

**MEMORANDUM OF UNDERSTANDING
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
VISION Y COMPROMISO
FOR FISCAL YEARS 2021-2022 THROUGH 2022-2023**

This Memorandum of Understanding ("MOU"), entered into this 16 day of November 2021, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Vision Y Compromiso, a California nonprofit corporation, hereinafter referred to as "VYC," is made upon the following considerations:

WHEREAS, VYC has agreed to work with California Coverage & Health Initiatives and the California Department of Health Care Services to provide certain outreach services that are designed to assist community members with obtaining affordable health coverage and accessing high quality health care as part of the Medi-Cal Health Enrollment Navigators Project; and

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Social Services ("DHHS – Social Services"), has agreed to work collaboratively with VYC to support the implementation and administration of the Medi-Cal Health Enrollment Navigators Project in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures, standards and contractual requirements; and

WHEREAS, COUNTY and VYC desire to enter into an agreement which sets forth each party's rights and responsibilities regarding the implementation and administration of the Medi-Cal Health Enrollment Navigators Project in Humboldt County.

NOW THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the parties hereto mutually agree as follows:

1. RIGHTS AND RESPONSIBILITIES OF VYC:

VYC shall, in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures, standards and contractual requirements, refer individuals who have received outreach services as part of the Medi-Cal Health Enrollment Navigators Project to DHHS – Social Services for health care coverage determinations. VYC shall obtain signed Release of Information forms that allow case-level data, including, without limitation, Personally Identifiable Information, to be exchanged between VYC and DHHS – Social Services prior to referring individuals for health care determinations pursuant to the terms and conditions of this MOU.

2. RIGHTS AND RESPONSIBILITIES OF COUNTY:

COUNTY shall, in accordance with any and all applicable local, state and federal laws, regulations, policies, procedures, standards and contractual requirements, prepare, and provide VYC with, monthly case outcome reports for individuals who have been referred to DHHS – Social Services for health care coverage determinations pursuant to the terms and conditions of this MOU.

3. TERM:

This MOU shall begin upon execution by both parties and shall remain in full force and effect until December 31, 2022, unless sooner terminated as provided herein.

4. TERMINATION:

- A. Termination for Cause. Either party may immediately terminate this MOU, upon written notice, in the event that the other party materially defaults in performing any obligation under this MOU, or violates any laws, regulations or standards applicable to its performance hereunder.
- B. Termination without Cause. Either party may terminate this MOU without cause upon thirty (30) days advance written notice which states the effective date of the termination.

5. NOTICES:

Any and all notices required to be given pursuant to the terms and conditions of this MOU shall be in writing and either served personally or sent by certified mail, return receipt requested, to the respective addresses set forth below. Notice shall be effective upon actual receipt or refusal as shown on the receipt obtained pursuant to the foregoing.

COUNTY: Humboldt County DHHS – Social Services
Attention: Monique Upshaw-Smith, Program Manager II
929 Koster Street
Eureka, California 95501

VYC: Vision Y Compromiso
Attention: Ruben Ramirez Ruiz, Program Coordinator
1000 Alameda Street
Los Angeles, California 90012

6. REPORTING REQUIREMENTS:

Each party hereby agrees to prepare and submit any and all reports that may be required by any local, state and/or federal agencies for compliance with this MOU. Any and all reports required hereunder shall be prepared in a format that complies with the Americans with Disabilities Act and any other applicable local, state and federal accessibility laws, regulations and standards. Any and all reports required hereunder shall be submitted in accordance with any and all applicable timeframes using the format required by the State of California as appropriate.

7. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. Each party hereby agrees to timely prepare accurate and complete records, documents and other evidence relating to its performance hereunder, and to maintain and preserve said records for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all applicable local, state and federal laws, regulations, policies, procedures, standards and contractual requirements, except that if any litigation, claim, negotiation, audit or other action is pending, such records shall be retained until completion and resolution of all issues arising therefrom.
- B. Inspection of Records. Each party hereby agrees to make any and all records, documents and other evidence relating to its performance hereunder available during normal business hours to inspection, audit and reproduction by any duly authorized local, state and/or federal agencies for a period of three (3) years after expiration or termination of this MOU, or as otherwise required by any and all local, state and federal laws, regulations, policies, procedures, standards and contractual requirements. Each party further agrees to allow interviews of any of its employees who might reasonably have information related to such records by any duly authorized local,

state and/or federal agencies. Any and all examinations and audits conducted pursuant to the terms and conditions of this MOU shall be strictly confined to those matters connected with the performance of the duties and obligations set forth herein, including, without limitation, the costs associated with the administration of this MOU.

- C. Audit Costs. In the event of an audit exception or exceptions related to the performance of this MOU, the party responsible for not meeting the requirements set forth herein shall be responsible for the cost of the audit.

8. CONFIDENTIAL INFORMATION:

- A. Disclosure of Confidential Information. In the performance of this MOU, each party may receive information that is confidential under local, state or federal law. Each party hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures, standards and contractual requirements, including, without limitation: Division 19 of the California Department of Social Services Manual of Policies and Procedures – Confidentiality of Information; California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health and Safety Code Sections 1280.15 and 1280.18; the California Information Practices Act of 1977; the California Confidentiality of Medical Information Act (“CMIA”); the United States Health Information Technology for Economic and Clinical Health Act (“HITECH Act”); the United States Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) and any current and future implementing regulations promulgated thereunder, including, but not limited to, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162, all as may be amended from time to time.
- B. HIPAA Business Associate Requirements. Each party hereby agrees to adhere to the terms and conditions set forth in Exhibit A – HIPAA Business Associate Agreement, which is attached hereto and incorporated herein by reference as if set forth in full.
- C. Continuing Compliance with Confidentiality Requirements. Each party hereby acknowledges that local, state and federal laws, regulations, policies, procedures and standards pertaining to confidentiality, electronic data security and privacy are rapidly evolving and that amendment of this MOU may be required to ensure compliance with such developments. Each party agrees to promptly enter into negotiations concerning an amendment to this MOU embodying written assurances consistent with the requirements of HIPAA, the HITECH Act, the CMIA and any other applicable local, state and federal laws, regulations, policies, procedures, standards and contractual requirements.

9. NON-DISCRIMINATION COMPLIANCE:

- A. Nondiscriminatory Delivery of Social Services. In connection with the execution of this MOU, neither party shall unlawfully discriminate in the administration of public assistance and social services programs. Each party hereby assures that no person shall be excluded from participation in, be denied benefits of, or be subjected to discrimination under any program or activity receiving local, state or federal financial assistance because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic

characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. COUNTY reserves the right to monitor the services provided hereunder in order to ensure compliance with the requirements of this provision.

- B. Professional Services and Employment. In connection with the execution of this MOU, neither party shall unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of: race; religion or religious creed; color; age, over forty (40) years of age; sex, including, without limitation, gender identity and expression, pregnancy, childbirth and related medical conditions; sexual orientation, including, without limitation, heterosexuality, homosexuality and bisexuality; national origin; ancestry; marital status; medical condition, including, without limitation, cancer and genetic characteristics; mental or physical disability, including, without limitation, HIV status and AIDS; political affiliation; military service; denial of family care leave; or any other classifications protected by any and all applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. Nothing herein shall be construed to require employment of unqualified persons.
- C. Compliance with Anti-Discrimination Laws. Each party further assures that it will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, *et seq.*; California Government Code Sections 4450, *et seq.*; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Executive Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state or federal laws, regulations or standards, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing commission implementing California Government Code Section 12990, set forth in Sections 8101, *et seq.* of Title 2 of the California Code of Regulations are incorporated into this MOU by reference as if set forth in full.

10. NUCLEAR-FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this MOU, VYC certifies that it is not a Nuclear Weapons Contractor, in that VYC 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. VYC agrees to notify COUNTY immediately if it becomes a Nuclear Weapons Contractor as defined above. COUNTY may immediately terminate this MOU if it determines that the foregoing certification is false or if VYC subsequently becomes a Nuclear Weapons Contractor.

