

PURCHASE AGREEMENT DHHS-Public Health

Oral Health Solutions FY 17-21

ROUTE TO:									
Department	Approved	Disapproved	Date		Department	Approved	Disapproved	Date	
1	Branch Director	<u>MS</u>	___	<u>10/3/17</u>	3	Risk Manager	<u>VYG</u>	___	<u>10/10/17</u>
	Auditor	___	___		4	Purchasing	<u>JCG</u>	___	<u>10/11/17</u>
2	County Counsel	<u>Jr</u>	___	<u>10/5/2017</u>		Other	___	___	___

Comments: Please return fully executed Agreement to the DHHS-Contract Unit (4th Floor/Pro Building).

Contact for Information	Name	Lara Zintsmaster
Phone/Ext. Number	Number	268-2195

This Agreement has been reviewed and approved by Counsel and Risk.

Discussion: the Agreement with Oral Health Solutions is to develop a mobile device based app for case management and client tracking for the Dental Transformation Initiative-Local Dental Pilot Project. *** Both lines have been signed by the CEO of OHS as, though they are a corporation, they are a small company in which Bruce fills all official corporation positions that qualify to sign this agreement.

This agreement is being routed after the start date due to the need to gain approval from the Board of Supervisors on the DTI-LDPP agreement with the state including subcontractor plan details, and the need for revisions to the scope of work and a need to iron out insurance questions.

The contract term date is: July 1, 2017 - December 31, 2020 (FY's 17-18 through mid-20-21)

The maximum cap for the term of this Agreement shall not exceed: \$43,325

**PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
ORAL HEALTH SOLUTIONS, INC.**

This Agreement, entered into this ____ day of _____, 2017, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and Oral Health Solutions, Inc., a California corporation hereinafter referred to as "CONTRACTOR," is made upon the following considerations:

WHEREAS, COUNTY, by and through its Department of Health and Human Services ("DHHS") – Public Health was awarded a four year grant from the Department of Health Care Services ("DHCS") to serve as a Local Dental Pilot Project ("LDPP") as part of a statewide Dental Transformation Initiative ("DTI"); and

WHEREAS, DTI represents a critical mechanism to improve dental health for Medi-Cal children by focusing on high-value care, improved access, and utilization of performance measures to drive delivery system reform; and

WHEREAS, the intent of the LDPP in the County of Humboldt is to identify and serve children 0-12 years of age at high risk for dental disease while providing intensive case management and prevention-based services throughout the County of Humboldt; and

WHEREAS, COUNTY, by and through its DHHS – Public Health desires to retain the services of CONTRACTOR to develop, deploy, provide technical assistance of a dental data collection system, and to assist COUNTY with meeting the goals and objectives of the LDPP; 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 has represented that it is qualified to perform such services.

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 – Public Health Director or designee thereof, hereinafter referred to as DIRECTOR.

2. TERM:

This Agreement shall begin upon execution by both parties and shall remain in full force and effect until December 31, 2020, unless sooner terminated as provided herein. This Agreement is to also memorialize the informal agreement between the parties for the services provided by CONTRACTOR from July 1, 2017 to the date of execution of this Agreement.

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 to CONTRACTOR. 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 terminated or reduced, 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 of any termination of this Agreement, CONTRACTOR shall be entitled to compensation for uncompensated services rendered hereunder through and including the effective date of such termination. However, this provision shall not limit or reduce any damages owing to COUNTY resulting from 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 Forty-Three Thousand, Three Hundred and Twenty Five Dollars (\$43,325). CONTRACTOR agrees to perform all services required by this Agreement for an amount not to exceed such maximum dollar amount. If local, state or federal funding or allowance rates are reduced or deleted; the maximum amount payable by COUNTY for services provided hereunder may be reduced accordingly.
- B. Schedule of Rates. The specific rates and costs applicable to this Agreement are set forth in Exhibit B – Schedule of Rates, which is attached hereto and incorporated herein by reference.
- C. Additional Services. Any additional services not otherwise provided for herein, shall not be provided or compensated without written authorization by COUNTY. All unauthorized costs and expenses incurred above the maximum dollar amount set forth herein shall be the responsibility of CONTRACTOR. CONTRACTOR shall notify COUNTY, in writing, at least six (6) weeks prior to the date upon which CONTRACTOR estimates that the maximum dollar amount will be reached.

