

# ORIGINAL

## AGREEMENT FOR SERVICES #2082

### Provision of Temporary Medical Practitioner Services

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**THIS AGREEMENT** is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and LocumTenens.com, a Georgia Limited Liability Company, duly qualified to conduct business in the State of California, whose principal place of business is 2655 Northwinds Parkway, Alpharetta, GA 30009, and whose Agent for Service of Process is CSC-Lawyers Incorporating, 251 Little Falls Drive, Wilmington, DE 19808 (hereinafter referred to as "Contractor");

#### RECI T A L S

**WHEREAS**, pursuant to California Business and Professions Code Section 2418 (hereinafter referred to as "CA Code BPC:2418") enacted in 2005 via Senate Bill 279, the State recognizes that it is facing a growing crisis in physician supply due, in part, to difficulties in recruiting and retaining physicians; and

**WHEREAS**, the State recognizes that this crisis is particularly harsh for facilities operated by the state and local governments due to the difficulties of finding full-time medical staff; and

**WHEREAS**, further pursuant to CA Code BPC:2418, a locum tenens contractor, for purposes of California law, is not considered an employment agency nor employer of medical practitioners, may engage the services of said medical practitioners as independent contractors/subcontractors, and shall not be responsible for paying Social Security or workers' compensation/unemployment benefits to said contracted medical practitioners; and

**WHEREAS**, the locum tenens contractor's end use client is also not considered an employment agency nor employer of said medical practitioners whose services have been secured through locum tenens contractors and, as such, also shall not be responsible for paying Social Security or workers' compensation/unemployment benefits to said medical practitioners; and

**WHEREAS**, County has determined that it is necessary to obtain the services of medical practitioners through the use of a locum tenens contractor on an "as requested" basis for its Health and Human Services Agency; and

**WHEREAS**, LocumTenens.com has represented to County that it is specially trained, experienced, expert and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, Agreement for Services #162-S1511 with LocumTenens.com for Medical Practitioner services will automatically terminate upon final execution by both parties of Agreement for Services #2082 ; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

#### **ARTICLE I**

**Scope of Services:** The intent of this Agreement is to provide the County's Health and Human Services Agency (HHS) with qualified locum tenens medical practitioner(s) (Medical Practitioner) for the purpose of meeting the medical staffing needs of its various divisions, programs, and clients.

A. Contractor shall:

1. Agree that County shall retain patient revenue generated by any Medical Practitioner(s) accepted by HHS under this Agreement.
2. Use best efforts to source, screen, and present to HHS acceptable Medical Practitioner candidates that meet the requirements provided by the requesting HHS unit.
3. Provide to HHS, upon written acceptance of a candidate(s) by HHS:
  - a. A written confirmation of "assignment" to include, at minimum, Medical Practitioner's name, specialty, and other information specific to the assignment.
  - b. Appropriate documentation of Medical Practitioner(s) licensure and credentials as requested or required by HHS including any and all malpractice or other derogatory professional actions taken against the Medical Practitioner in the past.
4. Reimburse Medical Practitioner(s) directly for services provided to HHS.
5. Pay for professional liability (i.e. malpractice) insurance with a limit of liability of not less than \$1,000,000 per occurrence for each Medical Practitioner(s) provided under this Agreement with the County. This insurance shall be in excess of any professional liability insurance maintained by Medical Practitioner(s) or County and shall be considered primary coverage.
6. Provide documentation from Medical Practitioner's insurance brokers indicating that Medical Practitioner(s) personally meets all insurance requirements specified in the Article herein titled "Insurance," with the exception of professional liability coverage, which shall be provided by Contractor.

