

SC 1035  
HPC/MSA  
7/26/10

PROFFESIONAL SERVICES AGREEMENT  
COUNTY OF MONTEREY ON BEHALF OF ITS  
HEALTH DEPARTMENT  
SEXUAL ASSAULT FORENSIC EXAMINER  
MASTER AGREEMENT

THIS AGREEMENT is entered by and between the COUNTY OF MONTEREY (hereinafter "COUNTY"), and Connie Blackmore (hereinafter "CONTRACTOR"). The parties agree as follows:

1. **DUTIES.** CONTRACTOR agrees to exercise special skill to accomplish the results set forth in Attachment "A" for the Monterey County Health Department.
2. **COMPENSATION.** In consideration for CONTRACTOR accomplishing said result, COUNTY agrees to compensate CONTRACTOR as follows:
  - A. Twelve dollars (\$12.50) per hour for each hour scheduled to be On-Call for contact to perform Sexual Assault examinations on behalf of the County's Sexual Assault Response Team (hereinafter, "SART").
  - B. Three Hundred Dollars (\$300.00) for each examination performed, documented and submitted.
  - C. One Hundred Dollars (\$100.00) for each examination that is not completed or is cancelled at request of the victim or requesting law enforcement agency.
  - D. One hundred dollars (\$100.00) for attendance at mandatory SART Coalition monthly educational forums and for in-service meetings conducted by the SART Coordinator for the SART Team.
  - E. Three Hundred Fifty Dollars (\$350.00) for testimony preparation and One Hundred Fifty Dollars (\$150.00) for trial testimony upon request of the District Attorney's Office.
  - F. Fifty Dollars (\$50.00) for call back time. Contractor shall be compensated for those situations when the Contractor is not on-call or otherwise being compensated and are unexpectedly called back and must report to their work site in response to a directive from the SART Coordinator because of unanticipated work requirements.

COUNTY agrees to reimburse each Sexual Assault Forensic Examiner for one (1), up to Four Hundred Dollars (\$400.00) per fiscal year, for training registration fees. Reimbursement training must be reviewed and approved by the SART Coordinator prior to registering for the training. Reimbursement will occur after submission of the training agenda and the original, paid receipt (not a credit card statement) to the Health Department's Fiscal Unit.

The total amount payable by COUNTY to CONTRACTOR under this Agreement **shall not exceed the sum of \$100,000.**

CONTRACTOR agrees to submit to COUNTY a monthly invoice for services delivered using invoice template provided (Attachment C) within five (5) days of the beginning of next month. The following detail must be included on the invoice: dates and hours of on-call coverage; dates and number of forensic exams performed; dates and number of forensic exams cancelled by the victim or the requesting law enforcement agency; dates, purpose, and number of mandatory educational forums and in-service meetings attended; number of cases requiring testimony preparation; and number and dates of court appearances. County shall issue payment to Contractor for all legitimate charges within 30 days of the receipt of an approved invoice by the Auditor-Controller.

~~3. **TERM.** The term of this Agreement shall be for a two-year period effective July 1, 2010 through June 30, 2012.~~

4. **EARLY TERMINATION.** Either party hereto may terminate this Agreement without cause at any time by giving thirty (30) days' written notice of termination to the other party.


5. **INDEMNIFICATION FOR DAMAGES, TAXES AND CONTRIBUTIONS.** CONTRACTOR shall exonerate, indemnify, defend, and hold harmless COUNTY (which for the purpose of paragraphs 5 and 6 shall include, without limitation, its officers, agents, employees and volunteers) from and against:

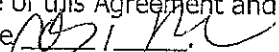
A. Any and all claims, demands, losses, damages, defense costs, or liability of any kind or nature which COUNTY may sustain or incur or which may be imposed upon it for injury to or death of persons, or damage to property as a result of, arising out of, or in any manner connected with the CONTRACTOR'S performance under the terms of this Agreement, excepting any liability arising out of the sole negligence of the COUNTY. Such indemnification includes any damage to the person(s), or property(ies) of CONTRACTOR and third persons.

