

Amendment One

Agreement between the SAN BENITO COUNTY HEALTH & HUMAN SERVICES and CALIFORNIA INSTITUTE FOR BEHAVIORAL HEALTH SOLUTIONS (CIBHS)

SERVICE REQUIREMENTS

I. SERVICE PROVIDER

Facility Name: California Institute for Behavioral Health Solutions
Street Address: 2125 19th Street – Second Floor
City and Zip Code: Sacramento, CA 95818
Contact: Rick Goscha - RGoscha@cibhs.org

II. SERVICE RECIPIENT

Name and Title: James Rydingsword
Organization: San Benito County Health & Human Services
Street Address: 1111 San Felipe Road, #206
City and Zip Codes: Hollister, CA 95023

III. OVERVIEW

Amendment One CIBHS will provide the following addition training activities for three counties (Mariposa, Plumas, San Benito) participating in the Small County Whole Person Care Learning Collaborative.

Scope of Work:

The Small County Whole Person Care Learning Collaborative for the above three counties will include:

One (1) one-hour webinar on the Strengths Model
One (1) one-day, in-person workshop on using the Strengths Assessment to inform the client plan
Up to four (4) follow-up consulting calls to provide feedback and guidance on initial Strengths Assessments

IV. Other Terms and Conditions

a. Debarment. CIBHS agrees on behalf of itself and its employees and agents (a) to comply with all federal, state and local statutes/regulations relating to the provision of services under this Agreement; and (b) that neither CIMHS nor its principals or officers are currently suspended or debarred from doing business with the United States government, as indicated by the GSA List of Parties Excluded from Federal Procurement and Non-Procurement Programs, the State of Texas, Travis County or the City of Austin; and (c) that CIBHS has the resources and full power and authority to enter into and perform this Agreement.

V. Compensation

\$3,500 flat fee that includes a one-hour webinar, one-day, in-person workshop, and up to four consultation calls. All travel expenses and preparation of materials is included in the flat fee.

VI. Payment

Upon receipt of an invoice presented by CIBHS, San Benito County Health & Human Services agrees to pay THREE THOUSAND-FIVE HUNDRED DOLLARS (\$3,500.00).

VII. IN WITNESS WHEREOF, the parties have executed this agreement by their duly authorized representatives:

California Institute for Behavioral Health
Solutions (CIBHS):



Percy Howard, III, LCSW
President & CEO

Chair

Date

4-10-18

San Benito County Health & Human Services:

Anthony Botelho

Date

APPROVED AS TO LEGAL FORM
SAN BENITO COUNTY COUNSEL



4-19-18

DEPUTY COUNTY COUNSEL DATE

EXHIBIT 1
TO AMENDMENT #_1_____

ORIGINAL
CONTRACT

(Please attach the initial contract and any prior amendments, from the most recent to the initial contract, in reverse chronological order.)

FULLY EXECUTED

Project# 3060SCWPe
Contract# 0001001
SO#: 1343

**IMPROVEMENT AND INNOVATION THROUGH DATA (IITD)
IMPLEMENTATION AND TRAINING AGREEMENT
SMALL COUNTY WHOLE PERSON CARE COLLABORATIVE
AND**

THE CALIFORNIA INSTITUTE FOR BEHAVIORAL HEALTH SOLUTIONS

THIS AGREEMENT is made and entered into effective 8/1/17 by and between The **California Institute for Behavioral Health Solutions (CIBHS)**, a public interest corporation, having its principal place of business at 2125 19th St., 2nd Floor, Sacramento, CA 95818, and **San Benito County Health and Human Services Agency**, on behalf of the **Small County Whole Person Care Collaborative** with offices located at 1111 San Felipe Road, Suite 206, Hollister, CA 95023, hereafter referred to as "Agency."

Whereas, CIBHS has the expertise to provide implementation, training and support activities to Agency/County staff in the Improvement and Innovation through Data (IITD) model and the Agency wishes to have its staff trained by CIBHS, Parties agree that for sufficient consideration described below, that implementation, training and support will occur as follows:

PRODUCT DESCRIPTION:

Improvement and Innovation Through Data (IITD) is a three-pronged approach created by CIBHS to assist county behavioral health systems' abilities to collect, improve and analyze client data and to use it in a meaningful way for client improvement. IITD includes: (1) a uniquely flexible, web-based data system; (2) a robust implementation method; (3) training on use of data in clinical practice. The web-based system was developed in partnership with eCenter Research, Inc. and is known as electronic Behavioral Health Solutions (eBHS).

