

COUNTY OF SAN MATEO  
PUBLIC AUTHORITY  
INTERAGENCY AGREEMENT TO ADMINISTER THE INDEPENDENT PROVIDER  
COMPONENTS OF THE IN-HOME SUPPORTIVE SERVICES PROGRAM

**I. DECLARATION**

This Agreement is entered into this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_, in the State of California by and between the COUNTY of SAN MATEO, hereinafter referred to as the "COUNTY" and the SAN MATEO COUNTY PUBLIC AUTHORITY hereinafter referred to as the "AUTHORITY," for the purpose of administering the independent provider components of the In-Home Supportive Services Program.

**II. DEFINITIONS**

A. Pursuant to California Welfare and Institutions Code Section 12301.6 and San Mateo County Ordinance Number 03508 the Public Authority was created to govern the administration of the provider components of the In-Home Supportive Services (IHSS) program.

1. The Public Authority is an entity separate from the county; and a corporate public body exercising public and essential governmental functions; and that has all powers necessary and convenient to carry out the independent provider components of IHSS.
2. Independent providers are those individuals hired by consumers of the In-Home Supportive Services to provide services.
3. Consumers are those individuals served by the In-Home Supportive Services Program.

**III. DUTIES AND RESPONSIBILITIES**

A. The COUNTY and the AUTHORITY shall have the following Joint Responsibilities:

1. Prepare periodic evaluations to determine a fiscal and program appraisal of the successes and/or deficiencies of the AUTHORITY to determine the extent to which the AUTHORITY is achieving its purposes.

2. Confer on all cases in which a consumer or independent provider grievance/appeal has been registered regarding the conduct or performance of the AUTHORITY.
3. Maintain liaison personnel
  - a. The COUNTY will provide a Program Manager to the AUTHORITY to manage its operations. This Manager will report to the Director of Aging and Adult Services and will have primary responsibility for liaison and coordination of activities between the AUTHORITY and the IHSS Program.
  - b. The COUNTY will also provide a liaison person from the IHSS Program to coordinate services with the AUTHORITY.
  - c. These persons will act to ensure compliance with all Agreement provisions.

B. The COUNTY shall have the following responsibilities:

1. The exclusive right to authorize services for a consumer.
2. Sole authority for the determination of need for IHSS, the level and quality of services required, and the eligibility of individuals to be served.
3. Assessment of a consumer's continuing need for services.
4. The exclusive right to terminate the consumer's participation in the IHSS Program at any time based on regulatory requirements.
5. To provide orientation to all appropriate staff regarding the AUTHORITY's role, responsibilities and contract agreements.
6. To refer all appropriate IHSS consumers to the AUTHORITY for AUTHORITY services.
7. To evaluate the effectiveness, level and quality of service performed by the AUTHORITY.
8. To assist the AUTHORITY to obtain complete and current information with respect to pertinent statutes, regulations, policies, procedures and guidelines which apply to the delivery of IHSS.
9. To provide necessary data and access to County records to allow the AUTHORITY to perform its mandated and authorized functions.
10. To provide certain services to the AUTHORITY. These services will include, but not be limited to, business administration, accounting, payables, receivables,

budgeting, contract processing and monitoring, legal services, risk management and benefits and payroll services for the AUTHORITY's administrative staff. The scope and costs of these services will be negotiated annually during the County's annual budget process.

11. To assist the AUTHORITY to develop the positions/staffing patterns necessary to accomplish its work, as mutually agreed upon.

C. The AUTHORITY shall have the following responsibilities:

1. EXHIBIT A, AUTHORITY Responsibilities, is attached and made a part hereof by this reference.

#### **IV. FISCAL PROVISIONS**

A. The AUTHORITY will be funded by State, Federal and County monies based on the established IHSS cost sharing ratios. Ratios are established by California State Welfare and Institutions Code 12306.

