



AGENDA ITEM NO.  
**C-10**

# COUNTY OF HUMBOLDT

For the meeting of: December 16, 2014

Date: October 21, 2014

To: Board of Supervisors

From: Phillip R. Crandall, Director *AP for PC*  
Department of Health and Human Services-Mental Health

Subject: Agreement with St. Joseph Hospital of Eureka for the period of January 1, 2015 through June 30, 2016

RECOMMENDATION(S):

That the Board of Supervisors:

- Approves and authorizes the Chair to sign three (3) originals of the Agreement with St. Joseph Hospital of Eureka for hospital medical services for the period of January 1, 2015 through June 30, 2016; and
- Directs the Clerk of the Board to return two (2) signed originals of the Agreement 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:

The Humboldt County Department of Health and Human Services-Mental Health (DHHS-MH) provides mental health services, including a psychiatric hospital, and frequently requires hospital medical services to

Prepared by Diane Goldsmith Harger, MA Administrative Analyst II      CAO Approval *Cheryl Dillingham*

REVIEW:	Auditor <i>MBM</i>	County Counsel <i>KR</i>	Personnel _____	Risk Manager <i>Df.</i>	Other _____
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TYPE OF ITEM:

Consent

Departmental

Public Hearing

Other \_\_\_\_\_

**BOARD OF SUPERVISORS, COUNTY OF HUMBOLDT**

Upon motion of Supervisor *Sundberg* Seconded by Supervisor *Fennell*

Ayes *Sundberg, Lovelace, Bohn, Fennell, Bass*

Nays \_\_\_\_\_

Abstain \_\_\_\_\_

Absent \_\_\_\_\_

PREVIOUS ACTION/REFERRAL:

Board Order No. C-23, C-17  
Meeting of: 6/22/10, 6/12/12

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

Dated: *Dec. 16, 2014*

By: *[Signature]*

Kathy Hayes, Clerk of the Board

facilitate care of County mental health patients.

St. Joseph Hospital Eureka is a California nonprofit public benefit corporation that operates a general acute care health facility, accredited by the Hospital's accreditation and licensed by the California Department of Public Health. As part of the hospital operations, it provides emergency, laboratory, pharmacy, radiology, surgery, and dietary services at its facilities.

Working collaboratively with St. Joseph Hospital of Eureka facilitates appropriate care and treatment of DHHS-MH's patients. This routinely requires medical clearance, lab work, and other ancillary services from St. Joseph Hospital of Eureka. This mutual support ensures the health and safety of DHHS-MH patients.

DHHS- Mental Health desires to continue contracting with St. Joseph Hospital of Eureka for the period of January 1, 2015 through June 30, 2016.

Therefore, DHHS-MH recommends that the Board approves and authorizes the Chair to execute the Agreement.

FINANCIAL IMPACT:

The Agreement between St Joseph Hospital of Eureka and DHHS-Mental Health provides for an adjusted rate for Hospital related services provided to clients that are currently admitted to Sempervirens Psychiatric unit. The maximum value of this agreement is not to exceed \$100,000.00 (One Hundred Thousand Dollars) per fiscal year. Expenditures related to this contract are included in the adopted budget for FY 2014-15 and the proposed FY 2015-16 DHHS- Mental Health-Sempervirens budget unit 1170-495. There is no impact to the County General Fund.

Approving this Agreement supports the Board's Strategic Framework by seeking to protect vulnerable populations and creating opportunities for improved health and safety.

OTHER AGENCY INVOLVEMENT:

None.

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve this Agreement. DHHS-MH does not recommend this alternative. DHHS-MH and St. Joseph Hospital of Eureka have worked to build a collaborative relationship to provide appropriate care and treatment of DHHS-MH patients. Without this Agreement, the health and safety of DHHS-MH patients may be negatively impacted.

