

**MEMORANDUM OF UNDERSTANDING
BETWEEN
COUNTY OF TULARE
AND
CREATIVE ALTERNATIVES, INC**

This MEMORANDUM OF UNDERSTANDING (MOU) is entered into between the County of Tulare, Health and Human Services Agency, Child Welfare Services (CWS) (hereinafter called COUNTY) and Creative Alternatives (hereinafter called FFA) to coordinate services for COUNTY Foster Children through cooperation, collaboration, and the sharing of appropriate information by agencies within this jurisdiction. This MOU will establish and/or ratify existing relationships and procedures between these parties effective the date of execution.

WHEREAS, the COUNTY has determined that a collaborative approach to the delivery of services to children and families may lead to the provision of more appropriate and effective delivery of services; and

WHEREAS, the COUNTY has determined that such collaboration may ultimately allow the FFA to provide appropriate services to children and families within existing consolidated resources; and

WHEREAS, the COUNTY has determined it is in the best interests of the FFA to establish a collaborative management of services provided to children and families; and

WHEREAS, the undersigned desire to enter into a MOU for the collaboration of services to families and children who would benefit from the cooperation, group effort, and the sharing of appropriate information by all parties; and

WHEREAS, the parties to this MOU agree to mutually implement the provisions of this MOU in order to meet the goals of the statewide Child Welfare Services system as described in Welfare and Institutions Code 16500, as follows:

"The Legislature hereby declares its intent in providing for this statewide system of child welfare services that all children are entitled to be safe and free from abuse and neglect."; and,

WHEREAS, the COUNTY reserves the right to place COUNTY foster children with the FFA that has signed this MOU and are in good standing with the COUNTY. An ongoing pattern of continued violations of this MOU will affect the good standing with the COUNTY and may affect placement; and,

WHEREAS, the parties to this MOU agree to mutually implement the provisions of California's Child Welfare Continuum of Care Reform (CCR) as mandated by Welfare and Institutions Code 11461.2, as follows:

"It is the intent of the Legislature to ensure quality care for children who are placed in the continuum of Aid to Families with Dependent Children-Foster Care (AFDC-FC) eligible placement settings."

ACCORDINGLY, IT IS AGREED:

- I. The FFA will be responsible to:
 - A. Ensure that the physical, emotional, and academic needs of children in their care are met, agree to participate fully in the child and family's case plan as established by the COUNTY, and work to facilitate positive outcomes for children and families including the transportation for all case plan services as well as all medical, mental health, family visits, academic, and social events, and also in accordance with CCR implementation;
 - B. Maintain its licensure in good standing in accordance with all State requirements, including all applicable statutes and regulations;
 - C. Provide the COUNTY CWS Social Worker with the form, "Foster Family Agency CWS/CMS Contact/Service Deliver Log (SOC 160)" following the completion of all face-to-face contacts with COUNTY foster children at a minimum of once a month;
 - D. Provide all applicable information regarding case plans, reports, evaluations, or other information deemed appropriate at the FFA and COUNTY (CWS) meetings;
 - E. Provide the COUNTY with informational updates on its certified and decertified (with the reason why they decertified) resource family homes by the 10th of each month (i.e., telephone numbers and composition of the home). The informational list for the resource family homes will include the physical address of the resource family home and not the address of the FFA headquarters;
 - F. Contact the assigned COUNTY CWS Social Worker and/or the assigned COUNTY CWS Social Worker's Supervisor immediately (within two hours) upon the occurrence of any incident as described in the Interim Licensing Standards version 3 (or most updated version released by the State), <http://www.cdss.ca.gov/inforesources/Childrens-Residential/Resources-for-Providers/Laws-and-Regulations>. For emergency after-hours issues, the FFA will contact the COUNTY CWS Hotline Telephone number: 1-800-331-1585;
 - G. Contact the County CWS Manager when the COUNTY CWS Social Worker and the COUNTY CWS Supervisor cannot be reached during regular work hours, if a question on CWS practice protocols occurs and regular communication is at a standstill;
 - H. Foster Family rescinded and/or "transferred". Transferred refers to the action by which a resource family voluntarily or involuntarily departs from one FFA (current FFA) to become a member of another FFA (prospective FFA), County resource family home or if a County resource family home wishes to be approved with a FFA. *If COUNTY foster children are involved, they are not automatically moved with the resource family without a staffing (CFT or Hybrid TDM/CFT) prior to the change;*
 - i. The FFA will notify the COUNTY immediately when an emergency arises requiring the movement of a COUNTY (CWS) placed child. Otherwise, FFA shall notify COUNTY at least sixty (60) days prior to any resource family rescinding their approval. To ensure the safety, permanency, and well-being of the child is met, the FFA will provide a synopsis to the COUNTY of the resource family seeking rescind their approval as a resource family.

