

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
PERSIMMONY INTERNATIONAL, INC.**

This Agreement, entered into this ____ day of _____, 2021, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as “COUNTY,” and Persimmony International, Inc., a Nevada Corporation with offices as 33 Endless Vista, Aliso Viejo, CA 92656, a software company that provides software for Electronic Case Management (ECM) and time study tracking and submission to California state, hereinafter referred to as “CONTRACTOR,” is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services (“DHHS”) – Public Health, Nursing Division and Healthy Communities, desires to retain the services of CONTRACTOR to provide software for ECM documentation for the Nursing Division’s home visiting programs and for time study tracking and submission to the state of California for both the Nursing Division and Healthy Communities; and

WHEREAS, such work involves the performance of professional, expert and technical services; and

WHEREAS, COUNTY has no employees available to perform such services and is unable to hire employees for the performance thereof; and

WHEREAS, CONTRACTOR has represented that it is qualified to perform such services; and

WHEREAS, CONTRACTOR provides a centrally hosted and managed subscription service consisting of certain proprietary software owned by CONTRACTOR or its third-party Licensors and accessible via the Internet; and

WHEREAS, COUNTY seeks to obtain, and CONTRACTOR seeks to provide, a subscription to the service on the terms and conditions set forth in the Agreement.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DESCRIPTION OF SERVICES:

CONTRACTOR agrees to furnish the services described in Exhibit A – Scope of Services, which is attached hereto and incorporated herein by reference. In providing such services, CONTRACTOR agrees to fully cooperate with the Public Health Director or designee thereof, hereinafter referred to as PH-Director.

2. DEFINITIONS:

- A. Confidential Information. Will have the meaning set forth in Section 14 – Confidential Information.
- B. County Data. All information provided directly or indirectly by COUNTY to CONTRACTOR for use in conjunction with the Services, including any information entered by COUNTY, or by CONTRACTOR at the direction of COUNTY.

- C. County Information. All information created or otherwise owned by COUNTY or licensed by COUNTY from third parties, including COUNTY Data and information created by COUNTY by using the Services, that is used in conjunction with the Services and the Software.
- D. Documentation. Means all configurations and specifications published by CONTRACTOR relating to the Software or the Services, attached hereto as Exhibit A and incorporated herein full. In the event the Documentation is revised during the term of this Agreement, the revised Documentation shall not take effect unless the Agreement is amended in writing to reflect the incorporation of the revised Documentation.
- E. Equipment. COUNTY shall be responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking equipment, web servers, and long distance and local telephone service, but excluding the Software (collectively "Equipment"). COUNTY shall be responsible for ensuring that the Equipment is compatible with the Services and the Software and complies with the Documentation. COUNTY shall also be responsible for the security and use of the Equipment.
- F. Maximum Users. Determined by costs and budget set forth in Exhibit B of this agreement. COUNTY shall not exceed the maximum number of users as determined by the budget, Exhibit B, to ensure COUNTY is able to meet all financial obligations related to this agreement.
- G. CONTRACTOR Information. Information, including the Software, created or otherwise owned by CONTRACTOR or licensed by CONTRACTOR from third parties, related to the Services or Software and all Documentation.
- H. Services. This refers to the Software, electronic data processing, storage, and transmission services ordered by COUNTY, which are enumerated in Exhibit A, attached hereto and incorporated herein full.
- I. Software. Refers to the Software used by CONTRACTOR to provide Services.

3. SERVICES AND SUPPORT:

- A. Obligations of CONTRACTOR. Subject to the terms and conditions of this Agreement. CONTRACTOR will use reasonable commercial efforts to provide the Services to County. If County requests additional services from CONTRACTOR, an amendment to this Agreement will be required.
- B. Grant of License. Subject to the terms and conditions of this Agreement, CONTRACTOR grants to COUNTY a limited, nontransferable, nonexclusive license for the term of this Agreement to access via the Internet and use the Services and the Software, solely to support COUNTY's normal course of business.
- C. Restrictions on Use. COUNTY may not, directly or indirectly, (i) license, sell, lease or otherwise transfer or grant third-party access to the Services or the Software, (ii) alter, modify, translate or create derivative works based on the Software, (iii) process or permit to be processed the data of any third party, (iv) use or permit the use of the Services or the Software in the operation of a service bureau, timesharing arrangement or otherwise for the benefit of a third party, (v) disassemble, decompile, or reverse engineer the Software or any aspect of the Services, or

otherwise attempt to derive or construct source code or other trade secrets from the Software, or (vi) permit any third party to do any of the foregoing.

- D. Support Services. Subject to COUNTY's prompt payment of the fees due under this Agreement, CONTRACTOR shall provide COUNTY with the support services specified in Exhibit A.
- E. Use of COUNTY Data/County Representations and Warranties. COUNTY shall be solely responsible for all COUNTY Information, and shall allow CONTRACTOR, for the sole purpose of its performance under this Agreement, to copy, display, distribute, download, and otherwise use COUNTY Information to transmit over the Internet. COUNTY represents and warrants that its COUNTY Information does not and will not include anything that infringes the copyright, patent, trade secret, trademark or any other intellectual property right of any third party; contains anything that is obscene, defamatory, harassing, offensive, malicious or which constitutes child pornography; or otherwise violates any other right of any third party.
- F. Passwords. CONTRACTOR shall provide COUNTY with passwords to access the Service. All Service passwords shall meet the United States Health Information Technology for Economic and Clinical Health Act ("HITECH Act") and the United States Health Insurance Portability and Accountability Act of 1996 ("HIPAA") regulatory standards. COUNTY shall be responsible for all use of its account(s). COUNTY shall also maintain the confidentiality of all passwords assigned to it. COUNTY may not share its passwords with third parties or attempt to access the Service without providing a password assigned to it.

4. COUNTY RESTRICTIONS AND RESPONSIBILITIES:

- A. Compliance with Documentation and Laws/Representations and Warranties. COUNTY represents, covenants, and warrants that COUNTY will use the Services and any data of third parties only as contemplated by the Documentation and in compliance with all applicable laws and policies (including but not limited to laws, government regulations, CONTRACTOR policies and any other applicable policies relating to intellectual property, employment, labor, spamming, spoofing, network security, privacy, obscenity or defamation).
- B. COUNTY Equipment. COUNTY shall be responsible for selecting, obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Services, including, without limitation, modems, hardware, servers, software, operating systems, networking equipment, web servers, and long distance and local telephone service, but excluding the Software (collectively "Equipment"). COUNTY shall be responsible for ensuring that the Equipment is compatible with the Services and the Software and complies with the Documentation. COUNTY shall also be responsible for the security and use of the Equipment.