ATTACHMENTS:

Service Agreement (three originals)

**AGREEMENT  
BY AND BETWEEN  
HUMBOLDT COUNTY  
AND  
ST. JOSEPH HOSPITAL OF EUREKA**

**FOR THE PERIOD JANUARY 1, 2015 THROUGH JUNE 30, 2016**

This Agreement, made and entered into this 16<sup>th</sup> day of December, 2015, at Eureka, California, by and between Humboldt County, a political subdivision of the State of California, hereinafter referred to as "COUNTY" and St. Joseph Hospital of Eureka, a California Corporation, hereinafter referred to as "HOSPITAL", is made upon the following considerations:

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

WHEREAS, HOSPITAL offers these services; and

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

NOW THEREFORE BE IT AGREED:

1. HOSPITAL:

St. Joseph Hospital of Eureka is an acute care health facility licensed by the State of California Department of Public Health and accredited by Healthcare Facilities Accreditation Program-American Osteopathic Association (HFAP-AOA). As part of HOSPITAL'S operations, it provides surgery, radiology, laboratory, pharmacy, emergency and dietary services at its facility, hereinafter referred to as SERVICES.

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2. COUNTY

The Humboldt County Department of Health and Human Services – Mental Health (COUNTY) provides mental health services, including a secure unit, as part of its operations, hereinafter referred to as PROGRAM. PROGRAM occasionally requires SERVICES to facilitate its care of County mental health patients.

3. PURPOSE OF THIS AGREEMENT

The purpose of this Agreement is to set forth the terms and conditions pursuant to which HOSPITAL shall provide SERVICES to COUNTY'S PROGRAM. This agreement applies while patient is admitted to COUNTY'S inpatient program, Sempervirens Psychiatric Health Facility.

4. GENERAL QUALIFICATIONS

HOSPITAL shall maintain appropriate licensure and accreditation, as above, at all times during the term of this Agreement. Failure of HOSPITAL to so maintain licensure and accreditation shall create in COUNTY the right to terminate this Agreement effective immediately.

5. SPECIFIC QUALIFICATIONS

HOSPITAL shall ensure that SERVICES are reasonably available and provided in a manner consistent with relevant law and regulation.

6. SERVICES TO BE PROVIDED

HOSPITAL shall make reasonably available to PROGRAM patients, upon request and, with appropriate physician orders the SERVICES described herein. It is understood and agreed that SERVICES shall be provided at HOSPITAL'S facility. Further, it is understood and agreed that COUNTY will arrange for patient transport to

and from HOSPITAL'S facility for patients requiring SERVICES. Finally, it is understood and agreed that such patients provided with SERVICES by HOSPITAL shall at all times remain patients of the PROGRAM. SERVICES are expected to benefit the PROGRAM patients in the following way: The medical needs of the patient will be met by HOSPITAL so that the COUNTY can effectively treat their mental health needs.

HOSPITAL will complete discharge instructions for each PROGRAM patient and provide a copy to the PROGRAM staff accompanying the PROGRAM patient. The discharge instructions will include follow-up recommendations for treatment initiated at the HOSPITAL. HOSPITAL will make every reasonable effort to notify the PROGRAM patient's primary care provider (if the PROGRAM patient provides information regarding the primary care provider) of the PROGRAM patient's condition upon discharge. The goal is to improve coordination of care between PROGRAM patient's providers.

7. SERVICE STANDARD

HOSPITAL agrees that the SERVICES referred to in this Agreement shall be provided in a competent, efficient and quality manner, consistent with the policies and procedures of HOSPITAL and COUNTY, consistent with all relevant laws, and provided at the same levels of care to all parties, including Medi-Cal beneficiaries, regardless of their payor. HOSPITAL shall provide COUNTY with reports documenting the services rendered. HOSPITAL will notify COUNTY of any current or anticipated difficulty in providing services, or if the services do not appear to be providing the anticipated benefit to the PROGRAM patients. HOSPITAL shall admit all PROGRAM patients referred and transported by COUNTY to HOSPITAL to the extent that HOSPITAL has the capacity to

admit them. HOSPITAL shall also address the immediate medical needs of PROGRAM patients as may be required by applicable laws.

8. 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.

9. TERM:

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

10. 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 Section 32 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  
Improperly performed service

Hospital may immediately suspend or terminate this Agreement in whole or in

part when the determination is made that the COUNTY breaches any material term or condition of this agreement.