Participating counties or agencies receive login rights to eBHS to upload information, interact with data, review dashboards and reports, and receive trainings, which are the deliverables that are the result of CIBHS services defined in this scope of work.

All data collected by CIBHS for a given agency and entered into the eBHS system can be exported from within the system into a .csv / excel for a complete record of all data collected.

The Data Integrity and Security Model has been fully vetted by DHCS, is HIPAA Compliant, hosted on Amazon Web Services, is covered under the CIBHS CyberSecurity Policy, and undergoes periodic security reviews and Security Risk Analysis as required by California and Federal Regulations.

SCOPE OF WORK:

CIBHS will provide implementation, training and support activities for IITD by using the Community Development Team (CDT), electronic Behavioral Health Solutions (eBHS), and Feedback Informed Treatment. The IITD model will include pre-implementation planning, implementation supports, Teleconference Consultation, customized web-based data platform access, data collection, interpretation and use training as follows:

TERMS OF CONTRACT:

The schedule for completion shall be 48 months from the effective date of the agreement, and Phase II is renewable annually. The dates of the agreement are: August 1, 2017-July 31, 2021.

See schedule A for General Terms and Conditions

COMPENSATION AND TERMS OF PAYMENT:

See Schedule B for Schedule of Charges and Payments.

In the event of early termination of the agreement, Agency will be responsible for those IITD fees and expenses incurred up to the point of time that the agreement is terminated.

In the event of staff turnover during the contract, the Agency may incur additional costs for training of new staff. Any additional costs and scope of work must be agreed to in writing by both parties. See Schedule B for pricing.

TERMINATION

Either party may terminate this Agreement upon written notice received 30 days in advance of termination.

Notice to CIBHS is to be sent via certified U.S. Mail to:

Percy Howard, LCSW
Interim CEO
California Institute for Behavioral Health Solutions
2125 19th Street, 2nd Floor
Sacramento, CA 95818

Notice to the Agency is to be sent via certified U.S. Mail to:

Mr. James A. Rydingsword, HHSA Director
San Benito County Health and Human Services Agency
1111 San Felipe Road, #206, Hollister, CA 95023
(831) 636-4180
Jrydingsword@cosb.us

