

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF TULARE
AND
KAWEAH DELTA HEALTH CARE DISTRICT**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into between the County of Tulare, Health and Human Services Agency (hereinafter called COUNTY) and the Kaweah Delta Health Care District (hereinafter called DISTRICT), local health care district organized and existing under the laws of the State of California, Health and Safety Code §32000 et seq. This MOU will establish and/or ratify existing relationships and procedures between these parties effective the date of execution.

WHEREAS, District operates a general acute care hospital known as Kaweah Delta Medical Center ("Hospital") and other health care related facilities, which serve communities in the County of Tulare, State of California ("Service Area"); and

WHEREAS, District has developed multiple Accreditation Council for Graduate Medical Education ("ACGME") accredited Residency Programs ("Programs") in order to enhance the provision of medical services in the Service Area, and meet the medical and mental health needs of the communities served by the District; and

WHEREAS, COUNTY operates a Mental Health Care Clinic, and employs or contracts with one or more California licensed physicians who have agreed to provide, and been approved by District as faculty members ("Faculty Member(s)") to provide, educational services for one or more of the Programs ("Faculty Attending Services") under this Agreement; and

WHEREAS, it is to the mutual benefit of the parties hereto that students have opportunities to use the facilities of the COUNTY for their learning experience.

ACCORDINGLY, IT IS AGREED:

- I. **PURPOSE:** The purpose of this MOU is to establish procedural guidelines for COUNTY and DISTRICT responsibilities in coordinating Programs for Psychiatry Residents assigned to COUNTY to complete the field education component of their educational curriculum at the COUNTY Mental Health Care Clinic. This MOU is a complete statement of the responsibilities and commitment of both parties to the Residency Program for work training rotation for inpatient and geriatrics by the Psychiatry Residents of DISTRICT.
- II. **POPULATION TO BE SERVED:** The Programs will serve Psychiatry Residents of District in need of completing their residency-required, patient-related and non-patient related, training experiences and Rotations. Psychiatry Residents are medical school graduates who are required to complete four years of residency, which is a stage of graduate medical training. This program will allow Psychiatry Residents to engage in specialized practices under the supervision of the Medical Program Director at COUNTY's Mental Health Care Clinic during their residency.

- III. Recognizing that the specific nature of the Residency experience may vary, it is agreed by the COUNTY and the DISTRICT, upon execution of this MOU and within the scope of its provisions, the parties will meet and confer on the nature of Residency experience to formalize operational detail of the Rotations. Both parties will adhere to the terms of the Residency Agreement, attached as **Exhibit A**.
- IV. FINGERPRINTING: Psychiatry Residents must submit to live-scan fingerprinting as part of a criminal history check, which will be provided to Psychiatry Residents by the COUNTY. The DISTRICT Psychiatry Resident's participation in the Psychiatry Resident Rotations will be contingent upon the criminal history/ Live Scan results. Convictions will be assessed by Human Resources and Development for relatedness to the Residency Rotation. Psychiatry Residents with criminal convictions may be still be accepted into the program if there are mitigating circumstances or if the conviction is not related to the field practicum.
- V. DATA COLLECTION: The DISTRICT will ensure DISTRICT Psychiatry Residents fill out the data collection packets for COUNTY prior to participating in Programs.
 Data Collection Packet will consist of:
 Personnel Rule 14: Equal Employment/Discrimination/Sexual Harassment Policy
 Personnel Rule 20: Dress Code
 Personnel Rule 21: Drug Free Workplace
 Health & Human Services Agency HIPAA Sanction Policy
 Health & Human Services Agency Confidentiality
 County of Tulare Policy on violence and threats of violence in the workplace & safety in the workplace policy & code of safe practices
 County of Tulare summary of the information technology (IT) security policy
 Tulare County Health & Human Services Agency Mandated Reporting policy.
- VI. WORKSTATION: The COUNTY will provide facilities as presently available and as necessary for the development and maintenance of a Psychiatry Resident.
- VII. RESIDENCY ROTATION INSTRUCTOR: The COUNTY will designate a Residency Rotation Instructor who will coordinate each Psychiatry Resident's learning experience in the Program, as described in **Exhibit A**.
- VIII. PSYCHIATRY RESIDENT SUPERVISION: COUNTY shall permit Psychiatry Residents to perform services for clients only when under the supervision of a professional on COUNTY'S staff. Such clinicians or professionals are to be certified or licensed in the discipline in which supervision is provided. Psychiatry

Residents shall assist staff, perform assignments, and participate in research, etc. Psychiatry Residents are to be regarded as resident physicians, not employees, and are not to replace the County's staff. There will be no expectation of employment by the COUNTY after completion by the Psychiatry Resident of the Programs.

