

**COUNTY OF MENDOCINO
STANDARD SERVICES AGREEMENT**

This Agreement is by and between the COUNTY OF MENDOCINO, hereinafter referred to as the "COUNTY", and FEI.com, Inc., hereinafter referred to as the "CONTRACTOR".

WITNESSETH

WHEREAS, pursuant to Government Code Section 31000, COUNTY may retain independent contractors to perform special services to or for COUNTY or any department thereof; and,

WHEREAS, COUNTY desires to obtain CONTRACTOR for its support and maintenance for Web Based Infrastructure for Treatment Services; and,

WHEREAS, CONTRACTOR is willing to provide such services on the terms and conditions set forth in this AGREEMENT and is willing to provide same to COUNTY.

NOW, THEREFORE it is agreed that COUNTY does hereby retain CONTRACTOR to provide the services described in Exhibit "A", and CONTRACTOR accepts such engagement, on the General Terms and Conditions hereinafter specified in this Agreement, the Additional Provisions attached hereto, and the following described exhibits, all of which are incorporated into this Agreement by this reference:

- Exhibit A Definition of Services
- Exhibit B Payment Terms
- Exhibit C Insurance Requirements
- Exhibit D Assurance of Compliance with Nondiscrimination in State and Federally Assisted Programs
- Appendix A Certification Regarding Debarment, Suspension, and Other Responsibility Matters -- Lower Tier Covered Transactions
- Addendum A Business Associate and Qualified Services Organization Agreement
- Attachment 1 Invoice

The term of this Agreement shall be from July 1, 2018 (the "Effective Date"), and shall continue through June 30, 2019.

The compensation payable to CONTRACTOR hereunder shall not exceed Sixty-Three Thousand Fifty-Six Dollars and Seventy-Two Cents (\$63,056.72) for the term of this Agreement.

IN WITNESS WHEREOF

DEPARTMENT FISCAL REVIEW:

A. Molgaard
Anne Molgaard, Acting HHSA Director
Date: 5/21/18

Budgeted: Yes No

Budget Unit: 4012

Line Item: 86-2189

Org/Object Code: DDADMIN

Grant: Yes No

Grant No.:

COUNTY OF MENDOCINO

By: Dan Hamburg
DAN HAMBURG, Chair
BOARD OF SUPERVISORS

Date: JUL 10 2018

ATTEST:

CARMEL J. ANGELO, Clerk of said Board

By: Karla Van Hagen
Deputy
JUL 10 2018

I hereby certify that according to the provisions of Government Code section 25103, delivery of this document has been made.

CARMEL J. ANGELO, Clerk of said Board

By: Karla Van Hagen
Deputy
JUL 10 2018

INSURANCE REVIEW:

By: Carmel J. Angelo
Risk Management

Date: 5-23-18

CONTRACTOR/COMPANY NAME

By: R. Conrad
Rodney Conrad, Sr. Vice President, General Manager

Date: 6/5/18

NAME AND ADDRESS OF CONTRACTOR:

FEI.com, Inc.

9755 Patuxent Woods Dr. #300

Columbia, MD 21046

443-270-5129;
Nikki.brann-tyson@feisystems.com

By signing above, signatory warrants and represents that he/she executed this Agreement in his/her authorized capacity and that by his/her signature on this Agreement, he/she or the entity upon behalf of which he/she acted, executed this Agreement

COUNTY COUNSEL REVIEW:

APPROVED AS TO FORM:

KATHARINE L. ELLIOTT,
County Counsel

By: Charlotte Scott
Deputy

Date: 5/21/18

EXECUTIVE OFFICE/FISCAL REVIEW:

By: Janette Ravn
Deputy CEO

Date: 5-23-18

Signatory Authority: \$0-25,000 Department; \$25,001- 50,000 Purchasing Agent; \$50,001+ Board of Supervisors

Exception to Bid Process Required/Completed 18-188

Mendocino County Business License: Valid

Exempt Pursuant to MCC Section: 2

GENERAL TERMS AND CONDITIONS

1. **INDEPENDENT CONTRACTOR:** No relationship of employer and employee is created by this Agreement; it being understood and agreed that CONTRACTOR is an Independent Contractor. CONTRACTOR is not the agent or employee of the COUNTY in any capacity whatsoever, and COUNTY shall not be liable for any acts or omissions by CONTRACTOR nor for any obligations or liabilities incurred by CONTRACTOR.