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

- i. If terminated by HOSPITAL, 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.

11. 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 HOSPITAL at the following addresses:

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

HOSPITAL: St. Joseph Hospital Eureka  
2700 Dolbeer Street  
Eureka, CA 95501  
Attn: Contracting Department

Copy to: St. Joseph Health  
3345 Michelson Drive, Suite 100  
Irvine, CA 92612  
ATTN: SVP, Contracting and Network Development

12. ATTORNEY FEE ON BREACH:

HOSPITAL 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.

13. PAYMENT:

COUNTY will reimburse HOSPITAL for SERVICES pursuant to this Agreement not to exceed the maximum amount of One Hundred Thousand Dollars (\$100,000.00) per fiscal year. HOSPITAL shall not be required to continue to provide SERVICES once the maximum amount has been met. It shall be the responsibility of the HOSPITAL to notify COUNTY in writing, prior to the date upon which HOSPITAL estimates that the maximum amount will be exceeded. Both the HOSPITAL and COUNTY will work in good faith to negotiate an amendment to modify the maximum amount. For SERVICES rendered pursuant to this Agreement, HOSPITAL shall be paid amounts equal to the standard HOSPITAL fee-for-service rates for such SERVICES (except those provided to Medicare Part A eligible patients). The COUNTY will pay claims for which they are responsible within thirty (30) days of receipt of a claim. If State, Federal or County funding are reduced or deleted, the maximum reimbursement shall be reduced or deleted.

14. MANNER OF PAYMENT - NON MEDICARE PATIENT

HOSPITAL shall bill patients and their third party insurers for all SERVICES received. Patient shall have the responsibility to compensate HOSPITAL for SERVICES rendered. In the event that COUNTY is responsible, COUNTY will pay HOSPITAL at the rate of fifty percent (50%) of billed charges for HOSPITAL related charges and fifty percent (50%) of usual and customary laboratory fees.



15. MANNER OF PAYMENT - MEDICARE (PART A) PATIENT

HOSPITAL shall bill COUNTY at its current prevailing fees for all services requested by COUNTY provided to Medicare Part A eligible patients who are inpatients in COUNTY'S PROGRAM at the time service is rendered. COUNTY will pay HOSPITAL at the rate of forty percent (40%) of billed charges which approximates its interim payment rate from Medicare. Parties agree to update the interim payment rate on an annual basis.

16. BILLING ASSISTANCE

COUNTY shall make available to HOSPITAL any and all billing information it may have regarding patients it refers for SERVICES at HOSPITAL. Current Medi-Cal cards and stickers, or other insurance documentation shall be presented by COUNTY to the HOSPITAL at the time of SERVICE.

HOSPITAL shall hold harmless the State of California and Medi-Cal Beneficiaries in the event COUNTY cannot or will not pay for services rendered by HOSPITAL pursuant to the terms of this Agreement while the patient is an inpatient of Sempervirens Psychiatric Health Facility.

17. 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 HOSPITAL. 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 HOSPITAL the repayment of any funds disbursed to the HOSPITAL under this Agreement, which in the judgment of COUNTY were not expended in accordance with the terms of this Agreement. The HOSPITAL shall promptly refund any such funds upon demand.

18. AUDIT AND RECORD RETENTION:

- A. HOSPITAL 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. HOSPITAL shall hold COUNTY harmless for any liability resulting from said audit.
- B. HOSPITAL 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. HOSPITAL'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. HOSPITAL 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.

HOSPITAL 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. HOSPITAL shall preserve and make available his/her records (1) for a period of seven (7) 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 seven (7) 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 seven-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 seven (7)-year period, whichever is later.

F. HOSPITAL 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. HOSPITAL 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, HOSPITAL 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.

19. INSPECTION RIGHTS

HOSPITAL 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 HOSPITAL'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 seven (7) 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.

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20. REPORTING:

HOSPITAL agrees to provide COUNTY with any reports that may be required by County, State or Federal agencies for compliance with this Agreement.