5. PAYMENT:

CONTRACTOR shall submit to COUNTY quarterly invoices itemizing all services rendered, and costs and expenses incurred, pursuant to the terms and conditions of this Agreement. Invoices shall

invoice for payment within thirty (30) days following the expiration or termination date of this Agreement. Payment for services rendered and costs and expenses incurred will be made within thirty (30) days after the receipt of approved invoices. All invoices submitted by CONTRACTOR shall be sent to COUNTY at the following address:

COUNTY: Humboldt County DHHS – Public Health
Attention: DTI-LDPP Coordinator
529 I Street
Eureka, CA 95501

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 – Public Health
Attention: Director
529 I Street
Eureka, CA 95501

CONTRACTOR: Oral Health Solutions, Inc.
Attention: Bruce Boyer, CEO
101 Broadway, Suite 248
Oakland, CA 94607

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. RECORD RETENTION AND INSPECTION:

- A. Maintenance and Preservation of Records. CONTRACTOR agrees to timely prepare accurate and complete financial, performance and payroll records, documents and other evidence relating to the services provided hereunder, and to maintain and preserve said records for at least three (3) years from the date of final payment under 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 therefrom. The books and records shall be original entry books with a general ledger itemizing all debits and credits for the services provided hereunder.
- B. Inspection of Records. Pursuant to California Government Code Section 8546.7, all records, documents, conditions and activities of CONTRACTOR, and its subcontractors, related to the services provided hereunder, shall be subject to the examination and audit of the California State Auditor and any other duly authorized agents of the State of California for a period of three (3) years after final payment under this Agreement. CONTRACTOR hereby agrees to make all such records available during normal business hours to inspection, audit and

reproduction by COUNTY and any duly authorized local, state and/or federal agencies. CONTRACTOR further agrees to allow interviews of any of its employees who might reasonably have information related to such records by COUNTY and any duly authorized local, state and/or federal agencies. All examinations and audits conducted hereunder shall be strictly confined to those matters connected with the performance of this Agreement, including, but not limited to, the costs of administering this Agreement.

- C. Audit Costs. In the event of an audit exception or exceptions, the party responsible for not meeting the program requirements shall be responsible for the deficiency and for the cost of the audit. If the allowable expenditures cannot be determined because CONTRACTOR's documentation is nonexistent or inadequate, according to generally accepted accounting practices, the questionable cost shall be disallowed by COUNTY.

9. MONITORING:

CONTRACTOR agrees that COUNTY has the right to monitor all activities related to this Agreement, including, without limitation, the right to review and monitor CONTRACTOR's records, 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. However, COUNTY is not responsible, and will not be held accountable, for overseeing or evaluating the adequacy of the results of services performed by CONTRACTOR pursuant to the terms of this Agreement.

10. CONFIDENTIAL INFORMATION:

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

11. NUCLEAR FREE HUMBOLDT COUNTY ORDINANCE COMPLIANCE:

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

12. NON-DISCRIMINATION COMPLIANCE:

- A. Professional Services and Employment. In connection with the execution of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate in the provision of professional services or against any employee or applicant for employment because of race, religion or religious creed, color, age (over forty (40) years of age), sex (including 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 laws or regulations. Nothing herein shall be construed to require the employment of unqualified persons.
- B. Compliance with Anti-Discrimination Laws. CONTRACTOR further assures that it, and its subcontractors, will abide by the applicable provisions of: Title VI and Title VII of the Civil Rights Act of 1964; Section 504 of the Rehabilitation Act of 1973; the Age Discrimination Act of 1975; the Food Stamp Act of 1977; Title II of the Americans with Disabilities Act of 1990; the California Fair Employment and Housing Act; California Civil Code Sections 51, et seq.; California Government Code Sections 4450, et seq.; California Welfare and Institutions Code Section 10000; Division 21 of the California Department of Social Services Manual of Policies and Procedures; United States Executive Order 11246, as amended and supplemented by United States Order 11375 and 41 C.F.R. Part 60; and any other applicable local, state and/or 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 California Government Code Section 12990, set forth in Chapter 5, Division 4 of Title 2, of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full.

