

ORIGINAL

AGREEMENT FOR SERVICES #013-S1811

Charter Motor Coach Transportation Services

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 All West Coachlines Inc., a Texas Corporation, duly qualified to conduct business in the State of California (hereinafter referred to as "Contractor"), whose principal place of business is 7701 Wilbur Way, Sacramento, CA 95828, and whose Agent for Service of Process is C T Corporation System, 818 W. Seventh Street, Los Angeles, CA 90017.

RECITALS

WHEREAS, County has entered into Agreements with various State Agencies and Departments for the provision of services for seniors; and

WHEREAS, County has determined that it is necessary to obtain a Contractor to provide charter motor coach transportation services and coordination/reservation services for senior group activities on an "as requested" basis for clients referred by the County of El Dorado Health and Human Services Agency; and

WHEREAS, Contractor 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, it is the intent of the parties hereto that such services shall be in conformity with all applicable Federal, State (all references to "State" in this Agreement shall mean the State of California unless otherwise specified), and local laws; and

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

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

ARTICLE I

Scope of Services: Contractor agrees to provide charter motor coach transportation, as requested/reserved by the County, for various groups of seniors to attend or participate in assorted activities. As requested by County and dependent on duration and destination of activity, Contractor is to provide coordination and reservation of hotels; acquisition of necessary admission tickets to tours, shows and activities; and arrangement of specified meals. Contractor also shall provide activity brochures and flyers. Contractor is to ensure that all arrangements are appropriately coordinated and that activities run according to schedule. Scheduling and coordination of activities shall be as follows:

1. County will submit a proposed activity to Contractor.
2. Contractor will submit written quotes for services requested.
 - a. Rates for services are to be quoted on a “per activity” basis prior to commitment by County.
3. County will accept quote or revise the activity agenda.
 - a. Once activity agenda and cost(s) are acceptable to County, a minimum number of reservations and the deadline for activity sign-up will be determined by County. The upcoming activity will then be published by County along with instructions on how to make reservations and payment arrangements.
 - b. Once the registration deadline arrives, and if said reservations are at or above the previously determined minimum number of reservation sign-ups, County will issue payment to Contractor, as defined in Article III – Compensation for Services.
 - c. If reservations are less than the minimum set by the County deadline, the activity will be cancelled and a cancellation notice will be immediately provided to Contractor. Seniors who have signed up for the activity and any deposits made in association with the activity by the County, Contractor, or persons signing up for the activity will be immediately refunded as required.
4. If interference with a scheduled activity occurs as a result of the Contractor’s actions, the Contractor will issue the County a full refund.
5. Contractor will not be responsible for any non-performance or delay attributed in whole or in part to any case beyond its reasonable control, including but not limited to Acts of God, government actions, war, civil disturbance, insurrection, sabotage, terrorist acts, or labor shortages or disputes.

ARTICLE II

Term: This Agreement shall become effective when fully executed by all parties hereto and shall cover the period of July 1, 2017 through June 30, 2020, 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: Following receipt and approval of an itemized invoice of services to be provided, County agrees to pay Contractor within thirty (30) days prior to departure dates of requested activities.

ARTICLE IV

Maximum Obligation: The maximum contractual obligation of the County under this Agreement shall not exceed \$750,000.00 for all of the stated services and during the term of the Agreement.

ARTICLE V

Audit by California State Auditor: Contractor acknowledges that contracts involving the expenditure of public funds in excess of \$10,000 are subject to examination and audit by the California State Auditor pursuant to Government Code Section 8546.7. Contractor shall provide Federal, State, or County authorities with access to any books, documents, papers, and records of Contractor, which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. In order to facilitate these potential examinations and audits, Contractor shall maintain all books, documents, papers, and records necessary to demonstrate performance under this Agreement for a period of at least three (3) years after final payment or for any longer period required by law.

ARTICLE VI

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 shall 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 VII

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 VIII

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, skillful, and workmanlike 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 IX

Continuous Operation: Contractor shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff required to meet applicable Federal, State, and County requirements, and which are necessary for the provision of services hereunder.

ARTICLE X

Fiscal Considerations: The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, the County of El Dorado 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 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.