11. INDEMNIFICATION:

- A. Mutual Indemnity. Each party hereto shall hold harmless, defend and indemnify the other party and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages, liabilities, expenses and costs of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in connection with, the negligent performance of, or failure to comply with, any of the duties and/or obligations contained herein, except such loss or damage which was caused by the sole negligence or willful misconduct of the other party or its agents, officers, officials, employees or volunteers.

- B. Comparative Liability. Notwithstanding anything to the contrary, in the event that both parties are held to be negligently or willfully responsible, each party will bear their proportionate share of liability as determined in any such proceeding. In such cases, each party will bear their own costs and attorney's fees.
- C. Effect of Insurance. Acceptance of the insurance required by this MOU shall not relieve either party from liability under this provision. This provision shall apply to all claims for damages related to either party's performance hereunder, regardless of whether any insurance is applicable or not.

12. INSURANCE REQUIREMENTS:

- A. General Insurance Requirements. Without limiting the parties' indemnification obligations set forth herein, each party shall maintain in full force and effect, at its own expense, any and all appropriate comprehensive general liability, comprehensive automobile, workers' compensation and professional liability insurance policies.
- B. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this MOU shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

COUNTY: County of Humboldt
Attention: Risk Management
825 Fifth Street, Room 131
Eureka, California 95501

VYC: Vision Y Compromiso
Attention: Ruben Ramirez Ruiz, Program Coordinator
1000 Alameda Street
Los Angeles, California 90012

13. RELATIONSHIP OF PARTIES:

It is understood that this MOU is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agent, servant, employee, partnership, joint venture or any other similar association. Each party shall be solely responsible for the acts or omissions of its agents, officers, employees, assignees and subcontractors.

14. COMPLIANCE WITH APPLICABLE LAWS, REGULATIONS AND STANDARDS:

- A. General Legal Requirements. Each party hereby agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards.
- B. Licensure Requirements. Each party hereby agrees to comply with any and all local, state and federal licensure and certification requirements applicable to its performance hereunder.
- C. Accessibility Requirements. Each party hereby agrees to comply with any and all applicable accessibility requirements set forth in the Americans with Disabilities Act, Section 508 of the Rehabilitation Act of 1973, as amended, California Government Code Section 1135 and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, the federal accessibility standards set forth in 36 C.F.R. Section 1194.1, all as may be amended from time to time.

D. Conflict of Interest Requirements. Each party hereby agrees to comply with any and all applicable conflict of interest requirements set forth in the California Political Reform Act and any current and future implementing regulations, policies, procedures and standards promulgated thereunder, including, without limitation, COUNTY's Conflict of Interest Code, all as may be amended from time to time.

15. PROVISIONS REQUIRED BY LAW:

This MOU is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this MOU. This MOU shall be read and enforced as though all legally required provisions are included herein, and if for any reason any such provision is not included, or incorrectly stated, the parties agree to amend the pertinent section to make such insertion or correction.

16. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

In the event any law, regulation or standard referred to herein is amended during the term of this MOU, the parties agree to comply with the amended provision as of the effective date of such amendment.

17. PROTOCOLS:

Each party hereby agrees that the inclusion of additional protocols may be required to make this MOU specific. All such protocols shall be negotiated, determined and agreed upon by each party hereto.

18. SEVERABILITY:

If any provision of this MOU, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this MOU.

19. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment in violation of this provision shall be void and shall be cause for immediate termination of this MOU. This provision shall not be applicable to service agreements or other arrangements usually or customarily entered into by either party to obtain supplies, technical support or professional services.

20. AGREEMENT SHALL BIND SUCCESSORS:

All provisions of this MOU shall be fully binding upon, and shall inure to the benefit of, the parties and to each of their heirs, executors, administrators, successors and permitted assigns.

21. NO WAIVER OF DEFAULT:

The waiver by either party of any breach of this MOU 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 MOU.

22. NON-LIABILITY OF OFFICIALS AND EMPLOYEES:

No official or employee of either party shall be personally liable for any default or liability under this MOU.