21. MONITORING:

HOSPITAL 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 HOSPITAL'S programs in order to ensure compliance with the terms and conditions of this Agreement.

HOSPITAL will allow COUNTY to monitor the services provided under this

Agreement and cooperate with a corrective action plan if deficiencies are identified

22. ASSIGNMENT:

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

23. SUBCONTRACTING:

HOSPITAL 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 HOSPITAL sees the need to subcontract services and COUNTY grants written permission to HOSPITAL to proceed with such undertaking, HOSPITAL shall ascertain that all subcontractors possess and maintain the necessary licensing or certification. HOSPITAL 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.

24. 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 HOSPITAL 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.

25. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

HOSPITAL certifies by its signature below that HOSPITAL is not a Nuclear Weapons Contractor, in that HOSPITAL 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. HOSPITAL 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 HOSPITAL becomes a Nuclear Weapons Contractor.

26. COMPLIANCE WITH LAWS:

HOSPITAL agrees to comply with all applicable local, State and Federal laws and regulations, including but not limited to the Americans with Disabilities Act. Compliance with the Americans with Disabilities Act, includes, but is not limited to, the following areas:

- A. Whatever written information is provided regarding its programs will also be provided in alternate formats, including Braille, large print audio recording, and electronic formats, upon request.
- B. Enter into contracts or make other arrangements with qualified sign language and oral interpreters to ensure their availability when required for effective communication with persons who are deaf or hard of hearing. The type of aid that will be required for effective communication will depend on the individual's usual method of communication, and the nature, importance, and duration of the communication at issue. In many circumstances, oral communication supplemented by gestures and visual aids, an exchange of written notes, use of a computer or typewriter, or use of an assistive listening device may be effective. In other circumstances, qualified sign language or oral interpreters are needed to communicate effectively with persons who are deaf or hard of hearing. The more lengthy, complex, and important the communication, the more likely it is that a qualified interpreter will be required for effective communication with a person whose primary means of communication is sign language or speech reading.
- C. If HOSPITAL operates a hotline to take telephone calls of an emergency nature, the Contractor shall ensure that it provides equivalent service for persons who use TTY's including providing direct-connection service for TTY users with hotline operators, without requiring TTY users to call through a third party operator, such as through the State or local Telecommunication Relay procedures, and provide the training necessary to ensure effective communication by Hotline

- D. staff with direct-connection callers using TTY's, as well as the training necessary to respond to callers who use the Telecommunication Relay Services.
- E. Survey facilities used as shelters or designated as potential shelters – or for counseling, job training, education, clothing or household provisioning, or other aspects of programs- to ensure that adequate arrangements are available for potential clients and family members with disabilities, including adults and children who have mobility impairments, who are blind or have low vision, and who are deaf or hard of hearing.
- F. Have written procedures and modify, as appropriate, eligibility criteria, to ensure that no person with a disability is turned away from a shelter or otherwise denied the opportunity to benefit from the services of HOSPITAL'S program on the basis of disability.
- G. Have written procedures to ensure that persons with disabilities who use service animals are not denied or discouraged from participating in HOSPITAL'S program, are able to be housed and served in an integrated environment, and are not separated from their service animals while participating in the program even if pets are normally not permitted in the facilities where such programs are conducted. The procedures will not unnecessarily segregate persons who use service animals from others but may take into account the potential presence of persons who, for safety or health reasons, should not be in contact with certain types of animals.
- H. Have written procedures to ensure that reasonable modifications are made to the HOSPITAL'S program when necessary for a client or family member with a



disability to participate in such programs, unless doing so would fundamentally alter the nature of the program.

- I. Have written policies to ensure that despite any “drug-free” policy of the HOSPITAL’S program, persons with disabilities who use medication prescribed for their use are able to continue using such medication while participating in such Programs or being housed in a shelter.

HOSPITAL agrees that all professional level persons employed by HOSPITAL have met applicable professional licensure requirements pursuant to the Welfare and Institutions and Business and Professions Codes and will provide copies of licensure to COUNTY upon request. HOSPITAL further agrees to comply with any applicable Federal, State or local licensing standards, any applicable accrediting standards and any other applicable standards or criteria established locally or by the State or Federal governments.