7. Require that Medical Practitioners have all appropriate California State licensure, credentialing, and HIPAA training. If Medical Practitioner's appropriate California State licensure or credentialing expires or deems them ineligible as a Medical Practitioner, including being listed on the Medi-Cal Exclusion List, the practitioner must immediately cease providing all services for which such license is required and notify the County, and County will not pay for services provided during the time they remain ineligible. Contractor shall also provide proof of pre-employment screening to County, including a Live Scan and criminal background check for each Medical Practitioner.
8. Agree to maintain documentation on all personnel provided by Contractor in a file until the expiration of four (4) years after the date on which such services were furnished under this Agreement.
9. Coordinate with County to provide Contractor-supplied personnel with an orientation to the County facility in a prompt manner and prior to the engagement of a Medical Practitioner. Contractor shall require Medical Practitioners to review instructions regarding confidentiality (including patient and employee), as well as any of the facility's specific policies and procedures provided to Contractor for such purpose.
10. When applicable, agree that in accordance with Section 952 of the Omnibus Budget Reconciliation Act of 1980, its contracts, books, documents, and records shall be made available to the Comptroller General of the United States, the United States Department of Health and Human Services and their duly authorized representative within seventy-two (72) hours of such request until the expiration of four (4) years after the date on which such services were furnished under this Agreement.
11. Agree that in addition to the medical services provided, the Medical Practitioner will be required to participate in any legal proceedings, including but not limited to, preparing for, attending, and testifying in any court proceeding, arbitration, deposition, or administrative hearings in relation to the services provided by the Medical Practitioner under this Agreement.
12. Agree that if the Medical Practitioner's documentation on the medical services provided does not meet Medi-Cal standards, or the standards required by other funding sources to which the services were billed, the amount of any disallowances (whether identified through County, State or Federal audits) will be properly documented and subject to good faith negotiation between the parties regarding potential recoupment from Contractor.
13. Contractor Disclaimer:
  - a. Neither Contractor nor its direct employees are engaged in the practice of medicine.
  - b. Contractor is not licensed to practice medicine.
  - c. Contractor acts only as a placement agency.
  - d. Each Medical Practitioner independently determines the assignments he/she is willing to accept and the rate at which he/she shall be paid for each assignment. Medical practitioners cannot be directed by Contractor to accept assignments.
  - e. Each Medical Practitioner has the right to terminate his/her relationship with Contractor at any time.
  - f. Contractor does not have the right to terminate any assignment that any Medical Practitioner chooses to accept with the County.
  - g. All payments made by Contractor to each Medical Practitioner are made on behalf of the County for services rendered by said Medical Practitioner.

- h. The relationship of each Medical Practitioner to Contractor is that of an independent contractor. Further:
- i. Because Medical Practitioners are independent contractors, they are not employees of Contractor and shall not be, for any purpose, treated as employees or agents of Contractor. Therefore:
  - i. Contractor shall not provide health insurance, workers compensation, or unemployment benefits for any Medical Practitioner; and
  - ii. Contractor shall not make or withhold tax payments for Federal or State entities unless otherwise required by law; and
  - iii. Each Medical Practitioner is individually responsible for and shall pay all Federal, State, and local income or self-employment taxes due on payments received as a result of their assignment(s).
- j. Contractor does not direct any Medical Practitioner's services in any manner including the time, place, type of professional service, working conditions,
- k. Contractor shall not in any way attempt to influence or direct any Medical Practitioner's professional medical judgment or any Medical Practitioner's relationship with County or patients.
- l. Contractor shall have no control as to the means or quality of medical services furnished by any Medical Practitioner nor shall Contractor have any right or responsibility for making any determination regarding Medical Practitioner's service assignments, schedule, or practice.
- m. Contractor shall have no liability for any injury or loss to any party relating to or in any way arising out of any Medical Practitioner's services at or on behalf of the County, unless such loss or injury is due to Contractor's negligence.
- n. Notwithstanding the above, Contractor warrants that its Medical Practitioners placed with the County are knowledgeable regarding the minimum documentation requirements for Medi-Cal Specialty Mental Health Services and scope of practice area.