The COUNTY will have full discretion to determine appropriate or continued placement with the resource family and/or the FFA.

- ii. Both the current FFA and the prospective FFA will notify the FFA resource family that they cannot “transfer” with any COUNTY foster child without the prior approval of the COUNTY. The same provisions will carry when a FFA resource family wishes to “transfer” to a County resource family home.
- iii. Both the current FFA and the prospective FFA will notify the COUNTY immediately if an emergency arises requiring the movement of a foster child. Otherwise, FFA will notify COUNTY at least 60 days upon knowledge of, or at the request of, any resource family who currently has a COUNTY foster child prior to transferring from the current FFA to another FFA or County Resource Home. The current FFA will attend a Child and Family Team (CFT) meeting or a Hybrid Team Decision Making (TDM)/CFT with the COUNTY, prospective FFA, biological parents, the child, resource family, and any other pertinent individuals (ex. mental health therapist, school personnel, etc.), to discuss the best interest of the child. The COUNTY will have discretion to determine appropriate or continued placement with the current resource family. The COUNTY will determine if appropriate notification timelines listed in this provision were followed by the prospective FFA and the current FFA.
- iv. The prospective FFA will notify the current FFA immediately if an emergency arises. Otherwise, FFA will notify COUNTY at least 60 days upon knowledge of, or at the request of, the current FFA to the prospective FFA when a COUNTY foster child is involved. The COUNTY foster child will not be automatically moved with the resource family without a CFT or Hybrid TDM/CFT meeting with the COUNTY prior to the change.
- I. Coordinate with the COUNTY CWS Social Worker for after-hours placements. The after-hours placement agreement form, “Placement Agency – Foster Family Agency Agreement (SOC 154A—the State is pending updating this form to conform to RFA language)” must be signed by the FFA Social Worker at the time of placement (faxing or emailing the signed placement agreement at the time of placement will be accepted);
- J. Conduct supervised visitations as described in COUNTY Policy #40-03 and complete approved COUNTY forms associated with each visit when a COUNTY foster child is involved;
- K. Provide transportation to the school of origin for the COUNTY foster child to be in compliance with Assembly Bill 490, as applicable;
- L. Attend a CFT or Hybrid TDM/CFT meeting with the COUNTY CWS Social Worker, the FFA, current resource family, prospective resource family(s), and COUNTY foster child, as applicable and age appropriate, to discuss the best interest of the COUNTY foster child when a change of placement is being considered, unless it’s an emergency (one of abuse);
- M. Notify the COUNTY of any intended move of the COUNTY foster child and attend any associated CFT or Hybrid TDM/CFT meeting via Seven-Day notice prior to moving a child. Hybrid TDM/CFTs should be requested prior to issuing a formal seven-day notice when placement stability is at risk. COUNTY foster

children are not to be automatically moved between resource family homes without a CFT or Hybrid TDM/CFT meeting prior to the change unless the COUNTY foster child is in imminent risk;

