

## AGREEMENT FOR SERVICES #410-S1611

**THIS AGREEMENT** is made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "El Dorado County") and the County of Mono, a political subdivision of the State of California, whose principal place of business is 57 Bryant Street, P.O. Box 596, Bridgeport, CA 93517 (hereinafter referred to as "Mono County"). El Dorado County and Mono County are hereinafter referred to as the "Parties";

### RECITALS

**WHEREAS**, the Board of Supervisors of every county in the State of California must provide and maintain a suitable place for detention and housing of wards of the juvenile court, and of minors alleged to come within that court's jurisdiction, pursuant to *California Welfare and Institutions Code* section 850;

**WHEREAS**, pursuant to Title 15 of the California Code of Regulations, El Dorado County has established Juvenile Detention Facilities designed for the reception and temporary care of minors detained in accordance with the provisions of the *California Welfare and Institutions Code*;

**WHEREAS**, the juvenile hall in Mono County is only a ninety-six (96) hour special purpose juvenile hall;

**WHEREAS**, from time to time there is space available in El Dorado County's Juvenile Detention Facilities for the detention and housing of minors who reside outside of El Dorado County;

**WHEREAS**, *Welfare and Institutions Code* section 872 provides that, where there is no juvenile hall in the county of residence of minors, or when that county's juvenile hall becomes unfit or unsafe for detention of minors, the presiding or sole juvenile court judge may, with the recommendation of the probation officer of the sending county and the consent of the probation officer of the receiving county, by written order filed with the clerk of the court, designate the juvenile hall of any county in the state for the detention of an individual minor for a period not to exceed sixty (60) days;

**WHEREAS**, *Welfare and Institutions Code* section 872 further provides that the county of residence of a minor so transferred shall reimburse the receiving county for costs and liability as agreed upon by the two counties in connection with the order;

**WHEREAS**, Mono County desires to place one or more wards of its juvenile court in El Dorado County's facility to the extent that such accommodation may exist;

**WHEREAS**, the parties to this Agreement, with the concurrence of their respective Chiefs of Probation, wish to enter into an agreement to govern their relationship with respect to such orders as from time to time may be made pursuant to *Welfare and Institutions Code* section 872 by the Superior Court of California, County of Mono (acting as juvenile court), or another court of competent jurisdiction of the State of California, concerning minors residing in Mono County; and

**WHEREAS**, it is the intent of the Parties hereto that the placement of said ward(s) of the juvenile court conform with all applicable federal, state and local laws;

**NOW, THEREFORE**, El Dorado County and Mono County mutually agree as follows:

## **ARTICLE I**

**Scope of Services:** Mono County shall have the right to place juveniles in the Juvenile Detention Facilities of El Dorado County on a space-available basis, subject to acceptance of each juvenile by El Dorado County and to adherence to the terms and conditions set forth herein. The El Dorado County Juvenile Detention Superintendent, or designee, reserves the right to approve wards for acceptance into the facility(ies), and may remove and/or terminate the bed space of a problem ward upon 72 hours' notice to Mono County. El Dorado County agrees that all Mono County wards accepted for placement in El Dorado County's Juvenile Detention Facilities shall receive the same accommodations and services as El Dorado County wards, always in accordance with all applicable federal, state, and local laws and regulations.

Mono County shall provide for the transportation of said juvenile(s) to and from the El Dorado County Juvenile Detention Facility(ies). Mono County shall provide the Chief Probation Officer of El Dorado County, or his or her designee at the time of admission, a completed juvenile referral form, a copy of the Juvenile Wardship Petition, a Detention Order filed with the Clerk of the Court of Mono County (or the clerk of another court of competent jurisdiction), a medical release, and any other documentation/information deemed necessary.

Either Mono County, or the parent(s) or guardian(s) of a ward, must provide any medication prescribed for the ward.

Mono County retains the right to request immediate return of any Mono County ward detained in an El Dorado County Juvenile Detention Facility. In the event of such a request, Mono County may, at its own expense, arrange for transportation of any such ward from the El Dorado County Juvenile Detention Facility, and El Dorado County shall make such ward available for transportation at the earliest practicable time.

## **ARTICLE II**

**Term:** This Agreement shall become effective upon final execution by both Parties hereto, and may be terminated at any time by either Party upon (30) days' written notice to the other.

## **ARTICLE III**

**Compensation for Services:** For services provided herein, Mono County agrees to pay El Dorado County the sum of Ninety Dollars (\$90.00) per calendar day for each ward placed within the Juvenile Detention Facility in a non-reserved bed; and the sum of One Hundred Dollars (\$100.00) per calendar day for each ward ordered to be placed within JTC Challenge Commitment in the Juvenile Detention Facility.

Mono County shall pay monthly in arrears and within thirty (30) days following Mono County's receipt and approval of itemized invoice(s) identifying services rendered in accordance with this Article III.

