

**AGREEMENT FOR SERVICES 4330
AMENDMENT I**

Operation of County of El Dorado Psychiatric Health Facility

This Amendment I to that Agreement for Services #4330 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 Telecare Corporation, Inc., A California corporation duly qualified to conduct business in the State of California, whose principal place of business is 1080 Marina Village Parkway, Alameda CA 94501 (hereinafter referred to as “Contractor”), and whose Agent for Service of Process is Marshall Langfeld, 1080 Marina Village Parkway, Alameda, CA 94501;

RECITALS

WHEREAS, Contractor has been engaged by County to operate the El Dorado County Psychiatric Health Facility (PHF) in accordance with Agreement for Services #4330, dated December 17, 2019, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to language revisions related to the Cost Report , hereby amending **Article III, titled “Compensation and Maximum Obligation”**, with no change to the Maximum contractual Obligation; and

WHEREAS, the parties hereto have mutually agreed to additional language being added to the “HIPAA BAA”, hereby amending **Article IV, “Contract Requirements,”** and replacing **Exhibit F**, marked HIPAA Business Associate Agreement with **Exhibit F Amendment 1, “HIPAA Business Associate Agreement;”** and

WHEREAS, the parties hereto have mutually agreed to update the following Articles: **Article V, “Notice to Parties,” Article VI, “Administrator,” Article XV, “Contractor to County, Article XIX, “Waivers,” and Article XXIV, “Independent Contractor/Liability;”** and

WHEREAS, the parties hereto have mutually agreed to add **Article XXXVI, “Force Majeure;”** and

WHEREAS, unless otherwise specified herein, the following terms and conditions shall be effective upon final execution of this Amendment 1 to that Agreement #4330.

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NOW THEREFORE, the parties do hereby agree that Agreement for Services #4330 shall be amended a First time as follows:

- 1) **Article III “Compensation and Maximum Obligation” shall be amended in its entirety to read as follows:**

ARTICLE III

Compensation and Maximum Obligation:

A. Operations Costs: The Base Compensation for Psychiatric Health Facilities operations shall be adjusted on July 1 of each fiscal year, by a two percent (2.0%) increase. For purposes of this Agreement, a fiscal year shall be defined as July 1 to June 30. Compensation shall be paid as follows:

Base Compensation for the Psychiatric Health Facility Operations	Maximum Obligation
January 1, 2020 through June 30, 2020 (This is the remaining amount based on \$2,391,553 paid on prior contract.)	\$2,344,375
Fiscal Year 2020/21	\$4,830,647
Fiscal Year 2021/22	\$4,927,259
Fiscal Year 2022/23	\$5,025,805
Fiscal Year 2023/24	\$5,126,321
Fiscal Year 2024/25	\$5,228,847
July 1, 2025 through December 31, 2025	\$2,666,712
Maximum Contractual Obligation:	\$30,149,966

- B. Invoices / Payment: Operations Costs shall be invoiced and paid as outlined herein below:
1. County shall pay Contractor for the Base Compensation on a monthly basis in increments of one-twelfth (1/12) of the total twelve (12) month Base Compensation as adjusted for each respective fiscal year or as subsequently amended.
 2. It is a requirement of this Agreement that Contractor shall submit an original invoice, similar in content and format with the following sample available at: https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx. Itemized invoices shall follow the format specified by County and shall reference this Agreement number on their faces and on any enclosures or backup documentation. Copies of documentation attached to invoices shall reflect Contractor’s charges for the specific services billed on those invoices.

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Invoices shall be sent as follows, or as otherwise directed in writing by County:

INVOICE ADDRESS:	REMITTANCE ADDRESS:
County of El Dorado Health and Human Services Agency Attn: Finance Unit 3057 Briw Road, Suite B Placerville, CA 95667-5321 bhinvoice@edcgov.us	Telecare Corporation, Inc. 1080 Marina Village Parkway Alameda, CA 94501 Accounts Receivable

3. For services provided herein, including any deliverables that may be identified herein, Contractor shall submit invoices for services thirty (30) days following the end of a “service month.” For billing purposes, a “service month” shall be defined as a calendar month during which Contractor provides services in accordance with Article I, “Scope of Agreement.” For all 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, except as indicated in section D. below. County may withhold or delay any payment if Contractor fails to comply with any provision of this Agreement.

a. Supplemental Invoices: For the purpose of this Agreement, supplemental invoices shall be defined as invoices submitted for additional services rendered during a month for which a prior invoice has already been submitted to County. Supplemental invoices should include the standard invoice format with description of services rendered and a detailed explanation why the invoice was not submitted in the approved timeframe.

i. For those situations where a service is disallowed by HHSa on an invoice, or inadvertently not submitted on an invoice, and a corrected invoice is later submitted ("Supplemental Invoice"), Supplemental Invoices for services provided during the period July 1st through June 30th for each fiscal year of this Agreement and received by HHSa after July 31 of the subsequent fiscal year, shall be neither accepted nor paid by the County. Requests for exceptions to pay an invoice received after July 31 of the subsequent year, must be submitted in writing and must be approved by HHSa's Chief Fiscal Officer

C. Patient Charges and Third Party Billing: In the event any billed services that are identified through a County, State, or federal audit as subject to recoupment, or otherwise disallowed, the County may recover from Contractor the amount subject to recoupment and/or disallowed. Reimbursement from Contractor to County shall be remitted to County no later than six (6) months following the notification of recoupment and/or disallowance. Upon written approval by the HHSa Director, this reimbursement may be made via monthly installment payments for up to six (6) months.