B. County shall:

1. Use its best efforts to request personnel at least twenty-four (24) hours prior to required reporting time in order to assure prompt arrival of Contractor-assigned personnel. County shall provide all information regarding reporting time and assignment at the time of the initial call.
2. Notify Contractor within five (5) County business days following presentation of a Medical Practitioner if he/she is already known to County.
3. Be prohibited from directly contracting with any Medical Practitioner whose credentials are referred by Contractor for a period of one (1) year (12 months) from the date of initial referral by Contractor. For any Medical Practitioner referred by Contractor and previously unknown to County, County agrees to pay a permanent placement fee to Contractor pursuant to the "Permanent Placement Fee" provision contained herein this Agreement under the Article titled "Compensation for Services," if County enters into a committed, direct relationship (such as placement into a permanent position with County or through a direct contract with another agency rather than through Contractor) with said Medical Practitioner while he or she is on active assignment or during the one year period following the later of introduction date or last day of active assignment.
4. Notwithstanding the foregoing, and if so desired, County may enter into an "expectation of services" agreement separately with Medical Practitioner assigned by

Contractor for the sole purpose of more clearly defining the expectations of and Medical Practitioner's relationship with County during their tenure under the terms of this Agreement.

5. Provide each Medical Practitioner under assignment with the equipment, supplies, hospital privileges, credentialing, support staff, and environment necessary to perform their services.
  6. Promptly provide Contractor with a written report of any incident that may lead to a malpractice claim or disciplinary action taken against an assigned Medical Practitioner.
  7. May require the individual to leave the premises and shall notify Contractor in writing, if County concludes, in its sole discretion, that any personnel provided by Contractor have engaged in misconduct, or have been negligent, providing in reasonable detail the reasons(s) for such dismissal. County's obligation to compensate Contractor for such individual's services shall be limited to all services satisfactorily rendered. Contractor shall not reassign the individual to the facility without prior approval of the County.
  8. May request the dismissal of any Contractor personnel for any reason. County agrees to notify Contractor of any such action immediately in writing, providing in reasonable detail the reasons for such dismissal. County shall be obligated to compensate Contractor personnel for all services satisfactorily rendered.
  9. County shall document and develop an incident report of any injury, illness, or ailment experienced by Contractor's personnel, in all instances where County supervises personnel at the facility workplace, in accordance with applicable Federal, State and local laws, rules and regulations.
  10. Retain full authority and responsibility for professional and medical management of care for each of its patients and for ensuring that services provided by Contractor personnel under this Agreement are furnished in a safe and effective manner and in accordance with applicable standards.
  11. Compensate Contractor according to the rates and provisions stated in the Article herein titled "Compensation for Services."
- C. Contractor and County mutually agree that neither Contractor nor County shall discriminate based on age, race, color, national origin, religion, sex, disability, being a qualified disabled veteran, being a qualified veteran of the Vietnam era, or any other category protected by law.

**ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both parties hereto and shall continue through August 31, 2021, unless terminated earlier pursuant to the provisions contained herein this Agreement under the Article(s) titled "Default, Termination, and Cancellation" or "Fiscal Considerations."

**ARTICLE III**

**Compensation for Services:** For the purpose of this Agreement, the following definitions shall apply to this contract:

Term	Definition
Hourly Rate	Rate of hourly compensation agreed upon in writing, by Contractor and HHSA, for a Medical Practitioner for the first forty (40) hours worked in a pay week.

<b>Term</b>	<b>Definition</b>
Hourly Rate	Rate of hourly compensation agreed upon in writing, by Contractor and HHSA, for a Medical Practitioner for the first forty (40) hours worked in a pay week.
On-call (Off site)	Available to be contacted in order to provide a professional service if necessary, but not formally on duty.
Overtime	Hours worked in a pay week in excess of forty (40) hours.
Overtime Hourly Rate	Rate of hourly compensation agreed upon in writing, by Contractor and HHSA, for a Medical Practitioner, in excess of forty (40) hours worked in a pay week.
Pay week	Monday through Sunday (7 days) as determined by Contractor.
Prior Authorization	Authorization to work in excess of scheduled work hours, on any given day, approved by the HHSA Mental Health Medical Director, or designee.

The following rates and schedules are effective upon final execution of this Agreement for Services #2082. Hourly Rates for each Medical Practitioner shall be agreed upon, in writing, by Contractor and HHSA.