- N. Provide at least seven (7) days advance notice to the COUNTY if removal of a COUNTY foster child is requested unless it is agreed upon with the COUNTY that less time is necessary as noted on the SOC 156 form;
- O. Arrange respite care for the COUNTY foster child as needed. Respite care cannot be used by an FFA resource family to avoid giving a Seven-Day notice;
- P. Attend and participate at all case staffings (ex. CFTs, TDMs, Hybrid TDM/CFTs, Special Rates Committee, etc) as required by COUNTY;
- Q. FFA Social Workers may attend the Social Worker Core Trainings conducted by the Central California Training Academy (CCTA). The Social Worker Core Trainings are provided in a cycle throughout a 12 month period;
- R. FFA Social Workers will review the personal rights (as defined in Welfare and Institutions Code §16001.9 (LIC 613B form)) with the child and the FFA resource family every 90 days prior to the child's status review hearing and every 90 days after the child's status review hearing. The child, or for children under the age of ten, the child's representative must sign the LIC 613B. A copy of the completed LIC 613B is to be sent to the COUNTY;
- S. The FFA is required to post a copy of the child's personal rights in areas accessible to the public and in the FFA resource family home;
- T. The FFA director must attend the quarterly FFA Executive meetings. If the director cannot attend, a designee must be assigned to attend.
- U. The FFA will ensure that their agency representative will have someone available to answer the phone on weekends, evenings and holidays, also providing to the COUNTY updated contact information for after-hour coverage.
- V. Upon issue of the MOU, the FFA will provide the County with a description and schedule of training curriculum they provide to their FFA resource family homes.

II. COUNTY will be responsible to:

- A. Provide required information to the FFA including the child's Case Plan, child's Placement Needs and Services Plan, Health and Education Passport, Protected Information, Medi-Cal card, Medical Authorization, Consent to Treatment Form and JV -220 with a seven (7) calendar day turnaround;
- B. Communicate and coordinate with the FFA regarding case plans, CFTs, visitation, transportation, and placement changes on behalf of children and families;
- C. Input into Child Welfare Services/Case Management Services (CWS/CMS) database the "Foster Family Agency CWS/CMS Contact/Service Deliver Log (SOC 160)" upon receipt from the FFA;
- D. Input into Child Welfare Services/Case Management Services (CWS/CMS) database the physical address of the FFA resource family home where the child

- is placed on the "Placement Page." The address of the FFA headquarters is to be input into CWS/CMS on the "Payee Page";
- E. Provide to the FFA an updated Tulare County CWS Roster with telephone numbers and e-mail addresses for each COUNTY CWS case carrying Social Worker, COUNTY CWS Supervisor, and COUNTY CWS Manager, including the Foster Care Ombudsman on a monthly basis.
 - F. Foster Family who rescind their resource family approval and/or "transfer." *If COUNTY foster children are involved, they are not to be automatically moved to a new placement without a staffing with the COUNTY prior to the placement change;*
 - i. If a resource family with a COUNTY foster child rescinds their approval from a FFA and is not seeking to be approved with another FFA or County Home, the COUNTY will conduct a CFT or Hybrid TDM/CFT with the COUNTY CWS Social Worker, the current FFA, and the resource family(s) to discuss the best interest of the child prior to removal of said child.
 - ii. If a family with a COUNTY foster child rescinds their approval from one FFA to join another FFA or become a County Resource Family Home (transferring) and is seeking to continue caring for the COUNTY foster child, the COUNTY will coordinate and conduct a CFT or Hybrid TDM/CFT meeting with the COUNTY CWS Social Worker, current FFA, prospective FFA (if FFA to FFA transfer), and resource family(s) to discuss the best interest of the child. The COUNTY will have discretion to determine appropriate or continued placement. The COUNTY does not guarantee continued placement for said child. The COUNTY's decision will be partly based on the prospective FFA's good standing in accordance with all requirements of this Memorandum of Understanding that include: to collaborate, to cooperate, and to share appropriate information within specified time lines with other parties existing within this jurisdiction.
 - iii. County will notify FFA upon receipt of application of any FFA home applying to become a Tulare County Resource Family Home.
 - G. Coordinate with the FFA Social Worker for after-hours placements. The COUNTY CWS Social Worker will contact the FFA Social Worker during a placement to obtain their signature on the placement agreement form, "Placement Agency – Foster Family Agency Agreement (SOC 154A—the State is pending updating this form to conform to RFA language)" (faxing the placement agreement will be acceptable);
 - H. Provide to the FFA approved COUNTY forms and guidelines to conduct Supervised Visitations and provide the "Foster Family Agency CWS/CMS Contact/Service Delivery Log (SOC 160)" for face-to-face contacts with COUNTY foster children by the FFA;
 - I. Conduct a CFT or Hybrid TDM/CFT meeting with the COUNTY CWS Social Worker, the FFA, current resource family(s), and prospective or new resource family to discuss the best interest of the child when placement may be disrupted;
 - J. The COUNTY CWS Social Worker will notify the FFA and the FFA resource family of all case staffings (ex. CFTs, TDMs, Hybrid TDM/CFTs, Special Rates