13. DRUG-FREE WORKPLACE:

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 the terms of CONTRACTOR's Drug-Free Policy as a condition of employment.
- D. Effect of Noncompliance. Failure to comply with the above-referenced requirements may result in suspension of payments under this Agreement and/or termination thereof, and CONTRACTOR may be ineligible for award of future contracts if COUNTY determines that the foregoing certification is false or if CONTRACTOR violates the certification by failing to carry out the above-referenced requirements.

14. 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 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 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 insurance, if required by this Agreement, does not relieve CONTRACTOR from liability under this provision. This provision shall apply to all claims for damages related to the services performed by CONTRACTOR pursuant to the terms and conditions of this Agreement regardless if 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 by CONTRACTOR hereunder.

15. INSURANCE REQUIREMENTS:

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

- A. General Insurance Requirements. Without limiting CONTRACTOR's indemnification obligations provided for herein, CONTRACTOR shall, and shall require that all subcontractors hereunder, take out and maintain, throughout the entire period of this Agreement, and any extended term thereof, the following policies of insurance, placed with insurers authorized to do business in the State of California with a current A.M. Bests rating of no less than A: VII or its equivalent against personal injury, death and property damage which may arise from, or in connection with, the activities of CONTRACTOR, its agents, officers, directors, employees, licensees, invitees, assignees or subcontractors:
1. Comprehensive or Commercial General Liability Insurance at least as broad as Insurance Services Office Commercial General Liability Coverage (occurrence form CG 0001), in an amount of One Million Dollars (\$1,000,000.00) per occurrence for any one 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. As stated in Exhibit A – Scope of Services, CONTRACTOR will not drive an automobile in the performance of services for COUNTY with exception to one round-trip visit to the County offices for training. CONTRACTOR shall maintain and provide proof of Automobile/Motor Liability Insurance with a limit of liability not less than Five Hundred Thousand Dollars (\$500,000.00) combined single limit coverage for the automobile used for that trip. Insurance must name the driver of the vehicle as the Policyholder.
 3. Workers' Compensation Insurance, as required by the Labor Code of the State of California, with statutory limits, and Employers Liability Insurance with a limit of no less than One Million Dollars (\$1,000,000.00) per accident for bodily injury or disease. Said policy shall contain, or be endorsed to contain, a waiver of subrogation against COUNTY, its agents, officers, officials, employees and volunteers.
 4. Professional Liability Insurance – Error and Omission Coverage including coverage in an amount no less than One Million Dollars (\$1,000,000.00) for each occurrence (One Million Dollars (\$1,000,000.00) 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, 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, 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 loss or damage to property caused by explosion or resulting from collapse of buildings or structures or damage to property underground, 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 insured shall not operate to impair the rights of one insured against another insured, and the coverage afforded shall apply as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the insurer's liability.
 4. For claims related to this 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, including breach of warranties, shall not affect coverage provided to COUNTY, 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 other remedies under this Agreement, take out the necessary insurance, and CONTRACTOR agrees to pay the cost thereof. COUNTY is also hereby authorized with the discretion to 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
 Attn: Risk Management
 825 Fifth Street, Room 131
 Eureka, California 95501

CONTRACTOR: Oral Health Solutions, Inc.
Attention: Bruce Boyer, CEO
101 Broadway, Suite 248
Oakland, CA 94607

16. RELATIONSHIP OF PARTIES:

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

17. COMPLIANCE WITH APPLICABLE LAWS AND LICENSURE REQUIREMENTS:

CONTRACTOR agrees to comply with any and all local, state and federal laws, regulations, policies and procedures applicable to the services covered by this Agreement. CONTRACTOR further agrees to comply with any and all applicable local, state and federal licensure and certification requirements.

18. 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.

19. REFERENCE TO LAWS AND RULES:

In the event any law, regulation, policy or procedure 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.

20. 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.