D. Cost Report: The Cost Report template is distributed by the State. Contractor shall submit an annual Cost Report to County within 30 days of distribution of the Cost Report template by the State or by September 30 following the fiscal period in which the costs were incurred, whichever is later. A fiscal period shall be defined as July 1 through June 30 (Fiscal Year). Contractor shall prepare the Cost Report in accordance with all federal, State, and County requirements, following Generally Accepted Accounting Principles, as well as with the State Department of Health Care Services Cost and Financial Reporting System Local Program

Financial Support Instruction Manual, incorporated by reference as if fully set forth herein. Contractor shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice. Contractor shall maintain source documentation of costs and allocations, and said documentation shall be available at any time to County upon reasonable notice.

It is agreed between County and Contractor that the provisional base compensation stated in this Agreement is intended to approximate the Contractor's actual costs. Should the actual costs as determined in the Cost Report for the fiscal period be less than the provisional costs, Contractor agrees to reimburse County for all amounts paid in excess of the actual rate. Contractor may not reduce the invoice amounts to cover the amount of the reimbursement owed to the County but shall remit reimbursement to the County no later than 30 days following the final submission of the cost report to the Contractor. Costs will be settled to the lesser of actual and allowable costs, and not exceeding the maximum amount of this Agreement.

If Contractor fails to submit an accurate and complete Cost Report as indicated above in section D., the County shall withhold payments to Contractor under this Agreement beginning February following the fiscal period in which the costs were incurred and until Contractor submits an accurate and complete Cost Report.

- E. Cost Settlement: Contractor will reimburse County, as indicated in the County/State Final Cost Settlement. Settlement shall not exceed Contractor's actual direct and indirect costs, of which indirect costs may include operating income, nor shall costs exceed the Base Compensation for the Fiscal Year in which the costs were incurred. Reimbursement shall be processed thirty (30) days after the State issues its report. County shall notify Contractor of the issuance of the State's report.

2) Paragraph E of Article IV, titled "Contract Requirements," shall be amended in its entirety to read as follows:

ARTICLE IV

Contract Requirements:

- E. HIPAA Compliance: By signing this Agreement, Contractor agrees to comply with Exhibit F-Amendment 1, "Business Associate Agreement", attached hereto and incorporated by reference herein.

3) Exhibit F "HIPAA Business Associate Agreement" shall be replaced in its entirety by Exhibit F – Amendment 1 "HIPAA Business Associate Agreement," attached.

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4) Article V, titled “Notice to Parties: shall be amended in its entirety to read as follows:

ARTICLE V

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
HHSA-Contracts@edcgov.us

or to such other location as the County directs.

with a copy to

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

Or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

TELECARE CORPORATION, INC.
1080 Marina Village Parkway
Alameda, CA 94501
ATTN: Chief Financial Officer, or successor

Or to such other location as the Contractor directs.

5) Article VI, titled “Administrator” shall be amended in its entirety to read as follows:

ARTICLE VI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Nicole Ebrahimi-Nuyken LMFT, Director of Behavioral Health, or successor.

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6) Article XV, titled “Contractor to County” shall be amended in its entirety to read as follows:

ARTICLE XV

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 understood that this Agreement does not create an exclusive relationship between County and Contractor, and Contractor may perform similar work or services for others. However, Contractor shall not enter into any agreement with any other party, or provide any information in any manner to any other party, that would conflict with Contractor’s responsibilities or hinder Contractor’s performance of services hereunder, unless County’s Contract Administrator, in writing, authorizes that agreement or sharing of information.

7) Article XIX, titled “Waivers” shall be amended in its entirety to read as follows:

ARTICLE XIX

Waiver: No failure on the part of the parties to exercise any rights under this Agreement, and no course of dealing with respect to any right hereunder, shall operate as a waiver of that right, nor shall any single or partial exercise of any right preclude the exercise of any other right. The remedies herein provided are cumulative and are not exclusive of any other remedies provided by law.

