

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
DIAMOND DRUGS, INC.
FOR FISCAL YEARS 2018-2019 THROUGH 2019-2020**

This Agreement, entered into this 16 day of October, 2018, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Diamond Drugs, Inc., a Pennsylvania corporation, hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services – Mental Health ("DHHS – Mental Health"), desires to retain a licensed pharmacy to provide pharmaceutical and prescription monitoring services to DHHS – Mental Health's patients; and

WHEREAS, such work involves the performance of professional, expert and technical services of a temporary and occasional character; and

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

WHEREAS, CONTRACTOR represents that it is adequately trained, skilled, experienced and qualified to perform the pharmaceutical and prescription monitoring services required by COUNTY.

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 DHHS – Mental Health Director, or a designee thereof, hereinafter referred to as "Director."

2. TERM:

This Agreement shall begin on July 1, 2018 and shall remain in full force and effect until June 30, 2020, unless sooner terminated as provided herein.

3. TERMINATION:

- A. Breach of Contract. If, in the opinion of COUNTY, CONTRACTOR fails to adequately perform the services required hereunder within the time limits specified herein, or otherwise fails to comply with the terms of this Agreement, or violates any ordinance, regulation or other law applicable to its performance herein, COUNTY may terminate this Agreement immediately, upon notice.
- B. Without Cause. COUNTY may terminate this Agreement without cause upon thirty (30) days advance written notice. Such notice shall state the effective date of the termination.
- C. 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 termination. However, this provision shall not limit or reduce any damages owed to COUNTY due to a breach of this Agreement by CONTRACTOR.

4. COMPENSATION:

- A. Maximum Amount Payable. The maximum amount payable by COUNTY for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement is Four Hundred Thousand Dollars (\$400,000.00). In no event shall the maximum amount paid under this Agreement exceed Two Hundred Thousand Dollars (\$200,000.00) per fiscal year for fiscal years 2018-2019 and 2019-2020. 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 for services provided 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 – Payment Terms and Conditions, which is attached hereto and incorporated herein by reference.
- C. Additional Services. Any additional services not otherwise provided for herein, shall not be provided by CONTRACTOR, or compensated by COUNTY, without written authorization by COUNTY. All unauthorized costs and expenses incurred above the maximum payable amount set forth herein shall be the responsibility of CONTRACTOR. CONTRACTOR shall notify COUNTY in writing, at least six weeks prior to the date upon which CONTRACTOR estimates that the maximum payable amount will be reached.
- D. Hold Harmless. In the event COUNTY cannot, or will not, pay for services rendered by CONTRACTOR pursuant to the terms and conditions of this Agreement, CONTRACTOR shall hold harmless the State of California and Medi-Cal Beneficiaries.

5. PAYMENT:

- A. Invoices. CONTRACTOR shall submit to COUNTY monthly invoices itemizing all services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement by the tenth (10th) working day of each month for medications dispensed in the preceding month. Invoices shall be in a format approved by Director and the Humboldt County Auditor-Controller, and shall include the date on which each service was provided, the name of the eligible recipient or "house stock," the prescription number, the name of the prescribing physician, the name, strength, dosage, quantity and description of the medication dispensed, the net prescription billing, the pharmacist wholesale cost per one hundred (100) units or per pint and the total cost to COUNTY. CONTRACTOR shall submit a final invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Any and all invoices submitted pursuant to the terms and conditions of this Agreement shall be sent to COUNTY either electronically through CONTRACTOR's secure, encrypted, password protected web-based file manager system, or by mail at the following address:

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

- B. Payments. Payment for services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement shall be made by COUNTY, via check, within thirty (30) days after the receipt of approved invoices. All payments made pursuant to the terms and conditions of this Agreement shall be sent to CONTRACTOR at the following address:

CONTRACTOR: Diamond Pharmacy Services Medical Supply, Inc.
Attention: Mark J. Zilner, Chief Operating Officer
645 Kolter Drive
Indiana, Pennsylvania 15701

6. 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-Mental Health
Attention: Mental Health Director
720 Wood Street
Eureka, California 95501

CONTRACTOR: Diamond Pharmacy Services Medical Supply, Inc.
Attention: Mark J. Zilner, Chief Operating Officer
645 Kolter Drive
Indiana, Pennsylvania 15701

7. REPORTS:

CONTRACTOR agrees to provide COUNTY with any and all reports that may be required by local, state and/or federal agencies for compliance with this Agreement. Reports shall be submitted no later than fifteen (15) days after the end of each calendar quarter using the format required by the State of California as appropriate.

8. AUDIT AND RETENTION OF PERFORMANCE RECORDS:

- A. Maintenance of Records. CONTRACTOR shall develop and implement a record keeping system that is designed to maintain any and all financial, performance and payroll records, documents and other evidence, including, without limitation, inventory records, prescription records and patient profiles, that are necessary to properly reflect the adequacy of the services provided pursuant to the terms and conditions of this Agreement, as well as all direct and indirect costs of whatever nature, including, but not limited to, any and all matching costs and expenses, claimed to have been incurred in the performance of such services. The foregoing constitutes "records" for the purpose of this provision.
- B. Government Access to Records and Facilities. CONTRACTOR's facility or office, or such part thereof as may be engaged in the performance of this Agreement, and its records shall be

subject at all reasonable times to inspection, audit and reproduction by COUNTY, the California Department of Health Care Services ("DHCS"), the California Department of General Services, the Bureau of State Audits, or their designated representatives, including, without limitation, the Comptroller General of the United States, and any other duly authorized local, state or federal agencies.

- C. General Examination and Audit. CONTRACTOR agrees that COUNTY, DHCS, the California Department of General Services, the Bureau of State Audits, or their designated representatives, including the Comptroller General of the United States, and any other duly authorized local, state or federal agencies, shall have the right to review and copy any records and supporting documentation pertaining to the performance of this Agreement. CONTRACTOR agrees to allow COUNTY, DHCS and any other duly authorized local, state or federal agencies access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records.
- D. Examination and Audit by the California State Auditor. Pursuant to California Government Code Section 8546.7, CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three (3) years after final payment hereunder. CONTRACTOR shall hold COUNTY harmless for any liability resulting from said audit.
- E. Preservation of Records. CONTRACTOR shall preserve and make available its records for a period of three (3) years after final payment hereunder, and for such longer period, if any, as required by applicable statute or any provision of this Agreement.
 - 1. If this Agreement is completely or partially terminated, the records relating to the terminated services shall be preserved and made available for a period of three (3) years from the date of any resulting final settlement.
 - 2. If any litigation, claim, negotiation, audit or other action involving the records has been started before the expiration of the three (3) year period, the records shall be retained until completion of the action and resolution of all issues which arise there from, or until the end of the regular three (3) year period, whichever is later.
- F. Legal Compliance. CONTRACTOR shall comply with the above-referenced requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Section 10115.10 of the California Public Contract Code, if applicable.
- G. Record Storage and Reproduction. CONTRACTOR may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD or other data storage medium. Upon request by a designated representative of COUNTY, DHCS or any other duly authorized local, state or federal agencies to inspect, audit or obtain copies of said records, CONTRACTOR must supply or make available applicable devices, hardware and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers.

9. INSPECTION RIGHTS:

CONTRACTOR shall allow COUNTY, DHCS, the United States Department of Health and Human Services, the Comptroller General of the United States, and any other duly authorized local, state and federal agencies, or their designated representatives, to inspect or otherwise evaluate the quality, appropriateness and timeliness of services performed under this Agreement, and to inspect, evaluate,

and audit any and all books, records and facilities maintained by CONTRACTOR, and its subcontractors hereunder, pertaining to such services at any time during normal business hours, for a period of at least three (3) years from the close of the DHCS fiscal year in which this Agreement came into effect. Books and records include, but are not limited to, all physical records originated or prepared pursuant to CONTRACTOR's performance of the obligations and duties contained in this Agreement, including working papers, reports, financial records and books of account, client records, prescription files, subcontracts and any other documentation pertaining to covered services and other related services for clients. Upon request, at any time during the above-referenced period, CONTRACTOR shall furnish any such record, or copy thereof, to COUNTY, DHCS, the United States Department of Health and Human Services, the Comptroller General of the United States, and any other duly authorized local, state and federal agencies, or their designated representatives. COUNTY and all other duly authorized local, state and federal agencies shall maintain the confidentiality of such books and records in accordance with any and all applicable local, state and federal laws, regulations and standards.