CONTRACTOR shall have no claim under this Agreement or otherwise, for seniority, vacation time, vacation pay, sick leave, personal time off, overtime, health insurance medical care, hospital care, retirement benefits, social security, disability, Workers' Compensation, or unemployment insurance benefits, civil service protection, or employee benefits of any kind.

CONTRACTOR shall be solely liable for and obligated to pay directly all applicable payroll taxes (including federal and state income taxes) or contributions for unemployment insurance or old age pensions or annuities which are imposed by any governmental entity in connection with the labor used or which are measured by wages, salaries or other remuneration paid to its officers, agents or employees and agrees to indemnify and hold COUNTY harmless from any and all liability which COUNTY may incur because of CONTRACTOR's failure to pay such amounts.

In carrying out the work contemplated herein, CONTRACTOR shall comply with all applicable federal and state workers' compensation and liability laws and regulations with respect to the officers, agents and/or employees conducting and participating in the work; and agrees that such officers, agents, and/or employees will be considered as Independent Contractors and shall not be treated or considered in any way as officers, agents and/or employees of COUNTY.

CONTRACTOR does, by this Agreement, agree to perform his/her said work and functions at all times in strict accordance with all applicable federal, state and COUNTY laws, including but not limited to prevailing wage laws, ordinances, regulations, titles, departmental procedures and currently approved methods and practices in his/her field and that the sole interest of COUNTY is to ensure that said service shall be performed and rendered in a competent, efficient, timely and satisfactory manner and in accordance with the standards required by the COUNTY agency concerned.

Notwithstanding the foregoing, if the COUNTY determines that pursuant to state and federal law CONTRACTOR is an employee for purposes of income tax withholding, COUNTY may upon two (2) week's written notice to CONTRACTOR, withhold from payments to CONTRACTOR hereunder federal and state income taxes and pay said sums to the federal and state governments.

2. **INDEMNIFICATION:** To the furthest extent permitted by law (including without limitation California Civil Code sections 2782 and 2782.8, if applicable), CONTRACTOR shall assume the defense of, indemnify, and hold harmless the COUNTY, its officers, agents, and employees, from and against any and all claims, demands, damages, costs, liabilities, and losses whatsoever alleged to be occurring or resulting in connection with the CONTRACTOR'S performance or its obligations under this AGREEMENT, unless arising out of the sole negligence or willful misconduct of COUNTY. "CONTRACTOR'S performance" includes CONTRACTOR'S action or inaction and the action or inaction of CONTRACTOR'S officers, employees, agents and subcontractors.
3. **INSURANCE AND BOND:** CONTRACTOR shall at all times during the term of the Agreement with the COUNTY maintain in force those insurance policies and bonds as designated in the attached Exhibit C, and will comply with all those requirements as stated therein.
4. **WORKERS' COMPENSATION:** CONTRACTOR shall provide Workers' Compensation insurance, as applicable, at CONTRACTOR's own cost and expense and further, neither the CONTRACTOR nor its carrier shall be entitled to recover from COUNTY any costs, settlements, or expenses of Workers' Compensation claims arising out of this Agreement.

CONTRACTOR affirms that s/he is aware of the provisions of Section 3700 of the California Labor Code which requires every employer to be insured against liability for the Workers' Compensation or to undertake self-insurance in accordance with the provisions of the Code and CONTRACTOR further assures that s/he will comply with such provisions before commencing the performance of work under this Agreement. CONTRACTOR shall furnish to COUNTY certificate(s) of insurance evidencing Worker's Compensation Insurance coverage to cover its employees, and CONTRACTOR shall require all subcontractors similarly to provide Workers' Compensation Insurance as required by the Labor Code of the State of California for all of CONTRACTOR'S and subcontractors' employees.