21. ASSIGNMENT:

Neither party shall delegate its duties nor assign its rights hereunder, either in whole or in part, without the other party's prior written consent. Any assignment 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 CONTRACTOR to obtain supplies, technical support or professional services.

22. 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.

23. 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 any breach or default. COUNTY shall have the right to demand repayment of, and CONTRACTOR shall promptly refund, any funds disbursed to CONTRACTOR which, in the judgment of COUNTY, were not expended in accordance with the terms of this Agreement.

24. 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.

25. 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.

26. 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.

27. TITLE TO INFORMATION AND DOCUMENTS:

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

28. INTELLECTUAL PROPERTY OWNERSHIP AND ASSIGNMENT:

CONTRACTOR acknowledges and agrees that COUNTY is the sole owner of any and all Intellectual Property (as defined below) in connection with this Agreement.

“Intellectual Property” means all rights in the nature of intellectual property and includes without limitation all statutory and other proprietary rights, and applications, registrations or filings for rights, in respect of trademarks, patents, circuit layout, copyrights, designs, trade secrets, Work

Product (as defined below), know how, domain registrations and sales information and leads, software of any kind including executable files, source code firmware and binary software, documentation, algorithms, processes and other information.

“Work Product” means all original works that result from the performance by CONTRACTOR of its duties under this Agreement including without limitation all notes, drawings, designs, technical data, circuit layout or topography, know how, works of authorship, derivative works, firmware, software, source code, ideas, improvements, inventions, innovations, material, information, work or product made, authored, conceived, created, discovered, invented, generated, written or first reduced to practice provided in connection with this Agreement.

CONTRACTOR agrees, acknowledges and warrants and represents that COUNTY shall have the right to use, copy, modify and translate the Work Product in any manner in their sole discretion and the rights assigned to COUNTY hereunder shall give COUNTY and any third party designated by COUNTY, the unlimited right to manufacture, sell, sublicense or otherwise use or exploit the Work Product, by any method in which COUNTY, whether now known or hereafter invented or devised, and to use any trademarks, trade names or labels in connection therewith.

CONTRACTOR hereby transfers and assigns, and covenants to transfer and assign, to COUNTY in perpetuity all proprietary rights, including all rights in the nature of Intellectual Property, it may have now, at any time and from time to time in the Work Product. CONTRACTOR covenants and agrees to execute and deliver to COUNTY such documents and further assurances as may be necessary from time to time to more fully evidence and effect such transfer and assignment. Should COUNTY elect to register claims of copyright to any such works, CONTRACTOR will, at the expense of COUNTY, do such things, sign such documents and provide such reasonable cooperation as is necessary for COUNTY to register such claims, and obtain, protect, defend and enforce such proprietary rights. CONTRACTOR shall not register any claims for Intellectual Property rights protection with respect to any such works without COUNTY’s prior written consent. CONTRACTOR hereby appoints COUNTY as its true and lawful attorney-in-fact with the right to execute assignments of and to register any and all rights to the Work Product if CONTRACTOR is for any reason unavailable.

CONTRACTOR agrees that, if any subcontractor, employee, independent contractor, consultant, agent, and/or other representative of CONTRACTOR, in the course of performing services for COUNTY, and/or at any time, incorporates any work, software of any kind including source code, improvement, invention, development, concept, discovery, or other proprietary information into the Work Product, where the Intellectual Property rights therein are not transferred or assigned to COUNTY for any reason, COUNTY shall have, and CONTRACTOR shall obtain for COUNTY forthwith, a non-exclusive, irrevocable, royalty-free, perpetual, transferable and worldwide license, including the right to sublicense, to use the Work Product in any manner desired by COUNTY without restriction or accounting to CONTRACTOR, including, without limitation, the right to make, have made, sell, offer for sale, rent, lease, import, copy, create derivative works, display, translate, modify, perform, and distribute such Work Product, and which license will be in favor of COUNTY and binding on the subcontractor and any third party who holds rights in the nature of Intellectual Property in such proprietary information. To the extent the Work Product is not already the property of COUNTY and is not assignable, CONTRACTOR hereby grants and agrees to grant COUNTY under any and all Intellectual Property rights it may have in the Work Product, a non-exclusive, irrevocable, royalty-free, perpetual, transferable and worldwide license, including the right to sublicense, to use the Work Product in any manner desired by COUNTY without restriction or accounting to CONTRACTOR, including, without limitation, the right to make, have made, sell,

offer for sale, rent, lease, import, copy, create derivative works, translate, display, perform, and distribute such Work Product.