5. PROPRIETARY RIGHTS:

- A. CONTRACTOR's Proprietary Rights. Exclusive of COUNTY Information, CONTRACTOR (or its third-party Licensors, if applicable) will retain all rights, title, and interest in and to the Software, Services, and the CONTRACTOR Information and all legally protectable elements or derivative works thereof. CONTRACTOR may place copyright and/or proprietary notices, including hypertext links, within the Services. COUNTY may not alter or remove these notices without CONTRACTOR's written permission. COUNTY may not have the right to, and agrees not to, attempt to restrain CONTRACTOR from using any skills or knowledge of a general nature acquired during the course of providing the Services, including information publicly

known or available or that could reasonably be acquired in similar work performed for another CONTRACTOR County.

- B. COUNTY's Proprietary Rights. COUNTY will retain all rights, title and interest in and to the legally protectable elements of COUNTY Information and derivative works thereof.
- C. CONTRACTOR Audit Rights. COUNTY shall (i) promptly provide written notice to CONTRACTOR if the number of users exceeds the maximum number permitted in Exhibit B ("Maximum users"), and (ii) simultaneously pay CONTRACTOR for any additional users. During normal business hours or at any time the Software or Service is being used, CONTRACTOR or its authorized representatives may, upon reasonable advance notice, audit and inspect COUNTY's use of the Software and Service and/or COUNTY's compliance with this Agreement.

6. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect until June 30, 2024, unless sooner terminated as provided herein.

7. TERMINATION:

- A. Termination for Cause. COUNTY may, in its sole discretion, immediately terminate this Agreement, if CONTRACTOR fails to adequately perform the services required hereunder, fails to comply with the terms or conditions set forth herein, or violates any local, state or federal law, regulation or standard applicable to its performance hereunder.
- B. Termination Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice which states the effective date of the termination.
- C. Termination due to Insufficient Funding. COUNTY's obligations under this Agreement are contingent upon the availability of local, state and/or federal funds. In the event such funding is reduced or eliminated, COUNTY shall, at its sole discretion, determine whether this Agreement shall be terminated. COUNTY shall provide CONTRACTOR seven (7) days advance written notice of its intent to terminate this Agreement due to insufficient funding.
- D. Compensation Upon Termination. In the event this Agreement is terminated, CONTRACTOR shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.

8. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for any and all services provided, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is Five Hundred Sixty-Five Thousand, Seven Hundred Forty Dollars (\$565,740.00). In no event shall the maximum amount paid under this Agreement exceed Two Hundred Twelve Thousand, Three Hundred Five Dollars (\$212,305.00) for fiscal year 2021-2022, One Hundred Eighty Thousand, One Hundred Thirty Dollars (\$180,130.00) for fiscal year 2022-2023 and One Hundred Seventy-Three Thousand, Three Hundred Five Dollars (\$173,305.00) for fiscal year 2023-2024. CONTRACTOR agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. However, if local, state or federal funding

or allowance rates are reduced or eliminated, COUNTY may, by amendment, reduce the maximum amount payable hereunder or terminate this Agreement as provided herein.

- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in Exhibit B – Schedule of Rates, which is attached hereto and incorporated herein by reference. Billing for this contract is quarterly and only accounts with users logging into the Persimmony software system will be included in the quarterly bill.
- C. Additional Services. Any additional services not otherwise provided for herein, shall not be provided or compensated without written authorization by COUNTY. All unauthorized costs and expenses incurred above the maximum dollar amount set forth herein shall be the responsibility of CONTRACTOR. CONTRACTOR shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which CONTRACTOR estimates that the maximum dollar amount will be reached.
- D. Tax Exempt Status. The COUNTY is a political subdivision of the State of California. As such, the COUNTY is tax exempt under Internal Revenue Code section 115.

9. PAYMENT:

CONTRACTOR shall submit to COUNTY quarterly invoices itemizing all services rendered, including a list of names of active users who log into the ECM software and a list of active users who log into the MAA time study software who are included in the quarterly bill, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement. Invoices shall be in a format approved by, and shall include backup documentation as specified by, the PH-Director, The DHHS Local Governmental Administrator (LGA), and the Humboldt County Auditor-Controller. CONTRACTOR shall submit a final undisputed invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Payment for services rendered and costs and expenses incurred will be made within thirty (30) days after the receipt of approved invoices. All invoices submitted by CONTRACTOR shall be sent to COUNTY at the following addresses:

COUNTY: Humboldt County DHHS – Public Health
Attention: Financial Services
507 F Street
Eureka, California 95501

10. NOTICES:

Any and all notices required to be given pursuant to the terms of this Agreement 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 – Public Health Nursing Division
Attention: Megan Blanchard
908 7th Street
Eureka, CA 95501

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CONTRACTOR: Persimmony International, Inc.
Attention: Michael Kogus
33 Endless Vista
Aliso Viejo, CA 92656

11. REPORTS:

CONTRACTOR agrees to provide COUNTY with any and all reports that may be required by any local, state and/or federal agencies for compliance with this Agreement. CONTRACTOR shall submit one (1) hard copy and one (1) electronic copy of any and all reports required hereunder 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.

12. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided pursuant to the terms and conditions of this Agreement, and to maintain and preserve said records for at least three (3) years from the date of final payment hereunder, 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 therefrom. Such records shall be original entry books with a general ledger itemizing all debits and credits for the services provided pursuant to the terms and conditions of this Agreement.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the services provided pursuant to the terms and conditions of this Agreement, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after the date of final payment hereunder. CONTRACTOR hereby agrees to make all such records available during normal business hours to inspection, audit and reproduction by COUNTY and any other duly authorized local, state and/or federal agencies. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any other duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, without limitation, the costs of administering this Agreement.
- C. Audit Costs. In the event of an audit exception or exceptions related to the services provided pursuant to the terms and conditions of this Agreement, the party responsible for not meeting the requirements set forth herein shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

13. MONITORING:

CONTRACTOR agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONTRACTOR's records, policies, procedures and overall business operations, at any time, in order to ensure compliance with the terms

and conditions of this Agreement. CONTRACTOR shall cooperate with a corrective action plan, if deficiencies in CONTRACTOR's records, policies, procedures or business operations are identified by COUNTY. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of CONTRACTOR's performance hereunder.