10. MONITORING:

CONTRACTOR agrees that COUNTY and any other duly authorized local, state or federal agencies, including, without limitation, DHCS, have the right to monitor all activities related to this Agreement, including the right to review and monitor CONTRACTOR's records, programs or procedures, at any time, as well as the overall operation of CONTRACTOR's programs in order to ensure compliance with the terms and conditions of this Agreement. CONTRACTOR will cooperate with a corrective action plan, if deficiencies in CONTRACTOR's records, programs or procedures are identified by COUNTY or any other duly authorized local, state or federal agencies. However, COUNTY is not responsible, and shall not be held accountable, for overseeing or evaluating the adequacy of CONTRACTOR's performance hereunder.

11. CONFIDENTIAL INFORMATION:

- A. Legal Compliance. CONTRACTOR hereby agrees to protect all confidential records and client confidentiality in conformance with any and all applicable local, state and federal laws and regulations, including, but not limited to: California Welfare and Institutions Code Sections 827, 5328, 10850 and 14100.2; California Health & 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 and Clinical Health Act ("HITECH Act"); the United States Health Information Portability and Accountability Act of 1996 ("HIPAA") and any current and future implementing regulations promulgated thereunder, all as may be amended from time to time.
- B. Continuing Compliance with Confidentiality Laws. COUNTY and CONTRACTOR acknowledge that local, state and federal laws, regulations, standards and contractual requirements pertaining to confidentiality, electronic data security and privacy 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, regulations, standards or contractual requirements.

12. DISCLOSURE AND SECURITY REQUIREMENTS:

- A. Legal Compliance. CONTRACTOR hereby agrees to comply with any and all applicable local, state and federal privacy, security and confidentiality requirements, including, but not

limited to, the Federal Privacy Regulations contained in Title 45 of the Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Federal Security Standards contained in 45 C.F.R. Parts 160, 162 and 164 and the Federal Standards for Electronic Transactions contained in 45 C.F.R. Parts 160 and 162; 42 C.F.R. Sections 431.300, et seq.; and 45 C.F.R. Section 205.50, all as may be amended from time to time. CONTRACTOR further agrees to comply with any and all applicable privacy, security, and confidentiality requirements contained in the Mental Health Managed Care Agreement (State Standard Agreement No. 12-89364) and the Mental Health Performance Agreement (State Standard Agreement No. 17-94523) that COUNTY has with DHCS, which are incorporated herein by reference as if set forth in full.

B. Disclosure of Confidential Information. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:

1. Disclosure of Identifying Information. CONTRACTOR shall protect from unauthorized disclosure the names and other “Identifying Information,” including “Personal Information” and “Personally Identifiable Information,” concerning persons receiving services pursuant to this Agreement or persons whose names or Identifying Information become available, or is disclosed, to CONTRACTOR as a result of the services provided hereunder, except for statistical information not identifying any such person.
 - a. Personal Information. As used herein, the term “Personal Information” (“PI”) shall include, without limitation, any information that identifies or describes an individual, including, but not limited to, his or her physical description, home address, home telephone number, education, financial matters, medical or employment history and statements made by, or attributed to, the individual.
 - b. Personally Identifiable Information. As used herein, the term “Personally Identifiable Information” (“PII”) shall include, without limitation, any information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, driver license number, identification card number, financial account number or other identifying number, symbol or particular, including, but not limited to, finger prints, voice prints and photographs.
2. Unauthorized Disclosures of Identifying Information. CONTRACTOR shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such Identifying Information to anyone other than COUNTY or DHCS without prior written authorization from COUNTY or the DHCS Program Contract Manager, except if disclosure is required by local, state or federal law.
3. Use of Identifying Information. CONTRACTOR shall not use such Identifying Information for any purpose other than carrying out its obligations under this Agreement.
4. Notification of Requests for Identifying Information. CONTRACTOR shall promptly transmit to COUNTY all requests for disclosure of such Identifying Information not emanating from a person whose name or Identifying Information becomes available, or is disclosed, to CONTRACTOR as a result of the services provided hereunder.
5. Use and Disclosure of Protected Health Information. CONTRACTOR shall not use or disclose “Protected Health Information” in any manner that would constitute a breach of this Agreement or a violation of any applicable local, state or federal laws, regulations, rules or standards.

- a. Protected Health Information. As used herein, the term “Protected Health Information” (“PHI”) shall include, without limitation, individually identifiable health information that is transmitted by, or maintained in, electronic media or any other form or medium, as defined by the HIPAA Standards for Privacy of Individually Identifiable Health Information, as codified at 45 C.F.R. Parts 160 and 164, and the Federal Security Standards contained in 45 C.F.R. Parts 160 and 164, all as may be amended from time to time.
 6. Minimum Use and Disclosure of Protected Health Information. CONTRACTOR shall use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of this Agreement.
 7. Legal Standards Pertaining to Protected Health Information. CONTRACTOR shall only use, store, disclose or access PHI in compliance with this Agreement and all applicable local, state and federal laws, regulations, rules and standards.
 8. Downloading Protected Health Information. CONTRACTOR shall not download PHI to any personal device, including, but not limited to, flash drives, cell phones, iPads or tablets without the prior written approval of COUNTY.
 9. Maintenance and Preservation of Disclosure Records. CONTRACTOR agrees to timely prepare accurate and complete performance records relating to the use and disclosure of PHI transmitted pursuant to this Agreement, and to maintain and preserve said records for at least three (3) years from the date of expiration or termination of this Agreement, except that if any litigation, claim, negotiation, audit or other action is pending, the records shall be retained until completion and resolution of all issues arising there from.
 10. Accounting Requirements. CONTRACTOR shall comply with the accounting requirements of 45 C.F.R. Section 164.528 and any associated regulations or informal guidance issued by the United States Department of Health and Human Services – Office of Civil Rights, all as may be amended from time to time.
- C. Security Incidents and Suspected Breaches of Confidential Information. If CONTRACTOR has reason to believe that PHI, PI or PII transmitted hereunder may have been accessed, disclosed or acquired in breach of this Agreement, CONTRACTOR shall immediately take all actions necessary to preserve forensic evidence and to identify, mitigate and remediate the cause of the suspected breach. Such actions include, but are not limited to, the following:
1. Reporting Breaches of Confidential Information. CONTRACTOR shall notify COUNTY immediately, by telephone call and e-mail or fax, upon the discovery of a breach of PHI, PI or PII in electronic media or in any other media, if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person.
 2. Reporting Suspected Security Incidents. CONTRACTOR shall notify COUNTY, by telephone call and e-mail or fax, within twenty-four (24) hours after discovering any other suspected security incident, intrusion, loss or unauthorized use or disclosure of PHI, PI or PII in violation of this Agreement or any applicable local, state or federal law.
 - a. Discovery of Breaches and Security Incidents. For purposes of this Agreement, a breach of, or security incident involving, PHI, PI or PII shall be treated as discovered by CONTRACTOR as of the first (1st) day on which such breach is known, or by exercising reasonable diligence would have been known, to

CONTRACTOR or any person, other than the person committing the suspected breach, who is an employee, officer or other agent of CONTRACTOR.