In addition to the daily contractual amount, Mono County agrees to pay or reimburse El Dorado County, or any other authorized third party, for the rendering of the following services to any ward detained:

Costs of any hospital, medical, dental, and/or surgical care/treatment of any ward outside of those provided by El Dorado County as long as they are authorized by the Chief Probation Officer, or his or her designee, of Mono County; or, in the case of an emergency, by the Superintendent of the El Dorado Juvenile Detention Facility (ies); and

Costs of transportation and maintenance between Mono County and El Dorado Juvenile Detention Facilities.

## **ARTICLE IV**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the Parties hereto. With the exception of changes of address per Article IX, below, said amendments shall become effective only when in writing and fully executed by duly authorized officers of the Parties hereto.

## **ARTICLE V**

**Fiscal Considerations:** For the purposes of this Agreement, the Parties recognize and acknowledge that El Dorado County is a political subdivision of the State of California, and that, 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, El Dorado 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, El Dorado 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, but shall in no event be less than the period specified in Article II. Upon the effective date of such notice, this Agreement shall be automatically terminated and El Dorado County released from any prospective liability hereunder.

In addition to the above, should El Dorado County's Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any El Dorado County department by which services were contracted to be performed under this Agreement, pursuant to this paragraph in the sole discretion of El Dorado County, this Agreement may be deemed to be prospectively terminated in its entirety subject to payment for services performed prior to cancellation and upon notice to Mono County in accordance with Article II.

## **ARTICLE VI**

**Audit by California State Auditor; Access to Records:** The Parties acknowledge 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, the Parties shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the Agreement, all books, records and documentation necessary to demonstrate performance under the Agreement.

In addition, the Parties agree that, for the duration of this Agreement and for a period of three (3) years thereafter, county, state, and federal officials, including authorized representatives of each Party, shall have access to any books, documents, papers, and records of the Parties that are directly pertinent to the subject matter of this Agreement, for the purpose of ensuring each Party's compliance with this Agreement.

## **ARTICLE VII**

**Confidentiality:** The Parties acknowledge that, in connection with the performance of this Agreement, each Party will encounter confidential, privileged, or otherwise protected information pertaining to third parties, including, but not limited to, information pertaining to the detention, care, and medical treatment of juveniles. During the pendency of this Agreement, and after its termination, expiration, or cancellation, the Parties agree to maintain as confidential all such information, to the extent permitted by law.

To the extent that El Dorado County is provided, creates, or has access to Protected Health Information, Personally Identifiable Information, or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), El Dorado County shall adhere to all federal, state, and local laws, rules, and regulations protecting the privacy of such information. El Dorado County shall adhere to all existing and future federal, state, and local laws, rules, and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of Mono County's and third parties' Protected Information provided to, or accessed or created by, El Dorado County.

El Dorado County agrees to notify Mono County immediately of any unauthorized access to or disclosure of Protected Information of which El Dorado County becomes aware.

El Dorado County will be responsible for all costs associated with El Dorado County's breach of the security and privacy of Mono County's or third parties' Protected Information, including, but not limited to, mitigation of the breach, cost to Mono County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, and/or local laws, rules or regulations applicable at the time of the breach.

In addition, El Dorado County agrees that its performance under this Agreement will be subject to compliance with Mono County's HIPAA "Business Associate" agreement, attached hereto as Exhibit "A".

## **ARTICLE VIII**

**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 El Dorado County shall be addressed as follows:

COUNTY OF EL DORADO  
Probation Department  
3974 Durock Road, Suite 205  
Shingle Springs, CA 95682  
ATTN: Chief Probation Officer

or to such other location as the County may hereinafter  
direct, with a carbon copy to

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

Notices to Mono County shall be addressed as follows:

MONO COUNTY PROBATION SERVICES  
PO Box 596  
Bridgeport, CA 93517  
ATTN: Chief Probation Officer

or to such other location as Mono County may hereinafter direct.

## **ARTICLE IX**

**Change of Address:** In the event of a change in address for Mono County's principal place of business, Mono County's Agent for Service of Process, or Notices to Mono County, Mono County shall notify El Dorado 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 El Dorado 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 X**

**Indemnity:** The Parties shall defend, indemnify, and hold one another 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, the Parties' respective 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 performance of this Agreement, regardless of the existence or degree of fault or negligence on the part of a putative indemnitee or its agents or employees, save for the putative indemnitee's sole negligence or willful misconduct. This Article IX shall not include any obligation for either Party to defend or indemnify the other against the other's sole or active negligence; willful or intentional misconduct; or as expressly proscribed by statute. Each Party's duty to indemnify and save the other harmless hereunder includes the duties to defend set forth in California Civil Code Section 2778.

