



COUNTY OF HUMBOLDT

For the meeting of: 6/25/2019

File #: 19-901

To: Board of Supervisors

From: DHHS: Administration

Agenda Section: Consent

SUBJECT:

Second Amendment to the Professional Services Agreement with SVT Gruppe, Inc. Regarding the Provision of Security and Secure Transportation Services

RECOMMENDATION(S):

That the Board of Supervisors:

1. Approve, and authorize the Chair of the Board to execute, the attached second amendment to the professional services agreement with SVT Gruppe, Inc. regarding the provision of security and secure transportation services for the period of July 1, 2016 through June 30, 2020; and
2. Direct the Clerk of the Board to return a fully executed original copy of the attached second amendment to the professional services agreement with SVT Gruppe, Inc. to the Department of Health and Human Services - Contracts Unit for further processing.

SOURCE OF FUNDING:

Social Services Fund; Mental Health Fund; Public Health Fund

DISCUSSION:

The Humboldt County Department of Health and Human Services (DHHS) requires security guard services at various DHHS facilities to ensure safe living and working conditions for clients and staff. In addition, secure in-county and out-of-county transportation services are required to transport patients and clients from DHHS facilities.

On June 28, 2016, the County of Humboldt entered into the current professional services agreement with SVT Gruppe, Inc. regarding the provision of security and secure transportation services for the period of July 1, 2016 through June 30, 2018. The Humboldt County Board of Supervisors subsequently approved the first amendment to the professional services agreement with SVT Gruppe, Inc., which extended the term thereof, expanded the scope of services provided, and increased the maximum amount payable, thereunder, adjusted the rates of compensation set forth therein and updated the County of Humboldt Health Insurance Portability and Accountability Act (HIPAA) Business Associate Agreement and DHHS - Mental Health PPD Annual Waiver attached thereto, on June 26, 2018 (Item C-11). The attached second amendment to the professional services agreement with SVT Gruppe, Inc. will allow for the continued provision of security and secure transportation

services for the period of July 1, 2019 through June 30, 2020.

Accordingly, DHHS recommends that the Board approve, and authorize the Chair of the Board to execute, the attached second amendment to the professional services agreement with SVT Gruppe, Inc. regarding the provision of security and secure transportation services for the period of July 1, 2016 through June 30, 2020.

FINANCIAL IMPACT:

The attached second amendment to the professional services agreement with SVT Gruppe, Inc. will increase the maximum amount payable thereunder from \$1.65 million to \$2.7 million for the period of July 1, 2016 through June 30, 2020. In no event shall the maximum amount paid under the professional services agreement with SVT Gruppe, exceed \$850,000 for fiscal year 2018-19 and \$900,000 for fiscal year 2019-20. However, if local, state or federal funding is reduced or eliminated, the County of Humboldt may reduce the above-referenced maximum amount payable or terminate the attached professional services agreement with SVT Gruppe, Inc. in its entirety.

Expenditure appropriations related to the attached second amendment to the professional services agreement with SVT Gruppe, Inc. have been included in the approved fiscal year 2018-19 and the proposed 2019-2020 budgets for Sempervirens/Crisis Stabilization Unit budget unit 1170-495, Children and Family Services budget unit 1170-497, Social Services Administration budget unit 1160-511, Child Welfare Services budget unit 1160-508 and Public Health Administration budget unit 1175-400. As a result, approval of the attached second amendment to the professional services agreement with SVT Gruppe, Inc. will not impact the Humboldt County General Fund.

STRATEGIC FRAMEWORK:

The recommended actions support the Board of Supervisors' Strategic Framework by creating opportunities for improved safety and health and supporting business, workforce development and creation of private-sector jobs.

OTHER AGENCY INVOLVEMENT:

None

ALTERNATIVES TO STAFF RECOMMENDATIONS:

The Board could choose not to approve the attached second amendment to the professional services agreement with SVT Gruppe, Inc. regarding the provision of security and secure transportation services. However, this alternative is not recommended since it will not allow DHHS to meet the security and transportation needs of DHHS clients and staff.