B. Any and all Federal, State and local taxes, charges, fees, or contributions required to be paid with respect to CONTRACTOR and CONTRACTOR'S officers, employees and agents engaged in the performance of this Agreement (including, without limitation, unemployment insurance, social security and payroll tax withholding).

6. **INSURANCE.** COUNTY shall maintain in full force and effect during the original and any extended term of this Agreement, professional errors and omissions liability insurance (commonly referred to as "malpractice insurance") with policy limits in an amount not less than One Million Dollars (\$1,000,000), and Three Million Dollars (\$3,000,000) aggregate ensuring CONTRACTOR against any and all liabilities or damages arising out of and pursuant to this Agreement. CONTRACTOR shall maintain in full force and effect, during the original and any extended term of this Agreement, insurance coverage and limits, as follow:

**A. Types of Insurance and Minimum Limits**

(1) Worker's Compensation in the minimum statutorily required coverage amounts. This insurance coverage shall not be required if the CONTRACTOR has no employees and certifies to this fact by initialing here 

(2) Automobile Liability Insurance for each of CONTRACTOR'S vehicles used in the performance of this Agreement, including owned, non-owned (e.g. owned by CONTRACTOR'S employees), leased or hired vehicles, in the minimum amount of \$500,000 combined single limit per occurrence for bodily injury and property damage. This insurance coverage shall not be required if vehicle use by the CONTRACTOR is not a material part of performance of this Agreement and CONTRACTOR and COUNTY both certify to this fact by initialing here 

**7. INDEPENDENT CONTRACTOR STATUS.** In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability that County may incur because of CONTRACTOR's failure to pay such taxes.

CONTRACTOR and COUNTY have reviewed and considered the principal test and secondary factors below and agree that CONTRACTOR is an independent contractor and not an employee of COUNTY. CONTRACTOR is responsible for all insurance (workers compensation, unemployment, etc.) and all payroll related taxes. CONTRACTOR is not entitled to any employee benefits. COUNTY agrees that CONTRACTOR shall have the right to control the manner and means of accomplishing the result contracted for herein.

PRINCIPAL TEST: The CONTRACTOR rather than COUNTY has the right to control the manner and means of accomplishing the result contracted for.

SECONDARY FACTORS: (a) The extent of control, which by agreement COUNTY may exercise over the details of the work is slight rather than substantial; (b) CONTRACTOR is engaged in a distinct occupation or business; (c) In the locality, the work to be done by CONTRACTOR is usually done by a specialist without supervision, rather than under the direction of an employer; (d) The skill required in the particular occupation is substantial rather than slight; (e) The CONTRACTOR rather than the COUNTY supplies the instrumentalities, tools and work place; (f) The length of time for which CONTRACTOR is engaged is of limited duration rather than indefinite; (g) The method of payment of CONTRACTOR is by the job rather than by the time; (h) The work is part of a special or permissive activity, program, or project, rather than part of the regular business of COUNTY; (i) CONTRACTOR and COUNTY believe they are

creating an independent contractor relationship rather than an employer-employee relationship; and (j) The COUNTY conducts public business.

It is recognized that it is not necessary that all secondary factors support creation of an independent contractor relationship, but rather that overall there are significant secondary factors, which indicate that CONTRACTOR is an independent contractor.

By their signatures to this Agreement, each of the undersigned certifies that it is his or her considered judgment that the CONTRACTOR engaged under this Agreement is in fact an independent contractor.

## **8. MISCELLANEOUS PROVISIONS.**

~~8.01. Conflict of Interest.~~ CONTRACTOR represents that he/she presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the professional services required to be rendered under this Agreement.

8.02. Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

8.03. Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.

8.04. Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.

8.05. Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.

8.06. Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.

8.07. Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.

8.08. Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.

8.09. Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.

8.10. Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.

8.11. Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.

8.12. Non-exclusive Agreement. This Agreement is non-exclusive and both COUNTY and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.