A. On-Site Services

	Minimum Rate/Hour	Maximum Rate/Hour
Hourly Rate	\$220.00	\$260.00
Overtime Hourly Rate	\$330.00	\$390.00

Weekend Scheduled Hours (Saturday and Sunday) - Times may vary.

Saturday	Minimum of 2 hours* up to a Maximum of 4 hours**
Sunday	Minimum of 2 hours* up to a Maximum of 4 hours**

\* Medical Practitioner is guaranteed to be compensated a minimum of two hours (2) for each weekend day for physical presence at the facility, subject to Hourly/Overtime definitions.

\*\*Prior authorization is required for hours above the Maximum allowable of 4 hours per weekend day. Weekend hours are paid at the approved hourly rate subject to Hourly/Overtime definitions. (Up to 40 hours/week) and/or overtime (in excess of 40 hours/week)

B. Off-Site Services

Monday 8 a.m.-Tuesday 8 a.m.	\$ 225/day
Tuesday 8 a.m. to Wednesday 8 a.m.	\$ 225/day
Wednesday 8 a.m. to Thursday 8 a.m.	\$ 225/day
Thursday 8 a.m. Friday 8 a.m.	\$ 225/day
Friday 8 a.m. to Saturday 8 a.m.	\$ 225/day
Saturday 8 a.m. to Sunday 8 a.m.	\$600/day
Sunday 8 a.m. to Monday 8 a.m.	\$600/day

Contractor shall submit monthly invoices no later than thirty (30) days following the end of a “service month” except in those instances where Contractor obtains written approval from County Health and Human Services Agency Director or Director’s designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a “service month” shall be defined as a calendar month during which Contractor provides services in accordance with the Article herein titled “Scope of Services.”

For satisfactory services provided herein, County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County’s receipt and approval of itemized invoice(s) identifying services rendered. County shall not pay for any services that have not been pre-approved in writing by HHSA as described above. Contractor shall ensure that only billing information is included on the invoice. Invoices with “white-out” types of corrections shall not be accepted.

Contractor is strongly advised to submit monthly invoices to HHSA no later than thirty (30) days following the end of a “service month.” Failure to submit invoices by the 30<sup>th</sup> of the month following the end of a service month or failure for Contractor to have original signatures on invoices shall result in a significant delay in reimbursement. Receipt by HHSA of invoices submitted by Contractor for payment shall not be deemed evidence of allowable costs under this Agreement. Upon request by County, Contractor may be required to submit additional or new information, which may delay reimbursement.

Invoices to County and remittances to Contractor shall be sent as follows:

Mail invoices to:	Mail remittance to:
County of El Dorado Health and Human Services Agency 3057 Briw Road, Suite B Placerville, CA 95667 Attn: Fiscal Unit	LocumTenens.com 2655 Northwinds Parkway Alpharetta, GA 30009 Attn: Accounting Department

A. Permanent Placement Fee:

1. In consideration for each medical practitioner placed permanently with County as defined in this Agreement, County agrees to pay Contractor a placement fee in an amount agreed to in writing by both parties. In no event shall said fee exceed the dollar value of "four times weekly pay" hereby defined as: (i) the most current hourly rate paid to Contractor for the medical practitioner in question, multiplied by (ii) the number of regularly scheduled weekly hours as defined in the most current written "assignment" confirmation for the medical practitioner in question, multiplied by (iii) the number four (4).
2. County shall pay the agreed upon placement fee according to the following schedule and conditions, and subject to conditions stated in following item 3.
  - a. Installment #1 = 50% of fee due upon effective date of permanent placement, and
  - b. Installment #2 = 25% of fee due 45 days following permanent placement, and
  - c. Installment #3 = 25% of fee due 90 days following permanent placement.



- B. Installments #2 and #3 are due and payable to Contractor only if the medical practitioner in question has not separated from his/her employee status with the County, has not terminated his/her Contractor status with the County, or has not provided notice of separation or termination of contract prior to the day that a respective installment is due. Provided, however, that if such separation from employee status is without cause or such termination of contractor status is without cause, County shall owe the full amount of each installment payment.