ATTACHMENTS:

1. Second Amendment to the Professional Services Agreement with SVT Gruppe, Inc. Regarding the Provision of Security and Secure Transportation Services dated June 28, 2016
2. First Amendment to the Professional Services Agreement with SVT Gruppe, Inc. Regarding the Provision of Security and Secure Transportation Services dated June 28, 2016
3. Professional Services Agreement with SVT Gruppe, Inc. Regarding the Provision of Security

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and Secure Transportation Services dated June 28, 2016

PREVIOUS ACTION/REFERRAL:

Board Order No.: D-5; D-7; C-8

Meeting of: 09/08/09; 11/10/09; 05/10/16

File No.: 19-901

**SECOND AMENDMENT
PROFESSIONAL SERVICES AGREEMENT
BY AND BETWEEN
COUNTY OF HUMBOLDT
AND
SVT GRUPPE, INC.
FOR FISCAL YEARS 2016-2017 THROUGH 2019-2020**

This Second Amendment to the Professional Services Agreement dated June 28, 2016, as amended on June 26, 2018, by and between the County of Humboldt, a political subdivision of the State of California, hereinafter referred to as "COUNTY," and SVT Gruppe, Inc., a California corporation, hereinafter referred to as "CONTRACTOR," is entered into this 25 day of June, 2019.

WHEREAS, COUNTY, by and through its Department of Health and Human Services, desired to retain a qualified organization to provide security and secure transportation services; and

WHEREAS, on June 28, 2016, COUNTY and CONTRACTOR entered into a Professional Services Agreement regarding the provision of such services; and

WHEREAS, on June 26, 2018, COUNTY and CONTRACTOR amended the Professional Services Agreement in order to extend the term thereof, expand the scope of security and secure transportation services provided, and increase the maximum amount payable, thereunder, adjust the rates of compensation set forth therein and update the County of Humboldt HIPAA Business Associate Agreement and DHHS – Mental Health PPD Annual Waiver attached thereto; and

WHEREAS, the parties now desire to amend certain provisions of the Professional Services Agreement in order to extend the term thereof, increase the maximum amount payable thereunder, adjust the rates of compensation set forth therein, update the County of Humboldt HIPAA Business Associate Agreement attached thereto and include a provision regarding counterpart execution thereof.

NOW THEREFORE, the parties mutually agree as follows:

1. Section 4 – Term of the Professional Services Agreement is hereby amended to read as follows:

4. TERM:

The term of this Agreement shall begin on July 1, 2016 and shall remain in full force and effect until June 30, 2020, unless sooner terminated as provided herein.

2. Section 6(A) – Maximum Amount Payable of the Professional Services Agreement is hereby amended to read as follows:

6. 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 Two Million Seven Hundred Thousand Dollars (\$2,700,000.00). In no event shall the maximum amount paid under this Agreement exceed Four Hundred Fifty Thousand Dollars (\$450,000.00) for fiscal year 2016-2017, Five Hundred Thousand Dollars (\$500,000.00) for fiscal year 2017-2018, Eight Hundred Fifty Thousand Dollars (\$850,000.00) for fiscal year 2018-2019 and Nine Hundred Thousand Dollars (\$900,000.00) for fiscal

year 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 hereunder or terminate this Agreement as provided herein.

3. The Professional Services Agreement is hereby amended to include the following provision regarding counterpart execution:

45. COUNTERPART EXECUTION:

This Agreement, and any amendments hereto, may be executed in one (1) or more counterparts, each of which shall be deemed to be an original and all of which, when taken together, shall be deemed to be one (1) and the same agreement. A signed copy of this Agreement, and any amendments hereto, transmitted by email or by other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original executed copy of this Agreement and any amendments hereto.

4. The Professional Services Agreement is hereby amended to delete Exhibit E – Schedule of Rates (“Exhibit E”) and replace it in its entirety with the modified version of Exhibit E that is attached hereto and incorporated herein by reference. The modified version of Exhibit E attached hereto shall supersede any and all prior versions thereof as of the effective date of this Second Amendment.
5. The Professional Services Agreement is hereby amended to delete Exhibit F – County of Humboldt HIPAA Business Associate Agreement (“Exhibit F”) and replace it in its entirety with the modified version of Exhibit F that is attached hereto and incorporated herein by reference. The modified version of Exhibit F attached hereto shall supersede any and all prior versions thereof as of the effective date of this Second Amendment.
6. Except as modified herein, the Professional Services Agreement dated June 28, 2016, as amended on June 26, 2018, shall remain in full force and effect. In the event of a conflict between the provisions of this Second Amendment and the original Professional Services Agreement, or any prior amendments thereto, the provisions of this Second Amendment shall govern.