14. CONFIDENTIAL INFORMATION:

- A. Confidentiality Obligation. "Confidential Information" means all written or oral information designated as confidential at the time of disclosure that is made accessible to the other party in connection with this Agreement including, without limitation, computer programs, software, formulas, data, information, inventions, techniques, strategies, trade secrets, know-how, plans for products or services, marketing plans, financial documents or data, processes and designs, and Service passwords. Written Confidential Information must be marked as "confidential" or "proprietary." Oral Confidential Information must be designated as confidential at the time of disclosure and reduced to a written summary and marked "confidential" or "proprietary" within a reasonable period following the oral disclosure. Each of the parties shall treat the other party's Confidential Information confidentially and with at least the same degree of care it uses to prevent the disclosure of its own Confidential Information, but in no event less than reasonable care. In addition, each party shall use the Confidential Information of the other party solely in the performance of its obligations under this Agreement and not disclose it, except to authorized employees of the receiving party or its affiliates, its legal counsel and its accountants (provided that the receiving party contractually obligates them to a duty of confidentiality no less restrictive than the duty imposed by this section 14(A) and remains jointly and severally liable for any breach of confidentiality by them). Each party shall promptly notify the other party of any actual or suspected misuse or unauthorized disclosure of its Confidential Information. Upon expiration or termination of this Agreement, each party shall return all tangible copies of any Confidential Information received from the other party.
- B. Disclosure of Confidential Information. In the performance of this Agreement, CONTRACTOR may receive information that is confidential under local, state or federal law. CONTRACTOR hereby agrees to protect all confidential information in conformance with any and all applicable local, state and federal laws, regulations, policies, procedures and standards, 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, without limitation, 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.
- C. Continuing Compliance with Confidentiality Laws. The parties acknowledge that federal and state confidentiality laws are rapidly evolving and that amendment of this Agreement may be required to ensure compliance with such developments. Each party 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, the CMIA and any other applicable local, state and federal laws or regulations.

- D. HIPAA Business Associate Requirements. CONTRACTOR hereby agrees to adhere to the terms and conditions set forth in Exhibit C – County of Humboldt HIPAA Business Associate Agreement, which is attached hereto and incorporated herein by reference as if set forth in full.
- E. Exclusions. Confidential Information will not include information that the recipient can prove: (i) was generally available to the public at the time it was disclosed, (ii) was known to the recipient, without restriction, at the time of disclosure by the disclosing party, (iii) is disclosed with the prior written approval of the disclosing party, (iv) was independently obtained or developed by the recipient without any use of the Confidential Information, (v) becomes known to the recipient, without restriction, from a source other than the disclosing party who does not owe a duty of confidentiality to the disclosing party and obtained the information by lawful means, (vi) is required to be disclosed as a non-exempt public record pursuant to the California Public Records Act (Government Code section 6250 et seq.), or (vii) is disclosed in response to an order or requirement of a court, administrative agency, or other governmental body, a subpoena, or by the rules of a securities market or exchange on which the disclosing party's securities are traded (but only if (a) the recipient provides prompt advance notice to the disclosing party to enable it to appear and independently contest the disclosure, and (b) any Confidential Information so disclosed will otherwise remain subject to the provisions of this section 14). The burden of proof in establishing that any Confidential Information is subject to any of the foregoing exceptions will be borne by the receiving party.

15. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

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

16. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not 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 the employment of unqualified persons.
- C. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it, and its subcontractors, 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 Agreement by reference and made a part hereof as if set forth in full.

17. DRUG-FREE WORKPLACE:

By executing this Agreement, CONTRACTOR certifies that it will provide a drug-free workplace in accordance with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, *et seq.*), by doing all of the following:

- A. Drug-Free Policy Statement. Publish, as required by California Government Code Section 8355(a)(1), a Drug-Free Policy Statement which notifies employees that the unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited, and specifies the actions to be taken against employees for violations.
- B. Drug-Free Awareness Program. Establish, as required by California Government Code Section 8355(a)(2), a Drug-Free Awareness Program which informs employees about:
 - 1. The dangers of drug abuse in the workplace;
 - 2. CONTRACTOR's policy of maintaining a drug-free workplace;
 - 3. Any available counseling, rehabilitation and employee assistance programs; and
 - 4. Penalties that may be imposed upon employees for drug abuse violations.
- C. Drug-Free Employment Agreement. Ensure, as required by California Government Code Section 8355(a)(3), that every employee who provides services pursuant to the terms and conditions of this Agreement will:
 - 1. Receive a copy of CONTRACTOR's Drug-Free Policy Statement; and
 - 2. Agree to abide by CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Non-Compliance. Failure to comply with the requirements set forth herein may result in termination of this Agreement and/or ineligibility for award of future contracts.

18. INDEMNIFICATION:

- A. Hold Harmless, Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY and its agents, officers, officials, employees and volunteers from and against any and all claims, demands, losses, damages and liabilities of any kind or nature, including, without limitation, attorney's fees and other costs of litigation, arising out of, or in

connection with, CONTRACTOR's 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 COUNTY.

- B. Effect of Insurance. Acceptance of the insurance required by this Agreement shall not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to CONTRACTOR's performance hereunder, regardless of whether any insurance is applicable or not. The insurance policy limits set forth herein shall not act as a limitation upon the amount of indemnification or defense to be provided hereunder.
- C. CONTRACTOR Indemnification Regarding Services and Software. Except as is excluded in Section 18.D, CONTRACTOR hereby agrees to defend and pay any damages awarded in a final judgment against COUNTY, its officers, directors and employees (each, an "Indemnified Party" and collectively the "Indemnified Parties") against any loss, damage, expense or cost, including reasonable attorney fees, arising out of or resulting from any claim, action or demand (collectively, a "Claim") from a third party alleging that the use of the Services or Software infringes the intellectual property rights of a third party under United States law. Upon notice of a Claim or if, in Licensor's opinion, such a Claim is likely, CONTRACTOR shall have the right, at its option, to (i) replace or modify the Services or Software so that it is functionally equivalent and non-infringing, (ii) obtain a license for COUNTY to continue the use of the Services or Software, or (iii) return the fee paid by COUNTY therefore.
- D. Limitations. CONTRACTOR will have no obligation hereunder for any Claim which arises out of or result from: (i) the Indemnified Party's use of the Services or Software in a combination with materials or products not supplied by CONTRACTOR, (ii) the modification or attempted modification of the Services or Software by parties other than CONTRACTOR or the use of such modified Services or Software, (iii) Indemnified Party's use of the Services or Software in violation of this Agreement, or (iv) paragraph 3(E) of this Agreement.
- E. CONTRACTOR Indemnification Regarding Privacy Breaches. CONTRACTOR shall hold harmless, defend, and indemnify COUNTY and its officers, officials, employees and volunteers from and against any and all liability, loss, damage, expense, costs (including without limitation costs and fees of litigation) of every nature arising out of or in connection with CONTRACTOR's performance of work hereunder or its failure to comply with any of its obligations contained in the Agreement (including the security and protection of confidential and protected health information as outlined in Exhibit C), except such loss or damage which was caused by the sole negligence or willful misconduct of the COUNTY.
- F. COUNTY Indemnification. Except for third party claims which are subject to CONTRACTOR's indemnification obligations set forth in Section 18(C) and 18(E), COUNTY hereby agrees to defend and pay any damages awarded in a final judgment against CONTRACTOR, its officers, directors and employees (each, an "Indemnified Party") against any loss or damage arising out of or resulting from any claim, action or demands from a third party as a result of COUNTY violating any right of any individual or entity, including without limitation any rights of privacy, or violating any applicable law or regulation, except such loss or damage which was caused by the sole negligence or willful misconduct of the CONTRACTOR.
- G. Comparative Liability. Notwithstanding Sections 18(C) through 18(F) above, in the event that both parties are held to be negligently or willfully responsible, each party will bear its proportionate share of liability as determined in any such proceeding.