#### **ARTICLE IV**

**Maximum Obligation:** The maximum contractual obligation under this Agreement shall not exceed \$750,000 for all of the stated services and during the term of the Agreement. In no event shall County be obligated to pay Contractor for any amount above the total maximum obligation of this Agreement for Services.

#### **ARTICLE V**

##### **Employment Status:**

- A. Contractor, and all Medical Practitioners furnished to County by Contractor pursuant to this Agreement, shall, during the entire term of this Agreement, be construed to be independent contractors and nothing in this Agreement is intended nor shall be construed to create an employer-employee relationship, a joint venture relationship with County nor shall it be construed to allow County to exercise discretion or control over the professional manner in which Contractor and Medical Practitioners perform the services required hereunder this Agreement except, however, that the services to be furnished by Contractor and Medical Practitioners to County shall be rendered in a manner consistent with the professional standards applicable to such services. The sole interest of County is to insure that services provided under this Agreement shall be rendered and performed in a competent, efficient, and satisfactory manner.
- B. Contractor and Medical Practitioner shall be fully responsible for payment of all respective taxes and required deductions, if any, due to the State of California or the Federal government, which would be withheld from their respective compensation if Contractor or any Medical Practitioner were County employees.
- C. Neither Contractor nor Medical Practitioner shall be eligible for any benefits provided by County on behalf of its direct employees, including but not limited to professional dues, health, or life insurance.
- D. County shall not be liable for any deductions in any amount for any purpose from Contractor's compensation or any compensation that may be paid to any Medical Practitioners furnished under this Agreement, including but not limited to deductions for Social Security, Federal, State taxes, workers' compensation, unemployment, or health insurance premiums.

#### **ARTICLE VI**

**Mandated Reporter Requirements:** Contractor acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as The Child Abuse and Neglect Reporting Act.



## ARTICLE VII

**Monitoring for Compliance:** County shall monitor the Contractor's operations for compliance with the provisions of this Agreement as well as applicable Federal and State laws and regulations. When monitoring activities identify areas of non-compliance, County shall issue reports to the Contractor detailing findings, recommendations, and corrective action. Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to California Code Regulations., Title 9, Sections 1810.380 and 1810.385

## ARTICLE VIII

**HIPAA Compliance:** As a condition of Contractor performing services for the County of El Dorado, Contractor shall execute that Business Associate Agreement which is attached hereto as Exhibit A, which is incorporated herein for all intents and purposes.

## ARTICLE IX

**Debarment and Suspension Certification:** By signing this Agreement, the Contractor agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to Title 45 Code of Federal Regulations (CFR) 76.

By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- B. Have not within a three (3) year period preceding this application/proposal/Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph B herein;
- D. Have not within a three (3) year period preceding this application/proposal/Agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier covered transaction with a person who is proposed for debarment under Federal regulations (i.e., 48 CFR part 9, subpart 9.400), debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
- F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to County.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549 (1986) as amended by Federal Executive Order 12689 (1989).

If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, County may terminate this Agreement for cause or default.

#### **ARTICLE X**

**Taxes:** Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

#### **ARTICLE XI**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

#### **ARTICLE XII**

**Contractor to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

#### **ARTICLE XIII**

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

#### **ARTICLE XIV**

**Independent Contractor/Liability:** Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional and skillful manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

## **ARTICLE XV**

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

## **ARTICLE XVI**

**Audit by California State Auditor:** Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code §8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

## **ARTICLE XVII**

### **Default, Termination, and Cancellation:**

- A. Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so

elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

#### **ARTICLE XVIII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
Health and Human Services Agency  
3057 Briw Road, Suite B  
Placerville, CA 95667  
ATTN: Contracts Unit

Or to such other location as the County directs.

With a carbon copy to:

COUNTY OF EL DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
330 Fair Lane  
Placerville, CA 95667  
ATTN: Purchasing Agent

Notices to Contractor shall be addressed as follows:

LOCUMTENENS.COM  
2655 Northwinds Parkway  
Alpharetta, GA 30009  
ATTN: Kevin Thill, Vice President, or successor

Or to such other location as the Contractor directs.