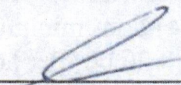
[Signatures on Following Page]

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

TWO SIGNATURES ARE REQUIRED FOR CORPORATIONS:

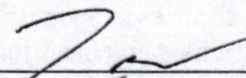
- (1) CHAIRPERSON OF THE BOARD, PRESIDENT, OR VICE PRESIDENT; AND
- (2) SECRETARY, CHIEF FINANCIAL OFFICER OR TREASURER.

SVT GRUPPE, INC.:

By:  Date: 6/4/19

Name: Antonette Ginochio

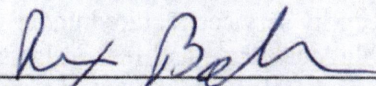
Title: VP

By:  Date: 6/4/19

Name: Zahary Morgan

Title: Director of Finance

COUNTY OF HUMBOLDT:

By:  Date: 6/25/19

Rex Bohn
Chair, Humboldt County Board of Supervisors

INSURANCE AND INDEMNIFICATION REQUIREMENTS APPROVED:

By:  Date: 06/11/2019

Risk Management

LIST OF EXHIBITS:

Exhibit E – Schedule of Rates

Exhibit F – County of Humboldt HIPAA Business Associate Agreement

EXHIBIT E
SCHEDULE OF RATES

SVT Gruppe, Inc.

For Fiscal Years 2016-2017 through 2019-2020

1. SECURITY SERVICES:

- A. Base Hourly Rate. COUNTY shall pay CONTRACTOR at the rate of Nineteen Dollars (\$19.00) per hour for each Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2016-2017 with a four (4) hour minimum per call. COUNTY shall pay CONTRACTOR at the rate of Twenty Dollars (\$20.00) per hour for each Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2017-2018 with a four (4) hour minimum per call. COUNTY shall pay CONTRACTOR at the rate of Twenty-One Dollars (\$21.00) per hour for each Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2018-2019 with a four (4) hour minimum per call. COUNTY shall pay CONTRACTOR at the rate of Twenty-Two Dollars (\$22.00) per hour for each Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2019-2020 with a four (4) hour minimum per call.
- B. Overtime Rate. COUNTY shall pay CONTRACTOR at the overtime rate of Nineteen Dollars (\$19.00) per hour for each Security Guard who works more than forty (40) hours in any one (1) work week in performance of the security services required under this Agreement or as otherwise required by any and all applicable local, state and federal laws or regulations for fiscal year 2016-2017. COUNTY shall pay CONTRACTOR at the overtime rate of Twenty Dollars (\$20.00) per hour for each Security Guard who works more than forty (40) hours in any one (1) work week in performance of the security services required under this Agreement or as otherwise required by any and all applicable local, state and federal laws or regulations for fiscal year 2017-2018. COUNTY shall pay CONTRACTOR at the overtime rate of Twenty-One Dollars (\$21.00) per hour for each Security Guard who works more than forty (40) hours in any one (1) work week in performance of the security services required under this Agreement or as otherwise required by any and all applicable local, state and federal laws or regulations for fiscal year 2018-2019. COUNTY shall pay CONTRACTOR at the overtime rate of Twenty-Two Dollars (\$22.00) per hour for each Security Guard who works more than forty (40) hours in any one (1) work week in performance of the security services required under this Agreement or as otherwise required by any and all applicable local, state and federal laws or regulations for fiscal year 2019-2020.
- C. Base Hourly Rate – Roamer. COUNTY shall pay CONTRACTOR at the rate of Twenty-One Dollars (\$21.00) per hour for each Roamer Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2017-2018. COUNTY shall pay CONTRACTOR at the rate of Twenty-Two Dollars (\$22.00) per hour for each Roamer Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2018-2019. COUNTY shall pay CONTRACTOR at the rate of Twenty-Three Dollars (\$23.00) per hour for each Roamer Security Guard providing security services pursuant to the terms and conditions of this Agreement for fiscal year 2019-2020.
- D. Base Monthly Rate – Monitoring and Dispatch Services. COUNTY shall pay CONTRACTOR at the rate of Eighty-Nine Dollars (\$89.00) per month for each location at which TrackTik monitoring services are provided pursuant to the terms and conditions of this Agreement, and Ninety-Nine Dollars (\$99.00) per month for each location at which twenty-four (24) hour dispatch services are provided pursuant to the terms and conditions of this