SMALL COUNTY WHOLE PERSON CARE COLLABORATIVE
ITD SERVICE AGREEMENT

SCHEDULE A: GENERAL TERMS AND CONDITIONS

1.0 Definitions

- 1.1 *Acceptance:* The CIBHS Solutions shall be considered accepted for all purposes upon the earlier of: (a) notification by County that the CIBHS Solutions is in compliance with all requirements specified in this Agreement; (b) expiration of the Test Period if County fails to notify Contractor of any material nonconformity during the Test Period; or (c) use of the CIBHS Solutions by County in a Solutions environment for at least thirty (30) days.
- 1.2 *Acceptance Plan:* A description of the criteria for final Acceptance of the CIBHS Solutions and the procedure by which Acceptance will be demonstrated and documented, which shall be delivered as a component of the Implementation Plan document. Unless otherwise provided for in this Agreement or agreed upon in writing by both Parties, acceptance testing will be performed on County's site, on County's equipment.
- 1.3 *Agreement:* This Agreement, all Schedules, appendices and exhibits thereto, and any and all subsequent duly executed amendments thereto.
- 1.4 *Authorized Representative:* The person or persons authorized by County to work with Contractor to implement changes to the CIBHS Solutions, submit CIBHS Solutions issues to Contractor to resolve, and authorize Contractor to make changes to the list of Users who can use the CIBHS Solutions.
- 1.5 *CIBHS Solutions:* See Scope of Work.
- 1.6 *Compliance Update:* A change made to the CIBHS Solutions to reflect a mandated change in the applicable law.
- 1.7 *Computer System:* The desktop hardware and software components and programs that are used by County in conjunction with the CIBHS Solutions.
- 1.8 *Confidential Information:* Any and all other confidential and/or proprietary information provided by a Party ("Discloser") to the other Party ("Recipient") pursuant to this Agreement or otherwise, relating to, among other items, the research, development, Solution, processes, business plans, customers, finances, suppliers, and personnel data of or related to the business of Discloser, including, without limitation, the CIBHS Solutions and all Documentation. Confidential Information shall also include all "non-public personal information" as defined in Title V of the Gramm-Leach-Bliley Act (15 U.S. C. Section 6801, et seq.) and the implementing regulations thereunder (collectively, the "GLB Act"), as the same may be amended from time to time. Confidential Information does not include any information: (a) Recipient knew before Discloser provided it; (b) which has become publicly known through no wrongful act of Recipient; (c) which Recipient developed independently, as evidenced by appropriate Documentation; or, (d) of which Recipient becomes aware from any third person not bound by non-disclosure obligations to Discloser and with the lawful right to disclose such information to Recipient. Notwithstanding the foregoing, specific information will not be deemed to be within the foregoing exceptions merely because it is contained within more general information otherwise subject to such exceptions.
- 1.9 *Copyrights:* Copyrighted and copyrightable materials, whether or not registered, published, or containing a copyright notice, in any and all media, and further including, without limitation, any and all moral rights and corresponding rights under international agreements and conventions, all Derivatives thereof, and any and all applications for registrations, registrations, and/or renewals of any of the foregoing.
- 1.10 *Consulting Services:* The Contractor consulting services as set forth in the applicable SOW.

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- CIBHS Solutions and Documentation; and, (c) is not made available to Contractor's licensees generally without separate charge.
- 1.25 *Notice of Completion:* A written notice from Contractor stating that delivery, installation and implementation of all CIBHS Solutions at County's site has been completed and that the CIBHS Solutions is available for acceptance testing.
 - 1.26 *Party:* Either Contractor or County, and "Parties" means both of the same.
 - 1.27 *Patents:* All patentable materials, letters patent, and utility models, including, without limitation, all reissues, continuations, continuations-in-part, renewals, Derivatives, and extensions of any of the foregoing and all applications therefor (and patents which may issue on all such applications).
 - 1.28 *Release:* Means a version of the CIBHS Solutions denoted by the number to the left of the decimal point (as compared to a change in the number to the right of the decimal point). For example, 4.x and 4.1 are the same Release; 4.x and 5.x are two different Releases. Releases include major Enhancements and the incorporation of any Version developed after the Release immediately preceding the most current Release.
 - 1.29 *Seat:* A unique physical device, such as a terminal, microcomputer, or similar computing device that is part of the Computer System at which an End User has access to some or all of the CIBHS Solutions.
 - 1.30 *Site:* A single physical location and single database for which the CIBHS Solutions is licensed. The number of Sites for which County is licensed to use the CIBHS Solutions shall be specified in the applicable Schedule.
 - 1.31 *Specifications:* The functional, operational, and performance characteristics of the CIBHS Solutions as described in Contractor's current published Documentation.
 - 1.32 *Statement of Work or SOW:* A statement of work executed by parties that describes the services to be provided by Contractor to County under this Agreement.
 - 1.33 *Subsequent Release:* A Release of the CIBHS Solutions for use in a particular operating environment which supersedes the CIBHS Solutions. A Subsequent Release is offered and expressly designated by Contractor as a replacement to a specified CIBHS Solutions. A Subsequent Release will be supported by Contractor in accordance with the terms of this Agreement. Multiple Subsequent Releases may be supported by Contractor at any given time.
 - 1.34 *Support Services:* Those support services provided by Contractor as described in the applicable SOW.
 - 1.35 *Test Period:* The thirty (30) day period following: (a) County's receipt of the Notice of Completion or (b) in the case where County requests or causes a material delay in the performance of implementation services, the date set forth in the Implementation Plan for commencement of Acceptance testing.
 - 1.36 *Third Party Software Solutions:* Third party software utilized in tandem with the CIBHS Solutions, and necessary to enable the CIBHS Solutions to perform the Specifications, supplied by Contractor with the CIBHS Solutions or acquired directly by County on the advice of Contractor.
 - 1.37 *Trademarks* – trademarks, service marks, logos, trade names, and/or domain names including, without limitation, any and all common law and/or statutory rights therein and any and all applications to register and/or registrations therefor, anywhere within or outside of the Territory.
 - 1.38 *Update:* A revision of the CIBHS Solutions released by Contractor to its end user customers receiving maintenance and support services from Contractor. "Update" does not include any New Solutions or added features for which Contractor generally imposes a separate charge.