Committee, etc) where FFA participation is required;

- K. The COUNTY CWS Social Worker will arrange CFT or Hybrid TDM/CFT meetings and notify all participants including FFA Administration;
- L. Provide date, time, and location information to the FFA for the Social Worker Core Trainings conducted by the Central California Training Academy;
- M. The COUNTY CWS Social Worker will provide and review the Personal Rights (LIC 613B—the State is pending updating this form to conform to RFA language) form at the time of placement with all foster youth and the resource family, as defined in Welfare and Institutions Code §16001.9, and obtain the child's signature for children over the age of ten. The social worker will review these rights with the child every six months prior to the child's status review hearing and every six months after the child's status review hearing.

III. This MOU is a statement of the responsibilities and commitment of both parties to the COUNTY children and families.

IV. TERM: This MOU is effective upon signatures by the Tulare County Board of Supervisors through June 30, 2019.

V. INDEPENDENT CONTRACTOR STATUS:

(a). This MOU is entered into by both parties with the express understanding that FFA will perform all services required under this MOU as an independent contractor. Nothing in this MOU shall be construed to constitute the FFA or any of its agents, employees or officers as an agent, employee or officer of COUNTY.

(b). FFA agrees to advise everyone it assigns or hires to perform any duty under this MOU that they are not employees of COUNTY. Subject to any performance criteria contained in this MOU, FFA shall be solely responsible for determining the means and methods of performing the specified services and COUNTY shall have no right to control or exercise any supervision over FFA as to how the services will be performed. As FFA is not COUNTY'S employee, FFA is responsible for paying all required state and federal taxes. In particular, COUNTY will not:

- (1) withhold FICA (Social Security) from FFA'S payments.
- (2) make state or federal unemployment insurance contributions on FFA'S behalf.
- (3) withhold state or federal income tax from payments to FFA.
- (4) make disability insurance contributions on behalf of FFA.
- (5) obtain unemployment compensation insurance on behalf of FFA.

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

VI. COMPLIANCE WITH LAW: FFA shall provide services in accordance with applicable Federal, State, and local laws, regulations and directives. With respect to FFA'S employees, FFA 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.

- VII. **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 in compliance with charges pursuant to federal or state laws, regulations, or policies affecting MOUs rulings, pertinent regulations, or funding.
- VIII. **RECORDS AND AUDIT:** FFA shall maintain complete and accurate records with respect to the services rendered under this MOU. In addition, FFA 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, FFA 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.
- IX. **INSURANCE:** Prior to approval of this MOU by COUNTY, FFA shall file with the submitting department evidence of required insurance as set forth in Exhibit A attached. Insurance policies shall not be used to limit FFA'S liability or to limit the indemnification provisions and requirements of this MOU or act in any way to reduce the policy coverage and limits available from the insurer(s).
- X. **INDEMNIFICATION:** The FFA 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 FFA or its agents, officers and employees under this MOU. This indemnification obligation shall continue beyond the term of this MOU as to any acts or omissions occurring under this MOU or any extension of this MOU.
- XI. **TERMINATION:**
- (a). Without Cause: County 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. FFA agrees to return to COUNTY any and all plans, specifications and estimates, and other documents prepared by CONTRACTOR in accordance with this MOU. No sanctions will be imposed.
- (b). With Cause: This MOU may be terminated 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 FFA or anyone acting On FFA'S behalf, as to any matter related in any way to

COUNTY'S retention of FFA, or
(7) other misconduct or circumstances which, in the sole discretion of the COUNTY, either impair the ability of FFA to competently provide the services under this MOU, or expose 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 FFA'S services have been terminated by the County, said termination will not affect any rights of the County to recover damages against the FFA.