- H. Notice to the Indemnifying Party. In the event that any claim, action or demand is made against the Indemnified Party, the Indemnified Party will promptly upon becoming aware of any such claim, demand or suit, notify CONTRACTOR [in the case of Section 18(C) or 18(E)] or COUNTY [in the case of Section 18(F)] (each, an “Indemnifying Party”, as applicable), in writing as to the nature and particulars of the same and will promptly furnish the Indemnifying Party with copies of any and all documents (inclusive of all correspondence and pleadings other than attorney client communications) pertaining thereto. The Indemnified Party will also keep the Indemnifying Party continuously and fully informed in a timely manner as to the status of the same and will provide the Indemnifying Party with copies of any additional documents pertaining thereto in a timely manner. The Indemnifying Party shall retain competent counsel and may employ a single counsel to represent all Indemnified Parties, which counsel may also be counsel to the Indemnifying Party, except where there is a conflict of interest. If a conflict of interest exists such that a single counsel cannot adequately represent the individual interests of each party, the Indemnifying Party shall retain separate competent counsel for each Indemnified Party. Each Indemnified Party is also entitled to engage additional independent counsel, at such Indemnified Party’s sole expense.
- I. Obligations of the Indemnified Party. The obligation of the Indemnifying Party under Section 18(C) and 18(E) – CONTRACTOR Indemnification and Section 18(F) – COUNTY Indemnification is contingent upon each Indemnified Party (i) giving prompt written notice to the Indemnifying Party of any such claim, action or demand as required in Section 18(F) above, (ii) allowing the Indemnifying Party to control the defense and related settlement negotiations, and (iii) fully assisting in the defense so long as the Indemnifying Party agrees to pay such Indemnified Party’s out-of-pocket expenses, as appropriate.

19. WARRANTY AND DISCLAIMER

- A. Limited Warranty for Services. CONTRACTOR shall use reasonable commercial efforts consistent with prevailing industry standards to maintain the security of the Services and minimize errors and interruptions in the Services, provided that:
1. COUNTY uses the Service and the Software strictly in accordance with the Documentation.
 2. COUNTY pays all amounts due under this Agreement and is not in default of any provision of this Agreement, and
 3. COUNTY makes no changes (nor permits any changes to be made other than by or with the express approval of CONTRACTOR) to the Software or Service.

In addition, COUNTY acknowledges that the Services may be temporarily unavailable for scheduled maintenance, for unscheduled emergency maintenance, or because of other causes beyond CONTRACTOR's reasonable control. CONTRACTOR will not be liable to COUNTY as a result of these temporary service interruptions, except where the unavailability of the Service is caused by the sole negligence or willful misconduct of CONTRACTOR.

- B. Warranty Against Infringement. CONTRACTOR warrants and represents that the Service and the use of the Software for its intended purpose by COUNTY does not and will not infringe any patent, copyright or other intellectual property right of a third party nor misappropriate any trade secrets or other intellectual property of a third party.

- C. Licensing and Permits. CONTRACTOR warrants and assures that it is in compliance with and will comply with all State or other licensing requirements, including but not limited to the provisions of Chapter 9, Division 3 of the Business and Professions Code. CONTRACTOR warrants that it has all necessary permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County of Humboldt, and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.
- D. Standard of Practice. CONTRACTOR 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. CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.
- E. DISCLAIMER OF WARRANTIES FOR SERVICES AND SOFTWARE. NEITHER CONTRACTOR NOR ITS SUPPLIERS OR SERVICE PROVIDERS WARRANT THAT THE SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE, NOR DO THEY MAKE ANY WARRANTY ABOUT THE RESULTS THAT MAY BE OBTAINED BY USING THE SOFTWARE OR SERVICES. EXCEPT AS EXPRESSLY AND UNAMBIGUOUSLY PROVIDED IN SECTIONS 19(A) AND 19(B), THE SOFTWARE AND SERVICES ARE PROVIDED "AS IS" AND CONTRACTOR, ITS SUPPLIERS AND SERVICE PROVIDERS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, INFORMATIONAL CONTENT, SYSTEM INTEGRATION, ENJOYMENT AND NONINFRINGEMENT.

20. LIMITATION OF LIABILITY

- A. EXCLUSION OF DAMAGES AND LIMITS ON LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT OR OTHERWISE, CONTRACTOR, ITS OFFICERS, EMPLOYEES, AFFILIATES, REPRESENTATIVES, LICENSORS, SUPPLIERS, LICENSORS AND SERVICE PROVIDERS WILL NOT BE RESPONSIBLE UNDER ANY CONTRACT OR THEORY OF RECOVERY (INCLUDING NEGLIGENCE, STRICT LIABILITY OR OTHERWISE) FOR ANY: (A) ERRORS OR INTERRUPTIONS OF USE, LOSSES, INACCURACY OR CORRUPTION OF DATA, OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY, BUSINESS INTERRUPTIONS OR LOST OPPORTUNITIES; (B) INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) LOSSES CAUSED BY EVENTS BEYOND CONTRACTOR'S REASONABLE CONTROL; AND (D) AMOUNTS THAT, IN THE AGGREGATE, EXCEED THE FEES PAID BY COUNTY TO CONTRACTOR FOR THE SERVICES UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE FIRST ALLEGED ACT OR OMISSION THAT GAVE RISE TO THE LIABILITY.