3. Reporting Suspected Breaches and Security Incidents to Affected Individuals. To the extent deemed warranted, CONTRACTOR shall provide notice to any and all individuals affected by the suspected breach of, or security incident involving, PHI, PI or PII. CONTRACTOR shall pay the full costs associated with notifying such individuals, which may include, without limitation, the costs to retain an outside firm to undertake the notification effort. In addition, CONTRACTOR shall consult with COUNTY regarding the steps required to notify impacted individuals and any other persons, media outlets or governmental agencies, and must supply COUNTY with the following information:
 - a. Description of Suspected Breach or Security Incident. A brief description of the circumstances surrounding the suspected breach of, or security incident involving, PHI, PI or PII, including, without limitation, the date of occurrence and discovery thereof, if known.
 - b. Description of the Information Involved. A description of the types of unsecured PHI, PI or PII that were involved in the suspected breach or security incident, including, but not limited to, the full name, social security number, date of birth, home address, account number or disability code of all affected third parties.
 - c. Description of Remedial Actions. A brief description of the actions being taken by CONTRACTOR to remediate the breach of, or security incident involving, PHI, PI or PII, mitigate losses and protect against any further breaches or security incidents.
4. Investigation of Suspected Breaches and Security Incidents. CONTRACTOR shall immediately investigate any and all suspected breaches of, or security incidents involving, PHI, PI or PII. Within seventy-two (72) hours of the discovery of such suspected breach or security incident, CONTRACTOR shall submit an updated "Privacy Incident Report" containing the applicable information to the extent known at that time.
5. Remediation of Breaches and Security Incidents. Upon discovery of a breach of, or security incident involving, PHI, PI or PII, CONTRACTOR shall:
 - a. Corrective Action. Take prompt corrective action to mitigate any risks or damages regarding the breach or security incident and to protect the operating environment.
 - b. Legal Compliance. Take any action pertaining to such breach or security incident required by any and all applicable local, state and federal laws and regulations.
6. Cooperation with COUNTY's Remediation Efforts. Upon discovery of a breach of, or security incident involving, PHI, PI or PII, CONTRACTOR shall give highest priority to immediately mitigating and remediating the breach or security incident, and shall devote such resources as may be required to accomplish that goal. In addition, CONTRACTOR shall cooperate with COUNTY's mitigation and remediation efforts, including, without limitation, providing any and all information necessary to enable COUNTY to fully understand the nature and scope of the breach or security incident, including, but not limited to, identification of each individual whose unsecured PHI may have been improperly accessed, acquired or disclosed. In the event that CONTRACTOR's assistance is required to reinstall software, such assistance shall be provided at no cost to COUNTY and in accordance with COUNTY's policies and standards.

7. Remediation Report. CONTRACTOR shall provide to COUNTY a written report of the investigation of a breach of, or security incident involving, PHI, PI or PII within ten (10) business days of the discovery of such breach or security incident. The report shall include, without limitation, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to remediate and/or contain the breach or security incident.

D. Safeguarding Confidential Information. CONTRACTOR shall implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of all PHI, PI and PII related to the services provided pursuant to the terms and conditions of this Agreement, including, without limitation, electronic PHI, PI and PII that CONTRACTOR creates, receives, maintains, uses or transmits on behalf of COUNTY. CONTRACTOR shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of CONTRACTOR's operations and the nature and scope of its activities, including, at a minimum, the following safeguards:

1. Personnel Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
 - a. Employee Training. All workforce members who assist in the performance of functions or activities on behalf of CONTRACTOR, or access or disclose PHI, PI or PII, must complete information privacy and security training, at least annually, at their own expense. Each workforce member who receives information privacy and security training must sign a certification indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following expiration or termination of this Agreement.
 - b. Employee Discipline. Appropriate sanctions must be applied against workforce members who fail to comply with the privacy policies and procedures or any of the privacy, security and confidentiality requirements contained herein, including termination of employment where appropriate.
 - c. Confidentiality Statement. All persons that will be working with PHI, PI or PII must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use and Enforcement Policies. The statement must be signed by the workforce member prior to gaining access to PHI, PI or PII. The statement must be renewed annually. CONTRACTOR shall retain each person's written confidentiality statement for inspection for a period of six (6) years following expiration or termination of this Agreement.
 - d. Background Check. Before a member of the workforce may access PHI, PI or PII, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. CONTRACTOR shall retain each workforce member's background check documentation for a period of three (3) years following expiration or termination of this Agreement.
2. Technical Security Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:

- a. Workstation and Laptop Encryption. All workstations and laptops that store PHI, PI or PII either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (“AES”). The encryption solution must be full disk unless approved by the DHCS – Information Security Office.
- b. Server Security. Servers containing unencrypted PHI, PI or PII must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- c. Minimum Necessary. Only the necessary amount of PHI, PI or PII required to perform necessary business functions may be copied, downloaded or exported.
- d. Removable Media Devices. All electronic files that contain PHI, PI or PII data must be encrypted when stored on any removable media or portable device, including, without limitation, USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes, etc. Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. Antivirus Software. All workstations, laptops and other systems that process and/or store PHI, PI or PII must install and actively use a comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. Patch Management. All workstations, laptops and other systems that process and/or store PHI, PI or PII must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within thirty (30) days of vendor release. Applications and systems that cannot be patched within the required time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
- g. User Identification and Password Controls. All users must be issued a unique user name for accessing PHI, PI or PII. Usernames must be promptly disabled, deleted or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within twenty-four (24) hours. Passwords are not to be shared. Passwords must be at least eight (8) characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed at least every ninety (90) days, preferably every sixty (60) days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
 - Upper case letters (A-Z);
 - Lower case letters (a-z);
 - Arabic numerals (0-9);
 - Non-alphanumeric characters (punctuation symbols).

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- h. Data Destruction. When no longer needed, all PHI, PI or PII must be wiped using the Gutmann or United States Department of Defense (“DOD”) 5220.22-M (7 Pass) standard or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the DHCS – Information Security Office.
 - i. System Timeout. The system providing access to PHI, PI or PII must provide an automatic timeout, requiring re-authentication of the user session after no more than twenty (20) minutes of inactivity.
 - j. Warning Banners. All systems providing access to PHI, PI or PII must display a warning banner stating that data is confidential, systems are logged and system use is for business purposes only by authorized users. Users must be directed to log off the system if they do not agree with these requirements.
 - k. System Logging. The system must maintain an automated audit trail which can identify the user or system process which alters PHI, PI or PII. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only and must be restricted to authorized users. If PHI, PI or PII is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least three (3) years after occurrence.
 - l. Access Controls. The system accessing PHI, PI or PII must use role based access controls for all user authentications, enforcing the principle of least privilege.
 - m. Transmission Encryption. All transmissions of PHI, PI or PII outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PHI can be encrypted. This requirement pertains to any type of PHI, PI or PII in motion such as website access, file transfer and e-mail.
 - n. Intrusion Detection. All systems involved in accessing, holding, transporting and protecting PHI, PI or PII that are accessible via the internet must be protected by a comprehensive intrusion detection and prevention solution.
3. Audit Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
- a. System Security Review. CONTRACTOR must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing PHI, PI or PII must have at least an annual system risk assessment/security review which provides assurance that administrative, physical and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
 - b. Log Reviews. All systems processing and/or storing PHI, PI or PII must have a routine procedure in place to review system logs for unauthorized access.
 - c. Change Control. All systems processing and/or storing PHI, PI or PII must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

4. Business Continuity and Disaster Recovery Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
 - a. Emergency Mode Operation Plan. CONTRACTOR must establish a documented plan to enable continuation of critical business processes and protection of the security of PHI, PI or PII held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than twenty-four (24) hours.
 - b. Data Backup Plan. CONTRACTOR must have established documented procedures to backup PHI to maintain retrievable exact copies of PHI, PI or PII. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media and an estimate of the amount of time needed to restore PHI, PI or PII should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of data.
5. Paper Document Controls. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
 - a. Supervision of Data. PHI, PI or PII in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. PHI, PI or PII in paper form shall not be left unattended in vehicles or planes and shall not be checked in baggage on commercial airplanes.
 - b. Escorting Visitors. Visitors to areas where PHI, PI or PII is contained shall be escorted, and PHI, PI or PII shall be kept out of sight while visitors are in the area.
 - c. Confidential Destruction. PHI, PI or PII must be disposed of through confidential means, such as cross cut shredding and pulverizing.
 - d. Removal of Data. Only the minimum necessary amount of PHI, PI or PII may be removed from the premises of CONTRACTOR except with express written permission from COUNTY. PHI, PI or PII shall not be considered "removed from the premises," if it is only being transported from one (1) of CONTRACTOR's locations to another of CONTRACTOR's locations.
 - e. Faxing. Faxes containing PHI, PI or PII shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
 - f. Mailings. Mailings containing PHI, PI or PII shall be sealed and secured from damage or inappropriate viewing of such PHI, PI or PII to the extent possible. Mailings which include five hundred (500) or more individually identifiable records of PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission to use another method is obtained.

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13. HIPAA BUSINESS ASSOCIATE AGREEMENT:

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 and made a part hereof as if set forth in full.