Agreement, for fiscal year 2017-2018. COUNTY shall pay CONTRACTOR at the rate of Ninety-Nine Dollars (\$99.00) per month for each location at which TrackTik monitoring services are provided pursuant to the terms and conditions of this Agreement, and One Hundred and Nine Dollars (\$109.00) per month for each location at which twenty-four hour dispatch services are provided pursuant to the terms and conditions of this agreement, for fiscal years 2018-2019 and 2019-2020.

- E. Criminal and Civil Actions. COUNTY shall pay CONTRACTOR at the aforementioned hourly rates for all time spent by any Security Guard in performance of the security services required hereunder in connection with any criminal or civil action involving COUNTY.
- F. Training. COUNTY shall pay CONTRACTOR at the aforementioned hourly rates for all time spent by Security Guards in training authorized by COUNTY. All time spent by Security Guards in training provided by CONTRACTOR shall be at CONTRACTOR's expense.
- G. Vehicle Expenses. COUNTY shall pay CONTRACTOR at the rate of Seven Dollars (\$7.00) per hour for each marked patrol vehicle used to provide security services pursuant to the terms and conditions of this Agreement. This rate includes all mileage and insurance expenses.

2. SECURE TRANSPORTATION SERVICES:

- A. In-County Transport of One (1) to Two (2) Individuals. For in-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Twenty-Nine Dollars (\$29.00) per hour for one (1) Secure Transportation Personnel member and vehicle, including mileage at the rate of Seventy-Nine Cents (\$0.79) per mile, round-trip, traveled from point of dispatch, for fiscal year 2016-2017. If COUNTY finds that a second Secure Transportation Personnel member is necessary for the transport, the amount paid to CONTRACTOR shall be Twenty-Nine Dollars (\$29.00) per hour for the second Secure Transportation Personnel member for fiscal year 2016-2017. For in-county secure transportation services of one (1) to two (2) DHHS client or patient, the amount paid to CONTRACTOR shall be Thirty Dollars (\$30.00) per hour for one (1) Secure Transportation Personnel member and vehicle, including mileage at the rate of Seventy-Nine Cents (\$0.79) per mile, round-trip, traveled from point of dispatch, for fiscal year 2017-2018. If COUNTY finds that a second Secure Transportation Personnel member is necessary for the transport, the amount paid to CONTRACTOR shall be Thirty Dollars (\$30.00) per hour for the second Secure Transportation Personnel member for fiscal year 2017-2018. For in-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Thirty-One Dollars (\$31.00) per hour for one (1) Secure Transportation Personnel member and vehicle, including mileage at the rate of Seventy-Nine Cents (\$0.79) per mile, round-trip, traveled from point of dispatch, for fiscal year 2018-2019. If COUNTY finds that a second Secure Transportation Personnel member is necessary for the transport, the amount paid to CONTRACTOR shall be Thirty-One Dollars (\$31.00) per hour for the second Secure Transportation Personnel member for fiscal year 2018-2019. For in-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Thirty-Two Dollars (\$32.00) per hour for one (1) Secure Transportation Personnel member and vehicle, including mileage at the rate of Eighty-Five Cents (\$0.85) per mile, round-trip, traveled from point of dispatch, for fiscal year 2019-2020. If COUNTY finds that a second Secure Transportation Personnel member is necessary for the transport, the amount paid to CONTRACTOR shall be Thirty-Two Dollars (\$32.00) per hour for the second Secure Transportation Personnel member for fiscal year 2019-2020. As used herein, the term "in-county" is defined as any location within the boundaries of Humboldt County.