HOSPITAL agrees to comply with applicable provisions of any Mental Health Plan contract between the Department of Health Care Services and COUNTY.

27. 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.

28. 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.

29. 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), HOSPITAL 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. HOSPITAL 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, HOSPITAL 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. HOSPITAL 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.). HOSPITAL 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. HOSPITAL shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

- C. HOSPITAL 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 HOSPITAL'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. HOSPITAL shall, in all solicitations or advancements for employees placed by or on behalf of the HOSPITAL, 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. HOSPITAL 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 HOSPITAL's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- F. HOSPITAL 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. HOSPITAL 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 HOSPITAL'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 HOSPITAL 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, HOSPITAL 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.

30. MEDICAL RECORD:

- A. HOSPITAL 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. HOSPITAL agrees to maintain and preserve, until seven (7) 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. HOSPITAL shall maintain such books and records as are necessary to disclose how HOSPITAL 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 HOSPITAL 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 seven (7) years after the final payment is made and all pending matters closed, or, in the event HOSPITAL 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.

31. CONFIDENTIALITY OF RECORDS:

A. CONFIDENTIALITY - HOSPITAL 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 130203 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 HOSPITAL 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. HOSPITAL 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.

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

HOSPITAL 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 HOSPITAL or are disclosed to HOSPITAL 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 HOSPITAL's duties and obligations hereunder.

HOSPITAL 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 HOSPITAL or is disclosed to HOSPITAL as a result of services performed under this Agreement.

HOSPITAL shall use or disclose only the minimum amount of Protected Health Information "PHI" necessary to accomplish the intended purpose of this Agreement. HOSPITAL 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.

HOSPITAL 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.

HOSPITAL 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.

HOSPITAL 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 HOSPITAL 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, HOSPITAL shall immediately take all actions necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the suspected breach. HOSPITAL 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, HOSPITAL 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 HOSPITAL'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.

HOSPITAL 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.

HOSPITAL shall make reasonable best efforts to notify COUNTY, by telephone call or e-mail, immediately 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 HOSPITAL 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 HOSPITAL shall provide notice to any or all individuals affected by the suspected breach. HOSPITAL 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, HOSPITAL 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 HOSPITAL is doing to remediate the breach, mitigate losses and protect against any further breaches.

HOSPITAL 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 seven (7) 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.

HOSPITAL 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 HOSPITAL is a named adverse party.

All workforce members who assist in the performance of functions or activities on behalf of HOSPITAL, 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. 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. HOSPITAL 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. HOSPITAL shall retain each workforce member's background check documentation for a period of three (3) years.

32. INSURANCE REQUIREMENTS:

A. THIS CONTRACT SHALL NOT BE EXECUTED BY COUNTY and the HOSPITAL 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 HOSPITAL'S indemnification obligations provided for herein, HOSPITAL 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:

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.
5. Insurance notices sent to:

County of Humboldt  
Attn: Risk Management  
825 5<sup>th</sup> 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 HOSPITAL. 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 prior written notice being provided to COUNTY and in accordance with the Notice provisions set forth under Section 11. It is further understood that HOSPITAL 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 HOSPITAL'S insurance is primary coverage to the COUNTY, and any insurance or self-insurance programs maintained by the COUNTY are excess to HOSPITAL'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) HOSPITAL 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 COUNTY. If HOSPITAL 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 HOSPITAL 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 HOSPITAL under this Contract.

33. HOLD HARMLESS/INDEMNIFICATION AGREEMENT:

- A. HOSPITAL 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 HOSPITAL'S duties and obligations under this Agreement and any amendments hereto.

- B. COUNTY shall indemnify, defend and hold harmless HOSPITAL 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 HOSPITAL and COUNTY are both held to be negligently or willfully responsible, HOSPITAL 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 HOSPITAL from liability under this indemnification clause. This indemnification clause shall apply to all damages or claims for damages suffered by HOSPITAL's operations regardless if any insurance is applicable or not.