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In providing the CIBHS Solutions and services hereunder, Contractor, and the agents and employees thereof, shall act in an independent capacity and as an independent contractor and not as agents or employees of County.

5.0 Indemnification

5.1 General

Each Party shall defend, indemnify and save harmless the other Party, its officers, officials, employees, agents and volunteers from any and all liabilities, claims, demands, judgments damages, losses or expenses (including, without limitation, defense costs and attorney fees of litigation) arising out of this Agreement or occasioned by the performance or attempted performance of the provisions hereof, including, but not limited to, any act or omission to act on the part of the indemnifying Party or its agents or employees or other independent contractors directly responsible to it, except those liabilities, claims, demands, judgments damages, losses or expenses to the extent resulting from the negligence or willful misconduct of the other Party. With respect to any and all liabilities, claims, demands, judgments damages, losses or expenses arising from the joint or concurrent negligence of Contractor and County, each Party shall assume responsibility in proportion to the degree of its respective fault as determined by a court of competent jurisdiction. Each Party's obligation to indemnify the other Party is contingent upon the other Party giving prompt notice to such indemnifying Party of any claims, permitting the indemnifying Party to defend, compromise, or settle any claim, and cooperate with the defense of any such claim. Each Party shall notify the other Party immediately in the event of any accident or injury arising out of or in connection with this Agreement.

5.2 Intellectual Property

- a. Notwithstanding any language contained herein to the contrary, Contractor warrants that the CIBHS Solutions does not infringe upon or violate any Patent, Copyright, trade secret, contract right, or any other proprietary right of any third party within the United States. Except as otherwise provided, Contractor, at its own expense, will defend, indemnify and hold County harmless from any claim made or threatened or any suit or proceeding brought against County insofar as it is based on an allegation that the CIBHS Solutions furnished by Contractor under this Agreement infringes any Copyright or Patent in existence on the date the CIBHS Solutions was initially provided to County, but only if County does all of the following:
 - i. notifies Contractor of that action in writing within a reasonable period of time (such that Contractor suffers no prejudice to its rights);
 - ii. gives Contractor the right to control and direct the defense and settlement of that action;
 - iii. makes no compromise, settlement, or admission of liability; and
 - iv. provides reasonable assistance and cooperates in the defense of that action at Contractor's reasonable expense.
- b. Subject to the limitations set forth in this Agreement, Contractor shall pay any resulting damages, costs and expenses finally awarded to a third party, including, but not limited to, reasonable legal fees, incurred as a result of the CIBHS infringement of a Copyright or Patent right. Contractor will have no responsibility for the settlement of any claim, suit, or proceeding made by County without Contractor's prior written approval.
- c. If the CIBHS Solutions is held to infringe, and the use of the CIBHS Solutions is enjoined, Contractor, at its expense, will do one of the following:
 - i. procure for County the right to continue using the infringing or potentially infringing CIBHS Solutions;

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At all times, a Party shall keep and maintain in full force and effect throughout the duration of this Agreement, policies of insurance required by this Agreement which policies shall be issued by companies with a Best's Rating of B+ or higher (B+, B++, A-, A, A+ or A++), or a Best's Financial Performance Rating (FPR) of 6 or higher (6, 7, 8 or 9) according to the current Best's Key Rating Guide. In the event the Best's Rating or Best's FPR shall fall below the rating required by this paragraph, each Party shall be required to forthwith secure alternate policies which comply with the rating required by this paragraph, or be in material breach of this Agreement. Failure to provide and maintain the insurance policies (including Best's ratings), endorsements, or certificates of insurance required by this Agreement shall constitute a material breach of this Agreement (herein "Material Breach"); and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which the non-breaching Party may elect to suspend payments hereunder, or terminate this Agreement, or both.