In the event CONTRACTOR violates or threatens to violate the provisions of this section, damages at law will be an insufficient remedy and COUNTY shall be entitled to equitable relief including but not limited to injunction, monetary damages, punitive damages, and specific liquidated damages in the amount that CONTRACTOR has been paid by COUNTY in accordance with this Agreement. In addition, other remedies or rights shall be available to COUNTY and no bond or security will be required in connection with such equitable relief.

The existence of any claim or cause of action that CONTRACTOR may have against COUNTY will not at any time constitute a defense to the enforcement by COUNTY of the restrictions or rights provided by this section.

29. JURISDICTION AND VENUE:

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

30. 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.

31. SUBCONTRACTS:

CONTRACTOR shall obtain prior written approval from COUNTY before subcontracting any of the services to be provided hereunder. Any and all subcontracts will be subject to all applicable provisions of this Agreement. 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.

32. 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.

33. SURVIVAL:

The duties and obligations of the parties set forth in Section 3(D) – Compensation Upon Termination, Section 8 – Record Retention and Inspection, Section 10 – Confidential Information and Section 14 – Indemnification shall survive the expiration or termination of this Agreement.

34. 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 paragraphs 1 through 39 of this Agreement, paragraphs 1 through 39 of this Agreement shall have priority.

35. 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 party on the basis that the other party prepared it.

36. 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.

37. FORCE MAJEURE:

Neither party hereto shall be liable or responsible for delays or failures in performance resulting from events beyond the reasonable control of such party and without 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.

38. HIPAA BUSINESS ASSOCIATE AGREEMENT:

CONTRACTOR hereby agrees to adhere to the terms and conditions set forth in the “County of Humboldt HIPAA Business Associate Agreement,” which is attached hereto as Exhibit C and incorporated herein by reference. A breach of the attached Business Associate Agreement shall constitute a material breach of this Agreement.

39. 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, whether oral or written, concerning the same subject matter. Any and all acts which may have already been consummated pursuant to the terms and conditions of this Agreement are hereby ratified.

40. 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 date first 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.

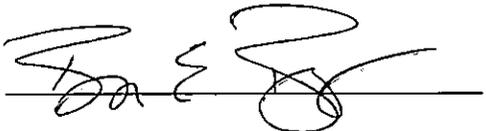
ORAL HEALTH SOLUTIONS, INC.:

By: 

Date: 9/14/2017

Name: Bruce E Boyer

Title: President

By: 

Date: 9/14/2017

Name: Bruce E Boyer

Title: Secretary

COUNTY OF HUMBOLDT:

By: 
Humboldt County Purchasing Agent

Date: 10-11-17

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
Oral Health Solutions, Inc.
July 1, 2017 – December 31, 2020

Oral Health Solutions, Inc. (OHS) will provide technical services and assistance to the County of Humboldt Dental Transformation Initiative – Local Dental Pilot Project (LDPP) for the development, deployment, and maintenance of a Data Collection System (DCS).

1. SERVICES:

A) DCS Development – DCS development includes the design, coding, and testing of at least three DCS App forms and the connection and storing of data on cloud-based databases.

B) System Documentation – System Documentation will consist of a PDF format user manual that incorporates text and images to document the features and functions of the DCS App and specific forms. Special documentation will be created for one-on-one and group training of care coordinators and providers, in the use of App and forms.

C) Training – OHS will conduct one onsite training of LDPP personnel and one online (WebEx) training. The WebEx training will be recorded and can be used by new personnel as needed over the course of the project.

D) HIPAA Compliance – The DCS App is expected to collect and store Protected Health Information (PHI). It will be compliant with HIPAA regulations regarding the privacy and security of PHI, as detailed in Exhibit C- HIPAA Business Associate Agreement.