- IX. GROUND FOR REMOVAL: COUNTY may request that DISTRICT remove from the Programs any Psychiatry Resident whose performance after appropriate instruction and counseling continues to fall below the level required to maintain appropriate practice standards, or whose conduct inhibits desirable relationships COUNTY has with the public or other agencies, or who fails to follow COUNTY's administrative policies, procedures, rules, and regulations. DISTRICT agrees to remove such Psychiatry Residents at COUNTY's request.
- X. TERM: This MOU will commence retroactive from July 1, 2017 and will remain in effect until August 31, 2020, unless otherwise terminated as provided in this MOU.
- XI. INDEPENDENT CONTRACTOR STATUS:
The parties expressly understand and agree that the Psychiatry Residents enrolled in the Program are in attendance for educational purposes, and such Psychiatry Residents are not considered employees of either COUNTY or DISTRICT for any purpose, including, but not limited to, compensation for services, welfare and pension benefits. In addition, participation in the Program is not a guarantee of employment with the COUNTY and does not confer any employment rights to the Psychiatry Residents. DISTRICT agrees to provide workers' compensation insurance in accordance with Section XV, below, and Exhibit B, attached, to Psychiatry Residents for any injury or disease arising out of Psychiatry Residents' participation in the Program.

This MOU is not intended and shall not be construed to create the relationship of agent, servant, employee, partnership, joint venture, landlord/tenant, or association between the DISTRICT and the COUNTY and their employees, students, or agents, but rather is an MOU by and between two independent parties. Each Psychiatry Resident that is placed with the COUNTY as part of the Program is receiving education as part of his/her academic curriculum. Duties performed by a Psychiatry Resident are not performed as an employee of COUNTY but rather in fulfillment of the academic requirements of his/her educational experience and are performed under field supervision by COUNTY personnel. DISTRICT acknowledges that nothing in this MOU shall be construed to confer any right upon the DISTRICT or DISTRICT Personnel to participate in, control, or direct operations at the COUNTY. As DISTRICT is not COUNTY's employee, DISTRICT is responsible for paying all required state and federal taxes for its employees. In particular, COUNTY will not

- a. Make state or federal unemployment insurance contributions on DISTRICT'S behalf.
- b. Make disability insurance contributions on behalf of DISTRICT.

- c. Obtain unemployment compensation insurance on behalf of DISTRICT.

Notwithstanding this independent contractor relationship, COUNTY shall have the right to monitor and evaluate the performance of DISTRICT to assure compliance with this MOU.

- XII. COMPLIANCE WITH LAW: DISTRICT shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to DISTRICT'S employees, DISTRICT shall comply with all laws and regulations pertaining to wages and hours, state and federal income tax, unemployment insurance, Social Security, disability insurance, workers' compensation insurance, and discrimination in employment.
- XIII. AMENDMENTS: Amendments or modifications to the terms of this MOU must be made in writing and approved by all parties hereto, in order to maintain compliance with changes pursuant to federal or state laws, regulations, or policies affecting MOUs rulings, pertinent regulations, or funding.
- XIV. RECORDS AND AUDIT: DISTRICT shall maintain complete and accurate records with respect to the services rendered under this MOU. In addition, DISTRICT shall maintain complete and accurate records with respect to any employees or subcontractors performing work under this MOU. All such records shall be prepared in accordance with generally accepted accounting and/or record keeping procedures, shall be clearly identified, and shall be kept readily accessible. Upon request, DISTRICT shall make such records available within Tulare County to the COUNTY or its designee, for the purpose of auditing and/or copying such records for a period of five (5) years from the date of expiration or termination under this MOU.
- XV. INSURANCE:
 - a. Prior to approval of this MOU by the COUNTY, DISTRICT shall file with the Clerk of the Board of Supervisors, evidence of the insurance as set forth in **Exhibit B** attached, which outlines the minimum scope, specifications and limits of insurance required under this Agreement. Additional insured endorsements required as outlined in **Exhibit B** shall not be used to reduce limits available to COUNTY as an additional insured from the DISTRICT'S full policy limits. Insurance policies shall not be used to limit liability or to limit the indemnification provisions and requirements of this Agreement or act in any way to reduce the policy coverage and limits available from the insurer (s). Failure to maintain or renew coverage, or to provide evidence of renewal, may be considered a material breach of this Agreement.
 - b. The parties acknowledge and agree that it shall be the responsibility of the DISTRICT to procure and maintain in force during the full period of any residency with COUNTY, at DISTRICT'S sole cost and expense, professional liability insurance in amounts reasonably necessary to protect

the parties against liability arising from any and all negligent acts or incidents caused by the Psychiatry Residents. Coverage under such professional liability insurance shall not be less than one million dollars (\$1,000,000) for each occurrence and one million dollars (\$1,000,000) in the aggregate. Such coverage is to be obtained from a carrier rated A or better by AM Best.