- B. Overtime Rates for In-County Secure Transportation Services. COUNTY shall pay CONTRACTOR the overtime rate of Twenty-Nine Dollars (\$29.00) per hour for each Secure Transportation Personnel member providing in-county secure transportation services pursuant to the terms and conditions of this Agreement for more than eight (8) hours in any one (1) work day or as otherwise required by local, state or federal laws or regulations for fiscal year 2016-2017. COUNTY shall pay CONTRACTOR the overtime rate of Thirty Dollars (\$30.00) per hour for each Personnel member providing in-county secure transportation services pursuant to the terms and conditions of this Agreement for more than eight (8) hours in any one work day or as otherwise required by local, state or federal laws or regulations for fiscal year 2017-2018. COUNTY shall pay CONTRACTOR the overtime rate of Thirty-One Dollars (\$31.00) per hour for each Personnel member providing in-county secure transportation services pursuant to the terms and conditions of this Agreement for more than eight (8) hours in any one (1) work day or as otherwise required by local, state or federal laws or regulations for fiscal year 2018-2019. COUNTY shall pay CONTRACTOR the overtime rate of Thirty-Two Dollars (\$32.00) per hour for each Personnel member providing in-county secure transportation services pursuant to the terms and conditions of this Agreement for more than eight (8) hours in any one (1) work day or as otherwise required by local, state or federal laws or regulations for fiscal year 2019-2020.
- C. Out-of-County Transport of One (1) to Two (2) Individuals. For out-of-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Twenty-Nine Dollars (\$29.00) per hour paid to each of the two (2) Secure Transportation Personnel members [a total of Fifty-Eight Dollars (\$58.00)] for two (2) Secure Transportation Personnel members and vehicle, including mileage at the rate of Seventy-Nine Cents (\$0.79) per mile, round-trip, traveled from point of dispatch, for fiscal year 2016-2017. For out-of-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Thirty Dollars (\$30.00) per hour paid to each of the two (2) Secure Transportation Personnel members [a total of Sixty Dollars (\$60.00)] for two (2) Secure Transportation Personnel members and vehicle, including mileage at the rate of Seventy-Nine Cents (\$0.79) per mile, round-trip, traveled from point of dispatch, for fiscal year 2017-2018. For out-of-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Thirty-One Dollars (\$31.00) per hour paid to each of the two (2) Secure Transportation Personnel members [a total of Sixty-Two Dollars (\$62.00)] for two (2) Secure Transportation Personnel members and vehicle, including mileage at the rate of Seventy-Nine Cents (\$0.79) per mile, round-trip, traveled from point of dispatch, for fiscal year 2018-2019. For out-of-county secure transportation services of one (1) to two (2) DHHS clients or patients, the amount paid to CONTRACTOR shall be Thirty-Two Dollars (\$32.00) per hour paid to each of the two (2) Secure Transportation Personnel members [a total of Sixty-Four Dollars (\$64.00)] for two (2) Secure Transportation Personnel members and vehicle, including mileage at the rate of Eighty-Five Cents (\$0.85) per mile, round-trip, traveled from point of dispatch, for fiscal year 2019-2020. As used herein, the term "out-of-county" is defined as any location outside the boundaries of Humboldt County.
- D. Overnight Stays. Overnight out-of-county trips require authorization from Director, and receipts for approved meals and lodging must accompany all invoices associated with such overnight trips. Reimbursements shall be made only for actual and receipted expenses.
- E. Daily Meal and Lodging Allowances. The maximum daily meal allowance for each Secure Transportation Personnel member shall not exceed Forty-Four Dollars (\$44.00). Lodging expenses shall not exceed One Hundred and Fifty Dollars (\$150.00) per night.

EXHIBIT B
COUNTY OF HUMBOLDT HIPAA BUSINESS ASSOCIATE AGREEMENT
SVT Gruppe, Inc.
For Fiscal Years 2016-2017 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" pursuant to the terms of the Agreement, some of which may constitute Protected Health Information ("PHI").