7.0 Ownership of Data

County is and shall be the owner of the following items incidental to this Agreement upon CIBHS Solutions, whether or not completed: all Data collected, and any material necessary for the practical use of the Data from the time of collection and/or CIBHS Solutions whether or not performance under this Agreement is completed or terminated prior to completion, except for CIBHS Solutions which shall be used as provided in this Agreement. Contractor shall not release any materials under this section without prior written approval of County.

No materials produced in whole or in part under this Agreement shall be subject to Copyright in the United States or in any other country except as provided in this Agreement. County shall have the unrestricted authority to publish, disclose, distribute, and otherwise use in whole or part, any reports, Data, documents or other similar materials prepared under this Agreement, except for the CIBHS Solutions and other Intellectual Property, which shall be subject to the ownership and other restrictions set forth in this Agreement.

8.0 Assignment and Subcontracting

Except as specifically provided herein, the rights, responsibilities, duties and services to be performed under this Agreement are personal to County and Contractor. They may not be transferred, subcontracted, or assigned without the prior written consent of both Parties.

Each Party shall cause and require each transferee, subcontractor and assignee to comply with the insurance provisions set forth herein at to the extent such insurance provisions are required of a Party under this Agreement. Failure of a Party to so cause and require such compliance by each transferee, subcontractor and assignee shall constitute a Material Breach of this Agreement, and, in addition to any other remedy available at law or otherwise, shall serve as a basis upon which the non-breaching Party may elect to suspend payments hereunder, or terminate this Agreement, or both.

9.1 Confidentiality

The Parties hereto acknowledge that information obtained about the other Party pursuant to this Agreement may include Confidential Information. Each Party agrees not to use Confidential information except in accordance with the terms of this Agreement or any other agreements between the Parties, and not to disclose Confidential Information to any third parties without the prior written consent of the other Party, except as required by law. The Parties agree that the Confidential Information does not include any information which, at the time of disclosure, is generally known by the public. County shall make no attempt to reverse compile, disassemble, or otherwise reverse engineer the CIBHS Solutions or any portion thereof. These obligations of confidentiality shall survive termination of the user agreement provided hereunder and this Agreement.

To the extent required by the Health Insurance Portability and Accountability Act of 1996 and regulations related to privacy promulgated there under (the "Privacy Standard"), and notwithstanding anything to the contrary herein, Contractor will maintain the confidentiality of

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CONTRACT OR TORT, INCLUDING NEGLIGENCE. THE STATED EXPRESS WARRANTIES ARE IN LIEU OF ALL OBLIGATIONS OR LIABILITIES ON THE PART OF CONTRACTOR ARISING OUT OF OR IN CONNECTION WITH THE DELIVERY, USE, AND/OR PERFORMANCE OF THE CIBHS SOLUTIONS.

Unless otherwise stated in the applicable Schedule, Contractor shall not be liable for, and County hereby assumes the risk of and shall indemnify and hold harmless Contractor against, any claim, injury, loss, damage, or expense (including attorneys' fees), either direct or indirect, incurred, made, or suffered by County in connection with or in any way arising out of the furnishing, performance, or use of services provided by any third party contracted by County to perform services in connection with the CIBHS Solutions.

11.0 Nondiscrimination and Compliance with Laws

In providing services hereunder, Contractor agrees to comply with all applicable laws and regulations, including but not limited to those relating to nondiscrimination and civil rights. Contractor agrees to timely file all required reports, make required payroll deductions, and timely pay all taxes and premiums owed, including sales and use taxes and unemployment compensation and workers' compensation premiums. Contractor shall have and keep current at all times during the Term of this Agreement all user permits required by law.

12.0 Intellectual Property

County acknowledges that Contractor owns all right, title and interest in and to the CIBHS Solutions, the Documentation, and other information relating thereto, including all Patents, Trademarks, Copyrights, trade secrets and other Intellectual Property rights. No rights, other than those granted pursuant to the user agreement set forth in this Agreement, are transferred to County.

13.0 Conflict of Interest

Contractor covenants that Contractor presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of services required to be performed under this Agreement. Contractor further covenants that in the performance of this Agreement, no person having any such interest shall be employed by Contractor. This covenant shall not prohibit Contractor from offering the same or similar CIBHS Solutions and services to other entities.