23. AMENDMENT:

This MOU may be amended at any time during the term hereof upon the mutual consent of both parties. No addition to, or alteration of, the terms of this MOU shall be valid unless made in writing and signed by an authorized representative of each party hereto.

24. STANDARD OF PRACTICE:

Each party warrants that it has the degree of learning and skill ordinarily possessed by reputable professionals practicing in similar localities in the same profession and under similar circumstances. Each party's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

25. JURISDICTION AND VENUE:

This MOU shall be construed in accordance with the laws of the State of California. Any dispute arising hereunder, or relating hereto, shall be litigated in the State of California and venue shall lie in the County of Humboldt unless transferred by court order pursuant to California Code of Civil Procedure Sections 394 or 395.

26. ADVERTISING AND MEDIA RELEASE:

Each party shall obtain the written approval of the other party before any informational material related to this MOU may be used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. Each party shall inform the other party of any and all requests for interviews by media related to this MOU before such interviews take place. Each party shall be entitled to have a representative present at any and all interviews concerning the subject matter of this MOU. Any and all notices required by this provision shall be provided in accordance with the notice requirements set forth herein.

27. SUBCONTRACTS:

Each party shall obtain prior written approval from the other party, which shall not be unreasonably withheld, before subcontracting any of its duties or obligations hereunder. Any and all subcontracts shall be subject to all applicable terms and conditions of this MOU, including, without limitation, the confidentiality, licensing and certification requirements set forth herein. Each party shall remain legally responsible for the performance of all terms and conditions of this MOU, including, without limitation, any and all duties performed by third parties under subcontracts, whether approved by the other party or not.

28. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 7 – Record Retention and Inspection, Section 8 – Confidential Information and Section 11 – Indemnification shall survive the expiration or termination of this MOU.

29. CONFLICTING TERMS OR CONDITIONS:

In the event of any conflict in the terms or conditions set forth in any other agreements in place between the parties hereto and the terms and conditions set forth in this MOU, the terms and conditions set forth herein shall have priority.

30. INTERPRETATION:

This MOU, as well as its individual provisions, shall be deemed to have been prepared equally each of the parties hereto, and shall not be construed or interpreted more favorably for one (1) party on the basis that the other party prepared it.

31. INDEPENDENT CONSTRUCTION:

The titles of the sections and subsections set forth herein are inserted for convenience of reference only and shall be disregarded in construing or interpreting any of the provisions of this MOU.

32. FORCE MAJEURE:

Niether party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control, and without the fault or negligence, of such party. Such events shall include, without limitation, acts of God, strikes, lockouts, riots, acts of war, epidemics, pandemics, acts of government, fire, power failures, nuclear accidents, earthquakes, unusually severe weather, acts of terrorism or other disasters, whether or not similar to the foregoing.

33. ENTIRE AGREEMENT:

This MOU contains all of the terms and conditions agreed upon by the parties hereto and no other agreements, oral or otherwise, regarding the subject matter of this MOU shall be deemed to exist or to bind either of the parties hereto. In addition, this MOU shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this MOU are hereby ratified.

34. COUNTERPART EXECUTION:

This MOU, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. This MOU, and any amendments hereto, may be signed by manual or electronic signatures in accordance with any and all applicable local, state and federal laws, regulations and standards, and such signatures shall constitute original signatures for all purposes. A signed copy of this MOU, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this MOU and any amendments hereto.

35. AUTHORITY TO EXECUTE:

Each person executing this MOU represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this MOU. Each party represents and warrants to the other that the execution and delivery of this MOU and the performance of such party's obligations hereunder have been duly authorized.

[Signatures on Following Page]

IN WITNESS WHEREOF, the parties have entered into this MOU as of the first date written above.