- c. DISTRICT agrees to provide worker's compensation insurance coverage to Psychiatry Residents for any injury or disease arising out of a Psychiatry Resident's participation in the PROGRAM.

XVI. INDEMNIFICATION: The DISTRICT shall hold harmless, defend and indemnify COUNTY, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including COUNTY property, arising from, or in connection with, the performance by the DISTRICT or its agents, officers and employees under this MOU. This indemnification specifically includes any claims that maybe made against the COUNTY by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against COUNTY alleging Civil Rights violations by DISTRICT under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for DISTRICT'S failure to provide FORM DE-542, when applicable.

COUNTY shall hold harmless, defend and indemnify DISTRICT, its agents, officers and employees from and against any liability, claims, actions, costs, damages or losses of any kind, including death or injury to any person and/or damage to property, including DISTRICT property, arising from, or in connection with, the performance by the COUNTY or its agents, officers and employees under this MOU. This indemnification specifically includes any claims that maybe made against the DISTRICT by any taxing authority asserting that an employer-employee relationship exists by reason of this Agreement, and any claims made against DISTRICT alleging Civil Rights violations by DISTRICT under Government Code sections 12920 et seq. (California Fair Employment and Housing Act), and any fines or penalties imposed on COUNTY for DISTRICT'S failure to provide FORM DE-542, when applicable.

XVII. TERMINATION:

(a). Without Cause: Either party will have the right to terminate this MOU without cause by giving thirty (30) days prior written notice of intention to terminate pursuant to this provision, specifying the date of termination.

(b). With Cause: This MOU may be terminated immediately by either party should the other party:

- (1) be adjudged or bankrupt, or
- (2) become insolvent or have a receiver appointed, or
- (3) make a general assignment for the benefit of creditors, or
- (4) suffer any judgment which remains unsatisfied for 30 days, and which

would substantively impair the ability of the judgment debtor to perform under this MOU, or
(5) materially breach this MOU.

In addition, COUNTY may terminate this MOU based on:

- (6) Material misrepresentation, either by DISTRICT or anyone acting On DISTRICT'S behalf, as to any matter related in any way to this MOU or the Residency Program, or
- (7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impairs the ability of DISTRICT to competently provide the services under this MOU, or exposes the COUNTY to an unreasonable risk of liability.

(c). Effects of Termination: Expiration or termination of this MOU shall not terminate any obligations to indemnify, to maintain and make available any records pertaining to the MOU, to cooperate with any audit, to be subject to offset, or to make any reports of pre-termination contract activities. Where DISTRICT'S services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the DISTRICT.

(d). Suspension of Performance: Independent of any right to terminate this MOU, the authorized representative of COUNTY for which DISTRICT's services are to be performed, may immediately suspend performance by DISTRICT or participation by Psychiatry Resident in the Residency Program, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by DISTRICT to comply with the provisions of this MOU, until such time as the cause for suspension is resolved, or a notice of termination becomes effective.

XVIII. NOTICES: Except as may be otherwise required by law, any notice to be given shall be written and shall be either personally delivered, sent by facsimile transmission or sent by first class mail, postage prepaid and addressed as follows:

COUNTY:
TULARE COUNTY HEALTH & HUMAN SERVICES AGENCY
CONTRACTS UNIT
5957 S. MOONEY BLVD
VISALIA, CA 93291
Phone No. (559) 624-8000
Fax No. (559) 737-4059

Kaweah Delta Health Care District
ATTN: EDWARD HIRSCH, M.D.
VICE PRESIDENT/CHIEF MEDICAL OFFICER
400 WEST MINERAL KING AVENUE
VISALIA, CALIFORNIA 93291-6263