21. INSURANCE REQUIREMENTS:

This Agreement shall not be executed by COUNTY, and CONTRACTOR is not entitled to any rights hereunder, unless certificates of insurance or other sufficient proof that the following provisions have been complied with, are filed with the Clerk of the Humboldt County Board of Supervisors.

A. General Insurance Requirements. Without limiting CONTRACTOR's indemnification obligations provided for herein, CONTRACTOR shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:

1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of Two Million Dollars (\$2,000,000.00) per occurrence for any one (1) incident, including, without limitation, personal injury, death and property damage. If a general aggregate limit is used, such limit shall apply separately hereto or shall be twice the required occurrence limit.
2. As stated in Exhibit A – Scope of Services, CONTRACTOR will not drive an automobile in the performance of the services provided pursuant to the terms and conditions of this Agreement. If CONTRACTOR's responsibilities are changed in such a way that driving will be required during the performance of the services set forth herein, CONTRACTOR shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability 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, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).
3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than Two Million Dollars (\$2,000,000.00) for each occurrence (Four Million Dollars (\$4,000,000.00) general aggregate). Said insurance shall be maintained for the statutory period during which CONTRACTOR may be exposed to liability regarding the services provided pursuant to the terms and conditions of this Agreement. CONTRACTOR shall require that such coverage be incorporated into its professional services agreements with any other entities.

B. Special Insurance Requirements. Said policies shall, unless otherwise specified herein, be endorsed with the following provisions:

1. The Comprehensive or Commercial General Liability Policy shall provide that COUNTY, and its agents, officers, officials, employees and volunteers, are covered as additional insured for liability arising out of the operations performed by, or on behalf of, CONTRACTOR. The coverage shall contain no special limitations on the scope of protection afforded to COUNTY or its agents, 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 property damage caused by explosion or collapse of structures or underground damage, commonly referred to as “XCU Hazards.”
 - c. Is the primary insurance with regard to COUNTY.
 - 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 above-referenced policies shall not be canceled, non-renewed or materially reduced in coverage without thirty (30) days prior written notice being provided to COUNTY in accordance with the notice requirements set forth herein. It is further understood that CONTRACTOR shall not terminate such coverage until COUNTY receives adequate proof that equal or better insurance has been secured.
 - 3. The inclusion of more than one (1) insured shall not operate to impair the rights of one (1) 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 (1) insured shall not operate to increase the limits of the insurer’s liability.
 - 4. For claims related to this Agreement, CONTRACTOR’s insurance is the primary coverage to COUNTY, and any insurance or self-insurance programs maintained thereby are excess to CONTRACTOR’s insurance and will not be used to contribute therewith.
 - 5. Any failure to comply with the terms and conditions of this Agreement shall not affect the coverage provided to COUNTY or its agents, officers, officials, employees and volunteers.
 - 6. CONTRACTOR shall furnish COUNTY with certificates and original endorsements effecting the required coverage prior to execution of this Agreement. The endorsements shall be on forms approved by the Humboldt County Risk Manager. Any deductible or self-insured retention over One Hundred Thousand Dollars (\$100,000.00) shall be disclosed to, and approved by, COUNTY. If CONTRACTOR does not keep all required policies in full force and effect, COUNTY may, in addition to any other available remedies, take out the necessary insurance and deduct the cost of said insurance from the monies owed to CONTRACTOR under this Agreement.
 - 7. COUNTY is to be notified immediately if twenty-five percent (25%) or more of any required insurance aggregate limit is encumbered, and CONTRACTOR shall be required to purchase additional coverage to meet the above-referenced aggregate limits.
- C. Insurance Notices. Any and all insurance notices required to be given pursuant to the terms and conditions of this Agreement shall be sent to the addresses set forth below in accordance with the notice requirements contained herein.

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

///

CONTRACTOR: Persimmony International, Inc.
Attention: Michael Kogus
33 Endless Vista
Aliso Viejo, CA 92656

22. RELATIONSHIP OF PARTIES:

It is understood that this Agreement is by and between two (2) independent entities and is not intended to, and shall not be construed to, create the relationship of agents, servant, employee, partnership, joint venture or any other similar association. Both parties further agree that CONTRACTOR shall not be entitled to any benefits to which COUNTY employees are entitled, including, without limitation, overtime, retirement, leave or workers' compensation benefits. CONTRACTOR shall be solely responsible for the acts and omissions of its agents, officers, employees, assignees and subcontractors.

23. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

- A. General Legal Requirements. CONTRACTOR agrees to comply with any and all local, state and federal laws, regulations, policies, procedures and standards applicable to the services provided pursuant to the terms and conditions of this Agreement.
- B. Licensure Requirements. CONTRACTOR agrees to comply with any and all local, state and federal licensure, certification and accreditation standards applicable to the services provided pursuant to the terms and conditions of this Agreement.
- C. Accessibility Requirements. CONTRACTOR 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. CONTRACTOR 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.

24. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the terms, conditions or funding of this Agreement. This Agreement 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.

25. REFERENCE TO LAWS, REGULATIONS AND STANDARDS:

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

26. PROTOCOLS:

Both parties agree that the inclusion of additional protocols may be required to make this Agreement specific. All such protocols shall be negotiated, determined and agreed upon by both parties hereto.

27. SEVERABILITY:

If any provision of this Agreement, 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 Agreement.

28. ASSIGNMENT:

Neither party shall delegate its duties or assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment by CONTRACTOR in violation of this provision shall be void, and shall be cause for immediate termination of this Agreement. 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.

29. AGREEMENT SHALL BIND SUCCESSORS:

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

30. WAIVER OF DEFAULT:

The waiver by either party of any breach 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 which may then exist on the part of CONTRACTOR. Nor 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 repayment of, and CONTRACTOR shall promptly refund, any funds which COUNTY determines were not expended in accordance with the terms and conditions of this Agreement.

31. NON-LIABILITY OF COUNTY OFFICIALS AND EMPLOYEES:

No official or employee of COUNTY shall be personally liable for any default or liability under this Agreement.

32. AMENDMENT:

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

33. STANDARD OF PRACTICE:

CONTRACTOR 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.

CONTRACTOR's duty is to exercise such care, skill and diligence as professionals engaged in the same profession ordinarily exercise under like circumstances.