8.13. Construction of Agreement. The COUNTY and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.

8.14. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

8.15. Authority. Any individual executing this Agreement on behalf of the COUNTY or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.

8.16. Integration. This Agreement, including the exhibits, represent the entire Agreement between the COUNTY and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.

8.17. Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

8.18. **ACKNOWLEDGMENT.** CONTRACTOR shall acknowledge in all reports and literature that the Monterey County Board of Supervisors has provided funding to the CONTRACTOR.

8.19. **RETENTION AND AUDIT OF RECORDS.** CONTRACTOR shall retain records pertinent to this Agreement for a period of not less than five (5) years after final payment under this Agreement or until a final audit report is accepted by COUNTY, whichever occurs first. CONTRACTOR hereby agrees to be subject to the examination and audit by the Monterey County Auditor-Controller, the Auditor General of the State of California, or the designee of either for a period of five (5) years after final payment under this Agreement.

8.20. **PRESENTATION OF CLAIMS.** Presentation and processing of any or all claims arising out of or related to this Agreement shall be made in accordance with applicable law.

9. **NOTICES.** Notices to the parties in connection with this Agreement shall be given personally or by United States Mail, addressed as follows:

**County**

Monterey County Health Department  
Sexual Assault Response Team (SART)  
1270 Natividad Road  
Salinas, CA 93906-3198  
Attention: SART Coordinator

**Contractor**

Connie Blackmore, RN, SANE  
Sexual Assault Forensic Examiner  
PO Box 523  
Soquel, CA 95073

10. **ATTACHMENTS.** This Agreement includes the following attachments:

- Attachment A: Duties and Responsibilities of Contractor
- Attachment B: Business Associate Agreement
- Attachment C: SART Examiner Invoice template

*The remainder of this page was intentionally left blank*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the day and year last written below.

**CONTRACTOR:**

*[Signature]* Date: 6/21/10  
By: Sexual Assault Forensic Examiner

**COUNTY OF MONTEREY**

*[Signature]* Date: 7-8-10  
By: Contracts/Purchasing Officer

**Approved:**  
*[Signature]* Date: 7/12/2010  
By: Robert C. Egnew, Interim Director of Health

**Approved as to Legal Form:**

By: *[Signature]* Date: 6/29/10  
Deputy County Counsel

**RISK MANAGEMENT**

**~~COUNTY OF MONTEREY~~**

**Approved as to Liability Provisions:**

**APPROVED AS TO INDEMNITY/  
INSURANCE LANGUAGE**  
By: \_\_\_\_\_ Date: \_\_\_\_\_  
Risk Management

By: *[Signature]*  
Date: 6-29-10

**Approved as to Fiscal:**

By: *[Signature]* Date: 6-29-10  
Auditor-Controller

ENTERED  
JUL 07 2010  
ccc

## ATTACHMENT A

### DUTIES AND RESPONSIBILITIES OF CONTRACTOR

Contractor agrees to exercise special skill to accomplish the following result(s):