WHEREAS, COUNTY and BUSINESS ASSOCIATE intend to protect the privacy and provide for the security of PHI disclosed to BUSINESS ASSOCIATE pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information and Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), and regulations promulgated thereunder by the U.S. Department of Health and Human Services (the "HIPAA Regulations") and other applicable laws.

WHEREAS, pursuant to HIPAA Regulations, the Privacy Rule and Security Rule (defined below) COUNTY is required to enter into an Agreement containing specific requirements with BUSINESS ASSOCIATE prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, Sections 164.314(a), 164.502(e), and 164.504(e) of the Code of Federal Regulations ("C.F.R.") and contained in this Agreement.

NOW THEREFORE, the parties hereto mutually agree as follows:

1. DEFINITIONS:

- A. Breach.** As used herein, the term "Breach" shall have the meaning given to such term under the HITECH Act and HIPAA Regulations [42 U.S.C. Section 17921 and 45 C.F.R. Section 164.402].
- B. Breach Notification Rule.** As used herein, the term "Breach of Notification Rule" shall mean the HIPAA Regulation that is codified at 45 C.F.R. Parts 160 and 164, Subparts A and D.
- C. Business Associate.** As used herein, the term "Business Associate" shall have the meaning given to such term under the Privacy Rule, the Security Rule, and the HITECH Act, including, but not limited to, 42 U.S.C. Section 17938 and 45 C.F.R. Section 160.103.
- D. Covered Entity.** As used herein, the term "Covered Entity" shall have the meaning given to such term under the Privacy and Security Rules, including, without limitation, 45 C.F.R. Section 160.103.
- E. Designated Record Set.** As used herein, the term "Designated Record Set" shall have the meaning given to such term under the Privacy Rule, including, but not limited to, 45 C.F.R. Section 164.501.
- F. Electronic Protected Health Information.** As used herein, the term "Electronic Protected Health Information" means Protected Health Information that is maintained in or transmitted by electronic media.

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- 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 concurrently provide COUNTY with copies of any Protected Information and other records that BUSINESS ASSOCIATE provides to the Secretary.
- J. Minimum Necessary.** BUSINESS ASSOCIATES and its agents and subcontractors shall request, use and disclose only the minimum amount of Protected Information necessary to accomplish the purpose of the request, use or disclosure. [42 U.S.C. Section 17935(b); 45 C.F.R. Section 164.514(d)]. BUSINESS ASSOCIATE hereby agrees to keep itself informed of guidance issued by the Secretary with respect to what constitutes "minimum necessary."

- K. **Data Ownership.** BUSINESS ASSOCIATE understands that BUSINESS ASSOCIATE has no ownership rights with respect to the Protected Information.
- L. **Notification of Possible Breach.** BUSINESS ASSOCIATE shall notify COUNTY within twenty-four (24) hours of any suspected or actual breach of Protected Information; any use or disclosure of Protected Information not permitted by the Agreement; any security incident (i.e., any attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system) related to Protected Information, and any actual or suspected use or disclosure of data in violation of any applicable federal or state laws by BUSINESS ASSOCIATE or its agents or subcontractors. The notification shall include, to the extent possible, the identification of each individual whose unsecured Protected Information has been, or is reasonably believed by the BUSINESS ASSOCIATE to have been accessed, acquired, used, or disclosed, as well as any other available information that COUNTY is required to include in notification to the individual, the media, the Secretary, and any other entity under the Breach Notification Rule and any other applicable state or federal laws, including, but not limited, to 45 C.F.R. Section 164.404 through 45 C.F.R. Section 164.1408, at the time of the notification required by this paragraph or promptly thereafter as information becomes available. BUSINESS ASSOCIATE shall take (i) prompt corrective action to cure any deficiencies and (ii) any action pertaining to unauthorized uses or disclosures required by applicable federal and state laws. [42 U.S.C. Section 17921; 45 C.F.R. Section 164.504(e)(2)(ii)(C); 45 C.F.R. Section 164.308(b)]. Any and all notices required pursuant to the terms and conditions of this provision shall be submitted to COUNTY at the following address:

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

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

3. **TERMINATION:**

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

4. **INTERPRETATION:**

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