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

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

VISION Y COMPROMISO:

DocuSigned by:
 By: Maria Lemus
880B1F2CE8CD47C...
 Name: Maria Lemus
 Title: Executive Director

Date: 10/20/2021

DocuSigned by:
 By: Cynthia Avillar
898A76649A58468...
 Name: Cynthia Avillar
 Title: Chair of the Board

Date: 10/21/2021

COUNTY OF HUMBOLDT:

By: Virginia Bass
 Virginia Bass, Chair
 Humboldt County Board of Supervisors

Date: 11/16/21

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: Kaufman
 Risk Management

Date: 11/03/2021

LIST OF EXHIBITS:

Exhibit A – HIPAA Business Associate Agreement

EXHIBIT A
HIPAA BUSINESS ASSOCIATE AGREEMENT
Vision y Compromiso
For Fiscal Years 2021-2022 through 2022-2023

RECITALS:

WHEREAS, COUNTY, as a “Covered Entity” (defined below) wishes to disclose certain information to Vision y Compromiso, hereafter known as the “BUSINESS ASSOCIATE” pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”).

WHEREAS, 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.

WHEREAS, pursuant to HIPAA Regulations, the Privacy Rule and Security Rule (defined below) COUNTY is required 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.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS:

- A. **Breach**. As used herein, the term “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**. As used herein, the term “Breach of 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**. As used herein, the term “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**. As used herein, the term “Covered Entity” shall have the meaning given to such term under the Privacy and Security Rules, including, without limitation, 45 C.F.R. Section 160.103.
- E. **Designated Record Set**. As used herein, the term “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**. As used herein, the term “Electronic Protected Health Information” means Protected Health Information that is maintained in or transmitted by electronic media.
- G. **Electronic Health Record**. As used herein, the term “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.** As used herein, the term “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.** As used herein, the term “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.** As used herein, the term “Protected Health Information” (“PHI”) means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- K. **Protected Information.** As used herein, the term “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.** As used herein, the term “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.** As used herein, the term “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.** As used herein, the term “Unsecured PHI” shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **OBLIGATIONS OF BUSINESS ASSOCIATE:**

- A. **Permitted Uses.** BUSINESS ASSOCIATE shall use Protected Information only for the purpose of performing BUSINESS ASSOCIATE’s obligations under the Agreement and as permitted or required under the Agreement, or as required by law. Further, BUSINESS ASSOCIATE shall not use Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so used by COUNTY. However, BUSINESS ASSOCIATE may use Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. [45 C.F.R. Sections 164.504(e)(2), 164.504(e)(4)(i)].
- B. **Permitted Disclosures.** BUSINESS ASSOCIATE shall disclose Protected Information only for the purpose of performing BUSINESS ASSOCIATE’s obligations under the Agreement and as permitted or required under the Agreement, or as required by law. BUSINESS ASSOCIATE shall not disclose Protected Information in any manner that would constitute a violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. If BUSINESS ASSOCIATE discloses Protected Information to a third-party, BUSINESS ASSOCIATE must obtain, prior to making

any such disclosure, (i) reasonable *written* assurances from such third-party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third-party, and (ii) a written agreement from such third-party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.I. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- C. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and the patient 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]. Such safeguards shall be, at a minimum, at Federal Information Processing Standards Publication 199 protection levels.
- E. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2(D) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- F. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under California Health and Safety Code Section 123110 and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(e)]. If BUSINESS ASSOCIATE maintains Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable COUNTY to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.