34. 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, HOSPITAL 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.

35. 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 HOSPITAL.

36. DRUG FREE WORKPLACE CERTIFICATION:

By signing this Agreement, HOSPITAL hereby certifies that HOSPITAL 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. HOSPITAL'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 HOSPITAL's drug-free policy statement, and
  - ii. Will agree to abide by the terms of HOSPITAL'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 HOSPITAL may be ineligible for award of future State contracts if the Department determines that any of the following has occurred: (1) HOSPITAL has made a false certification or, (2) violates the certification by failing to carry out the requirements as noted above.

37. PATIENTS' RIGHTS:

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

38. 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, HOSPITAL 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.

39. 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.

40. COST REPORT:

HOSPITAL shall submit an unaudited end of the fiscal year final cost report summarizing all costs incurred providing services for COUNTY-linked patients during the fiscal year. This will occur no later than ninety (90) days following the close of the fiscal year. Final Cost Report shall meet the specifications of the mandated cost reporting requirements of COUNTY, pertaining to that fiscal year.

41. DETERMINATION OF ABILITY TO PAY:

If so directed by the DHHS-Mental Health Director, HOSPITAL shall, determine client's share of cost using the State's Uniform Method of Determining the Ability to Pay, relaying to COUNTY the results of such determination. This shall be done any time there is a demonstrable change in client's financial status but no less than annually. HOSPITAL avers that inability to pay shall be no bar to HOSPITAL's services. However, HOSPITAL further agrees that unwillingness to pay may bar services (except in emergencies) following consultation with COUNTY. COUNTY agrees to provide

training in the determination of ability to pay.

42. AMENDMENT:

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

43. NOTIFICATION IN CHANGE IN OWNERSHIP AND CONTROL

In the event of a change in HOSPITAL's ownership or control, within thirty five (35) days, or upon request of COUNTY, HOSPITAL, 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 HOSPITAL. 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 HOSPITAL or in any subcontractor in which HOSPITAL has a 5 percent or more interest);
  - c. Whether the person (individual or corporation) with an ownership or control interest in HOSPITAL 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 HOSPITAL has a 5 percent or more interest is

related to another person with ownership or control interest in HOSPITAL as a spouse, parent, child, or sibling;

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

44. 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, HOSPITAL shall submit disclosures regarding certain business transactions. The following information must be disclosed:

- i. The ownership of any subcontractor with whom HOSPITAL 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 HOSPITAL and any wholly owned supplier, or between HOSPITAL and any subcontractor, during the 5-year period ending on the date of the request.

45. DISCLOSURES RELATED TO PERSONS CONVICTED OF CRIMES

Upon request by COUNTY, HOSPITAL 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). HOSPITAL shall submit the following disclosures:

- i. The identity of any person who is a managing employee of HOSPITAL 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 HOSPITAL 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.

46. FEDERAL HEALTH CARE PROGRAM EXCLUSION

HOSPITAL 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.

47. NOTIFICATION OF LITIGATION

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

48. CLEAN AIR / POLLUTION

For Contracts of amounts in excess of \$100,000 (unless exempt under 40 Code of Federal Regulations section 15.5): HOSPITAL 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.

49. INTELLECTUAL PROPERTY RIGHTS

HOSPITAL 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 HOSPITAL 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, HOSPITAL will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, HOSPITAL 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, HOSPITAL 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 HOSPITAL 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, HOSPITAL accesses any third-party Intellectual Property that is licensed to the State Department of Health Care Services, HOSPITAL 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. HOSPITAL 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 HOSPITAL enters into any agreements or subcontracts with other parties in order to perform this Agreement, HOSPITAL 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,

HOSPITAL, or the State Department of Health Care Services and which result directly or indirectly from this Agreement or any subcontract.