14. PATIENTS' RIGHTS:

- A. Legal Compliance. The parties to this Agreement shall comply with any and all applicable local, state and federal laws and regulations relating to patients' rights, including, but not limited to, California Welfare and Institutions Code Section 5325, Title 9 of the California Code of Regulations ("C.C.R.") Sections 860 through 868 and 42 C.F.R. Section 438.100.
- B. Specific Rights. During the performance of this Agreement, the parties hereto shall comply with any and all applicable local, state and federal policies and procedures pertaining to patients' rights, and shall ensure that its staff and subcontractors take those rights into account when providing services pursuant to the terms and conditions of this Agreement, including, without limitation, the right to:
1. Receive information in accordance with 42 C.F.R. Section 438.10.
 2. Be treated with respect and with due consideration for his or her dignity and privacy.
 3. Receive information on available treatment options and alternatives, presented in a manner appropriate to his or her condition and ability to understand.
 4. Participate in decisions regarding his or her health care, including the right to refuse treatment.
 5. Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience or retaliation.
 6. Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. Sections 164.524 and 164.526.
 7. Be furnished services in accordance with 42 C.F.R. Sections 438.206 through 438.210.
 8. Freely exercise his or her rights, and the exercise of those rights will not adversely affect the way in which CONTRACTOR treats the patient.
- C. Effect of Provision. Nothing herein shall be construed to replace or conflict with the duties of patients' rights advocates set forth in California Welfare and Institutions Code Section 5520.

15. PSYCHIATRIC HEALTH FACILITY:

In connection with the execution of this Agreement, CONTRACTOR and its staff, employees and subcontractors will be providing services in COUNTY's Psychiatric Health Facility, Sempervirens. Prior to commencing work, CONTRACTOR will provide COUNTY with proof of a negative screen for Tuberculosis ("TB") and Purified Protein Derivative ("PPD") or X-rays along with a physicians' statement of negative TB and PPD Waiver.

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16. REQUIRED DISCLOSURES:

- A. Notification of Change in Ownership and Control. In the event of a change in ownership or control of CONTRACTOR's business, within thirty-five (35) days after the occurrence thereof or upon request of COUNTY, CONTRACTOR shall notify COUNTY of any change in ownership or control of its business and provide information as requested by COUNTY. The disclosures to be provided shall include, without limitation:
1. The name and address of any individual or corporation with an ownership or control interest in CONTRACTOR's business. The address for corporate entities shall include, as applicable, a primary business address, each business location and a P.O. Box address;
 2. Date of birth and social security number, in the case of an individual;
 3. Other tax identification number, in the case of a corporation with an ownership or control interest in CONTRACTOR's business or in the business of any subcontractor in which CONTRACTOR has a five percent (5%) or more interest;
 4. Whether the individual or corporation with an ownership or control interest in CONTRACTOR's business is related to another person with ownership or control interest in the same or any other COUNTY contractor as a spouse, parent, child or sibling; or whether the individual or corporation with an ownership or control interest in the business of any subcontractor in which CONTRACTOR has a five percent (5%) or more interest is related to another person with ownership or control interest in CONTRACTOR's business as a spouse, parent, child or sibling;
 5. The name of any other disclosing entity in which CONTRACTOR has an ownership or control interest; and
 6. The name, address, date of birth and social security number of any managing employee of CONTRACTOR.
- B. Disclosures Related to Business Transactions. In accordance with 42 C.F.R. Sections 455.101 through 455.106, CONTRACTOR shall submit disclosures regarding certain business transactions within thirty-five (35) days after receiving COUNTY's request for such information. The disclosures to be provided shall include, without limitation:
1. The ownership of any subcontractor with whom CONTRACTOR has had business transactions totaling more than Twenty-Five Thousand Dollars (\$25,000.00) within twelve (12) months of the date of the request; and
 2. Any significant business transactions between CONTRACTOR and any wholly owned supplier, or any subcontractor, within five (5) years of the date of the request.
- C. Disclosures Related to Persons Convicted of Crimes. Upon request by COUNTY, CONTRACTOR shall submit the following disclosures regarding its owners, persons with controlling interest, agents and managing employees' criminal convictions related to federal health care programs pursuant to 42 C.F.R. Section 455.106(a)(1)-(2):
1. The identity of any managing employee of CONTRACTOR who has been convicted of a crime related to federal health care programs (42 C.F.R. Section 455.106(a)(1)-(2)); and

2. The identity of any agent of CONTRACTOR who has been convicted of a crime related to federal health care programs. (42 C.F.R. Section 455.106(a)(1)-(2).) For purposes of this provision, the word “agent” has the meaning set forth in 42 C.F.R. Section 455.101.

17. FEDERAL HEALTH CARE PROGRAM EXCLUSION:

- A. Certification of Eligibility. By executing this Agreement, CONTRACTOR certifies that neither it nor any of its current staff members are restricted or excluded from providing services under any health care program funded by the federal government, either directly or indirectly, in whole or in part.
- B. Employment of Ineligible or Excluded Individuals or Entities. CONTRACTOR shall not employ or contract with providers or other individuals and entities excluded from participation in federally funded health care programs, as defined in Section 1128B(F) of the Social Security Act, under either Section 1128, 1128A or 1156 of the Social Security Act. Federal funding is not available for amounts expended for providers excluded by Medicare, Medicaid or the California Children’s Insurance Program, except for emergency services.
- C. Eligibility Screening. CONTRACTOR shall screen, on a monthly basis, all staff employed or retained to provide services related to this Agreement to ensure that they are not designated as “Ineligible” or “Excluded” as defined herein. Screening shall be conducted against both the California “Medi-Cal Suspended and Ineligible List” and the United States Health and Human Services – Office of Inspector General “List of Excluded Individuals/Entities” or any other list pursuant to 42 C.F.R. 438.214(d). CONTRACTOR shall screen prospective staff prior to hire or engagement.
- D. Eligibility Notification. CONTRACTOR shall notify COUNTY that CONTRACTOR and its staff are eligible to participate in federally funded health care programs on a monthly basis by completing Organizational Provider Employee Screening form (QI 67).
- E. Disclosure Requirements. CONTRACTOR shall immediately disclose to COUNTY any debarment, exclusion or other event that causes CONTRACTOR, or any member of its staff, to be ineligible for participation in federally funded health care programs. If CONTRACTOR discovers that a staff member has become ineligible for, or excluded from, participation in federally funded health care programs, CONTRACTOR shall remove such individual from responsibility for, or involvement with, providing services under this Agreement.
- F. Defense and Indemnification. CONTRACTOR shall hold harmless, defend and indemnify COUNTY against all loss or damage arising from any federal exclusion of CONTRACTOR or its staff members from participation in a federally funded health care program.
- G. Effect of Non-Compliance. Failure by CONTRACTOR to meet the requirements of the provisions set forth herein shall constitute a material breach upon which COUNTY may immediately terminate or suspend this Agreement.

18. INTELLECTUAL PROPERTY RIGHTS:

CONTRACTOR hereby agrees to comply with any and all applicable intellectual property rights provisions contained in the Mental Health Managed Care Agreement (State Standard Agreement No. 12-89364) that COUNTY has with DHCS, which are incorporated herein by reference and made a part hereof as if set forth in full:

A. Ownership. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:

1. Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all "Intellectual Property," from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from or reduced to practice by CONTRACTOR or DHCS and which result directly or indirectly from this Agreement.
 - a. For purposes of this Agreement, "Intellectual Property" means recognized protectable rights and interest such as: patents (whether or not issued), copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or come into existence hereafter, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - i. For purposes of the definition of "Intellectual Property," "works" means all literary works, writings and printed matter, including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells and other audiovisual works, including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. "Works" do not include articles submitted to peer review, reference journals or independent research projects.
2. In the performance of this Agreement, CONTRACTOR will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, CONTRACTOR may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, CONTRACTOR shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without DHCS' prior written permission. Except as otherwise set forth herein, neither CONTRACTOR nor DHCS shall give any ownership interest in, or rights to, its Intellectual Property to the other party. If during the term of this Agreement, CONTRACTOR accesses any third-party Intellectual Property that is licensed to DHCS, CONTRACTOR agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.
3. CONTRACTOR agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If CONTRACTOR enters into any agreements or subcontracts with other parties in order to perform this Agreement, CONTRACTOR shall require the terms of the agreements or subcontracts to include all Intellectual Property provisions. Such terms must include, but are not limited to, the

subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, CONTRACTOR or DHCS and which result directly or indirectly from this Agreement or any subcontract.