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ARTICLE XII

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 with 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.
- B. **Bankruptcy:** This Agreement, at the option of 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 the other party 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 upon written notice by County without cause to the other party for any reason. If such prior termination is effected, County shall 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 XIII

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 herein 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 XIV

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

COUNTY OF EL DORADO
HEALTH AND HUMAN SERVICES AGENCY
3057 BRIW ROAD, SUITE B
PLACERVILLE, CA 95667-5321
ATTN: CONTRACTS UNIT

Or to such other location as County directs with a copy to

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
330 FAIR LANE
PLACERVILLE, CA 95667-5321
ATTN: PURCHASING AGENT

Notices to Contractor shall be addressed as follows:

ALL WEST COACHLINES, INC., A COACH USA COMPANY
7701 WILBUR WAY
SACRAMENTO, CA 95828
ATTN: PRESIDENT, OR SUCCESSOR

Or to such other location as Contractor directs.

ARTICLE XV

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

- A. Full Workers' Compensation and Employers' 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 Contractor uses motor vehicles in the performance of the Agreement.
- D. In the event Contractor is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) 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 Risk Manager as evidence that the above-required insurance is being maintained.
- F. The insurance shall be issued by an insurance company acceptable to the County of El Dorado Risk Management Department (“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 the 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 the Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event 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 for breach pursuant to the provisions contained herein this Agreement under the Article titled "Default, Termination, and Cancellation."

- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer shall 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" page, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. Contractor's insurance coverage shall be primary insurance as respects County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by County, its officers, officials, employees, or volunteers shall be excess of Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by County. Either:
 - 1. Insurer shall reduce or eliminate such deductibles or self-insured retentions as respects County, its officers, officials, employees, and volunteers; or
 - 2. 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 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 both insurance and evidence of insurance to County that shall cover 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 the protection of County.

ARTICLE XVI

Interest of Public Official: No official or employee of the County of El Dorado 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 the County of El Dorado have any interest, direct or indirect, in this Agreement or the proceeds thereof.

ARTICLE XVII

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, Contractor shall employ no person having any such interest.

ARTICLE XVIII

California Residency (Form 590): If Contractor is a California resident, Contractor must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. Contractor shall 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 Contractor during term of the Agreement. This requirement applies to any Agreement exceeding \$1,500.00.

ARTICLE XIX

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 XX

Taxpayer Identification Number (Form W-9) and County Payee Data Record Form: All independent Contractors or Corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9 with County, which certifies their Taxpayer Identification Number. All independent Contractors or Corporations providing services to County may also be required to file a County-issued "Payee Data Record" form with County.

ARTICLE XXI

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 XXII

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 the County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

ARTICLE XXIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Michelle Hunter, Program Manager, or successor.

ARTICLE XXIV

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 XXV

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

ARTICLE XXVI

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

ARTICLE XXVII

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 XXVIII

Conflict Prevention and Resolution: The terms of this Agreement shall control over any conflicting terms in any referenced document, except to the extent that the end result would constitute a violation of Federal or State law. In such circumstances, and only to the extent the conflict exists, this Agreement shall be considered the controlling document.

ARTICLE XXIX

Special Terms and Conditions:

A. **Availability of Funding:** This Agreement is valid and enforceable only if sufficient funds are made available to the States by the United States government and those funds are

released by the State to the County for the services to be provided under this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms, or funding of this Agreement in any manner.

The County's obligation for payment of any Agreement beyond the current fiscal year end is contingent upon the availability of funding from which payment can be made. No legal liability on the part of the county shall arise for payment beyond June 30 of the calendar year unless funds are made available for such performance.

- B. Compliance with All Federal, State and Local Laws and Regulations:** Contractor shall comply with all Federal, State and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42USC12101 et. seq.) and California Government Code Section 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Contractor from County's Health and Human Services Agency.

Contractor shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety, and health and sanitation regulations. Such laws shall include, but not be limited to, the Copeland "Anti-Kickback" Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Contractor further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado and all other appropriate governmental agencies and shall maintain these throughout the term of the Agreement.

- C. Non-Discrimination:** During the performance of this Agreement, the Contractor shall not unlawfully discriminate, harass or allow harassment, against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family leave care. The Contractor shall ensure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. The Contractor shall comply with the provisions of the Fair Employment and Housing Act (Government Code Section 12900 et. seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are incorporated into this Agreement by reference and made a part hereof as if set forth in full. The Contractor shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.

The Contractor shall comply with the provisions of Title VI of the Civil Rights Act of 1964 (42 USC 2000), as amended by the Equal Opportunity Act of March 24, 1972 (Public Law 92-261); Sections 503 and 504 of the Rehabilitation Act of 1973, as amended (29 USC 794); and all requirements imposed by the applicable Health and Human Services regulations (45 CFR, Part 84) and the American's with Disabilities Act.