14.0 Responsibilities of County

County shall provide all information reasonably necessary to Contractor in performing the services provided herein. Contractor shall not be responsible for any delays caused by County's failure to provide information or failure to perform obligations.

15.0 Technology Life Expectancy

County understands, acknowledges, and agrees that the technology upon which the CIBHS Solutions and services are based changes rapidly. County further acknowledges that Contractor will continue to improve the functionality and features of the CIBHS Solutions and Services to improve legal compliance, accuracy, functionality, and usability. As a result, Contractor does not represent or warrant that the CIBHS Solutions and Services provided to County under this Agreement or that the Computer System recommended by Contractor will function for an indefinite period of time. Rather, Contractor and County may, from time to time, analyze the functionality of the CIBHS Solutions and Services, in response to changes to determine whether Upgrades are advised. County is solely responsible for all costs associated with such future resources and Upgrades.

16.0 Term and Termination

16.1 The initial term (the "Initial Term") of this Agreement shall commence upon execution by both Parties (hereinafter the "Effective Date") and unless sooner terminated in accordance with this Agreement, shall continue until [forty-eight months] following the Effective Date.

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but not limited to Data conversion tables, client files, interface specifications, and training materials. Contractor shall provide for the prompt and orderly conclusion of all Work required under this Agreement, as County may direct, including completion or partial completion of projects, documentation of work in process, and other measures to assure an orderly transition to County or County's designee. All Contractor work done as part of the disentanglement shall be performed by Contractor and will be reimbursed by County at Contractor's rates as set forth in this Agreement. Contractor shall not receive any additional or different compensation for the work otherwise required by this Agreement. Contractor's obligation to provide the services shall not cease until the earlier of the following: a) the disentanglement is completed to County's reasonable satisfaction, or b) twelve (12) months after the expiration of the then-current term of this Agreement.. Return, Transfer and Removal of Data and other Assets

- a. Upon termination of this Agreement, Contractor shall return to County all County-furnished assets in Contractor's possession.
- b. Upon termination of this Agreement, Contractor shall ensure that any and all of County's Data maintained by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date or the completion of the disentanglement period, whichever is later, and that said data is securely transmitted or delivered to County or County's designee.

16.5 Effect of Termination: Contractor shall cooperate with County to ensure a smooth transition at the time of termination of this Agreement, regardless of the nature or timing of the termination. Contractor shall cooperate with County to ensure that any and all of County's data maintained in the CIBHS Solutions user agreement to County by Contractor is extracted in a commercially recognized format acceptable to County prior to the termination date, and that said data is securely transmitted to County. If County terminates this Agreement prior to the payment of all CIBHS Solutions user fees, or if County is in breach of this Agreement, County shall immediately cease using the CIBHS Solutions and shall either destroy or return the original and all copies, in whole or in part, in any form, of the CIBHS Solutions and related materials. County shall certify such action in writing to County within one (1) month after the termination date. Obligations and rights in connection with this Agreement which by their nature would continue beyond the termination of this Agreement shall survive termination of this Agreement.

17.0 **Dispute Resolution**

If a dispute, controversy, or claim arises between the Parties relating to this Agreement, the Parties shall promptly notify one another of the dispute in writing. Each Party shall promptly designate a representative to resolve the dispute. The representatives shall meet within ten (10) days following the first receipt by a Party of such written notice and shall attempt to resolve the dispute within fifteen (15) days. Any unresolved issues shall then be submitted by the parties to binding arbitration by a single arbitrator appointed by the American Arbitration Association ("Association") in accordance with the Association's commercial arbitration rules then in effect (as expressly modified by this Section). The arbitration shall take place in the State of California. The decision of the arbitrator shall be enforceable in any court of competent jurisdiction. The parties shall use their best efforts to commence the arbitration proceeding within twenty (20) business days after the failure of the informal settlement procedures above. Depositions may be taken and discovery obtained in any such arbitration proceedings as provided in Sections 1283.05 and 1283.1 of the Code of Civil Procedure of the State of California. During such arbitration, each party shall be responsible for its own legal fees and expenses. These provisions shall survive the termination of this agreement, regardless, of the cause of such termination.