34. TITLE TO INFORMATION AND DOCUMENTS:

It is understood that any and all documents, information and reports concerning the subject matter of this Agreement prepared and/or submitted by CONTRACTOR shall become the property of COUNTY. However, CONTRACTOR may retain copies of such documents, information and reports for its records. In the event this Agreement is terminated, for any reason whatsoever, CONTRACTOR shall promptly turn over all such documents, information and reports to COUNTY without exception or reservation.

35. JURISDICTION AND VENUE:

This Agreement 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.

36. ADVERTISING AND MEDIA RELEASE:

Any and all informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, without limitation, television, radio, newspapers and internet. CONTRACTOR shall inform COUNTY of any and all requests for interviews by the media related to this Agreement before such interviews take place; and COUNTY shall be entitled to have a representative present at such interviews. Any and all notices required by this provision shall be given to Director in accordance with the notice requirements set forth herein.

37. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided pursuant to the terms and conditions of this Agreement. Any and all subcontracts shall be subject to all applicable terms and conditions of this Agreement, including, without limitation, the licensing, certification, privacy, security and confidentiality requirements set forth herein. CONTRACTOR shall remain legally responsible for the performance of all terms and conditions of this Agreement, including, without limitation, any and all services provided by third parties under subcontracts, whether approved by COUNTY or not.

38. ATTORNEYS' FEES:

If either party shall commence any legal action, including, without limitation, an action for declaratory relief, against the other by reason of the alleged failure of the other to perform any of its obligations hereunder, the party prevailing in said action shall be entitled to recover court costs and reasonable attorneys' fees, including, but not limited to, the reasonable value of services rendered by the Humboldt County Counsel's Office, to be fixed by the court, and such recovery shall include court costs and attorneys' fees on appeal, if applicable. As used herein, the term "prevailing party" means the party who dismisses an action in exchange for payment of substantially all sums allegedly due, performance of provisions allegedly breached, or other considerations substantially equal to the relief sought by said party, as well as the party in whose favor final judgment is rendered.

39. SURVIVAL OF PROVISIONS:

The duties and obligations of the parties set forth in Section 7D – Compensation upon Termination, Section 12 – Record Retention and Inspection, Section 14 – Confidential Information and Section 18 – Indemnification shall survive the expiration or termination of this Agreement.

40. 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 Agreement, the terms and conditions set forth herein shall have priority.

41. INTERPRETATION:

This Agreement, as well as its individual provisions, shall be deemed to have been prepared equally by both 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.

42. 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 Agreement.

43. FORCE MAJEURE:

Neither 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.

44. ENTIRE AGREEMENT:

This Agreement 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 Agreement shall be deemed to exist or to bind either of the parties hereto. In addition, this Agreement shall supersede in their entirety any and all prior agreements, promises, representations, understandings and negotiations between 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 Agreement are hereby ratified.

45. PUBLIC RECORDS:

All proposals and materials submitted become the property of the COUNTY and are subject to disclosure under the Public Records Act, Government Code sections 6250 *et seq.*

46. COUNTERPART EXECUTION:

This Agreement, 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 Agreement, 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 Agreement, 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 Agreement and any amendments hereto.

47. AUTHORITY TO EXECUTE:

Each person executing this Agreement represents and warrants that he or she is duly authorized and has legal authority to execute and deliver this Agreement. Each party represents and warrants to the other that the execution and delivery of this Agreement 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 Agreement 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.

Persimmony International, Inc.:

By:  Date: 06/04/2021

Name: Michael Kogus

Title: President

By:  Date: 06/04/2021

Name: Michael Kogus

Title: Secretary

COUNTY OF HUMBOLDT:

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

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By:  Date: 06/09/2021
Risk Management

LIST OF EXHIBITS:

- Exhibit A – Scope of Services
- Exhibit B – Schedule of Rates
- Exhibit C – County of Humboldt HIPAA Business Associate Agreement

EXHIBIT A
SCOPE OF SERVICES
Persimmony International, Inc.
For Fiscal Years 2021-2022 through 2023-2024

Persimmony International, Inc. (“CONTRACTOR”) will provide the COUNTY of Humboldt, DHHS, Public Health, Nursing Division, or its designee, with access to their propriety software developed and maintained by CONTRACTOR and referred to as, Electronic Case Management (“ECM”) Module. Included in the ECM Module is a scheduling and time study component for employees assigned to the Nursing Division. CONTRACTOR will provide the County of Humboldt, DHHS, Public Health with access to their propriety time study software developed and maintained by CONTRACTOR and referred to as Time Study Plus (“TSP”). CONTRACTOR will provide the County of Humboldt, DHHS, Public Health, Maternal Child and Adolescent Health (“MCAH”) Oral Health-Smile Humboldt Family Dental Program with access to their propriety software developed and maintained by CONTRACTOR to the specifications of said Dental Program administrators. CONTRACTOR will provide a Persimmony Project Coordinator to report problems as they arise for the timely resolution and tracking of all problems reported by the designated COUNTY Project Manager/Administrator (“COUNTY”) for the purposes of this Software support provision.

1. SERVICES:

Persimmony International, Inc. will provide the following services:

Persimmony Software Requirements. The requirements below include overall functional capabilities that are presently inherent within the Software, as well as, the ability to customize forms and assessments to meet the specific needs of the different nursing home-visiting programs as well as the dental program, that utilize the Persimmony software. The requirements noted below will be used to track, test and monitor the overall capabilities. The Software shall:

- Provide synchronization between Persimmony and National Service Office (“NSO”) for the national, evidence-based home visiting nursing program, Nurse-Family Partnership (“NFP”) and the Software.
- Provide ability to collect all required NFP information and specific client data for home charting through the use of interactive forms.
- Provide the ability to support client care, perform case monitoring, and outcomes measurements.
- Provide case management services reminders with online client referral processes for both outgoing and incoming referral tracking.
- Provide ability to track and reconcile referrals to enhance nurse case management efforts.
- Provide ability for COUNTY to modify fields or add forms/assessments without additional costs.
- Provide ability to run real-time reports on all nurses, clients and program outcomes in relation to the client demographics (e.g., foster children, handicapped, etc.).
- Provide ability to export all COUNTY-owned data in prescribed formats.
- Integrate data collection and reporting for MCAH Oral Health-Smile Humboldt Family, NFP, COUNTY, Medi-Cal Administrative Activities (MAA) and Targeted Case Management (TCM) reports.