Phone No.: (559)-624-2521

- XIX. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this MOU, COUNTY is relying on the personal skill, expertise; training and experience of DISTRICT employees and no part of this MOU may be assigned or subcontracted by DISTRICT.
- XX. DISPUTE RESOLUTION: If a dispute arises out of or relating to this MOU, or the breach thereof, and if said dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by non-binding mediation before resorting to litigation or some other dispute resolution procedure, unless the parties mutually agree otherwise. The mediator shall be mutually selected by the parties, but in case of disagreement, the mediator shall be selected by lot from among two nominations provided by each party. All costs and fees required by the mediator shall be split equally by the parties; otherwise each party shall bear its own costs of mediation. If mediation fails to resolve the dispute within 30 days, either party may pursue litigation to resolve the dispute.
- XXI. ENTIRE AGREEMENT REPRESENTED: This Agreement and its Exhibits represent the entire agreement between DISTRICT and COUNTY as to its subject matter and no prior oral or written understanding shall be of any force or effect. No part of this Agreement or its Exhibits may be modified without the written consent of both parties.
- XXII. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts that may be reasonably required to effect the purposes of this MOU.
- XXIII. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this MOU do not intend to provide any other party, including the students participating in the Internship Program, with any benefit or enforceable legal or equitable right or remedy.
- XXIV. CONFLICT WITH LAWS OR REGULATIONS/SEVERABILITY: This MOU is subject to all applicable laws and regulations. If any provision of this MOU is found by any court or other legal authority, or is agreed by the parties to be, in conflict with any code or regulation governing its subject matter, only the conflicting provision shall be considered null and void. If the effect of nullifying any conflicting provision is such that a material benefit or the MOU to either party is lost, the MOU may be terminated at the option of the affected party. In all other cases the remainder of the MOU shall continue in full force and effect.
- XXV. ASSURANCES OF NON-DISCRIMINATION: DISTRICT shall not discriminate in employment or in the provision of services on the basis of any characteristic or condition upon which discrimination is prohibited by state or federal law or regulation.
- (a). It is recognized that both the DISTRICT and the COUNTY have the

responsibility to protect the County employees and clients from unlawful activities, including discrimination and sexual harassment in the workplace.

- (b). Accordingly, DISTRICT agrees to provide appropriate training to its employees regarding discrimination and sexual harassment issues, and to promptly and appropriately investigate any allegations that any of its employees may have engaged in improper discrimination or harassment activities.
- (c). The County in its sole discretion, has the right to require DISTRICT to replace any employee who provides services of any kind to County pursuant to this MOU with other employees where County is concerned that its employees or clients may have been or may be subjects of discrimination or harassment by such employees. The right to require replacement of employees as aforesaid shall not preclude County from terminating this MOU with or without cause as provided for herein.

XXVI. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):

- (a). DISTRICT shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate exhibit, as set forth in **EXHIBIT C** attached.
- (b). At termination of this MOU, DISTRICT shall, if feasible, return or destroy all protected health information received from, or created or received by, DISTRICT on behalf of COUNTY that DISTRICT still maintains in any form, and retain no copies of such information; or, if such return or destruction is not feasible, extend the protection of this MOU to the information and limit further uses and disclosures to those purposes that make the return or destruction of the information feasible.
- (c). COUNTY may immediately terminate this MOU if COUNTY determines that DISTRICT has violated a material term of this provision.
- (d). As trainees, and solely for the purposes provided in this section, Psychiatry Residents shall be considered as members of COUNTY's "workforce" as defined by the HIPAA regulations at 45 CFR § 160.103, and shall be subject to COUNTY's policies protecting the confidentiality of personal health information, as well as any other confidential information that may arise out of performance of this agreement. COUNTY shall provide Psychiatry Residents with substantially the same training that it provides to its employees for such purposes.

XXVII. GOVERNING LAW: This MOU shall be interpreted and governed under the laws of the State of California without reference to California conflicts of law principles. The parties agree that this contract is made in and shall be performed in Tulare County, California.

XXVIII. CONFLICT OF INTEREST:

(a) DISTRICT agrees to, at all times during the performance of this MOU, comply with the law of the State of California regarding conflicts of interests and appearance of conflicts of interests, including, but not limited to Government Code Section 1090 et seq., and the Political Reform Act, Government Code Section 81000 et seq. and regulations promulgated pursuant thereto by the California Fair Political Practices Commission. The statutes, regulations and laws previously referenced include, but are not limited to, prohibitions against any public officer or employee, including DISTRICT for this purpose, from making any decision on behalf of COUNTY in which such officer, employee or consultant/contractor has a direct or indirect financial interest. A violation can occur if the public officer, employee or consultant/contractor participates in or influences any COUNTY decision which has the potential to confer any pecuniary benefit on DISTRICT or any business firm in which DISTRICT has an interest, with certain narrow exceptions.