E) Recurring Costs – During the lifetime of the project, OHS will assume responsibility for managing certain services that represent recurring costs. These include maintenance of the DCS app and forms after production release, leasing and managing host servers for the DCS cloud-based database, and maintaining liability insurance suitable for a HIPAA data host.

F) Sustainability – OHS will work with DHHS – Public Health personnel and other organizations to develop a long-term model for the sustainability of the DCS and related software tools.

G) Equipment – For development and testing of the DCS, OHS will purchase one iOS-based (Apple iPad).

2. SCHEDULE:

OHS shall perform in a timely manner those services and work identified in this Exhibit. It is understood by OHS that the performance of these services and work may require a varied schedule as mutually agreed upon by DHHS – Public Health and OHS.

3. DELIVERABLES:

A) A Data Collection System (DCS) smart device app that will:

- Support iOS devices
- Provide efficient, mobile data entry with the ability of collecting data both online or offline
- Support multiple forms, primarily a Caries Risk Assessment form
- Store all collected data in a cloud-based database
- Provide data security consistent with HIPAA requirements

- B) Oral Health Solutions will use iForm/ES administrative tools to create and update project forms, manage users (authorized data entry personnel) and manage the data collected using the forms.
- C) App forms to be created to collect data on individual LDPP clients (children):
- **Patient Activation Measure (PAM):** Structured, motivational survey form for use by care coordinators and community dental health workers. The PAM measure will give LDPP personnel insight to allow more effective support to each individual.
 - **Oral Health Treatment:** Allows entry of treatment codes (American Dental Association CDT codes) to document treatment received by children served by LDPP healthcare providers.
 - **Care Coordination:** Documents care coordination activities by LDPP personnel.
- D) Data collected by DCS App forms will be stored in two (2) cloud-based databases: Raw app form data will be stored on a server supported by Zerion Software; Reformatted data will be stored in the Oral Health Solution Dental Data Manager (DDM) database. The DDM is an electronic dental record system for use in public health.
- E) If the LDPP intends to use state and federal funds for the development of an information technology application or other software solution, it must be platform independent and interoperable, and scalable with the ability to grow sufficient user capacity for potential statewide deployment. Additionally, the solution must be modular in nature and have the ability to integrate with other components as specified by DHCS. It must be compatible with a wide range of mobile platforms and support multiple browsers. The software solution must:
- a. Comply with the American's with Disabilities ACT and HIPAA;
 - b. Comply with the Security and Privacy controls for Federal Information Systems and Organizations NISP SP 800-83;
 - c. Utilize FIPS 140-2 validated encryption; and
 - d. Follow Open Web Application Security Project (OWASP) guidelines.

4. ACCEPTANCE CRITERIA:

The Data Collection System (DCS) smart device app that will need to be able to:

- Support iOS devices
- Provide efficient, mobile data entry with the ability of collecting data both online or offline
- Support multiple forms, primarily a Caries Risk Assessment form
- Store all collected data in a cloud-based database
- Provide data security consistent with HIPAA requirements

EXHIBIT B
 Oral Health Solutions, Inc.
 Year 1
 07/01/2017 through 12/31/2017

Personnel

Position Title	# of Staff	Monthly Salary Range	FTE %	Annual Cost
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Project Director	1	\$12,500 - \$12,500	5 %	\$ 7,500
Software Technician	1	\$4,166.67 - \$4,166.67	15 %	\$ 7,500

Total Salary \$ 15,000
Fringe Benefits (0%) \$ 0

Total Personnel \$ 15,000

Operating Expenses

iOS tablet for development	\$700
Dental Data Manager Subscription	\$2,000

Total Operating Expenses \$ 2,700

Equipment

N/A	\$0
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Total Equipment Expenses \$ 0

Travel (At CalHR reimbursement rates)

Total Travel \$ 2,000

Subcontracts

N/A

Total Subcontracts \$ 0

Other Costs

N/A

Total Other Costs \$ 0

Indirect Costs (10% of salary)