1. The COUNTY's financial obligation under this Agreement shall be determined annually during the COUNTY's annual budget process. The COUNTY's final Adopted Budget for the AUTHORITY shall be provided to the AUTHORITY each year.
2. EXHIBIT B, Billing and Payment, is attached and made a part hereof by this reference.

B. Availability of Funds

1. Payment of all services provided in accordance with provisions of this Agreement are contingent upon the availability of County, State and Federal funds for the purposes of providing IHSS.

#### **V. TERMINATION**

A. This agreement may be terminated under the following conditions:

1. Failure or refusal of the AUTHORITY to perform any act herein required shall constitute a default. In the event of any default this Agreement may be terminated by the COUNTY immediately upon written notice.
2. This Agreement may be terminated by the COUNTY with or without cause when a 30-day written notice is provided to the AUTHORITY.

3. The AUTHORITY may terminate this agreement with or without cause by giving sixty (60) days' advance written notice to the COUNTY.

## VI. MONITORING/AUDIT PROVISIONS

A. Authorized representatives of the COUNTY, State and Federal Governments shall have the right to monitor and audit all aspects of operations under this Agreement.

1. The AUTHORITY shall cooperate fully in any monitoring or auditing conducted by the COUNTY or other governmental entities.
2. Monitoring by the COUNTY may be accomplished by the following means: field reviews, audit of claims, review of records.
3. The COUNTY shall notify the AUTHORITY in writing within 30 calendar days of the discovery of any potential audit exceptions discovered during any monitoring or auditing examination.

B. The AUTHORITY agrees their financial records shall contain itemized records of all costs and be available for inspection in the COUNTY within three working days of the request by any COUNTY, State, or Federal agency.

### C. Record Maintenance

1. The AUTHORITY agrees to maintain all required program, fiscal, statistical and management records locally and make such records available for inspection by the COUNTY, State and Federal representatives at all reasonable times.

### D. Records Retention

1. The AUTHORITY agrees to maintain all records pertaining to service delivery and fiscal and administrative controls for a minimum of three years after final payment for a given fiscal year has been made, or until all pending COUNTY, State and Federal audits are completed, whichever is later.
2. Upon request, the AUTHORITY shall make these records available in the COUNTY to all authorized COUNTY, State and Federal personnel.

### E. Disposal of Records

1. Records shall be destroyed in accordance with DSS, MPP Division 23, Section 350.

## **VII. MINIMUM STANDARDS FOR SALARIES AND BENEFITS**

- A. The AUTHORITY assures that the following minimum standards with regard to salaries and benefits for all AUTHORITY staff will be met:
  - 1. AUTHORITY staff shall receive wages and benefits which are no less than required by applicable State and Federal law.
  - 2. With the exception of retirement benefits, AUTHORITY staff shall receive the same benefits as comparable COUNTY employees.
  - 3. AUTHORITY staff shall receive retirement benefits through the Public Employees Retirement System (PERS).
- B. Salary and benefit payroll deductions will be made by the COUNTY for AUTHORITY staff.

## **VIII. GENERAL PROVISIONS**

### **A. Term of Agreement**

- 1. The term of this Agreement is from July 1, 2005 through June 30, 2008.

### **B. Totality of Agreement**

- 1. This Agreement contains all the terms and conditions agreed upon by the COUNTY and the AUTHORITY and no other understanding, oral or otherwise, regarding this Agreement shall be deemed to exist or to bind any of the parties to this Agreement.

### **C. Agreement Transition Process**

- 1. The AUTHORITY agrees to provide all information deemed necessary by the COUNTY for use in transitioning, rebidding or discontinuing this Agreement.
- 2. Should this Agreement be terminated by the COUNTY or the AUTHORITY for any reason, the AUTHORITY shall assist the COUNTY in the orderly transfer of AUTHORITY services to a successor contractor or other entity.

### **D. Laws Governing Agreement**

- 1. This Agreement shall be governed and construed in accordance with all the laws of the State of California, in addition to any other laws cited herein.