## **ARTICLE XI**

**Independent Contractor:** El Dorado County acknowledges that its employees, as well as any third-party contractors, shall be acting at all times as independent contractors in the performance of services under this Agreement, and not as employees of Mono County. El Dorado County, on behalf of itself and its employees and any and all third parties performing services under this Agreement, specifically disclaims any entitlement to compensation (other than that specifically contemplated in this Agreement for services rendered); employment benefits; eligibility for the California Public Employees Retirement System through Mono County; or any other incidentals of an employment relationship.

## **ARTICLE XII**

**Prison Rape Elimination Act (PREA):** El Dorado County will comply with the Prison Rape Elimination Act of 2003 ("PREA", 42 U.S.C. § 15601 *et seq.*), and with all applicable final regulations issued thereunder, as well as all California Department of Corrections and Rehabilitation, Division of Juvenile Justice ("DJJ") policies and standards related to PREA, including those intended for preventing, detecting, monitoring, investigating, and eradicating any form of sexual abuse within DJJ Facilities/Programs/Offices owned, operated or contracted. The Parties acknowledge that, in addition to "self-monitoring requirements", DJJ may conduct announced or unannounced, compliance monitoring to include "on-site" monitoring. Failure to comply with PREA, including PREA regulations and DJJ standards and policies, may result in termination of the Agreement.

## **ARTICLE XIII**

**Counterparts:** This Agreement may be executed in counterparts.

## **ARTICLE XIV**

**Nonassignment:** Except for the provision of third-party services as contemplated in Article III (such as medical and dental care), the Parties hereto agree that neither of them shall assign its rights nor delegate, subcontract, or otherwise transfer its obligations hereunder without the prior written consent of the other.

## **ARTICLE XV**

**Construction:** Each Party acknowledges that it has participated in the negotiation and drafting of this Agreement, and further agrees that, in the event of an ambiguity or question of intent, this Agreement shall be construed as if drafted jointly by the Parties. There shall be no presumption favoring or disfavoring any Party on the basis of authorship or presumed authorship of any provision in this Agreement. The operation of *Civil Code* section 1654 is expressly waived.

## **ARTICLE XVI**

**Administrator:** The El Dorado County Officer or employee with responsibility for administering this Agreement is Vince Janette, Deputy Chief Probation Officer, Probation Department or successor.

## **ARTICLE XVII**

**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 said Parties to the obligations set forth herein.

## **ARTICLE XVIII**

**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 XIX**

**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 XX**

**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.

## **ARTICLE XXI**

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

**Requesting Contract Administrator Concurrence:**

By:

Dated:

Vince Janette, Deputy Chief Probation Officer or Successor El  
Dorado County Probation Department

**Requesting Department Head Concurrence:**

By:

Dated:

Brian Richart, Chief Probation Officer or successor  
El Dorado County Probation Department

**-- PLACING COUNTY --**

**Requesting Department Head Concurrence:**

By:

Dated:

Karin S. Humiston, Chief Probation Officer or successor  
Mono County Probation Department

**Approved as to Form for Mono County:**

By:

Dated:

Stephen M. Kerns, Deputy County Counsel

By:

Dated:

Margaret White, Risk Manager

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement on the dates indicated below.

**-- COUNTY OF EL DORADO --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chair  
Board of Supervisors  
“County”

ATTEST:

James S. Mitrisin  
Clerk of the Board of Supervisors

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Deputy Clerk

**-- PLACING COUNTY --**

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Chairperson  
Board of Supervisors  
“County of Mono”

ATTEST:

By: \_\_\_\_\_ Dated: \_\_\_\_\_  
Deputy Clerk

## EXHIBIT A

### AGREEMENT BETWEEN COUNTY OF MONO AND COUNTY OF EL DORADO FOR THE PROVISION OF JUVENILE DETENTION AND ASSOCIATED SERVICES

#### HIPAA BUSINESS ASSOCIATE AGREEMENT

This Attachment shall constitute the Business Associate Agreement (the “Agreement”) between the County of El Dorado (the “Business Associate”) and the County of Mono (the “Covered Entity”), and applies to the functions Business Associate will perform on behalf of the Covered Entity (collectively, “Services”), that are identified in the Master Agreement (as defined below).

1. **Purpose.** This Agreement is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to “Protected Health Information” (as defined below) that the Business Associate may create, receive, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity, and that such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH Act”).

2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Agreement are to Title 45 of the Code of Federal Regulations as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in Sections 160.103, 164.304 and 164.501.

(a) **Business Associate.** “Business Associate” shall mean the party identified above as the “Business Associate”.

(b) **Breach.** “Breach” shall have the same meaning as the term “breach” in Section 164.402.

(c) **Covered Entity.** “Covered Entity” shall mean the County of Mono, a hybrid entity, and its designated covered components, which are or may be subject to the Standards for Privacy and Security of Individually Identifiable Health Information set forth in Parts 160 and 164.