Indirect Costs \$ 1,500

Annual Budget Total \$ 21,200

EXHIBIT B
 Oral Health Solutions, Inc.
 Year 2
 01/01/2018 through 12/31/2018

Personnel

Position Title	# of Staff	Monthly Salary Range	FTE %	Annual Cost
Project Director	1	\$12,500 - \$12,500	2 %	\$ 3,000
Software Technician	1	\$4,166.67 - \$4,166.67	10 %	\$ 5,000
Total Salary				\$ 8,000
Fringe Benefits (0%)				\$ 0
Total Personnel				\$ 8,000

Operating Expenses

Dental Data Manager Subscription	\$2,000	
		Total Operating Expenses \$ 2,000

Equipment

N/A	\$0	
		Total Equipment Expenses \$ 0

Travel (At CalHR reimbursement rates)

Total Travel **\$ 1,000**

Subcontracts

N/A		
		Total Subcontracts \$ 0

Other Costs

N/A		
		Total Other Costs \$ 0

Indirect Costs (10% of salary)

Indirect Costs **\$ 800**

Annual Budget Total **\$ 11,800**

EXHIBIT B
 Oral Health Solutions, Inc.
 Year 3
 01/01/2019 through 12/31/2019

Personnel

Position Title	# of Staff	Monthly Salary Range	FTE %	Annual Cost
Project Director	1	\$12,500 - \$12,500	1.5 %	\$ 2,250
Software Technician	1	\$4,166.67 - \$4,166.67	3.5 %	\$ 1,750
Total Salary				\$ 4,000
Fringe Benefits (0%)				\$ 0
Total Personnel				\$ 4,000

Operating Expenses

Dental Data Manager Subscription	\$2,000	
		Total Operating Expenses \$ 2,000

Equipment

N/A	\$0	
		Total Equipment Expenses \$ 0

Travel (At CalHR reimbursement rates)

Total Travel **\$ 0**

Subcontracts

N/A		
		Total Subcontracts \$ 0

Other Costs

N/A		
		Total Other Costs \$ 0

Indirect Costs (10% of salary)

Indirect Costs **\$ 400**

Annual Budget Total **\$ 6,400**

EXHIBIT B
 Oral Health Solutions, Inc.
 Year 4
 01/01/2020 through 12/31/2020

Personnel

Position Title	# of Staff	Monthly Salary Range	FTE %	Annual Cost
Project Director	1	\$12,500 - \$12,500	0.5 %	\$ 750
Software Technician	1	\$4,166.67 - \$4,166.67	2 %	\$ 1,100
Total Salary				\$ 1,750
Fringe Benefits (0%)				\$ 0

Total Personnel \$ 1,750

Operating Expenses

Dental Data Manager Subscription \$2,000

Total Operating Expenses \$ 2,000

Equipment

N/A \$0

Total Equipment Expenses \$ 0

Travel (At CalHR reimbursement rates)

Total Travel \$ 0

Subcontracts

N/A

Total Subcontracts \$ 0

Other Costs

N/A

Total Other Costs \$ 0

Indirect Costs (10% of salary)

Indirect Costs \$ 175

Annual Budget Total \$ 3,925

EXHIBIT C
COUNTY OF HUMBOLDT
HIPAA BUSINESS ASSOCIATE AGREEMENT

Oral Health Solutions, Inc.
July 1, 2017 – December 31, 2020

Recitals:

- A. COUNTY, as a “Covered Entity” (defined below) wishes to disclose certain information to CONTRACTOR, hereafter known as the “BUSINESS ASSOCIATE” (defined below) pursuant to the terms of the Agreement, some of which may constitute Protected Health Information (“PHI”) (defined below).
- B. COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws.
- C. As part of the HIPAA Regulations, the Privacy Rule and Security Rule (defined below) requires COUNTY to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations (“C.F.R”) and contained in this Agreement.

The parties agree as follows:

1. Definitions

- a. **Breach** shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- b. **Breach Notification Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- c. **Business Associate** shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- d. **Covered Entity** shall have the meaning given to such term under the Privacy Rule and the Security Rule, including, but not limited to, 45 C.F.R. Section 160.103.
- e. **Designated Record Set** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- f. **Electronic Protected Health Information** means Protected Health Information that is maintained in or transmitted by electronic media.
- g. **Electronic Health Record** shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. Section 17921.