## E. Insurance

1. Prior to commencement of the work, the AUTHORITY shall submit a copy of insurance policies evidencing that the AUTHORITY has obtained for the period of the Agreement, from a generally recognized responsible insurer, insurance in the following forms of coverage and specified minimum amounts:
  - a. A policy for Workers' Compensation Insurance covering all AUTHORITY staff.
  - b. Comprehensive General and Automobile Liability Insurance of:
    - \$1,000,000.00 Bodily Injury - per person and
    - \$1,000,000.00 Bodily Injury - each occurrence and
    - \$1,000,000.00 Property Damage or
    - \$1,000,000.00 Combined single limit bodily injury and property damage.
  - c. The policies shall include the COUNTY as co-insured, and all policies shall provide thirty (30) days' written notice to the COUNTY, by certified mail, of cancellation or material change of said policies. Any such policies or insurance held or owned by the COUNTY shall be called upon to cover a loss under said policy.
  - d. The amounts referenced above are specific to the COUNTY of this Agreement or are an aggregate amount for this and other Agreements. And further, if the amount(s) is/are or does become an aggregate for the AUTHORITY, the AUTHORITY shall execute an agreement with the Insurance Company, and provide evidence of same to the COUNTY, for the Insurance Company to immediately provide notice to the COUNTY of any claim that is filed which may reduce the aggregate amount.

## F. Compliance with laws; payment of Permits/Licenses

All services to be performed by AUTHORITY pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, including, but not limited to, Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended, and the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, as amended and attached hereto and incorporated by reference herein as Attachment "I," which prohibits discrimination on the basis of handicap in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including, but not limited to, appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations.

In the event of a conflict between the terms of this agreement and State, Federal, County, or municipal law or regulations, the requirements of the applicable law will take precedence over the requirements set forth in this Agreement.

AUTHORITY will timely and accurately complete, sign, and submit all necessary documentation of compliance.

G. Hold Harmless and Indemnification

1. AUTHORITY shall indemnify and save harmless COUNTY, its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description (A) brought for, or on account of injuries to or death of any person, including the AUTHORITY and the employees, agents and/or representatives of the AUTHORITY under this Agreement, or damage to any property of any kind whatsoever and to whomsoever belonging, arising out of the AUTHORITY's activities or the activities of the employees, agents and/or representatives of the AUTHORITY under this Agreement, (B) incurred by the COUNTY as a result of the AUTHORITY's violation of any duty under this Agreement including but not limited to the acts of employees, agents and/or representatives of the AUTHORITY resulting in any actual proposed disallowance by the State of California to the COUNTY's claim for reimbursement, (C) incurred by the COUNTY as a result of the AUTHORITY's failure to pay and discharge any obligation incurred by the AUTHORITY, including but not limited to the acts of employees, agents and/or representatives of the AUTHORITY with third parties in the performance of its duties under this Agreement, (D) incurred by the COUNTY from any State hearing cash grant award or lawsuit award resulting from the acts of employees, agents and/or representatives of the AUTHORITY, (E) by reason of any failure to withhold and/or pay to the government income and/or employment taxes from earning under this Agreement as made necessary by Section 530 of the Revenue Act of 1978, (F) and for any other losses or cost, including but not limited to the concurrent active or passive negligence of the COUNTY, its officers, agents, employees, or servants, resulting from the performance of any work required of the AUTHORITY or payments made pursuant to this Agreement, provided that this shall not apply to injuries or damage for which COUNTY has been found in a court of competent jurisdiction to be solely liable by reason of its own negligence or willful misconduct or, (G) any sanctions, penalties, or claims of damages resulting from AUTHORITY's failure to comply with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.