- D. **Fraud or Abuse Reporting:** Contractor acknowledges and agrees to comply with mandated reporter requirements pursuant to provisions of Welfare and Institution Code, Section 15630-15632. Additionally, during the performance of this Agreement, the Contractor shall report immediately by phone to (530) 642-7300 or other such phone number that may be provided and in writing to the County of El Dorado Health and Human Services Agency at 3057 Briw Road, Placerville, CA 95667, any known or suspected incidents of fraud or abuse to Clients or household occupants observed or learned of
- E. **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," and the Welfare and Institutions Code Section 15630 et seq., related to elder and dependent adults, as applicable.
- F. **Security Awareness Training:** As condition of Contractor performing services for the County of El Dorado, Contractor shall provide ongoing education and training, at least annually, for all employees who handle personal, sensitive, or confidential information. Such employees of Contractor shall complete the California Department of Aging's (CDA) Security Awareness Training, which may be accessed on the CDA website at www.aging.ca.gov, within thirty (30) days of the start date of the Agreement or within 30 days of the start date of employment with Contractor, and annually thereafter for the term of this Agreement. Contractor may substitute CDA's Security Awareness Training program with a training program that meets or exceeds CDA's training requirement. The Contractor shall maintain documentation of training and education provided to their employees and provide copies to the County of El Dorado upon request. The County of El Dorado will provide Contractor with a CDA's Security Awareness Training document with the executed Agreement.
- G. **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 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) or any of these, except for the sole or active negligence of the County, its officers, and employees, or as expressly proscribed 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.

The Contractor further agrees to indemnify, defend and save harmless the State of California and the California Department of Aging, its officers, agents, and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.

- H. **HIPAA Compliance:** As a condition of Contractor performing services for the County of El Dorado, Contractor agrees to fully comply with all terms and conditions of County's Business Associate Agreement, attached hereto as Exhibit A (incorporated herein and made by reference a part hereof).
- I. **Confidentiality and Information Security Provisions:** Contractor shall comply with applicable Federal, State, and local laws and regulations, including but not limited to the Code of Federal Regulations Title 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

Personally Identifiable Information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

1. Permitted Uses and Disclosures of PII by Contractor.

- a. Permitted Uses and Disclosures. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, Contractor, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.
- b. Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, Contractor shall:
 - i. Use and disclose only PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
 - ii. Take all reasonable steps to destroy, or arrange for the destruction of a Client's records within its custody or control containing personal

information that is no longer to be retained by Contractor by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

2. Responsibilities of Contractor.

a. Contractor agrees to safeguards:

- i. To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time; and
 - Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
 - Contractor shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
- ii. Contractor shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
 - Network based firewall or personal firewall; and
 - Continuously updated anti-virus software; and
 - Patch-management process including installation of all operating system/software vendor security patches.
- iii. Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors.
- iv. Agents and Subcontractors of Contractor. The same restrictions and conditions that apply through this Agreement to Contractor, shall also apply to Contractor's subcontractors and agents.
- v. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of PII or data, where the information or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two business days of discovery, at (530) 621-5852. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.

J. 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 45 CFR 76 and Contractor further certifies to the best of its knowledge and belief that it and its principals or affiliates or any sub-contractor utilized under the Agreement:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
2. 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 of records, making false statements, or receiving stolen property.
3. 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 the above Paragraph B.
4. Have not within a three (3)-year period preceding this Agreement had one or more public transactions (federal, state or local) terminated for cause or default.
5. Shall not knowingly enter in to any lower tier or subrecipient covered transaction with any person(s) who are proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4) or are debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the state.
6. Shall include a clause titled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier or subrecipient covered transactions in accordance with 45 CFR Part 76.

If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation in writing 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 (<http://www.archives.gov/federal-register/codification/executive-order/12549.html>).

If the Contractor knowingly violates this certification, in addition to other remedies available to the federal and state governments, County may immediately terminate this Agreement for cause or default.