(b) DISTRICT agrees that if any facts come to its attention which raise any questions as to the applicability of conflicts of interests laws, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of this question.

XXIX. HEADINGS:

Section headings are provided for organizational purposes only and do not in any manner affect the scope, meaning or intent of the provisions under the headings.

XXX. WAIVERS:

The failure of either party to insist on strict compliance with any provision of this Agreement shall not be considered a waiver of any right to do so, whether for that breach or any subsequent breach. The acceptance by either party of either performance or payment shall not be considered to be a waiver of any preceding breach of the Agreement by the other party.

XXXI. EXHIBITS & RECITALS: The recitals and the exhibits to this MOU are fully incorporated into and are integral parts of this MOU

XXXII. CULTURAL COMPETENCE AND DIVERSITY: DISTRICT shall comply with the Cultural Competence exhibit, as set forth in **EXHIBIT D** attached.

THE PARTIES, having read and considered the above provisions, indicate their agreement by their authorized signatures below.

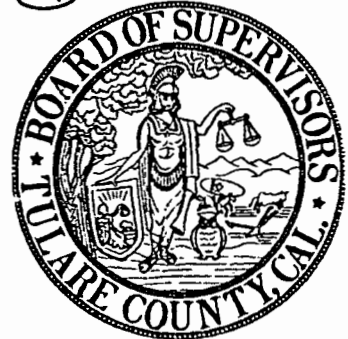
COUNTY OF TULARE

Date: 6/20/2018

BY [Signature]
Chairman, Board of Supervisors

ATTEST: Michael C. Spata
County Administrative Officer/Clerk of the Board
of Supervisors of the County of Tulare

BY [Signature]
Deputy Clerk



KAWEAH DELTA HEALTH CARE DISTRICT

Date: 6/11/18

By [Signature]
Edward Hirsch, MD
Chief Medical officer

Approved as to Form
County Counsel

By [Signature]
Deputy (20171468)

Date 6/12/18

EXHIBIT A

Residency Agreement

1. Key Responsibility of COUNTY and DISTRICT. COUNTY and DISTRICT shall provide appropriate supervision of Residents consistent with the requirements of the ACGME and District, with the goals of assuring the provision of safe and effective care to patients, assuring each Resident's development of the skills, knowledge, and attitudes required for the unsupervised practice of medicine and establishing a foundation for continued professional growth. Developing the skills, knowledge, and attitudes leading to proficiency in all the domains of clinical competency requires the resident to assume personal responsibility for the care of individual patients. For the Resident, the essential learning activity is interaction with patients under the guidance and supervision of Parties who give value, context and meaning to those interactions.

Specifically, both COUNTY and DISTRICT shall:

- A. Devote sufficient time to the Program(s) to fulfill his/her supervisory and teaching responsibilities; and to actively engage in the education of Residents;
 - I. Active engagement includes but is not limited to:
 - II. Supervision, at an appropriate level, of all Residents assigned to the service;
 - III. Assignment of patients from the service, to the Residents;
 - IV. Acceptance of Residents on each service offered at the District; and
 - V. Professional role-modeling in behaviors and attitudes.
- B. Complete and submit in a timely manner, meaningful evaluations of Psychiatry Residents to COUNTY and DISTRICT program directors.
- C. Administrate a structured educational experience that Residents report adheres to ACGME institutional and program specific requirements.
- D. Provide the Psychiatry Residents a Psychiatry Resident rotation involving patient safety and quality improvement
- E. Engage Psychiatry Residents in using standardized processes for Transitions of Care
Each Party must be board certified in his/her specialty or be deemed board eligible (Within 5 years of graduation from a residency/fellowship)

DISTRICT shall be responsible for the following:

Administer and maintain an educational environment conducive to educating residents in each of the ACGME competency areas;

- F. Establish and maintain an environment of inquiry and scholarship

- G. Regularly participate in organized clinical discussions and rounds
- H. Encourage and support Psychiatry Residents in scholarly activities;
- I. Complete periodic faculty development courses hosted by the Office of GME to ensure adequate knowledge of ACGME requirements and CMS documentation guidelines for billing when working with Residents.
- J. Significant Psychiatry Resident reports of deviation from ACGME requirements shall be forwarded to the Graduate Medical Education Committee and the Designated Institutional Official ("DIO").