2. The duty of the AUTHORITY to indemnify and save harmless as set forth herein, shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

#### H. Non-Discrimination

1. *Section 504 applies only to Contractor who are providing services to members of the public.* Contractor shall comply with § 504 of the Rehabilitation Act of 1973, which provides that no otherwise qualified handicapped individual shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of this Agreement.
2. *General non-discrimination.* No person shall, on the grounds of race, color, religion, ancestry, gender, age (over 40), national origin, medical condition (cancer), physical or mental disability, sexual orientation, pregnancy, childbirth or related medical condition, marital status, or political affiliation be denied any benefits or subject to discrimination under this Agreement.
3. *Equal employment opportunity.* Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County of San Mateo upon request.
4. *Violation of Non-discrimination provisions.* Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to
  - i. termination of this Agreement;
  - ii. disqualification of the Contractor from bidding on or being awarded a County contract for a period of up to 3 years;
  - iii. liquidated damages of \$2,500 per violation;
  - iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this section, the County Manager shall have the authority to examine Contractor's employment records with respect to compliance with this paragraph and/or to set off all or any portion of the amount described in this paragraph against amounts due to Contractor under the Contract or any other Contract between Contractor and County.



Contractor shall report to the County Manager the filing by any person in any court of any complaint of discrimination or the filing by any person of any and all charges with the Equal Employment Opportunity Commission, the Fair Employment and Housing Commission or any other entity charged with the investigation of allegations within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include the name of the complainant, a copy of such complaint, and a description of the circumstance. Contractor shall provide County with a copy of their response to the Complaint when filed.

*Compliance with Equal Benefits Ordinance.* With respect to the provision of employee benefits, Contractor shall comply with the County Ordinance which prohibits contractors from discriminating in the provision of employee benefits between an employee with a domestic partner and an employee with a spouse.

The Contractor shall comply fully with the non-discrimination requirements required by 41 CFR 60-741.5(a), which is incorporated herein as if fully set forth.

In witness whereof, this Agreement has been executed by the parties hereto upon this date first above written.

COUNTY OF SAN MATEO

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Richard Gordon  
President, Board of Supervisors, County of San Mateo

ATTEST:

\_\_\_\_\_  
Clerk of Said Board  
COUNTY of San Mateo  
State of California

IN-HOME SUPPORTIVE SERVICES PUBLIC AUTHORITY

By: \_\_\_\_\_ Date: \_\_\_\_\_  
Richard Gordon  
President, San Mateo County IHSS Public Authority

## SCHEDULE A

### AUTHORITY Responsibilities

1. Act as an “employer of record” for independent providers (IP). This activity may include, but not be limited to:
  - a. Enrolling independent providers into the State’s Case Management Information and Payrolling System (CMIPS).
  - b. Receiving and processing independent providers’ time cards.
  - c. Submitting reports or other data related to the independent provider payroll as required by the State’s Case Management Information and Payrolling System (CMIPS).
  - d. Working with independent providers, consumers and social workers regarding payroll problems, questions and issues.
  - e. Meeting and conferring with the recognized independent provider organization.
  - f. Responding to requests for independent provider employee verification.
2. Provide a registry of independent providers. This activity may include, but not be limited to:
  - a. Recruiting a sufficient number of qualified IHSS independent providers including substitute workers.
  - b. Screening and conducting background checks prior to placing a prospective provider on the registry. This activity may include, but not be limited to:

Requiring proof of identification; interviewing all registry applicants; reviewing and evaluating skills, qualifications and background; checking and documenting references and legal status to work in the U.S., and completing a criminal record search in San Mateo County on each applicant.
  - c. Maintaining all necessary and required records of independent providers.
3. Provide a referral system for the referral of independent providers to consumers. This activity may include, but not be limited to:
  - a. Providing the consumer with a list of independent providers that to the greatest extent possible match the consumer’s stated needs regarding the skills and preferences required in a worker.
  - b. Providing the list of independent providers within a time frame that meets the consumer’s needs, including their needs in emergency situations.
  - c. Assisting the consumer in hiring an independent provider by providing support, encouragement and training to address any questions or concerns the consumer may have regarding the interview/hiring process.