K. Accounting Systems and Financial Records: Contractor shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the State, County and any other local or private organizations. Contractor's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR Part 92 and in the Office of Management and Budget Uniform Administrative

Requirements, Cost Principles, and Audit Requirements for Federal Awards.” More particularly, Contractors are responsible for complying with the Uniform Grants Guidance and 45 CFR Part 92, and the allowability of the costs covered therein. Contractor must obtain written approval from a member of the HHSA Executive Management prior to” the expenditure of any “special” or unusual costs in order to avoid possible disallowances or disputes based on any potential unreasonableness or unallowability of expenditures as detailed under the specific cost principles of the Uniform Grants Guidance. In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the List of (CFR) Sections Affected (LSA) issued in the current month. The *Federal Register* home page offers links to both the *Federal Register* and the CFR. Electronic CFR (e-CFR) versions are available online via the U.S. Government Printing Office (GPO) website. Please note that documents on e-CFR, although updated daily, are unofficial editorial compilations of CFR material and *Federal Register* amendments and on-line versions may not be the most current version available.

- L. **Annual Audit:** Pursuant to the Office of Management and Budget Uniform Grants Guidance, any entity that receives federal funds, as stated in the Uniform Grants Guidance, for the purposes of carrying out federal programs, must complete an annual audit. The funding threshold is aggregate funds from all sources. If requested by County, Contractor shall mail a certified copy of said completed annual audit to County’s Health and Human Services Agency at the address listed in Agreement’s “Notice to Parties” Article within thirty (30) days of Contractor’s receipt of same. All adverse audit findings must be documented and included with completed annual audit. Certified evidence of correction(s) of adverse audit findings shall be provided to County at the HHSA address listed in Agreement’s Article titled “Notice to Parties.”
- M. **Lobbying Certification:** The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:
1. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
 2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 “Disclosure of Lobbying Activities” in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for

making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

N. **Litigation:** County, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Contractor must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Contractor of its indemnification obligations.

Contractor, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

O. **Transfer of Records:** In the event that Contractor ceases operation, all physical and electronic files that are subject to audit shall be transferred to the County for proper storage of physical records and electronic data. Contractor shall notify County of impending closure as soon as such closure has been determined, and provide County with a complete list of records in its possession pertaining to County Clients and operational costs under this Agreement. County shall promptly advise Contractor which records are to be transferred to the custody of County. Contractor shall properly destroy records not transferred to custody of County, and Contractor shall provide documentation of proper destruction of all such records to County.

P. **Waivers:** Failure of County to enforce any provision of this Agreement shall in no event be considered a waiver of any part of such provision or any other provision contained herein. No waiver by County of any breach or default by Contractor shall operate as a waiver of any succeeding breach of the same terms in the Agreement or other default or breach of any of Contractor's obligations under the Agreement. No waiver shall have any effect unless it is specific, irrevocable, and in writing.

Q. **Catalog of Federal Domestic Assistance:** Pursuant to the Office of Management and Budget (OMB) Uniform Grants Guidance, all recipients and sub-recipients of federal funds must be provided the Catalog of Federal Domestic Assistance (CFDA) number at the time the contract is awarded. The following are CFDA numbers and program titles for programs administered by the County on behalf of California Department of Social Services that may apply to this contract:

CFDA Number	Federal Award ID Number	Federal Award Date	Program Title
93.044	AP-1617-29	07/01/2016-06/30/2017	Older Americans Act Title III-Grants for State & Community Programs on Aging

ARTICLE XXX

Entire Agreement: This Agreement for Services #013-S1811 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: Michelle Hunter Dated: 4/3/17
Michelle Hunter
Program Manager
Health and Human Services Agency

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Patricia Charles-Heathers Dated: 4/7/17
Patricia Charles-Heathers, Ph.D.
Director
Health and Human Services Agency

IN WITNESS WHEREOF, the parties hereto have executed this Agreement for Services #013-S1811 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Shiva Frentzen, Chair
Board of Supervisors
"County"

ATTEST:

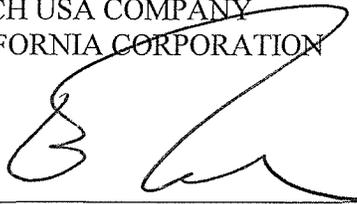
James S. Mitrison
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

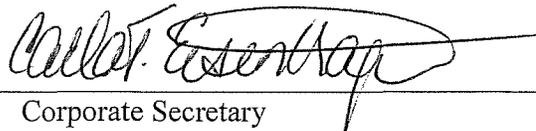
Dated: _____

-- CONTRACTOR --

ALL WEST COACHLINES, INC.
A COACH USA COMPANY
A CALIFORNIA CORPORATION

By: 
Eric Lea
General Manager
"Contractor"

Dated: 4/7/17

By: 
Corporate Secretary

Dated: 4/7/17

CM

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”).

R E C I T A L S

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.
 - 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.
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.