4. CONTRACTOR further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain and enforce DHCS' Intellectual Property rights and interests.
- B. Retained Rights and License Rights. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
1. Except for Intellectual Property made, conceived, derived from or reduced to practice by CONTRACTOR or DHCS and which result directly or indirectly from this Agreement, CONTRACTOR shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. CONTRACTOR hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/perform, distribute and dispose CONTRACTOR's Intellectual Property resulting from this Agreement, unless CONTRACTOR assigns all rights, title and interest in the Intellectual Property as set forth herein.
 2. Nothing in this provision shall restrict, limit or otherwise prevent CONTRACTOR from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that CONTRACTOR's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or any third-party, or result in a breach or default of any provisions herein or result in a breach of any provisions of law relating to confidentiality.
- C. Copyright. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
1. CONTRACTOR agrees that for purposes of copyright law, all works, as defined herein, of authorship made by or on behalf of CONTRACTOR in connection with CONTRACTOR's performance of this Agreement shall be deemed "works made for hire." CONTRACTOR further agrees that the work of each person utilized by CONTRACTOR in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of CONTRACTOR or that person has entered into an agreement with CONTRACTOR to perform the work. CONTRACTOR shall enter into a written agreement with any such person that: (i) all work performed for CONTRACTOR shall be deemed a "work made for hire" under the Copyright Act; and (ii) such person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from or reduced to practice by CONTRACTOR or DHCS and which result directly or indirectly from this Agreement.
 2. All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from or reduced to practice by CONTRACTOR or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g.,

2010, etc.], California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services.” This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

- D. Patent Rights. With respect to inventions made by CONTRACTOR in the performance of this Agreement, which did not result from research and development specifically included in this Agreement’s scope of services, CONTRACTOR hereby grants to DHCS a license as described herein for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within this Agreement’s scope of services, then CONTRACTOR agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.
- E. Third-Party Intellectual Property. Except as provided herein, CONTRACTOR agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of CONTRACTOR or third-party without first: (i) obtaining DHCS’ prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described herein, for any of CONTRACTOR’s or third-party’s Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and DHCS determines that Intellectual Property should be included in or is required for CONTRACTOR’s performance of this Agreement, CONTRACTOR shall obtain a license under terms acceptable to DHCS.
- F. Warranties. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, represents, warrants and agrees as follows:
1. It is free to enter into and fully perform this Agreement.
 2. It has secured, and will secure, any and all rights and licenses necessary for its performance hereunder.
 3. Neither CONTRACTOR’s performance of this Agreement, nor the exercise by either party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution and disposition of the Intellectual Property made, conceived, derived from or reduced to practice by CONTRACTOR or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States or any foreign country. There is currently no actual or threatened claim by any such third-party based on an alleged violation of any such right by CONTRACTOR.
 4. Neither CONTRACTOR’s performance of this Agreement, nor any part thereof, will violate the privacy rights of, or constitute a libel or slander against, any person or entity.
 5. It has secured, and will secure, any and all rights and licenses necessary for Intellectual Property, including, but not limited to, consents, waivers or releases from all authors of music or performances, talent, including radio, television and motion picture talent, and owners of any interest in sites, locations, property or props that may be used or shown.

6. It has not granted and shall not grant to any person or entity any right that might derogate, encumber or interfere with any of the rights granted to DHCS hereunder.
 7. It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
 8. It has no knowledge of any outstanding claims, licenses or other charges, liens or encumbrances of any kind or nature whatsoever that could affect in any way CONTRACTOR's performance of this Agreement.
 9. DHCS makes no warranty that the Intellectual Property resulting from this Agreement will not infringe upon any existing or subsequent patent, trademark, copyright or the like.
- G. Intellectual Property Indemnity. By executing this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
1. CONTRACTOR shall indemnify, defend and hold harmless DHCS, its licensees, assignees, officers, directors, employees, agents, representatives, successors and users of its products ("Indemnitees"), from and against all claims, actions, damages, losses or liabilities, or actions or proceedings with respect to any thereof, whether or not rightful, arising from any and all actions or claims by any third-party or expenses related thereto, including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action or proceeding, whether commenced or threatened, to which any of the Indemnitees may be subject, whether or not CONTRACTOR is a party to any pending or threatened litigation, which arise out of or are related to: (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of CONTRACTOR pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by CONTRACTOR or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at CONTRACTOR's expense, any such infringement action brought against DHCS.
 2. Should any Intellectual Property licensed by CONTRACTOR to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, CONTRACTOR will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel, at CONTRACTOR's expense, in any such claim or action. In the defense or settlement of the claim, CONTRACTOR may obtain the right for DHCS to continue using the licensed Intellectual Property; or replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.

3. CONTRACTOR agrees that damages alone would be inadequate to compensate DHCS for breach of any term of these Intellectual Property provisions by CONTRACTOR. CONTRACTOR acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including, without limitation, an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.
- H. Federal Funding. In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title and ownership, which results directly or indirectly from the agreement; except as provided in 37 C.F.R. Part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.
- I. Survival. The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule associated therewith.

19. NONDISCRIMINATION:

During the performance of this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:

- A. Compliance with Anti-Discrimination laws. CONTRACTOR hereby assures that it, and its subcontractors, shall comply with the provisions of Title VI and Title VII of the Civil Rights Act of 1964, Section 504 of the Rehabilitation Act of 1973, as amended, the Age Discrimination Act of 1975, 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, the Americans with Disabilities Act of 1990, the California Fair Employment and Housing Act and any other applicable local, state and federal laws and regulations, all as may be amended from time to time. The applicable regulations of the California Fair Employment and Housing Commission implementing Government Code Section 12990, set forth in 2 C.C.R. Sections 8101, et seq., are incorporated into this Agreement by reference and made a part hereof as if set forth in full.
- B. Provision of Professional Services. Consistent with the requirements of any and all applicable local, state and/or federal laws and regulations, including, but not limited to, 42 C.F.R. Section 438.6(d)(3)-(4), CONTRACTOR shall not: engage in any unlawful discriminatory practices in the admission of clients; assignments of accommodations, treatment, evaluation, employment or personnel; or in any other respect on the basis of race, religion or religious creed, color, age (over forty (40) years of age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal ordinances, laws or regulations. CONTRACTOR shall not discriminate against clients on the basis of health status or need for health care services, pursuant to 42 C.F.R. Section 438.6(d)(3).
- C. Employment Practices. In connection with the services provided hereunder, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any employee, or applicant for employment, because of race, religion or religious creed, color, age (over forty (40) years of

age), sex (including gender identity and expression, pregnancy, childbirth and related medical conditions), sexual orientation (including heterosexuality, homosexuality and bisexuality), national origin, ancestry, marital status, medical condition (including cancer and genetic characteristics), mental or physical disability (including HIV status and AIDS), political affiliation, military service, denial of family care leave or any other classifications protected by local, state or federal ordinances, laws or regulations. CONTRACTOR shall take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to the factors referenced above. Such actions shall include, without limitation: employment, promotion, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. Nothing herein shall be construed to require the employment of unqualified persons.

- D. Solicitations for Employment. CONTRACTOR shall, in all solicitations or advancements for employees placed by or on behalf thereof, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin, physical or mental disability, age or status as a disabled veteran or veteran of the Vietnam era.
- E. Notification to Current and Prospective Employees. CONTRACTOR shall post in conspicuous places, available to employees and applicants for employment, notices to be provided by the federal government or DHCS, setting forth the provisions of the Equal Opportunity Clause of Section 503 of the Rehabilitation Act of 1973 and the Affirmative Action Clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 United States Code ("U.S.C.") Section 4212). Such notices shall state CONTRACTOR's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin, physical or mental disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- F. Notification to Labor Unions and/or Workers' Representatives. CONTRACTOR shall send to each labor union or representative of workers with which it has a collective bargaining agreement, or other contract or understanding, a notice, to be provided by the federal government or the State of California, advising the labor union or workers' representative of CONTRACTOR's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- G. Compliance with Non-Discrimination Standards. CONTRACTOR shall comply with all the provisions of, and furnish all information and reports required by, Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. Section 4212) and Federal Executive Order No. 11246, as amended, including by Executive Order 11375 – "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by 41 C.F.R. Part 60 – "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations and relevant orders of the Secretary of Labor pertaining to the prohibition of discrimination against qualified disabled persons in all federally assisted programs or activities, as detailed in regulations found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- H. Access to Records Regarding Non-Discrimination Compliance. CONTRACTOR shall furnish all information and reports required by Federal Executive Order No. 11246, as amended, including by Executive Order 11375 – "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by 41 C.F.R. Part 60 – "Office of the Federal