- d. Implementing efficient and effective strategies for the utilization of independent providers on the registry, including the concept of “geographically-clustered” work sites.
4. Provide access to training for independent providers and consumers. This activity may include, but not be limited to:
  - a. Providing training for independent providers through the provision of written materials, initial and periodic training sessions, and “on the job” training, as needed.
  - b. Providing consumer training through the provision of written materials and agency/home visits, as requested.
  - c. Regularly notifying independent providers and consumers of training opportunities in the community.
5. Provide independent providers with information and programs to enhance their career development. This activity may include, but not be limited to:
  - a. Providing career education resources and referrals.
  - b. Offering information on educational programs to expand the training and certification of independent providers.
  - c. Collaborating with other agencies and educational institutions to develop programs and incentives to enhance the career development and promotional opportunities of independent providers.
6. Provide on-going support for consumers and families who may have difficulty supervising an independent provider, and/or consumers who are at “high risk” for premature institutionalization. This may include, but not be limited to:
  - a. Making follow-up calls as necessary.
  - b. Conducting home visits at the request of a social worker.
  - c. Attending case conferences at the request of a social worker.
7. Provide a system by which recipients and providers shall have the opportunity to express and have considered their views, grievances and complaints regarding the delivery of IHSS/AUTHORITY services.
8. Ensure that all provisions and legal requirements related to the Personal Care Services Program (PCSP) and IHSS Plus Waiver are implemented for the duration of this agreement.
9. Assist the COUNTY in developing and submitting to the California Department of Health Services (DHS) and the California Department of Social Services (DSS) materials required for DHS and DSS approval of AUTHORITY reimbursement rate and any rate adjustments.

10. Prepare and assist in the development of reports requested by the State or COUNTY regarding the operations of the AUTHORITY.
11. Assist the COUNTY in the implementation of the IHSS Quality Assurance and Program Integrity activities.
12. Provide the COUNTY with information needed in preparing the COUNTY's billing to DSS for State and Federal share of AUTHORITY costs. This information will be provided within five (5) working days of the request.
13. Provide any information including, but not limited to, budget, fiscal, statistical and program information as may be required by the COUNTY.
14. Prepare and maintain all necessary and required provider payroll, registry, referral, training and statistical information.
15. Perform other administrative activities related to the provider functions, the delivery of IHSS, and the provider benefits as deemed appropriate and as mutually agreed on by the COUNTY and the AUTHORITY.
16. Monitor contracts as requested or authorized.
17. Provide adequate administrative, supervisory and support personnel to carry out the requirements of this Agreement.
18. Collaborate with and assist the COUNTY in developing an integrated long term care system.
19. Maintain a local office at San Mateo County, California, which will remain open for business Monday through Friday between the hours of 8:00 a.m. and 5:00 p.m. except for designated holidays. The office shall be staffed at all times with appropriate personnel during business hours.
20. Ensure compliance with all applicable Federal, State and COUNTY laws, regulations, codes and Memoranda of Understanding.

## SCHEDULE B

### Billing and Payment

#### 1. Billing

- a. The AUTHORITY will bill the COUNTY at least quarterly, in advance, based on the COUNTY's financial Adopted Budget for the AUTHORITY. The AUTHORITY shall be responsible for submitting required invoices and reports documenting services from previous quarter as a condition of payment.

#### 2. Payment

- a. The AUTHORITY shall be paid an amount not to exceed the amount determined by the COUNTY's final adopted budget approved by the Board of Supervisors for fiscal years 2005-06, 2006-07 and 2007-08. Payment for the first quarter of each year will be one-fourth (1/4) the maximum obligation for that year. Subsequent quarterly payments will be adjusted to reflect actual expenses but in any event will not exceed one-fourth (1/4) the maximum obligation for that year.
- b. If the conditions set forth in this Agreement are met, the COUNTY shall pay, to the AUTHORITY, the sum of money claimed by the approved billings within 21 days following receipt of the AUTHORITY invoice. If the conditions are not met in a timely manner, the COUNTY shall pay when the necessary processing is completed.
- c. Payment for all services provided in accordance with provisions under this Agreement shall be contingent upon the availability of Federal, State and County funds for the purpose of providing In-Home Supportive Services and a Public Authority.