- A. Contractor shall conduct sexual assault victim examinations on adult and juvenile victims and suspects at the request of County on behalf of any law enforcement agency located within Monterey County and upon call out from County Communications or other designated entity. Contractor shall conduct examinations when requested by the County and/or the allied agencies discussed in this contract, regardless of criminal jurisdiction of the case investigated.
- B. The examinations shall be conducted at Natividad Medical Center or Community Hospital of the Monterey Peninsula (CHOMP), or other health care facility located within Monterey County designated by County. Contractor shall comply with all rules and regulations and procedures established by the hospitals for sexual assault examinations and medical procedures in general. County equipment, supplies, or facilities may only be used to conduct sexual assault examinations pursuant to this contract. Use of County equipment, supplies, or facilities to conduct a sexual assault examination for any person or entity other than those authorized by the County and/or the allied agencies discussed in this contract is strictly prohibited.
- C. Contractor shall conduct sexual assault examinations of adult and minor victims and adult and minor suspects using established OCJP protocols and in conformance with the standard of care within the nursing profession and community. When requested, contractor shall conduct follow-up examinations. Contractor shall document all examinations in such reports and on such forms as are required by State of California. Contractor shall obtain and preserve all forensic evidence according to appropriate chain of custody protocols, and document such evidence on such forms as required by County. Contractor shall provide, when requested by law enforcement officials, testimony in courts of law or elsewhere as to the procedure and results of any examination conducted under this agreement, including all pre-testimony preparation and forensic research. Contractor shall, upon request, meet with law enforcement agencies to consult on individual cases.
- D. Contractor shall be available to conduct examinations at any hour of the day during Contractor's on call schedule. Contractor shall respond to the designated hospital within one hour of call out. Contractor shall arrange with the other sexual assault forensic examiner, under contract with County, their respective on call schedules so that there is at least one forensic examiner on call at all times during the term of this contract. Contractor shall provide to County Communications prompt notice of any change as to the on call schedule.
- E. Contractor shall provide the County and County Communications the telephone number(s) and pager number (s) where County will be able to call out the Contractor for service under this contract. Contractor shall immediately provide to County Communications and changes of Contractor's phone numbers\pager numbers.



- F. Contractor shall at all time during the performance under this contract have a valid, unexpired, un-revoked license as a registered nurse or physician assistant issued by the State of California. Contractor acknowledges the successful completion of formal sexual assault examiner program training and pediatric examiner program training. Contractor shall at Contractor's expense participate in all mandatory continuing professional education and participate in yearly continuing education in the field of sexual assault examinations and forensics, as required by the respective accrediting entities.
- G. Contractor shall participate in monthly meetings with sexual assault investigators. Contractor shall complete and maintain statistical data of examinations conducted under this agreement as required by County. Contractor shall from time to time participate in peer review of examination protocol and related matters. Contractor shall, when necessary and appropriate, disseminate legal medical information to law enforcement and the District Attorney.
- H. Contractor shall comply with all applicable procedures of the NATIONAL STANDARDS TO PROTECT THE PRIVACY OF PERSONAL HEALTH INFORMATION, Act of 1996 and the rules and procedures issued thereunder (HIPAA) and the privacy and security policies and procedures related to individually identifiable health information issued by the participating SAFE health care providers.
- I. Contractor must provide updated contact information to the Health Department for a period up to two years upon termination of contractual relationship with the County of Monterey in case Contractor is subpoenaed.
- J. Contractor shall direct all phone calls to the SART Coordinator when not on-call or otherwise being compensated.

## BUSINESS ASSOCIATE AGREEMENT

This Agreement, hereinafter referred to as "Agreement", is made effective July 1, 2010 by and between the County of Monterey, a political subdivision of the State of California, on behalf of the Health Department, hereinafter referred to as "Covered Entity", and Connie Blackmore, RN, hereinafter referred to as "Business Associate", (individually, a "Party" and collectively, the "Parties").

### WITNESSETH:

WHEREAS, Sections 261 through 264 of the federal Health Insurance Portability and Accountability Act of 1996, Public Law 104-191, known as "the Administrative Simplification provisions," direct the Department of Health and Human Services to develop standards to protect the security, confidentiality and integrity of health information; and

WHEREAS, pursuant to the Administrative Simplification provisions, the Secretary of Health and Human Services has issued regulations modifying 45 CFR Parts 160 and 164 (the "HIPAA Privacy Rule"); and

WHEREAS, the United States Congress has enacted the American Recovery and Reinvestment Act of 2009 ("ARRA"), which amends HIPAA and the HIPAA Privacy Rule; and

WHEREAS, the State of California has enacted statutes designed to safeguard patient privacy including, without limitation, the Confidentiality of Medical Information Act ("CMIA"), California Civil Code § 56 *et seq.*, Senate Bill 541, enacted September 30, 2008, and Assembly Bill 211, enacted September 30, 2008; and

WHEREAS, the parties acknowledge that California law may include provisions more stringent and more protective of the confidentiality of health information than the provisions of HIPAA; and