- Provide ability to capture TCM data and apply TCM billing codes required for program reimbursement.
- Provide ability to capture Time Studies utilizing Time Study Plus (TSP).
- Facilitate family and client level data collection and reduce duplication of data entries for similar names and allow for easily matching of family members.
- Provide effective, user-friendly computer screens that simplify the data collection activity.

Persimmony Software Support. Persimmony will provide a Persimmony Project Coordinator to report software problems to and troubleshooting and support for system problems will be handled in accordance with the following specifications:

- Online support requests made by the COUNTY received through e-mail or online form submissions will be responded to via three modes of communication: (1) telephone; (2) e-mail; or (3) remote desktop technology, depending on the nature of support request and discretion of CONTRACTOR for which support method it deems reasonable. If CONTRACTOR deems remote desktop support necessary, using the remote desktop technology, COUNTY will be solely responsible to ensure that COUNTY's network does not block access for use of such technology by CONTRACTOR.
- When the COUNTY has any questions about the system, they have unlimited access to Persimmony's technical support via phone, online or e-mail. The COUNTY can access free technical support via phone or via e-mail during CONTRACTOR's regular business hours of 8:00 AM to 5:00 PM Pacific Time (Monday through Friday, excluding COUNTY holidays) or contact the Persimmony Project Coordinator. Response time to resolve most issues is within four hours of the initial request.
- CONTRACTOR shall provide comprehensive first-tier support to COUNTY Project Manager/Administrator and second-tier support for all authorized users if the COUNTY Project Manager/Administrator is unable to troubleshoot and resolve the Software issues:
 - **Persimmony 1st Tier Support:** Support to the COUNTY Administrator(s) and program supervisors who will be helping the COUNTY authorized users. The Persimmony Project Manager is available as well as our Help Desk for the COUNTY Administrator.
 - **Persimmony 2nd Tier Support:** If the COUNTY Administrator(s) who supports the authorized users is not able to resolve their issue, then the Persimmony Project Manager/Help Desk would be brought in to help resolve problems directly with the users.

Persimmony Data Exports:

- CONTRACTOR software shall include tools for COUNTY to export COUNTY-owned data on demand.
- Data export requests by COUNTY can be requested throughout the term of this Agreement.
- Requests must be accomplished within five business days from the date of notice.

Hosting Server Accessibility and Uptime:

- CONTRACTOR will host the software on servers provided by Zayo located in Irvine, California or Microsoft Azure and should be made available 24-hours a day, seven days a week for 365 days.
- CONTRACTOR can utilize up to 4 hours per month for system maintenance. System maintenance may occur during the week from 11PM to 4AM or on the weekends and consists of routine software and hardware maintenance including but not limited to Citrix/XenServer patches, Windows patches, Citrix Software upgrades, patches for plug-ins, Server Firmware, and backup software upgrades.
- CONTRACTOR shall provide 24 hour access to its server; server access may be unavailable in the planned event of routine maintenance, unexpected hardware failure, malicious attacks such as denial of service attacks, or other unforeseeable events which restrict outside access to the server.
- CONTRACTOR shall perform secure routine backups of all data.
- CONTRACTOR shall maintain backups throughout the term of this Agreement.

Software Training:

- CONTRACTOR shall provide remote training to the initially designated COUNTY Project Managers/Administrators and Program Supervisors (or their designees) via train the trainer methodology. Such training shall include methodologies for adding new surveys, questionnaires, assessment, reports and any other customization of the existing fields within the system. COUNTY Project Managers/Administrators and Program Supervisors (or their designees) are responsible for the continued training of all staff.
- CONTRACTOR shall provide access to Video Training to COUNTY authorized users via the Persimmony platform.
- CONTRACTOR will provide appropriate training to authorized users if and when new software is introduced.

2. SCHEDULE:

All services are to be rendered throughout the term of the contract.

3. DELIVERABLES:

Persimmony shall provide:

- Software support for all nursing programs, including MCAH Oral Health-Smile Humboldt Family utilizing the ECM Module to document in client charts. COUNTY staff are to report problems to their immediate supervisor who will consolidate and report problems to the COUNTY Administrator. The COUNTY Administrator will work with the assigned Persimmony Project Coordinator to resolve all reported problems and will communicate progress and solution options to COUNTY staff.
- Software support for all staff documenting their time studies in TSP. COUNTY staff are to report problems to their immediate supervisor who will consolidate and report problems to the COUNTY Administrator or designee. The COUNTY Administrator or designee will

work with the assigned Persimmony Project Coordinator to resolve all reported problems and will communicate progress and solution options to COUNTY staff.

- Training to the designated COUNTY Administrators, including, directions on how to customize forms and assessments, training on creating customized reports to support programs and staff using the Persimmony software, training on new features and updates, as needed.
- Access to the reports module to ensure that the COUNTY has access to their data for reporting, tracking, compliance purposes, and data exports.
- Creating audit modules for the purpose of state or Federal audits.

4. ACCEPTANCE CRITERIA:

The Public Health Director or designee will be responsible for acceptance of all project deliverables. The Public Health Director or designee will maintain a small team of advisors in order to ensure the completeness of each stage of the project and that the scope of work has been met.

5. REPORTING REQUIREMENTS:

Target Case Management (TCM) Reporting Requirements:

- Ability to download TCM encounters for upload to the California state interface for all Medi-Cal and non-Medi-Cal clients.
- Ability to export time studies in a format which complies with TCM requirements. Ability to upload reports utilized for reporting time study results within Public Health and for the purpose of the TCM Cost Report.
- Ability to track and report encounters. All encounters reported to California state must have the client's names (or mother's name if client is a minor), client's date of birth (and mother's DOB if client is a minor), client's Medi-Cal Number, Beneficiary Number, or Social Security Number, date of TCM service, name of the provider agency, and the name or ID number of the case manager rendering the service.
- Ability to link TCM and MAA service activities to Public Health Nursing Programs within the time study portion of the ECM Module for reports.
- Ability to verify non-duplication of claims using the software's reporting module.
- Ability to identify client characteristics that put the client into defined target populations with supporting documentation to validate that the client is eligible for TCM services.
- Ability to pull data to verify TCM compliance requirements, such as, dates of contact between assigned case managers and clients, ability to identify initial and follow-up encounters, diagnoses, referrals to services, client demographic data, name of the provider agency and the case manager providing each service, location each service is rendered (home, office, other).
- Ability to document and report on the following TCM documentation requirements: assessment (initial and follow-up), comprehensive service plan, consultation and linkages to services, assistance in accessing services, crisis assistance planning, and periodic reviews.
- Ability for program supervisors to review case notes of all program staff and supervisor sign-off on TCM required components listed above.

