOR shall implement reasonable systems for the discovery of and prompt reporting to County of any use or disclosure, or suspected use or disclosure, of County PHI not provided for by the Agreement and/or any transmission of unsecured County PHI, and to take the following steps:
 - a. CONTRACTOR shall provide all reports of unauthorized uses or disclosures to DHHS Compliance and Quality Assurance Administrator/Privacy Officer.
 - b. Initial Report.**
 - i. CONTRACTOR shall notify COUNTY by telephone call upon the discovery of a breach of unsecured County PHI in electronic media or in any other media if County PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon the discovery of a suspected security incident that involves data provided to County by the Social Security Administration or SSA.
 - ii. A suspected Security Incident or Breach of Unsecured PHI shall be treated as discovered by CONTRACTOR as of the first day the Breach or Security incident is known, even if it is not confirmed, or by exercising reasonable diligence would have known, to any person (other than the person committing the breach) who is an employee, officer or other agent of CONTRACTOR.
 - iii. CONTRACTOR shall notify COUNTY within twenty-four (24) hours of the discovery of any suspected or actual Security Incident or Breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any Security Incident (i.e., any 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 CONTRACTOR or its agents or subcontractors. A Breach shall be treated as discovered by the Contractor as of the first day on which such breach is known to the Contractor, or, by exercising reasonable diligence would have been known to the Contractor. The parties acknowledge and agree that this section constitutes notice by CONTRACTOR to COUNTY of the ongoing existence and occurrence of attempted but unsuccessful Security Incidents for which no additional notice to COUNTY shall be required. Unsuccessful Security Incidents shall include, but not be limited to, pings and other broadcast attacks on CONTRACTOR’S firewall, port scans, unsuccessful log-on attempts, denials of service and any combination of the above, so long as such incidents do not result, to the extent CONTRACTOR is aware, in unauthorized access, Use or disclosure of Electronic PHI.
 - iv. 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 CONTRACTOR 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 164.408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available.

- v. **Corrective Action.** Upon Discovery of a breach or suspected security intrusion or unauthorized access, use or disclosure of PHI, CONTRACTOR 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)].
- vi. **Investigation and Investigation Report.** CONTRACTOR shall immediately investigate such security incident, breach, or unauthorized access, use or disclosure of County PHI. Within three (3) business days of the discovery, CONTRACTOR shall submit an updated report to include investigation findings since initial report.
- vii. **Complete Report.** CONTRACTOR shall provide a complete report of the investigation within five (5) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA and applicable state law. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If County requests information in addition to that listed in the report, CONTRACTOR will provide County with such information. County will review and approve the determination of whether a breach occurred, Individual notifications are required, and the corrective action plan is adequate.
- viii. **Responsibilities for Notification of Breaches.** If County determines that the cause of a breach of County PHI is attributable to CONTRACTOR or its subcontractors, agents or vendors, CONTRACTOR shall notify individuals of the breach or unauthorized use or disclosure when notification is required under federal or state law and shall pay any costs of such notifications, as well as any costs associated with the breach. The notifications shall comply with the requirements set forth in 42 U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirements that:
 - 1. Notifications must be made to individuals without unreasonable delay and in no event later than sixty (60) calendar days from the date the breach was discovered. County shall approve the time, manner and content - of any such notifications before notifications are made.
 - 2. Notifications must be made to media outlets and to the Secretary, if a breach of unsecured County PHI involves more than five hundred (500) residents of the State of California or its jurisdiction. County shall approve the time, manner and content of any such notifications before notifications are made.

Contact Information for Reporting Notifications of Possible Breach:

DHHS Compliance and Quality Assurance Administrator & Privacy Officer
DHHS Quality Management Services (QMS)
507 F Street

1. **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) business 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.
- m. **Audits, Inspection and Enforcement.** Within ten (10) business 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) business 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.** If either party determines that the other party has violated a material term of this Business Associate Agreement, and the breaching party has not cured the breach or ended the violation within the time specified by the non-breaching party, which shall be reasonable given the nature of the breach and/or violation, the non-breaching party may terminate this Business Associate Agreement. [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.