(d) **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.

(e) **Electronic Protected Health Information.** “Electronic Protected Health Information” (“EPAH”) is a subset of Protected Health Information and means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.

(f) **Individual.** “Individual” shall have the same meaning as the term “Individual” in Section 160.103 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(g) Master Agreement. “Master Agreement” shall mean the memorandum of understanding between the Business Associate and the Covered Entity regarding the provision of juvenile detention services, captioned “AGREEMENT FOR SERVICES #410-S1611”, the agreement to which this Attachment is attached and of which it is made a part.

(h) Minimum Necessary. “Minimum Necessary” shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at Section 164.514(d)(1): *Standard: Minimum Necessary Requirements*.

(i) Privacy Rule. “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.

(j) Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(k) Required By Law. “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.

(l) Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his/her designee.

(m) Security Incident. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

(n) Security Rule. “Security Rule” shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(o) Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in Section 164.402, limited to the information created or received by Business Associate from or on behalf of Covered Entity.

#### 4. **Compliance with the HIPAA Privacy and Security Rules.**

(a) Business Associate acknowledges that it may be required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504; and Business Associate agrees to comply therewith.

(b) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law.

#### 5. **Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified in Exhibit 1 to this Attachment, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the scope of work set forth in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or

to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

## **6. Appropriate Safeguards.**

(a) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.

(b) To the extent practicable, Business Associate will secure all Protected Health Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.

## **7. Reporting Unauthorized Uses and Disclosures.**

(a) Business Associate agrees to notify Covered Entity of any breach, or security incident involving Unsecured Protected Health Information of which it becomes aware, including any access to, or use or disclosure of Protected Health Information not permitted by this Agreement. Such notification will be made within five (5) business days after discovery and will include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the Protected Health Information involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available information that the Covered Entity is required to include in its notification to the Individual under Section 164.404(c) at the time of the initial report or promptly thereafter as the information becomes available.

(b) In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.

(c) A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other

than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.

(d) In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

**8. Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Unsecured Protected Health Information.**

(a) Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Unsecured Protected Health Information by Business Associate or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Unsecured Protected Health Information, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.

(c) Except as required by law, Business Associate agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Unsecured Protected Health Information without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

**9. Indemnification.**

(a) Business Associate agrees to hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 8, above.

(b) Business Associate agrees to assume responsibility for any and all costs associated with the Covered Entity's notification of Individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.

(c) Business Associate agrees to hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party

shall survive the expiration or termination of this Agreement.

**10. Individuals' Rights.**

(a) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual, or a person or entity designated by the Individual in order to meet the requirements under Section 164.524 and HITECH Act Section 13405(e)(1).

(b) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity.

(c) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(d) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 10(c) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(e) Business Associate agrees to comply with any restriction to the use or disclosure of Protected Health Information that Covered Entity agrees to in accordance with Section 164.522.

**11. Obligations of Covered Entity.**

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

**12. Agents and Subcontractors of Business Associate.**

(a) Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of Protected Health Information of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.

(b) Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements

and shall mitigate the effects of any such violation.

**13. Audit, Inspection, and Enforcement.**

(a) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.

(b) With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Protected Health Information to determine compliance with the terms of this Agreement. Business Associate shall promptly correct any violation of this Agreement found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement.

**14. Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**15. Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by Business Associate under the Master Agreement and for so long as Business Associate remains in possession of any Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all Protected Health Information.

(b) Upon termination of the Master Agreement, Business Associate shall recover any Protected Health Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such Protected Health Information, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the Protected Health Information, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the Protected Health Information, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Protected Health Information for so long as Business Associate maintains such Protected Health Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Protected Health Information infeasible.

(c) Covered entity may immediately terminate the Master Agreement if it determines that Business Associate has violated a material term of this Agreement.

16. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Privacy and Security Rules and the HITECH Act.

17. **Entire Agreement.** This Attachment constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

18. **Notices.**

(a) All notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this paragraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier.

(b) Any mailed notice, demand, request, consent, approval or communication that Covered Entity desires to give to Business Associate shall be addressed to Business Associate at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that Business Associate desires to give to Covered Entity shall be addressed to Covered Entity at the following address:

Mono County Privacy Officer  
Office of County Counsel  
P.O. Box 2415  
Mammoth Lakes, CA 93546

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

19. **Lost Revenues; Penalties/Fines.**

(a) Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.

(b) Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

(c) Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

## **HIPAA BUSINESS ASSOCIATE PROVISIONS**

As provided in Paragraph 5 of Attachment A of this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified below, or as otherwise specified in the Master Agreement authorizing functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

**Authorized Purposes (in any in addition to the purposes set forth in the Scope of Work):**

All reasonable purposes not otherwise restricted and consistent with the Business Associate's scope of work set forth in the Master Agreement.