2. Performance. Each Psychiatry Resident shall be evaluated on an annual basis by the Medical Program Director for the COUNTY and the Resident Program Director for the DISTRICT or the DIO. Below average performance on evaluations completed of the Residents for teaching performance and lecture quality/content may trigger an earlier evaluation.

PROFESSIONAL SERVICES CONTRACTS (EXHIBIT B)
INSURANCE REQUIREMENTS

CONTRACTOR shall provide and maintain insurance for the duration of this Agreement against claims for injuries to persons and damage to property which may arise from, or in connection with, performance under the Agreement by the CONTRACTOR, his agents, representatives, employees and subcontractors, if applicable.

A. Minimum Scope & Limits of Insurance

1. Coverage at least as broad as Commercial General Liability, insurance Services Office Commercial General Liability coverage occurrence form GC 00 01, with limits no less than \$1,000,000 per occurrence including products and completed operations, property damage, bodily injury and personal & advertising injury. If a general aggregate limit applies, either the general aggregate limit shall apply separately to this project/location (ISO CG 25 03 or 25 04) or the general aggregate limit shall be twice the required occurrence limit.
2. Insurance Services Office Form Number CA 00 01 covering Automobile Liability of \$1,000,000 per occurrence including any auto or, if the CONTRACTOR has no owned autos, hired and non-owned auto coverage. If an annual aggregate applies it must be no less than \$2,000,000.
3. Workers' Compensation insurance as required by the State of California, with Statutory Limits, and Employer's Liability Insurance with limit of no less than \$1,000,000 per accident for bodily injury or disease.
4. Professional Liability (Errors and Omissions) insurance appropriate to the CONTRACTOR's profession, with limit no less than \$1,000,000 per occurrence or claim, \$2,000,000 aggregate.

B. Specific Provisions of the Certificate

1. If the required insurance is written on a claims made form, the retroactive date must be before the date of the contract or the beginning of the contract work and must be maintained and evidence of insurance must be provided for at least three (3) years after completion of the contract work.
2. CONTRACTOR must submit endorsements to the General Liability reflecting the following provisions:
 - a. *The COUNTY, its officers, agents, officials, employees and volunteers are to be covered as additional insureds as respects; liability arising out of work or operations performed by or on behalf of the CONTRACTOR including material, parts, or equipment furnished in connection with such work or operations.*
 - b. *For any claims related to this project, the CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, agents, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, agents, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.*
 - c. *CONTRACTOR hereby grants to COUNTY a waiver of any right to subrogation which any insurer of CONTRACTOR may acquire against the county by virtue of the payment of any loss under such insurance. CONTRACTOR agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the COUNTY has received a waiver of subrogation endorsement from the insurer.*

d. Each insurance policy required by this agreement shall be endorsed to state that coverage shall not be canceled by either party, except after written notice has been provided to the County.

3. The Workers' Compensation policy shall be endorsed with a waiver of subrogation in favor of the COUNTY for all work performed by the CONTRACTOR, its employees, agents and subcontractors. CONTRACTOR waives all rights against the COUNTY and its officers, agents, officials, employees and volunteers for recovery of damages to the extent these damages are covered by the workers compensation and employers liability.

C. Deductibles and Self-Insured Retentions

Self-insured retentions must be declared and the COUNTY Risk Manager must approve any deductible or self-insured retention that exceeds \$100,000.

D. Acceptability of Insurance

Insurance must be placed with insurers with a current rating given by A.M. Best and Company of no less than A-:VII and a Standard & Poor's Rating (if rated) of at least BBB and from a company approved by the Department of Insurance to conduct business in California. Any waiver of these standards is subject to approval by the County Risk Manager.

E. Verification of Coverage

Prior to approval of this Agreement by the COUNTY, the CONTRACTOR shall file with the submitting department, certificates of insurance with original endorsements effecting coverage in a form acceptable to the COUNTY. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The COUNTY reserves the right to require certified copies of all required insurance policies at any time.

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

This Exhibit shall constitute the Business Associate Agreement (the "Exhibit") between Contractor, (the "Business Associate") and the County of Tulare (the "Covered Entity"), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, "Services"), that are identified in the Agreement (as defined below).

Business Associate acknowledges and agrees that all Protected Health Information ("PHI") that is created or received by Covered Entity and disclosed or made available in any form, including but not limited to paper record, oral communication, audio recording, and electronic display by Covered Entity or its operating units to Business Associate or is created or received by Business Associate on Covered Entity's behalf shall be subject to this Agreement.