18.0 **Compliance with Public Records Law**

All information County receives from Contractor, whether received in connection with Contractor's proposal or in connection with any services performed by Contractor, will be disclosed upon receipt of a request for disclosure pursuant to the California Public Records Act; provided, however, that if

24.0 Section Headings

The headings of the several sections of this Schedule and other Sections which comprise this Agreement, and any table of contents appended hereto, shall be solely for convenience of reference and shall not affect the meaning, construction or effect hereof.

25.0 Severability

If any one or more of the provisions of this Agreement shall for any reason be held to be invalid or unenforceable in any respect, then such provision or provisions shall be deemed severable from the remaining provisions hereof, and such invalidity, illegality or unenforceability shall not affect any other provision hereof, and this Agreement shall be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

26.0 Amendment and Waivers

Any term or provision of this Agreement may be amended, and the observance of any term of this Agreement may be waived (either generally or in a particular instance and either retroactively or prospectively) only by a writing signed by the Party to be bound thereby. The waiver by a Party of any breach hereof or default hereunder shall not be deemed to constitute a waiver of any other breach or default. The failure of any Party to enforce any provision hereof shall not be construed as or constitute a waiver of the right of such Party thereafter to enforce such provision.

27.0 Force Majeure

Neither Party shall be deemed to be in default of its obligations hereunder if and so long as it is prevented from performing such obligations by any act of war, hostile action, or catastrophic natural event. Should there be such an occurrence that impacts the ability of either Party to perform their responsibilities under this Agreement, the nonperforming Party shall give immediate written notice to the other Party to explain the cause and probable duration of any such nonperformance.

Small County Whole Person Care Collaborative Total Fees: Year One

	Mariposa	Plumas	San Benito	Total Fees	Year One
SET-UP FEES					
System Set-up/Proj. Mgmt. Support and training	\$14,900	\$14,900	\$14,900		\$44,700
IITD Implementation Costs (Including Training)	\$21,440	\$21,440	\$21,440		\$64,320
Integration with EHR (\$4,800/provider)****	\$14,400	\$14,400	\$0		\$28,800
TOTAL	\$50,740	\$50,740	\$36,340		\$137,820
ANNUAL FEES					
User Fees (10 users) (Year one also)	\$3,660	\$3,660	\$3,660		\$10,980
Additional User Fees (Year one also)*	\$0	\$0	\$0		\$0
Proj. Mgmt. Support (After Year One)	\$0	\$0	\$0		\$0
TOTAL	\$3,660	\$3,660	\$3,660		\$10,980
CUSTOMIZATION FEES					
Simple collections/reports (\$3,800/collection) **	\$7,660	\$7,660	\$7,660		\$22,980
Complex collection/report (\$7660/collection) ***	\$7,660	\$7,660	\$7,660		\$22,980
System Enhancements (TBD by eCenter)	\$0	\$0	\$0		\$0
TOTAL	\$15,320	\$15,320	\$15,320		\$45,960
SPECIAL SUPPORT - HOURLY FEES					
System Review (200/hr)	\$0	\$0	\$0		\$0
Highly complex set-up (200/hr)	\$0	\$0	\$0		\$0
TOTAL	\$0	\$0	\$0		\$0
Total Year 1:	\$69,720	\$69,720	\$55,320		\$194,760

Notes:

- * \$500/additional user (annually)
- ** \$3,800/additional simple collection. Maximum of 5 reports
- ***\$7,600/additional complex collection, Maximum of 5 reports
- ****Each EHR linkage should require no more than 4 days.
- *****Noted that there may be additional costs