- h. **Health Care Operations** shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- i. **Privacy Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- j. **Protected Health Information or PHI** 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** shall mean PHI provided by COUNTY to BUSINESS ASSOCIATE or created, maintained, received, or transmitted by BUSINESS ASSOCIATE on COUNTY's behalf.
- l. **Security Incident** shall have the same meaning given to such term under the Security Rule, including, but not limited to, 45 C.F.R. Section 164.304.
- m. **Security Rule** shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and C.
- n. **Unsecured PHI** shall have the meaning given to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to, 42 U.S.C. Section 17932(h) and 45 C.F.R. Section 164.402.

2. **Obligations of Business Associate**

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

purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BUSINESS ASSOCIATE of any breaches, suspected breaches, security incidents, or unauthorized uses or disclosures of the Protected Information in accordance with paragraph 2.1. of the Agreement, to the extent it has obtained knowledge of such occurrences [42 U.S.C. Section 17932; 45 C.F.R. Section 164.504(e)].

- c. **Prohibited Uses and Disclosures.** BUSINESS ASSOCIATE shall not use or disclose PHI other than as permitted or required by the Agreement, or as required by law. BUSINESS ASSOCIATE shall not use or disclose Protected Information for fundraising or marketing purposes. BUSINESS ASSOCIATE shall not disclose Protected Information to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which PHI solely relates [42 U.S.C. Section 17935(a) and 45 C.F.R. Section 164.522(a)(vi)]. BUSINESS ASSOCIATE shall not directly or indirectly receive remuneration in exchange for Protected Information, except with prior written consent of COUNTY and as permitted by the HITECH Act, 42 U.S.C. Section 17935(d)(2), and the HIPAA regulations, 45 C.F.R. Section 164.502(a)(5)(ii); however this prohibition shall not affect payment by COUNTY to BUSINESS ASSOCIATE for services provided pursuant to the Agreement.
- d. **Appropriate Safeguards.** BUSINESS ASSOCIATE shall implement appropriate safeguards as are necessary to prevent the use or disclosure of Protected Information otherwise than as permitted by the Agreement, including, but not limited to, administrative, physical and technical safeguards in accordance with the Security Rule, including but not limited to, 45 C.F.R. Sections 164.308, 164.310, and 164.312. [45 C.F.R. Section 164.504(e)(2)(ii)(B); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall comply with the policies, procedures and documentation requirements of the Security Rule, including, but not limited to, 45 C.F.R. Section 164.316. [42 U.S.C. Section 17931].
- e. **Business Associate's Subcontractors and Agents.** BUSINESS ASSOCIATE shall ensure that any agents and subcontractors that create, receive, maintain or transmit Protected Information on behalf of COUNTY, agree in writing to the same restrictions and conditions that apply to COUNTY with respect to such Protected Information and implement the safeguards required by paragraph 2.d. above with respect to Electronic PHI [45 C.F.R. Section 164.504(e)(2)(ii)(D); 45 C.F.R. Section 164.308(b)]. BUSINESS ASSOCIATE shall implement and maintain sanctions against agents and subcontractors that violate such restrictions and conditions and shall mitigate the effects of any such violation (see 45 C.F.R. Sections 164.530(f) and 164.530(e)(1)).
- f. **Access to Protected Information.** If BUSINESS ASSOCIATE maintains a designated record set on behalf of COUNTY, BUSINESS ASSOCIATE shall make Protected Information maintained by BUSINESS ASSOCIATE or its agents or subcontractors in Designated Record Sets available to COUNTY for inspection and copying within five (5) days of a request by COUNTY to enable COUNTY to fulfill its obligations under state law [California Health and Safety Code Section 123110] and the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.524 [45 C.F.R. Section 164.504(e)(2)(ii)(e)]. If BUSINESS ASSOCIATE maintains Protected Information in electronic format, BUSINESS ASSOCIATE shall provide such information in electronic format as necessary to enable COUNTY to fulfill its obligations under the HITECH Act and HIPAA Regulations, including, but not limited to, 42 U.S.C. Section 17935(e) and 45 C.F.R. Section 164.524.
- 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, 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 164.408, 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 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.