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

2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Exhibit are to Title 45 of the Code of Federal Regulations, parts 160 and 164 (the "HIPAA Privacy Rule" and the "HIPAA Security Rule") as in effect or as amended, and for which compliance is required, unless otherwise specified.

3. **Definitions.** Unless otherwise defined in this Agreement, the terms used in this Agreement shall have the meanings ascribed in the HIPAA Regulations; provided that PHI shall mean Protected Health Information, as defined in 45 C.F.R. section 160.103, limited to the Protected Health Information Business Associate received from, created, or received on behalf of Covered Entity as its Business Associate.

4. Obligations and Activities of Business Associate.

Business Associate agrees to:

- a. Acknowledge that it is required by Sections 13401 and 13404 of the HITECH Act to comply with the HIPAA Security Rule, Sections 164.308 through 164.316, including the Security Rule's Administrative, Physical and Technical safeguard requirements and the use and disclosure provisions of the HIPAA Privacy Rule, Sections 164.502 and 164.504.
- b. Not use or further disclose PHI other than as permitted or required by this Exhibit, or as required by law.
 1. Use appropriate safeguards to maintain the security, including compliance with Subpart C of 45 CFR Part 164, with respect to electronic PHI, to prevent use or disclosure of the PHI other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PHI that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to applicable minimum necessary rules, regulations and statutes.
 2. To the extent practicable, Business Associate will secure all PHI by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with any applicable standards or guidance issued by the Department of Health and Human Services under Section 13402 of the HITECH Act.
- c. Report breach disclosures immediately to Covered Entity. Business associate: 1) shall report to Covered Entity any use or disclosure of PHI not provided for by this Agreement on the first day the Business Associate knows or should have known about it; 2) notify the Covered Entity of any and all breaches of PHI, and provide detailed information to the Covered Entity about the

EXHIBIT C

HIPAA BUSINESS ASSOCIATE AGREEMENT (Form revision approved 4/18/18)

breach, along with the names and contact information, when available, of all individuals whose PHI was involved. (See Section 6 of this Exhibit for further detail.) 3) agrees that such notification will meet the requirements of Section 13402 of the HITECH Act and § 164.410 of the amended HIPAA regulations.

- d. Enter into a written agreement with any agent, including a subcontractor, to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, pursuant to which such agent or subcontractor agrees to be bound by the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2) if applicable. (See Section 11 of this Exhibit for further detail.)
- e. Make internal practices, books, and records, including policies and procedures relating to the use and disclosure of PHI available to the Covered Entity or to the Secretary of the United States Department of Health and Human Services ("Secretary"), for purposes of determining Business Associate's compliance with the HIPAA Privacy Rule and Security Rule. (See Section 12 of this Exhibit for further detail.)
 - 1. Business Associate shall concurrently provide to the Covered Entity a copy of any PHI that Business Associate provides to the Secretary.
- f. Maintain and make available the information required to provide an accounting of disclosures of PHI as would be required for Covered Entity to respond to a request by an individual for an account of disclosures of PHI in accordance with 45 CFR § 164.528.

5. Permitted Uses and Disclosures by Business Associate.

- a. Business Associate may use PHI to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).
Unless otherwise limited in this Exhibit, Business Associate may:
- b. Use or disclose PHI to perform functions, activities, or services for, or on behalf of, Covered

Entity as necessary to perform the services described in Exhibit A to the Agreement, or as otherwise specified in the Master Exhibit, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

- c. Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.
- d. Disclose PHI for the proper management and administration of the Business Associate, provided that disclosures are required by law, or Business Associate obtains the appropriate medical release from the person whose PHI is being disclosed and the person to whom the PHI is disclosed provides reasonable assurances in writing that the PHI will remain confidential and used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- e. Use PHI to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

6. Reporting Unauthorized Uses and Disclosures.

- a. Business Associate agrees to notify Covered Entity of any breach, or security incident involving PHI of which it becomes aware, including any access to, or use or disclosure of PHI not permitted by this Exhibit. Such notification will be made immediately after discovery and will include, to the extent possible, the identification of each individual whose PHI has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the PHI involved, the nature of the unauthorized access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available

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information that the Covered Entity is required to include in its notification to the individual under Section 164.404(c) at the time of the initial report or within three (3) days of the information becoming available.

- b. In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.
- c. A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.
- d. In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Exhibit, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Exhibit and the Agreement.