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” the Rehabilitation Act of 1973, and by the rules, regulations and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records and accounts by authorized representatives of the State of California and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

- I. Sanctions for Non-Compliance. In the event of CONTRACTOR’s non-compliance with the requirements of the provisions set forth herein, or with any federal rules, regulations or orders referenced herein, this Agreement may be cancelled, terminated or suspended in whole or in part and CONTRACTOR may be declared ineligible for further state and federal contracts in accordance with procedures authorized in Federal Executive Order No. 11246, as amended, and such other sanctions that may be imposed, and remedies invoked, as provided in Federal Executive Order No. 11246, as amended, including by Executive Order 11375 – “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulation at 41 C.F.R. Part 60 – “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or by rule, regulation or order of the Secretary of Labor, or as otherwise provided by law.
- J. Determination of Medical Necessity. Notwithstanding other provisions of this section, CONTRACTOR may require a determination of medical necessity pursuant to 9 C.C.R. Sections 1820.205, 1830.205 or 1830.210, prior to providing covered services to a client.
- K. Incorporation of Provisions. CONTRACTOR shall include the foregoing provisions in every subcontract or purchase order unless exempted by rules, regulations or orders of the Secretary of Labor issued pursuant to Federal Executive Order No. 11246, as amended, including by Executive Order 11375 – “Amending Executive Order 11246 Relating to Equal Employment Opportunity,” and as supplemented by regulation at 41 C.F.R. Part 60 – “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or Section 503 of the Rehabilitation Act of 1973 or of the Vietnam Era Veterans’ Readjustment Assistance Act of 1974 (38 U.S.C. Section 4212), so that such provisions will be binding upon each subcontractor or vendor. CONTRACTOR shall take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions, including, without limitation, sanctions for non-compliance provided, however, that in the event CONTRACTOR becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, CONTRACTOR may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State of California and of the United States.

19. CLEAN AIR AND WATER POLLUTION CONTROL:

- A. Certification of Compliance. During the performance of this Agreement, CONTRACTOR, for itself, and its assignees and successors in interest, agrees as follows:
 - 1. To comply with all applicable standards, orders or requirements issued under Section 306 of the Clean Air Act (42 C.F.R. Section 1857(h)), Section 508 of the Clean Water Act (33 U.S.C. Section 1368), Executive Order 11738 and the Environmental Protection Agency regulations set forth in 40 C.F.R. Part 15.
 - 2. To comply with all applicable standards, orders or requirements under the Clean Air Act (42 C.F.R. Sections 7401, et seq.), as amended, and the Water Pollution Control Act (33 U.S.C. Sections 1251, et seq.), as amended.

- B. Incorporation of Provisions. CONTRACTOR shall include this provision in every subcontract or purchase order unless exempted by law.

20. SMOKE-FREE WORKPLACE CERTIFICATION:

- A. Legal Requirements. Public Law 103-227, also known as the Pro-Children Act of 1994 ("PCA"), requires that smoking not be permitted in any portion of any indoor facility owned or leased by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by federal programs either directly or through local or state governments by federal grant, contract, loan or loan guarantee. The PCA also applies to children's services that are provided in indoor facilities that are constructed, operated or maintained with such federal funds. The PCA does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants and Children Program coupons are redeemed.
- B. Certification of Compliance. By executing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the PCA, and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined thereby.
- C. Effect of Non-Compliance. Failure to comply with the PCA may result in the imposition of a civil monetary penalty of up to One Thousand Dollars (\$1,000.00) for each violation and/or the imposition of an administrative compliance order on the responsible entity.
- D. Incorporation of Provisions. CONTRACTOR further agrees that it will incorporate the provisions contained herein into any subcontracts related to the services provided hereunder.

21. DRUG FREE WORKPLACE CERTIFICATION:

By executing this Agreement, CONTRACTOR certifies that it will comply with the requirements of the Drug-Free Workplace Act of 1990 (California Government Code Sections 8350, et seq.), and will provide a drug-free workplace 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 the following:
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 hereunder 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 CONTRACTOR may be ineligible for award of future contracts if CONTRACTOR violates the foregoing certification.

22. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

By executing this Agreement, CONTRACTOR certifies 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.

23. 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.

24. 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 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 hereunder, CONTRACTOR shall, and shall require that all subcontractors, 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 and its agents, officers, officials, employees 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, but not limited to, 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. 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. Said coverage shall 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 and 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. 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 provisions 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 provisions 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 or County Counsel. 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 of this Agreement shall be sent to the addresses set forth below in accordance with the notice provisions described herein.

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

CONTRACTOR: Diamond Pharmacy Services Medical Supply, Inc.
Attention: Mark J. Zilner, Chief Operating Officer
645 Kolter Drive
Indiana, Pennsylvania 15701

25. 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, but not limited to, overtime, retirement benefits, leave benefits or workers' compensation.

26. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

- A. Legal Compliance. 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. Humboldt County Mental Health Managed Care Agreement. CONTRACTOR agrees to comply with all provisions applicable to subcontractors in the Mental Health Managed Care Agreement (State Standard Agreement No. 12-89364) that COUNTY has with DHCS, which are incorporated herein by reference and made a part hereof as if set forth in full. The above-

referenced agreement can be obtained online at the following address:
http://humboldt.granicus.com/GeneratedAgendaViewer.php?view_id=2&clip_id=707.

- C. Humboldt County Mental Health Performance Agreement. CONTRACTOR agrees to comply with all provisions applicable to subcontractors in the Mental Health Performance Agreement (State Standard Agreement No. 17-94523) that COUNTY has with DHCS, which are incorporated herein by reference and made a part hereof as if set forth in full. The above-referenced agreement can be obtained online at the following address:
<http://humboldt.legistar.com/gateway.aspx?M=F&ID=87a31d7a-71b0-419f-a235-7838571a8d61.pdf>.
- D. 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.

27. PROVISIONS REQUIRED BY LAW:

This Agreement is subject to any additional local, state and federal restrictions, limitations or conditions that may affect the provisions, terms 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 is not correctly stated, the parties agree to amend the pertinent section to make such insertion or correction.

28. REFERENCE TO LAWS AND RULES:

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

29. 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.

30. NOTIFICATION OF LITIGATION:

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

31. ASSISTANCE IN LITIGATION OR ADMINISTRATIVE PROCEEDINGS:

CONTRACTOR shall make itself, and any employees, agents or subcontractors assisting CONTRACTOR in the performance of its obligations hereunder, available to DHCS at no cost to testify as witnesses, or otherwise, in the event of any litigation or administrative proceedings being commenced against DHCS or its directors, officers or employees based upon claimed violations of HIPAA, or the regulations promulgated thereunder, which involve inactions or actions by COUNTY or CONTRACTOR, except where COUNTY or CONTRACTOR is a named adverse party.

32. 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 the parties to obtain supplies, technical support or professional services.

33. 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.

34. 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.

35. WAIVER OF DEFAULT:

The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement. In no event shall any payment by COUNTY constitute a waiver of any breach of this Agreement or any default which may then exist on the part of 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 disbursed to CONTRACTOR which COUNTY determines were not expended in accordance with the terms of this Agreement.

36. 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.

37. 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.

38. 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.

39. JURISDICTION AND VENUE:

This Agreement shall be construed in accordance with the laws of the State of California and COUNTY's contractual obligations under the Mental Health Managed Care Agreement (State Standard Agreement No. 12-89364) and the Mental Health Performance Agreement (State Standard Agreement No. 17-94523) that COUNTY has with DHCS. Any dispute arising hereunder 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.

40. ADVERTISING AND MEDIA RELEASE:

All informational material related to this Agreement shall receive approval from COUNTY prior to being used as advertising or released to the media, including, but not limited to, television, radio, newspapers and internet. CONTRACTOR shall inform COUNTY of 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. All notices required by this provision shall be given to Director.

41. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided hereunder. 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 work performed by third parties under subcontracts, whether approved by COUNTY or not.