# COUNTY OF SAN MATEO BUSINESS ASSOCIATE AGREEMENT

## Contractor Name and Address

In-Home Supportive Services Public Authority

225 37<sup>th</sup> Avenue

San Mateo, CA 94403

Department: Health Services Agency/  
Aging and Adult Services

Attention: Jackie Toliver

Address: 225 37<sup>th</sup> Avenue

City, State, Zip: San Mateo, CA  
94403

It is agreed between the County of San Mateo, California, and Contractor as follows:

### 1. Definitions

Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms defined in 45 Code of Federal Regulations section 160.103 and 164.501. (All regulatory references in this Agreement are to Title 45 of the Code of Federal Regulations unless otherwise specified.)

(a) *Business Associate*. "Business Associate" shall mean In-Home Supportive Services Public Authority.

(b) *Covered Entity*. "Covered Entity" shall mean that part of the County of San Mateo designated as the hybrid entity within the County of San Mateo subject to the Standards for Privacy of Individually Identifiable Health Information set forth in 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E ("County").

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

(d) *Individual*. "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).

(e) *Privacy Rule*. "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 Code of Federal Regulations Part 160 and Part 164, Subparts A and E.

(f) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in Section 164.501 and is limited to the information created or received by Business Associate from or on behalf of Covered Entity.

(g) *Required By Law*. “Required by law” shall have the same meaning as the term “required by law” in Section 164.501.

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

## 2. Obligations and Activities of Business Associate

(a) Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.

(b) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.

(c) Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

(d) Business Associate agrees to report to Covered Entity promptly of any use or disclosure of the Protected Health Information not provided for by this Agreement.

(e) Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

(f) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by Covered Entity, to Protected Health Information in a Designated Record Set, if Business Associate has Protected Health Information 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.

(g) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set, if applicable, 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 Covered Entity.

(h) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity available to the Covered Entity, or at the request of the Covered Entity, to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary determining Covered Entity’s compliance with the Privacy Rule.

(i) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity

to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(j) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 2(i) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

3. Permitted Uses and Disclosures by Business Associate

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the County of San Mateo Public Authority Interagency Agreement, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

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

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

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 42 Code of Federal Regulations 164.504(e)(2)(i)(B).

4. Obligations of Covered Entity

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

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

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



5. Permissible Requests by Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, unless the Business Associate will use or disclose Protected Health Information for, and the service contract includes provisions for, data aggregation or management and administrative activities of Business Associate.

6. Term and Termination

(a) *Term.* The Term of this Agreement shall be effective as of July 1, 2005 through June 30, 2008, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall provide an opportunity for Business Associate to cure the breach or end the violation or else the County/Covered Entity will terminate the service agreement with Business Associate.

(c) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

(2) In the event that Business Associate determines that returning or destroying the Protected Health Information is infeasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Indemnity.

Business Associate will indemnify and hold harmless Covered Entity and any Covered Entity affiliate, officer, director, employee or agent from and against any claim, cause of action, liability, damage, cost or expense, including attorneys' fees and court or proceeding costs, arising out of or in connection with any non-permitted use or disclosure of Protected Health

Information or other breach of this Addendum by Business Associate or any subcontractor, agent, person or entity under Business Associate's control.

8. Miscellaneous

(a) *Regulatory References.* A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended, and for which compliance is required.

(b) *Amendment.* The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

(c) *Survival.* The respective rights and obligations of Business Associate under Section 6 of this Agreement shall survive the termination of this Agreement.

(d) *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with the Privacy Rule.

**THIS CONTRACT IS NOT VALID UNTIL SIGNED BY ALL PARTIES**

_____	_____	_____
Contractor/Business Associate Signature	Date	Contractor/ Business Associate Name
_____	_____	_____
County of San Mateo/Covered Entity Signature	Date	
_____	_____	_____
County Manager Signature	Date	

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