- G. Amendment of PHI.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, within ten (10) days of a request by COUNTY for an amendment of Protected Information or a record about an individual contained in a Designated Record Set, BUSINESS ASSOCIATE and its agents and subcontractors shall make such Protected Information available to COUNTY for amendment and incorporate any such amendment or other documentation to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.526. If an individual requests an amendment of Protected Information directly from BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE must notify COUNTY in writing within five (5) days of the request and of any approval or denial of amendment of Protected Information maintained by BA or its agents or subcontractors [45 C.F.R. Section 164.504(e)(2)(ii)(F)].
- H. Accounting of Disclosures.** Within ten (10) days of a request by COUNTY for an accounting of disclosures of Protected Information, BUSINESS ASSOCIATE and its agents and subcontractors shall make available to COUNTY the information required to provide an accounting of disclosures to enable COUNTY to fulfill its obligations under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.528, and the HITECH Act, including but not limited to 42 U.S.C. Section 17935(c), as determined by COUNTY. BUSINESS ASSOCIATE agrees to implement a process that allows for an accounting to be collected and maintained by BUSINESS ASSOCIATE and its agents and subcontractors for at least six (6) years prior to the request. However, accounting of disclosures from an Electronic Health Record for treatment, payment or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BUSINESS ASSOCIATE maintains an Electronic Health Record. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received Protected Information and, if known, the address of the entity or person; (iii) a brief description of Protected Information disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure. If a patient submits a request for an accounting directly to BUSINESS ASSOCIATE or its agents or subcontractors, BUSINESS ASSOCIATE shall within five (5) days of the request forward it to COUNTY in writing.
- I. Governmental Access to Records.** BUSINESS ASSOCIATE shall make its internal practices, books and records relating to the use and disclosure of Protected Information available to COUNTY and to the Secretary of the U.S. Department of Health and Human Services (the "Secretary") for purposes of determining BUSINESS ASSOCIATE's compliance with HIPAA [45 C.F.R. Section 164.504(e)(2)(ii)(I)]. BUSINESS ASSOCIATE shall concurrently provide COUNTY with copies of any Protected Information and other records that BUSINESS ASSOCIATE provides to the Secretary.
- J. Minimum Necessary.** BUSINESS ASSOCIATES and its agents and subcontractors shall request, use, and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BUSINESS ASSOCIATE understands and agrees that the definition of "minimum necessary" is in flux and shall keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."
- K. Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- L. Special Provision for SSA Data.** If BUSINESS ASSOCIATE receives data from or on behalf of COUNTY that was verified by or provided by the Social Security Administration ("SSA")

and is subject to an agreement between DHCS and SSA, Business Associate shall provide, upon request by DHCS, a list of all employees and agents and employees who have access to such data, including employees and agents of its agents, to DHCS. This ensures that BUSINESS ASSOCIATE is meeting the standards that DHCS and SSA require of COUNTY while working with the COUNTY as described herein.

- M. Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY immediately upon discovery of breach or incident involving SSA data, or of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.1408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. Any and all notices required pursuant to the terms and conditions of this provision shall be submitted to COUNTY at the following address:

COUNTY: Humboldt County DHHS Compliance and Quality Assurance Office
Attention: Compliance and Quality Assurance Administrator & Privacy Officer
507 F Street
Eureka, California 95501
(707) 441-5410

- N. Breach Pattern or Practice by Business Associate's Subcontractors and Agents.** Pursuant to 42 U.S.C. Section 17934(b) and 45 C.F.R. Section 164.504(e)(1)(ii), if BUSINESS ASSOCIATE knows of a pattern or activity or practice of a subcontractor or agent that constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement, BUSINESS ASSOCIATE must take reasonable steps to cure the breach or end the violation. If the steps are unsuccessful, BUSINESS ASSOCIATE must terminate the Agreement or other arrangement if feasible. BUSINESS ASSOCIATE shall provide written notice to COUNTY of any pattern of activity or practice of a subcontractor or agent that BUSINESS ASSOCIATE believes constitutes a material breach or violation of the subcontractor or agent's obligations under the Agreement or other arrangement within five (5) days of discovery and shall meet with COUNTY to discuss and attempt to resolve the problem as one (1) of the reasonable steps to cure the breach or end the violation.
- O. Audits, Inspection and Enforcement.** Within ten (10) days of a request by COUNTY, BUSINESS ASSOCIATE and its agents and subcontractors shall allow COUNTY or its agents or subcontractors to conduct a reasonable inspection of the facilities, systems, books, records, agreements, policies and procedures relating to the use or disclosure of Protected Information pursuant to this Agreement for the purpose of determining whether BUSINESS ASSOCIATE has complied with this Agreement or maintains adequate security safeguards. BUSINESS

ASSOCIATE shall notify COUNTY within five (5) days of learning that BUSINESS ASSOCIATE has become the subject of an audit, compliance review, or complaint investigation by the Office for Civil Rights or other state or federal government entity.

3. **TERMINATION:**

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

4. **INTERPRETATION:**

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