SEP 22 2017



Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) Not use or disclose protected health information other than as permitted or required by the Agreement or as required by law;**
 - (b) Use, and document the implementation of, appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;**
 - (c) Report to covered entity as soon as practicable within two (2) business days of business associate becoming aware of any use or disclosure of protected health information not provided for by the Agreement. Business associate shall also report to covered entity within the same time-frame any breaches of unsecured protected health information as required at 45 CFR 164.410, and any security incident of which it becomes aware;**
 - (d) In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the business associate agree in writing to the same restrictions, conditions, and requirements that apply to the business associate with respect to such information;**
 - (e) Within five (5) business days of a request by the covered entity, make available protected health information in a designated record set as necessary to satisfy covered entity's obligations under 45 CFR 164.524. In the event an individual delivers directly to the business associate a request for access to protected health information, the business associate shall within two (2) business days forward such request to the covered entity;**
 - (f) Within five (5) business days of request of a covered entity, make amendment(s) to protected health information in a designated record set as directed or agreed to by the covered entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy covered entity's obligations under 45 CFR 164.526. This includes, but is not limited to, the business associate providing such information to the covered entity for amendment and incorporation of any such amendment(s) in the protected health information. In the event an individual delivers directly to the business associate a request for amendment(s) to protected health information, the business associate shall within two (2) business days forward such request to the covered entity;**
 - (g) Maintain a record of all disclosures of protected health information and information related to such disclosures, including the name of the recipient and the date of disclosure. If known, the records shall also include, the address of the recipient of the protected health information, a brief description of the protected health information disclosed, and the purpose of the disclosure which includes an explanation of the basis of such disclosure;**
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Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered entity shall notify business associate within five (5) business days of notice of any limitation(s) in the notice of privacy practices of covered entity under 45 CFR 164.520, to the extent that such limitation may affect business associate's use or disclosure of protected health information.
- (b) Covered entity shall notify business associate within five (5) business days of notice of any changes in, or revocation of, the permission by an individual to use or disclose his or her protected health information, to the extent that such changes may affect business associate's use or disclosure of protected health information.
- (c) Covered entity shall notify business associate within five (5) business days of notice of any restriction on the use or disclosure of protected health information that covered entity has agreed to or is required to abide by under 45 CFR 164.522, to the extent that such restriction may affect business associate's use or disclosure of protected health information.

Permissible Requests by Covered Entity

Business associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by covered entity, except for the exceptions set out at paragraph (d) above under "Permitted Uses and Disclosures By Business Associate"

42 CFR Part 2

- (a) To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits protected health information that is protected by 42 CFR, Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law. Business Associate acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from the Covered Entity, it is fully bound by 42 C.F.R. Part 2. Business Associate will resist efforts to obtain PHI except as provided in 42 C.F.R. Part 2.
 - (b) Business Associate may use and/or disclose PHI for the proper management and administration of its business, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate may use and/or disclose PHI to carry out its legal responsibilities, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate may use PHI to report violations of law as permitted by HIPAA and 42 C.F.R. Part 2.
 - (c) Covered Entity will notify Business Associate of any changes in or revocation of, authorization by an Individual to use or disclose PHI. Covered Entity will notify Business Associate of any Individual requests for restrictions to the use or disclosure of PHI. Business Associate acknowledges it is fully bound by HIPAA and 42 C.F.R. Part 2.
 - (d) Mandatory provisions of HIPAA preempt provisions of the Agreement. Provisions of the Agreement not mandated by HIPAA but nonetheless permitted by HIPAA will control. In the
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4. Not use or disclose the protected health information retained by business associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraph (d) above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and
5. Return to covered entity or, if agreed to by covered entity, destroy the protected health information retained by business associate when it is no longer needed by business associate for its proper management and administration or to carry out its legal responsibilities.

(d) Survival. The obligations of business associate under this Section shall survive the termination of this Agreement.

Miscellaneous

(a) Regulatory References. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) Amendment. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA Rules and any other applicable law.

(c) Interpretation. Any ambiguity in this Agreement shall be interpreted to permit compliance with the HIPAA Rules.

(d) Injunctive Relief. Business associate stipulates that its unauthorized use or disclosure of protected health information while performing services pursuant to this Agreement would cause irreparable harm to covered entity, and in such event, covered entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.

(e) Indemnification. Business associate shall indemnify and hold harmless covered entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by covered entity arising from a violation by business associate of its obligations under this Agreement.

(f) Exclusion from Limitation of Liability. To the extent that business associate has limited its liability under the terms of this Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to covered entity arising from business associate's breach of its obligations relating to the use and disclosure of protected health information.

(g) Owner of Protected Health Information. Under no circumstances shall business associate be deemed in any respect to be the owner of any protected health information used or disclosed by or to business associate by covered entity.