8) Article XXIV, titled “Independent Contractor/Liability” shall be amended in its entirety to read as follows:

ARTICLE XXIV

Independent Contractor: The parties intend that an independent contractor relationship will be created by this contract. 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 the terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, agents, affiliates, and subcontractors, if any are authorized herein, as they relate to the services or work to be performed under this Agreement during the course and scope of their employment by Contractor. Those persons will be entirely and exclusively under the direction, supervision, and control of Contractor.

County may designate the tasks to be performed and the results to be accomplished under this Agreement, provide information concerning the work or services, approve or disapprove the final work product and/or services provided, and set deadlines for the completion of the work or services, but County will not control or direct the manner, means, methods, or sequence in which Contractor performs the work or services for accomplishing the results.

Contractor, including any subcontractor or employees of Contractor, shall not receive, nor be eligible for, any benefits County provides for its employees, including, but not limited to, vacation pay, paid holidays, life insurance, health insurance, social security, disability insurance, pension, or 457 plans. Contractor shall not receive, nor be eligible for, workers' compensation, including medical and indemnity payments. County is not responsible for withholding, and shall not withhold, Federal Income Contribution Act amounts or taxes of any kind from any payments which it owes Contractor. Contractor shall not be subject to the work schedules or vacation periods that apply to County employees.

Contractor shall be solely responsible for paying its employees, and for withholding Federal Income Contribution Act amounts and other taxes, workers' compensation, unemployment compensation, medical insurance, life insurance, or any other benefit that Contractor provides for its employees.

Contractor acknowledges that it has no authority to bind the County or incur any obligations on behalf of the County with regard to any matter, and shall not make any agreements or representations on the County's behalf.

9) Article XXXVI, titled "Force Majeure" shall be added to read as follows:

ARTICLE XXXVI


Force Majeure: Neither party will be liable for any delay, failure to perform, or omission under this Agreement that is due to any cause that it is beyond its control, not due to its own negligence, and cannot be overcome by the exercise of due diligence. In that event, the affected party will:

1. Promptly give written notice to the other of the fact that it is unable to so perform and the cause(s) that is beyond its control; and
2. Once the cause(s) has ceased, provide written notice to the other party and immediately resume its performance under this Agreement.

For purposes of this Article, "cause that is beyond its control" includes labor disturbances, riots, fires, earthquakes, floods, storms, lightning, epidemics, war, disorders, hostilities, expropriation or confiscation of properties, failure of and delays by carriers, interference by civil or military authorities, whether legal or de facto, and whether purporting to act under some constitution, decree, or law, or otherwise, or acts of God.


Except as herein amended, all other parts and sections of that Agreement #4330 shall remain unchanged and in full force and effect.

Requesting Contract Administrator Concurrence:

By: 
Nicole Ebrahimi-Nuyken (Feb 7, 2022 15:52 PST)
Nicole Ebrahimi-Nuyken LMFT, Director
Behavioral Health Division

Dated: 02/07/2022

Requesting Department Head Concurrence:

By: 
Don Semon (Feb 4, 2022 11:08 PST)
Don Semon, Director
Health and Human Services Agency

Dated: 2/4/22

IN WITNESS WHEREOF, the parties hereto have executed this First Amendment to Agreement #4330 on the dates indicated below.

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MW

-- COUNTY OF EL DORADO --

By: Laura Schwartz Dated: 03/07/2022
Laura Schwartz (Mar 7, 2022 10:50 PST)
Purchasing Agent
Chief Administrative Office
"County"

- - CONTRACTOR - -

TELECARE CORPORATION, INC.

By: Anita D Barnas Dated: 02/14/2022
Anita D Barnas (Feb 14, 2022 11:10 CST)
Anita Barnas, SVP
Chief Program Operations Officer
"Contractor"

By: Leslie J Davis Dated: 02/23/22
Leslie J Davis (Feb 23, 2022 14:16 PST)
Leslie Davis
Senior Vice President and Chief Financial Officer
"Contractor"

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Exhibit F Amendment 1

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:

- I. 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.
- II. 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:
 - (1) 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,
 - (2) The third party will immediately notify BA of any breaches of confidentiality of PHI to the 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.
 - C. 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.
- III. 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 Title 45 of the Code of Federal Regulations, Part 160 and Part 164, Subparts A and C (the “HIPAA Privacy Rule” and the “HIPAA Security Rule”) in effect or as may be amended, including but not limited to 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.

IV. 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.

V. 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.

VI. 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.

VII. 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.
- VIII. 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.
- IX. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
- X. 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.
- XI. 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.

Approval and Signatures

By: <u>Anita D Barnas</u> <small>Anita D Barnas (Feb 14, 2022 11:10 CST)</small> <hr/> Name "BA Representative"	Dated: <u>02/14/2022</u> <hr/>
By: <u>N. Ebrahimi-Nuyken</u> <small>Nicole Ebrahimi-Nuyken (Feb 7, 2022 15:52 PST)</small> <hr/> Name "HHSA Representative"	Dated: <u>02/07/2022</u> <hr/>