WHEREAS, the Parties wish to enter into or have entered into an arrangement whereby Business Associate will provide certain services to Covered Entity, hereby referred to as the "Service Agreement" and, pursuant to such arrangement, Business Associate may be considered a "business associate" of Covered Entity as defined in the HIPAA Privacy Rule and under California law; and

WHEREAS, Business Associate may have access to Protected Health Information (as defined below) in fulfilling its responsibilities under such arrangement;

THEREFORE, in consideration of the Parties' continuing obligations under the Service Agreement, compliance with the HIPAA Privacy Rule, as amended by ARRA, compliance with California law, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties agree to the provisions of this Agreement in order to address the requirements of the HIPAA Privacy Rule, as amended by ARRA, and California law and to protect the interests of both Parties.

### I. DEFINITIONS

Except as otherwise defined herein, any and all capitalized terms in this Section shall have the definitions set forth in the HIPAA Privacy Rule. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of the HIPAA Privacy Rule, as amended, the HIPAA Privacy Rule shall control. In the event of an inconsistency between the provisions of this Agreement and mandatory provisions of CMIA or other California law, California law shall control. Where provisions of this Agreement are different than those mandated in the HIPAA Privacy Rule and California law, but nonetheless are permitted by the HIPAA Privacy Rule and California law, the provisions of this Agreement shall control.

## Exhibit B

The term "Protected Health Information" means individually identifiable health information including, without limitation, all information, data, documentation, and materials, including without limitation, demographic, medical and financial information, that relates to the past, present, or future physical or mental health or condition of an individual; the provision of health care to an individual; or the past, present, or future payment for the provision of health care to an individual; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual.

Business Associate acknowledges and agrees that all Protected Health Information that is created or received by Covered Entity and disclosed or made available in any form, including 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.

## II. CONFIDENTIALITY REQUIREMENTS

- (a) Business Associate agrees:
- (i) to access, use, or disclose any Protected Health Information solely: (1) for meeting its obligations as set forth in any agreements between the Parties evidencing their business relationship or (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Service Agreement (if consistent with this Agreement the HIPAA Privacy Rule, and California law), the HIPAA Privacy Rule, or California law and (3) as would be permitted by the HIPAA Privacy Rule and California law if such use or disclosure were made by Covered Entity;
  - (ii) at termination of this Agreement, the Service Agreement (or any similar documentation of the business relationship of the Parties), or upon request of Covered Entity, whichever occurs first, if feasible, Business Associate will return or destroy all Protected Health Information received from or created or received by Business Associate on behalf of Covered Entity that Business Associate still maintains in any form and retain no copies of such information, or if such return or destruction is not feasible, Business Associate will extend the protections of this Agreement to the information and limit further access, uses, and disclosures to those purposes that make the return or destruction of the information not feasible; and
  - (iii) to ensure that its agents, including a subcontractor, to whom it provides Protected Health Information received from or created by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply to Business Associate with respect to such information. In addition, Business Associate agrees to take reasonable steps to ensure that its employees' actions or omissions do not cause Business Associate to breach the terms of this Agreement.
- (b) Notwithstanding the prohibitions set forth in this Agreement, Business Associate may use and disclose Protected Health Information as follows:
- (i) if necessary, for the proper management and administration of Business Associate or to carry out the legal responsibilities of Business Associate, provided that as to any such disclosure, the following requirements are met:
    - (A) the disclosure is required by law; or
    - (B) Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidentially and accessed, 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 Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached, within five calendar days of discovering said breach of confidentiality;
  - (ii) for data aggregation services, if to be provided by Business Associate for the health care operations of Covered Entity pursuant to any agreements between the Parties evidencing their business

## Exhibit B

relationship. For purposes of this Agreement, data aggregation services means the combining of Protected Health Information by Business Associate with the protected health information received by Business Associate in its capacity as a business associate of another covered entity, to permit data analyses that relate to the health care operations of the respective covered entities.