(d). Suspension of Performance: Independent of any right to terminate this MOU, the authorized representative of COUNTY for which FFA'S services are to be performed, may immediately suspend performance by FFA, in whole or in part, in response to health, safety or financial emergency, or a failure or refusal by FFA 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.

XII. 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

FOSTER FAMILY AGENCY:

Creative Alternatives, INC
2855 Geer Rd.
Turlock, Ca 95382
209 668-9361

XIII. ASSIGNMENT/SUBCONTRACTING: Unless otherwise provided in this MOU, COUNTY is relying on the personal skill, expertise, training and experience of FFA and FFA'S employees and no part of this MOU may be assigned or subcontracted by FFA without the prior written consent of COUNTY.

XIV. FURTHER ASSURANCES: Each party will execute any additional documents and perform any further acts that may be reasonably required to affect the purposes of this MOU.

XV. NO THIRD-PARTY BENEFICIARIES INTENDED: Unless specifically set forth, the parties to this MOU do not intend to provide any other party with any benefit or enforceable legal or equitable right or remedy.

- XVI. 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.
- XVII. ASSURANCES OF NON-DISCRIMINATION:** FFA 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 FFA 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, FFA 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 FFA 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.
- XVIII. HEALTH INSURANCE PORTABILITY AND ACCOUNTABILITY ACT (HIPAA):**
- (a). FFA shall comply with the Health Insurance Portability and Accountability Act (HIPAA) Business Associate exhibit, as set forth in EXHIBIT B attached.
 - (b). At termination of this MOU, FFA shall, if feasible, return or destroy all protected health information received from, or created or received by, FFA on behalf of COUNTY that FFA 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 FFA has violated a material term of this provision.
- XVIII. GOVERNING LAW:** This Agreement 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.
- XIX. CULTURAL COMPETENCE AND DIVERSITY:** CONTRACTOR shall comply with the Cultural Competence exhibit, as set forth in EXHIBIT C attached.

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

COUNTY OF TULARE

Date: _____ BY _____
Chairman, Board of Supervisors

ATTEST: JASON T. BRITT
COUNTY ADMINISTRATIVE OFFICER/
CLERK, BOARD OF SUPERVISORS

By _____
Deputy Clerk

CREATIVE ALTERNATIVES, INC

Date: 4/9/19

By: Eileen Hamilton

TITLE: Vice-President

Date: 4/9/19

By: J. Middle

TITLE: Executive Director

Corporations Code section 313 requires that contracts with a corporation be signed by both (1) the chairman of the Board of Directors, the president or any vice-president, and (2) the secretary, any assistant secretary, the chief financial officer, or any assistant treasurer, unless the contract is accompanied by a certified copy of the corporation's Board of Directors' resolution authorizing the execution of the contract.

Approved as to Form
County Counsel

By: [Signature]
Deputy (20181954)

Date 4/25/19

EXHIBIT A

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 A

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

EXHIBIT A

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

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.

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.

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

Associate has violated a material term of this Exhibit.

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.

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 "B"

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.

Exhibit C

PROFESSIONAL SERVICES CONTRACTS **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, 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

Deductibles and Self-insured retentions must be declared and any deductible or self-insured retention that exceeds \$100,000 will be reviewed by the COUNTY Risk Manager for approval.

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.

WAIVERS:

I represent and attest that I am a person authorized to make representations on behalf of the CONTRACTOR, and represent the following:

(mark X if applicable)

Automobile Exemption: I certify that _____ does not own nor use vehicles in the performance of the agreement for which this insurance requirement is attached.

Workers' Compensation Exemption: I certify that _____ is not required to carry workers' compensation coverage or has filed an exemption with the State of California as required by law.

I acknowledge and represent that we have met the insurance requirements listed above.

Print Name Angie Potts Date: 2-27-19

Contractor Name Creative Alternatives

Signature Angie Potts