42. ATTORNEYS' FEES:

If either party shall commence any legal action or proceeding, including an action for declaratory relief, against the other by reason of the alleged failure of the other to perform or keep any provision of this Agreement to be performed or kept, the party prevailing in said action or proceeding shall be entitled to recover court costs and reasonable attorneys' fees, including 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, "prevailing party" means the party who dismisses an action or proceeding 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.

43. SURVIVAL:

The duties and obligations of the parties set forth in Section 3(D) – Compensation Upon Termination, Section 8 – Audit and Retention of Performance Records, Section 9 – Inspection Rights, Section 11 – Confidential Information, Section 12 – Disclosure and Security Requirements, Section 17 – Intellectual Property Rights and Section 23 – Indemnification shall survive the expiration or termination of this Agreement.

44. 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.

45. 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.

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46. INDEPENDENT CONSTRUCTION:

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

47. 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, 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.

48. 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 its entirety any and all prior agreements, promises, representations, understandings and negotiations of the parties, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms of this Agreement are hereby ratified.

49. 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, ASSISTANT SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

DIAMOND DRUGS, INC.:

By: Joan Zilner

Date: 9/5/2018

Name: Joan Zilner

Title: President

By: Mark J. Zilner

Date: 9/5/2018

Name: Mark J. Zilner

Title: Secretary

COUNTY OF HUMBOLDT:

By: Ryan Sundberg

Date: 10/16/18

Ryan Sundberg
Chair, Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By: Kauffman
Risk Management

Date: 9/28/18

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

Diamond Drugs, Inc.

For Fiscal Year 2018-2019 through 2019-2020

1. SERVICES:

- A. Pharmaceutical Services. CONTRACTOR shall provide comprehensive pharmaceutical services required at COUNTY sites, including, without limitation, the provision of prescription and non-prescription medications for topical, oral and injectable use, pharmacist consultations, record keeping and reporting,. Generic substitutions and/or brand name medications, whichever are most cost effective, will be provided when available and approved by COUNTY prescribers. CONTRACTOR shall only provide COUNTY with medications, biologicals and other related items that have been approved by the United States Food and Drug Administration pursuant to the terms and conditions of this Agreement. CONTRACTOR will ensure that consultant pharmacists are available to provide emergency and routine consultations to prescribing physicians and nurses twenty-four (24) hours a day, seven (7) days a week.
- B. Medical Supply Services. CONTRACTOR shall provide medical supplies on an as-needed basis. Medical supply and sundry orders will be delivered or shipped with medication orders as set forth herein.
- C. Prescription Monitoring Services. Prior to filling prescription orders, CONTRACTOR's clinical pharmacists shall screen each patient's complete computerized medication profile for any and all relevant information, including, without limitation, duplicate medication therapy, medication interactions, excessive and/or sub-therapeutic dosages, new and changed medication orders, medication allergies, medications that are being ordered to soon or after the designated stop date and overall prescription accuracy, to ensure safe and therapeutic medication administration. CONTRACTOR shall notify DHHS – Mental Health medical staff via phone or fax of such occurrences prior to delivering or shipping the order.
- D. Regulatory Consultation Services. CONTRACTOR shall provide, on a quarterly basis, or as otherwise required, all of the following regulatory consultation services:
 - 1. Performance of an overall inspection of COUNTY's medications room, including, without limitation, replacing any outdated and/or deteriorated items contained the emergency medication and poison antidote kits stored therein.
 - 2. Assistance in determining whether COUNTY's policies, procedures, protocols and practices regarding medication procurement, administration, storage, security and record keeping comply with any all applicable local, state and federal laws, regulations, standards and guidelines.
 - 3. Assistance in developing, implementing, monitoring and updating COUNTY's policies, procedures and protocols regarding medication procurement, administration, storage, security and record keeping, including, without limitation, providing COUNTY with an updated medication policy and procedure manual on a yearly basis and serving as a member of COUNTY's Pharmacy and Therapeutics Committee, if necessary, in order to ensure safe and effective control, administration and use of medications.

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4. Assistance in accounting, reconciling and destroying unused, expired, discontinued or contaminated controlled medications as required by any and all applicable local, state and federal laws, regulations, standards and guidelines, including, without limitation, providing COUNTY with count sheets and all other required documentation regarding controlled medications.
- E. In-Service Training Services. CONTRACTOR shall provide, on a quarterly basis, or as otherwise required, customized in-service trainings on a variety of topics regarding medication procurement, administration, storage, security and record keeping, including, without limitation, new medications, medication passes, medication accountability, adverse reactions to various medications, the effects of various medication interactions, review of DHHS – Mental Health’s psychotropic formulary, statutory and regulatory compliance and electronic Medication Administration Record software usage.
- F. Formulary Implementation and Management Services. CONTRACTOR shall utilize DHHS – Mental Health’s current psychotropic formulary and work in conjunction with COUNTY’s medical and mental health staff and the Pharmacy and Therapeutics Committee to evaluate additions or deletions of medications. CONTRACTOR shall provide quarterly medication usage reports accompanied with graphs, cost comparisons and drug indication for particular drug classes. COUNTY’s psychotropic formulary will be reviewed and updated by COUNTY on a quarterly basis, if necessary.
- G. Medication Management Services. Subject to the terms and conditions of this Agreement, CONTRACTOR hereby grants to COUNTY a non-exclusive and non-transferable license for unlimited HIPAA-compliant access to, and use of, the electronic Medication Administration Record software application (“Software”) by authorized COUNTY staff members in order to store, analyze and report pharmaceutical usage and manage onsite stock inventory barcoded by CONTRACTOR. CONTRACTOR will host the Software at its locations and will provide COUNTY with any and all applications, updates, training, installation and support services, including, without limitation, phone and e-mail support during regular business hours and twenty-four (24) hour emergency support, required to create and maintain a secure, HIPAA-compliant connection for COUNTY access to the Software. CONTRACTOR hereby warrants that to the best of its knowledge the licensed Software does not infringe upon or violate the patent rights, trade secret rights, copyrights or other intellectual property rights of any third party. In the event this Agreement is terminated, CONTRACTOR agrees to provide any and all transactional data pertaining to COUNTY in an alternative electronic format for continued use by COUNTY.

2. ORDERING AND DELIVERY OR SHIPPING OF MEDICATIONS:

- A. Ordering. COUNTY may place medication and medical supply orders by phone, electronic ordering or fax via CONTRACTOR’s toll-free number. CONTRACTOR shall provide daily drug order sheet samples, double peel-off labels and any other supplies and materials necessary for transmitting new orders, reorders, change orders, stop orders and/or discontinued orders. CONTRACTOR shall designate a pharmacy technician responsible for processing any and all medication and medical supply orders submitted by COUNTY.
- B. Delivery and Shipping Schedule. All medication and medical supply orders received by CONTRACTOR Monday through Friday by 1:00 p.m. Pacific Standard Time (“PST”) will be delivered or shipped by ground to COUNTY the same day or next day. All orders received by CONTRACTOR on Friday after 1:00 p.m. PST, and before 9:00 a.m. PST on Saturday, will be delivered or shipped to COUNTY by the following Monday. CONTRACTOR will notify

COUNTY in advance of any changes in the schedule for ordering and/or delivery or shipping due to holidays.

- C. Delivery and Shipping Reports. Each medication and medical supply delivery or shipment shall contain detailed itemized packing reports to ensure that any and all ordered items have been delivered or shipped. Such reports will be sorted in the format requested by COUNTY and will include, without limitation, all of the following:
1. Medication delivery or shipment reports which contain each patient's name and identification number, prescription number, dispense date, medication name, strength, number of doses and stop date for each non-controlled medication ordered by COUNTY.
 2. Scheduled items reports which contain each patient's name and identification number, prescription number, dispense date, medication name, strength, number of doses and stop date for each controlled medication ordered by COUNTY.
 3. Medical Supply delivery or shipment reports which contain the name, identification number and quantity of each medical supply ordered by COUNTY.
 4. Daily tracking reports to ensure timely and accurate delivery and/or shipment of any and all medications and/or medical supplies ordered by COUNTY.
- D. Medication Administration System. In conjunction with DHHS – Mental Health staff, CONTRACTOR shall implement a specialized delivery or shipment tracking system for each COUNTY site in order to ensure that COUNTY's need for safe, efficient, accountable, feasible and cost-effective medication administration is met. Prescription, non-prescription and controlled medications will be dispensed in unit-dose, patient specific, tamper-proof blister cards. CONTRACTOR shall dispense all prescriptions generically, unless there is no generic substitute. CONTRACTOR shall dispense controlled prescription items in quantities not to exceed a thirty (30) day supply thereof in accordance with the regulations promulgated by the California Board of Pharmacy and the instructions of the prescribing practitioner.
- E. Labeling. Each prescription medication will be labeled individually, with the patient's name, identification number and location, medication name and strength, generic interchange information, quantity dispensed, manufacturer's name, lot number, expiration date, route and times of administration, directions, prescription number, prescriber name, dispense date, stop date, pharmacist's initials and auxiliary warnings, when appropriate, in accordance with any and all applicable local, state and federal laws, regulations and standards.
- F. Starter Packs. CONTRACTOR will provide starter packs (on-site start doses), and accountability sheets pertaining thereto, of certain medications needed for immediate administration until a patient-specific prescription is received. Medications and stock quantities for starter doses will be determined in conjunction with COUNTY. Starter packs may be reordered by COUNTY on an as-needed basis.