v. HOSPITAL 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 HOSPITAL or the State Department of Health Care Services and which result directly or indirectly from this Agreement, HOSPITAL 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. HOSPITAL 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 HOSPITAL's Intellectual Property resulting from this Agreement, unless HOSPITAL 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 HOSPITAL from using any ideas, concepts, know-how, methodology

or techniques related to its performance under this Agreement, provided that HOSPITAL'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. HOSPITAL agrees that for purposes of copyright law, all works [as defined above] of authorship made by or on behalf of HOSPITAL in connection with HOSPITAL's performance of this Agreement shall be deemed "works made for hire". HOSPITAL further agrees that the work of each person utilized by HOSPITAL in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of HOSPITAL or that person has entered into a written agreement with any such person that: (1) all work performed for HOSPITAL 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 HOSPITAL 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 HOSPITAL 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 HOSPITAL in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, HOSPITAL 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 HOSPITAL 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, HOSPITAL agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of HOSPITAL 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 HOSPITAL'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 HOSPITAL's performance of this Agreement, HOSPITAL shall obtain a license under terms acceptable to the State Department of Health Care Services.

F. Warranties

- i. HOSPITAL 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.
- i. Neither HOSPITAL'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 HOSPITAL 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 HOSPITAL.

- c. Neither HOSPITAL'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.
- d. 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.
- e. 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.

- f. 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.
  - g. 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 HOSPITAL'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. HOSPITAL 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 HOSPITAL 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 HOSPITAL 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 HOSPITAL 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 HOSPITAL's expense, any such infringement action brought against the State Department of Health Care Services.

- ii. Should any Intellectual Property licensed by HOSPITAL to the State Department of Health Care Services under this Agreement become the subject of an Intellectual Property infringement claim, HOSPITAL 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 HOSPITAL's expense) in any such claim or action. In the defense or settlement of the claim, HOSPITAL 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. HOSPITAL 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 HOSPITAL. HOSPITAL 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.

50. HIPAA COMPLIANCE-COVERED ENTITY TO COVERED ENTITY

COUNTY and HOSPITAL each consider and represent themselves as covered entities as defined by the U.S. Health Insurance Portability and Accountability Act and agree to use and disclose protected health information as required by law. COUNTY and HOSPITAL acknowledge that the exchange of protected health information between them is only for treatment, payment, and health care operations.

51. ADVANCE DIRECTIVES and PHYSICIAN INCENTIVE PLANS

HOSPITAL will comply with COUNTY's policies and procedures on advance directives. HOSPITAL will comply with COUNTY's obligations for Physician Incentive

Plans, if applicable based on the services provided under this Agreement, as long as they do not conflict with the HOSPITAL'S Catholic Directives as set forth in Clause 52.

52. CATHOLIC DIRECTIVES

COUNTY recognizes and acknowledges that in the course of carrying out the terms of this Agreement, HOSPITAL will comply with the Ethical and Religious Directives for Catholic Health Care Facilities, the teachings of the Roman Catholic Church, and the values of the Sisters of St. Joseph of Orange. These services would include but not be limited to abortions, sterilizations and euthanasia.

53. TAX-EXEMPT STATUS

If at any time HOSPITAL in good faith has reason to believe that this Agreement may jeopardize the tax-exempt status of HOSPITAL or any of its affiliates under Section 501 c 3 of the Internal Revenue Code or the ability of HOSPITAL or any of its affiliates to obtain or maintain tax-exempt financing, the parties agree to negotiate any amendments to this Agreement to the extent necessary to address such issues. Any such amendment shall attempt to preserve the parties' economic benefits of this Agreement to the greatest extent possible. In the event HOSPITAL is advised by independent counsel in a written opinion that amendment of this Agreement will not be sufficient to address such issues, HOSPITAL may terminate this Contract upon thirty days advance written notice.

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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: *An Hartwell, Deputy*

APPROVED AS TO LEGAL FORM:

By *Karen Raebuck*  
County Counsel

APPROVED AS TO INSURANCE:

*Daniel J. Hicks*  
Risk Manager

COUNTY OF HUMBOLDT:

*Rex Bell*  
Chair, of the Board of Supervisors

HOSPITAL:

*ATZ*  
Name PICKIGRAM

SVP, Network Development and  
Title Contracting

*Mich Riccioni*  
Name MICH RICCIONI

CFO, Northern California Region  
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.