(c) Business Associate will implement appropriate safeguards to prevent access to, use of, or disclosure of Protected Health Information other than as permitted in this Agreement. The Secretary of Health and Human Services shall have the right to audit Business Associate's records and practices related to use and disclosure of Protected Health Information to ensure Covered Entity's compliance with the terms of the HIPAA Privacy Rule. Business Associate shall report to Covered Entity any access, use, or disclosure of Protected Health Information which is not in compliance with the terms of this Agreement, the HIPAA Privacy Rule, as amended by ARRA, or under California law, of which it becomes aware within five calendar days of discovering such improper access, use, or disclosure. In addition, Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use, disclosure, or access of Protected Health Information by Business Associate in violation of the requirements of this Agreement.

### III. AVAILABILITY OF PHI

Business Associate agrees to make available Protected Health Information to the extent and in the manner required by Section 164.524 of the HIPAA Privacy Rule. Business Associate agrees to make Protected Health Information available for amendment and incorporate any amendments to Protected Health Information in accordance with the requirements of Section 164.526 of the HIPAA Privacy Rule. In addition, Business Associate agrees to make Protected Health Information available for purposes of accounting of disclosures, as required by Section 164.528 of the HIPAA Privacy Rule.

### IV. TERMINATION

Notwithstanding anything in this Agreement to the contrary, Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately if Covered Entity determines that Business Associate has violated any material term of this Agreement. If Covered Entity reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, Covered Entity gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to Covered Entity that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then Covered Entity shall have the right to terminate this Agreement and the Service Agreement immediately, and seek injunctive and/or declaratory relief in a court of law having jurisdiction over Business Associate.

### V. MISCELLANEOUS

Except as expressly stated herein, in the HIPAA Privacy Rule, or under California law, the parties to this Agreement do not intend to create any rights in any third parties. The obligations of Business Associate under this Section shall survive the expiration, termination, or cancellation of this Agreement, the Service Agreement and/or the business relationship of the parties, and shall continue to bind Business Associate, its agents, employees, contractors, successors, and assigns as set forth herein.

This Agreement may be amended or modified only in a writing signed by the Parties. No Party may assign its respective rights and obligations under this Agreement without the prior written consent of the other Party. None of the provisions of this Agreement are intended to create, nor will they be deemed to create any relationship

Exhibit B

between the Parties other than that of independent parties contracting with each other solely for the purposes of effecting the provisions of this Agreement and any other agreements between the Parties evidencing their business relationship. This Agreement will be governed by the laws of the State of California. No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.

The parties agree that, in the event that any documentation of the parties, pursuant to which Business Associate provides services to Covered Entity contains provisions relating to the use or disclosure of Protected Health Information which are more restrictive than the provisions of this Agreement, the provisions of the more restrictive documentation will control. The provisions of this Agreement are intended to establish the minimum requirements regarding Business Associate's use and disclosure of Protected Health Information.

In the event that any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of the provisions of this Agreement will remain in full force and effect. In addition, in the event a party believes in good faith that any provision of this Agreement fails to comply with the then-current requirements of the HIPAA Privacy Rule or California law, such party shall notify the other party in writing. For a period of up to thirty days, the parties shall attempt in good faith to address such concern and amend the terms of this Agreement, if necessary to bring it into compliance. If, at the conclusion of such thirty-day period, a party believes in good faith that the Agreement still fails to comply with the HIPAA Privacy Rule or California law, then either party has the right to terminate this Agreement and the Service Agreement upon written notice to the other party. Neither party may terminate this Agreement without simultaneously terminating the Service Agreement, unless the parties mutually agree in writing to modify this Agreement or immediately replace it with a new Business Associate Agreement that fully complies with the HIPAA Privacy Rule and California law.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year written above.

COVERED ENTITY:

BUSINESS ASSOCIATE:

County of Monterey

Connie Blackmore, RN

By: Robert G. Egan

By: [Signature]

Title: Interim Director of Health

Title: Registered Nurse, Sexual Assault

Date: 7/12/2010

Date: 6/24/10 Nurse Examiner