#### **ARTICLE XIX**

**Change of Address:** In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties." Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XX**

**Indemnity:** The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XXI**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing

professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.

- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
  - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
  - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE XXII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XXIII**

**Interest of Contractor:** Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

#### **ARTICLE XXIV**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation."

#### **ARTICLE XXV**

##### **Nondiscrimination:**

- A. County may require Contractor's services on projects involving funding from various state and/or federal agencies, and as a consequence, Contractor shall comply with all applicable



nondiscrimination statutes and regulations during the performance of this Agreement including but not limited to the following: Contractor and its employees and representatives shall not unlawfully discriminate against any employee or applicant for employment because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age, or sex; Contractor shall, unless exempt, comply with the applicable provisions of the Fair Employment and Housing Act (Government Code, Sections 12900 et seq.) and applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Sections 7285.0 et seq.); the applicable regulations of the Fair Employment and Housing Commission implementing Government Code, Section 12990, set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations incorporated into this Agreement by reference and made a part hereof as if set forth in full; and Title VI of the Civil Rights Act of 1964, as amended. Contractor and its employees and representatives shall give written notice of their obligations under this clause as required by law.

- B. Where applicable, Contractor shall include these nondiscrimination and compliance provisions in any of its agreements that affect or are related to the services performed herein.
- C. Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to Government Code Section 12990 and Title 2, California Code of Regulations, Section 8103.

#### **ARTICLE XXVI**

**California Residency (Form 590):** If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XXVII**

**Nonresident Withholding:** If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

#### **ARTICLE XXVIII**

**Taxpayer Identification Number (Form W-9):** All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

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**ARTICLE XXIX**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

**ARTICLE XXX**

**Licenses:** Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

**ARTICLE XXXI**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Jamie Samboceti, Deputy Director, Behavioral Health Division, or successor.

**ARTICLE XXXII**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XXXIII**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXXIV**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**ARTICLE XXXV**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

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**ARTICLE XXXVI**


**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement for Services #2082 between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By:   
\_\_\_\_\_  
Jamie Samboceti, Deputy Director  
Behavioral Health Division  
Health and Human Services Agency

Dated: 4/25/18

**Requesting Department Head Concurrence:**

By:   
\_\_\_\_\_  
Patricia Charles-Heathers, Ph.D., M.P.A.  
Director  
Health and Human Services Agency

Dated: 4/24/18

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Services #2082 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 6/5/18  
By: [Signature]  
Michael Ranalli, Chair  
Board of Supervisors, "County"

ATTEST:  
James S. Mitrisin  
Clerk of the Board of Supervisors

By: [Signature] Dated: 6/5/18  
Deputy Clerk

-- CONTRACTOR --

LOCUMTENENS.COM  
A GEORGIA LIMITED LIABILITY COMPANY

By: [Signature] Dated: 5/2/18  
Name: Kevin Thill  
Title: Executive Vice President  
"Contractor"

By: [Signature] Dated: 5/2/18  
Name: Douglas B. Kline  
Title: CFO

**Exhibit A**  
**HIPAA Business Associate Agreement**

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

**RECITALS**

**WHEREAS**, County and Contractor (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. Definitions. Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI
- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
    - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - (2) Disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
    - (3) Disclose PHI as necessary for BA's operations only if:
      - (a) Prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - (i) To hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
        - (ii) The third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
    - (4) Aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
    - (5) Not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
    - (6) De-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
    - (7) BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies, procedures, and documentation requirements of the HIPAA Security Rule.

- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI 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 the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from 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 BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI 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.



- (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
  - D. Make available to the County, or to the Secretary of Health and Human Services (the “Secretary”) , BA’s internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA’s compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.
5. Obligations of County.
- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA’s ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA’s ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA’s use of disclosure of PHI.
  - D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
  - E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.
6. Term and Termination.
- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
  - B. Termination for Cause. Upon the County’s knowledge of a material breach by the BA, the County shall either:
    - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
    - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
    - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

- C. Effect of Termination.
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.