- Ability to track TCM timeline compliance criteria that TCM case managers must meet with client within 30 days of a scheduled service linkage and periodic review of the comprehensive service plan must be done every six months.

Medi-Cal Administrative Activities Reporting Requirements:

- Ability to link TCM and MAA service activities to MAA Claiming Units within the time study portion of the ECM Module and TSP for reports.
- Ability to export time studies in a format which complies with MAA and TCM requirements. Ability to upload reports utilized for reporting time study results within Public Health and for the purpose of the MAA invoices.

Federal Financial Participation Activities Reporting Requirements:

- Ability to export time studies in a format which complies with FFP requirements, utilizing TSP.

6. PLACE OF PERFORMANCE:

CONTRACTOR shall perform a majority of the work at its own facility. CONTRACTOR shall be available to meet either via conference call on an as needed basis; COUNTY will work with CONTRACTOR to coordinate a date and time.

7. COUNTY RESPONSIBILITIES:

The COUNTY of Humboldt is responsible for the following:

- COUNTY agrees to maintain all computers used by COUNTY's staff which access CONTRACTOR's server to be free of viruses, worms or other malicious software.
- CONTRACTOR shall not be liable for data loss related to malicious software contained within the data of or with any correspondence of COUNTY.
- COUNTY understands that the recommended configuration is a minimum of Windows 7 and maintains supported operating systems, screen resolution of 1024x768, and high-speed internet access.
- COUNTY understands that CONTRACTOR shall not be held responsible for COUNTY's computer hardware or software failures which restrict the users' ability to access the Persimmony Software.
- COUNTY shall designate a COUNTY Project Manager/Administrator and a designated COUNTY back-up to work directly with the Persimmony Project Coordinator for training, software customization and to serve as a liaison when reporting problems to Persimmony.

8. RESTRICTIONS:

CONTRACTOR shall not drive an automobile in the performance of the services provided pursuant to the terms and conditions of this Agreement. If CONTRACTOR's responsibilities are changed in such a way that driving will be required during the performance of the services required hereunder, CONTRACTOR shall take out and maintain Automobile/Motor Liability Insurance with a limit of liability not less than One Million Dollars (\$1,000,000.00) combined single limit coverage prior to

the commencement of any such driving. Such insurance shall include coverage of all owned, hired and non-owned vehicles, and be at least as broad as Insurance Service Offices Form Code 1 (any auto).

EXHIBIT B
SCHEDULE OF RATES
 Persimmony International, Inc.
 For Fiscal Years 2021-2022 through 2023-2024

Operational Costs	
Item: Electronic Case Management (ECM) Software Module Description: Access & maintenance of the ECM software module for nursing staffs' notes and time studies.	\$446,160.00
Item: Time Study Plus (TSP) Software Module Description: Access & maintenance of the TSP software module for time study reimbursements for Public Guardian and Public Health staff.	\$ 25,200.00
Total Operational Costs:	\$471,360.00
Annual Costs	
Item: NFP Admin Support Description: Support for the Administration of the NFP program in the Persimmony ECM Module. Includes data linkage to the National NFP Database so staff only need to enter data once.	\$ 18,000.00
Item: Nursing Admin Support Description: Support for the Administration of Nursing programs in the Persimmony ECM utilizing the TSP module for time studies.	\$ 13,500.00
Item: Oral Health Admin Support Description: Support for the Administration of MCAH Oral Health/SMILE Humboldt Program in the Persimmony ECM utilizing the TSP module for time studies.	\$ 13,500.00
Item: Remote Scan Licenses for 3 MOAs Description: Remote scanner licenses for three additional MOAs. Cost per license \$395.00	\$ 3,555.00
Total Annual Costs:	\$ 48,555.00
One-Time Costs	
Item: (FY22/23) Linking the ECM Module to County Payroll System for automatic cross-checking of staff timecards to staff's time studies. Description: Special one-time project to link Persimmony ECM Module & County timecard system for cross-checking between time studies and timecards and to ensure that there are no discrepancies between staffs' time studies in the ECM to their submitted timecards.	\$ 3,900.00
Item: (FY22/23) Linking the TSP Module to County Payroll System for automatic cross-checking of staff time cards to staff's time studies. Description: Special one-time project to link Persimmony TSP & County timecard system for cross-checking between time studies and timecards and to ensure that there are no discrepancies between staffs' time studies in TSP to their submitted time cards.	\$ 2,925.00
Item: (FY21/22) Creating system for MCAH Oral Health/Smile Humboldt Program Description: Stage 2 – Development of reports and alerts for dental quadrant tooth functionality. Continue to build program, configure reports and train staff.	\$ 27,300.00
Item: (FY22/23) Creating system for MCAH Oral Health/Smile Humboldt Program Description: Stage 3 – Development of reports and alerts for per tooth functionality. Continue to build program, configure reports and train staff.	\$ 11,700.00
Total One-Time Costs:	\$ 45,825.00
Total:	\$565,740.00

¹ Payment for ECM users is based on actual quarterly users who have logged into the Persimmony ECM module using their assigned login and password.

² Payment for TSP users is based on actual quarterly users who have logged into the Persimmony TSP module using their assigned login and password.

* County may request additional services* from Contractor throughout the term of this agreement, which shall be reimbursed at \$195/hour. Contractor and County shall agree on the scope of work for additional services, and Contractor shall obtain County's approval in writing before beginning any additional services.

Persimmony International, Inc. will submit a quarterly billing invoice for active users in the ECM and TSP systems and separate quarterly billing reports for active users in each system.

Training will be provided in accordance with the terms of the Exhibit A to the initially designated points of contact at the COUNTY at no charge. Any additional training requested by COUNTY that is not covered by Documentation or initial training shall be billed as additional services

EXHIBIT C
COUNTY OF HUMBOLDT HIPAA BUSINESS ASSOCIATE AGREEMENT

Persimmony International, Inc.

For Fiscal Years 2021-2022 through 2023-2024

RECITALS:

WHEREAS, COUNTY, as a “Covered Entity” wishes to disclose certain information to CONTRACTOR, hereafter known as “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 2.1. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- C. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however this prohibition shall not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.
- D. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- E. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2(D) above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- F. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under 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. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.1408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. 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

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

3. **TERMINATION:**

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

4. **INTERPRETATION:**

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