3. REPORTING REQUIREMENTS:

- A. Medication Administration Reports. CONTRACTOR shall provide COUNTY with monthly electronic medication administration reports, which include, without limitation, the patient's name, allergies, diagnosis and current medication list with directions and the physician's name, no later than the twenty-sixth (26th) day of each month for any and all patients who were prescribed medications in the previous month.

- B. Inspection Reports. CONTRACTOR shall provide COUNTY with signed and dated quarterly inspection reports, which include, without limitation, any and all problems observed, corrective actions implemented and/or recommendations for implementation of any and all appropriate corrective actions.
- C. Miscellaneous Reports. Upon request, CONTRACTOR shall provide COUNTY with electronic reports pertaining to medication usage and utilization, including, without limitation, medication allergy, side-effect and interaction reports, monthly medication usage, utilization and dispensation reports, medication classification and recall reports, cost containment recommendation reports, expiration and stop date reports and other customized management and cost containment reports.

EXHIBIT B
PAYMENT TERMS AND CONDITIONS
Diamond Drugs, Inc.
For Fiscal Year 2018-2019 through 2019-2020

1. **DEFINITIONS:**

- A. **Actual Acquisition Cost.** As used herein, the term “Actual Acquisition Cost” (“AAC”) means CONTRACTOR’s direct, upfront cost of medications and medical supplies, equipment and devices.
- B. **Average Wholesale Price.** As used herein, the term “Average Wholesale Price” (“AWP”) means the average wholesale price of a medication as published by Medispan.
- C. **Maintenance Medications.** As used herein, the term “Maintenance Medications” means medications prescribed to a patient for the treatment of a long-term, chronic condition.
- D. **Medical Supplies.** As used herein, the term “Medical Supplies” means any items that are not regulated as prescription drugs by the United States Food and Drug Administration (“FDA”) or the United States Drug Enforcement Agency, and are not considered Over the Counter medications.
- E. **Over the Counter.** As used herein, the term Over the Counter (“OTC”) means any medications that do not require a prescription.

2. **RATE OF COMPENSATION:**

For services rendered, COUNTY will reimburse CONTRACTOR for each prescription as follows:

- AAC up to \$9.99: AAC + 20%, OTC fee of \$4.50, Prescription (“RX”) fee of \$5.70
- AAC up to \$20.00: AAC +20%, OTC and RX fee of \$4.00
- AAC up to \$40.00: AAC +15%, OTC and RX fee of \$4.00
- AAC up to \$80.00: AAC +12%, OTC and RX fee of \$4.00
- AAC above \$80.00: AAC +10%, OTC and RX fee of \$4.00

3. **MAINTENANCE MEDICATIONS:**

Maintenance Medications will consist of fifteen (15) or thirty (30) day supply, and charges will be in accordance with the appropriate provisions set forth herein. CONTRACTOR reserves the right to increase the charges and dispensing fees of Maintenance Medications that are ordered in routine quantities less than a thirty (30) day supply. Medications will not be sold below cost.

4. **MEDICAL SUPPLIES AND SUNDRIES:**

All medical supplies and sundries ordered pursuant to the terms and conditions of this Agreement will be included in the maximum payable amount set forth herein.

5. **STANDARD SHIPPING COSTS:**

CONTRACTOR agrees to pay any and all standard shipping costs associated with medications, medical supplies and sundries provided pursuant to the terms and conditions of this Agreement.

However, COUNTY shall be responsible for paying actual shipping costs for any and all items that exceed size and weight restrictions.

6. RETURNS:

- A. Returned Medication Credit. A returned medication credit will be issued on full or partial blister cards at one hundred percent (100%) of the AAC. There will be no credit with a value of One Dollar and Fifty Cents (\$1.50) or less. Credits will be issued on returned, non-controlled tablets or capsules remaining in the original thirty (30) dose blister card or sealed bottle which contains a single dose per bubble, provided the medications are returned prior to three (3) months of expiration, have not been released to the patient population, do not contain writing or are adulterated and are permitted for return by the California State Board of Pharmacy and the FDA. Controlled medications and opened partial stock medications cannot be credited per federal regulations.
- B. Credit Memos. Returns received by CONTRACTOR, during the term of this Agreement, by the fifteenth (15th) day of the month will be credited on the next invoice for that calendar month. Credit memos will be deducted from payment of the oldest outstanding invoices. Upon termination of this Agreement, any desired returns must be made within fifteen (15) days after the termination date. CONTRACTOR will not return any items returned by COUNTY not eligible for credit.

7. COUNTY RESPONSIBILITIES:

- A. Patient and Billing Information. COUNTY shall provide CONTRACTOR with all appropriate and accurate patient and billing information prior to submitting orders.
- B. Invoice Verification. COUNTY shall verify all invoices received pursuant to the terms and conditions of this Agreement in order to assure that claims were billed to the proper department on a monthly basis. COUNTY shall inform CONTRACTOR of any billing discrepancies within fifteen (15) days of receipt of invoices.

EXHIBIT C
COUNTY OF HUMBOLDT HIPAA BUSINESS ASSOCIATE AGREEMENT

Diamond Drugs, Inc.
For Fiscal Year 2018-2019 through 2019-2020

RECITALS:

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

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 Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- E. Designated Record Set.** As used herein, the term “Designated Record Set” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- F. Electronic Protected Health Information.** As used herein, the term “Electronic Protected Health Information” means Protected Health Information that is maintained in or transmitted by electronic media.

- G. **Electronic Health Record.** As used herein, the term “Electronic Health Record” shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.
- H. **Health Care Operations.** As used herein, the term “Health Care Operations” shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- I. **Privacy Rule.** As used herein, the term “Privacy Rule” shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- J. **Protected Health Information.** As used herein, the term “Protected Health Information” (“PHI”) means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an individual; the provision of health care to an individual; or the past, present or future payment for the provision of health care to an individual; and (ii) that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual, and shall have the meaning given to the term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501. Protected Health Information includes Electronic Protected Health Information [45 C.F.R. Sections 160.103, 164.501].
- K. **Protected Information.** As used herein, the term “Protected Information” shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY’s behalf.
- L. **Security Incident.** As used herein, the term “Security Incident” shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- M. **Security Rule.** As used herein, the term “Security Rule” shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- N. **Unsecured PHI.** As used herein, the term “Unsecured PHI” shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **OBLIGATIONS OF BUSINESS ASSOCIATE:**

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

violation of the Privacy Rule or the HITECH Act if so disclosed by COUNTY. However, BUSINESS ASSOCIATE may disclose Protected Information as necessary (i) for the proper management and administration of BUSINESS ASSOCIATE; (ii) to carry out the legal responsibilities of BUSINESS ASSOCIATE; or (iii) as required by law. If BUSINESS ASSOCIATE discloses Protected Information to a third-party, BUSINESS ASSOCIATE must obtain, prior to making any such disclosure, (i) reasonable *written* assurances from such third-party that such Protected Information will be held confidential as provided pursuant to this Agreement and used or disclosed only as required by law or for the purposes for which it was disclosed to such third-party, and (ii) a written agreement from such third-party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.I. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- C. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and 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 provide COUNTY a copy of any Protected Information and other documents and records that BUSINESS ASSOCIATE provides to the Secretary concurrently with providing such Protected Information to the Secretary.
- J. **Minimum Necessary.** BUSINESS ASSOCIATES 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)].
- 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.