7. Mitigation of Harmful Effects.

- a. Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the following actions: breach, security incident, or unauthorized access, use or disclosure of PHI by Business Associate or its employees, officers, subcontractors, agents, or other representatives.
- b. Following the actions listed in Section 7(a) of this Exhibit, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make said documentation available to Covered Entity.
- c. Except as required by law, Business Associate agrees that it will not inform any third party of a

breach or unauthorized access, use or disclosure of PHI without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice.

8. Indemnification.

Business Associate agrees to:

- a. Hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 7 of this Exhibit.
- b. Assume responsibility for any and all costs associated with the Covered Entity's notification of individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.
- c. Hold harmless, defend at its own expense and indemnify Covered Entity and its respective employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party") against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Exhibit or from any acts or omissions related to this Exhibit by Business Associate or its employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorney's fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any

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Indemnified Party shall survive the expiration or termination of the Agreement.

9. Individuals' Rights.

Business Associate agrees to:

- a. Provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an individual in order to meet the requirements under Section 164.524.
- b. Make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an individual, and in the time and manner designated by the Covered Entity.
- c. Document such disclosures of PHI and information related to such disclosures as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- d. Provide to Covered Entity or an individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 9(c) of this Exhibit, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of PHI in accordance with Section 164.528.
- e. Comply with any restriction to the use or disclosure of PHI that Covered Entity agrees to in accordance with Section 164.522.

10. Obligations of Covered Entity.

Covered Entity shall:

- a. Provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.
- b. Provide Business Associate with any changes in, or revocation of, permission by individual to use or disclose PHI, if such changes affect Business Associate's permitted or required uses and disclosures.

- c. Notify Business Associate of any restriction to the use or disclosure of PHI that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

11. Agents and Subcontractors of Business Associate.

- a. Business Associate agrees to ensure that any agent, subcontractor, or other representative to whom it provides PHI received from, or created or received by Business Associate on behalf of Covered Entity, agrees in writing to the same restrictions, conditions and requirements that apply through this Exhibit to Business Associate with respect to such information, including the requirement to promptly notify the Business Associate of any instances of unauthorized access to or use or disclosure of PHI of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.
- b. Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

12. Audit, Inspection, and Enforcement.

- a. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of PHI received from, or created or received by Business Associate on behalf of, Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.
- b. With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of PHI to determine compliance with the terms of this Exhibit. Business Associate shall promptly correct any violation of this Exhibit found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any

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unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under the Agreement.

Associate has violated a material term of this Exhibit.

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

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

14. **Term and Termination.**

- a. The terms of this Exhibit shall remain in effect for the duration of all services provided by Business Associate under the Agreement and for so long as Business Associate remains in possession of any PHI received from, or created or received by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this section that it is not feasible to return or destroy all PHI.
- b. Upon termination of the Agreement, Business Associate shall recover any PHI relating to the Agreement and this Exhibit in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such PHI, in any form, in its possession and shall retain no copies. If Business Associate believes it is not feasible to return or destroy the PHI, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the PHI in its possession, and (2) the specific reasons for such determination. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the PHI, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Agreement and this Exhibit shall be extended to any PHI for so long as Business Associate maintains such PHI, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the PHI infeasible.
- c. Covered Entity may immediately terminate the Agreement if it determines that Business

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

- a. **Lost Revenues.** Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.
- b. **Penalties/Fines for Failure to Comply with HIPAA.** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.
- c. **Penalties/Fines (other).** Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

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

Revised 6/29/16/ SDF/ 2015418/ 930874_2

EXHIBIT "D"

CULTURAL COMPETENCE AND DIVERSITY

The CONTRACTOR is encouraged to support Tulare County Health and Human Services Agency in the journey to work effectively across and among all cultures. It is the desire of HHSA that services be sensitive to the diversity of the community served, including but not limited to ethnic, linguistic, sexual and cultural characteristics. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.

CONTRACTOR and COUNTY agree that:

- **Cultural competence** is the integration and transformation of knowledge about individuals and groups of people into specific standards, policies, practices, and attitudes used in appropriate cultural settings to increase the quality of services, thereby producing better outcomes. Competence in cross-cultural functioning means learning new patterns of behavior and effectively applying them in appropriate settings.

CONTRACTOR will strive to:

- Ensure that agents, employees or officers providing services are sensitive to the ethnic, linguistic, sexual and cultural diversity of the community served. Sensitivity includes acceptance and respect for the cultural values, beliefs and practices of the community, as well as the ability to apply an understanding of the relationships of language and culture to the delivery of supports and services.
- Assure equal access for people with diverse cultural backgrounds and/or limited English proficiency. Limited English Proficiency includes literacy issues: those who cannot either read or write in any language.