5. **CONFORMITY WITH LAW AND SAFETY:**
 - a. In performing services under this Agreement, CONTRACTOR shall observe and comply with all applicable laws, ordinances, codes and regulations of governmental agencies, including federal, state, municipal, and local governing bodies, having jurisdiction over the scope of services, including all applicable provisions of the California Occupational Safety and Health Act. CONTRACTOR shall indemnify and hold COUNTY harmless from any and all liability, fines, penalties and consequences from any of CONTRACTOR's failures to comply with such laws, ordinances, codes and regulations.

- b. Accidents: If a death, serious personal injury or substantial property damage occurs in connection with CONTRACTOR's performance of this Agreement, CONTRACTOR shall immediately notify Mendocino County Risk Manager's Office by telephone. CONTRACTOR shall promptly submit to COUNTY a written report, in such form as may be required by COUNTY of all accidents which occur in connection with this Agreement. This report must include the following information: (1) name and address of the injured or deceased person(s); (2) name and address of CONTRACTOR's sub-contractor, if any; (3) name and address of CONTRACTOR's liability insurance carrier; and (4) a detailed description of the accident and whether any of COUNTY's equipment, tools, material, or staff were involved.
 - c. CONTRACTOR further agrees to take all reasonable steps to preserve all physical evidence and information which may be relevant to the circumstances surrounding a potential claim, while maintaining public safety, and to grant to the COUNTY the opportunity to review and inspect such evidence, including the scene of the accident.
6. PAYMENT: For services performed in accordance with this Agreement, payment shall be made to CONTRACTOR as provided in Exhibit "B" hereto as funding permits.
- If COUNTY over pays CONTRACTOR for any reason, CONTRACTOR agrees to return the amount of such overpayment to COUNTY, or at COUNTY's option, permit COUNTY to offset the amount of such overpayment against future payments owed to CONTRACTOR under this Agreement or any other agreement.
- In the event CONTRACTOR claims or receives payment from COUNTY for a service, reimbursement for which is later disallowed by COUNTY, State of California or the United States Government, the CONTRACTOR shall promptly refund the disallowance amount to COUNTY upon request, or at its option COUNTY may offset the amount disallowed from any payment due or that becomes due to CONTRACTOR under this Agreement or any other agreement.
7. TAXES: Payment of all applicable federal, state, and local taxes shall be the sole responsibility of the CONTRACTOR.
8. OWNERSHIP OF DOCUMENTS: CONTRACTOR hereby assigns the COUNTY and its assignees all copyright and other use rights in any and all proposals, plans, specification, designs, drawings, sketches, renderings, models, reports and related documents (including computerized or electronic copies) prepared or otherwise created pursuant to this Agreement, whether prepared by the COUNTY, the CONTRACTOR, the CONTRACTOR's subcontractors or third

parties at the request of the CONTRACTOR (collectively, "Documents and Materials"). This explicitly includes the electronic copies of all above stated documentation.

CONTRACTOR shall be permitted to retain copies, including reproducible copies and computerized copies, of said Documents and Materials. CONTRACTOR agrees to take such further steps as may be reasonably requested by COUNTY to implement the aforesaid assignment. If for any reason said assignment is not effective, CONTRACTOR hereby grants the COUNTY and any assignee of the COUNTY an express royalty – free license to retain and use said Documents and Materials. The COUNTY's rights under this paragraph shall apply regardless of the degree of completion of the Documents and Materials and whether or not CONTRACTOR's services as set forth in Exhibit "A" of this Agreement have been fully performed.

The COUNTY's rights under this Paragraph 8 shall not extend to any computer software used to create such Documents and Materials.

9. CONFLICT OF INTEREST: The CONTRACTOR covenants that it presently has no interest, and shall not have any interest, direct or indirect, which would conflict in any manner with the performance of services required under this Agreement.
10. NOTICES: All notices, requests, demands, or other communications under this Agreement shall be in writing. Notices shall be given for all purposes as follows:

Personal delivery: When personally delivered to the recipient, notices are effective on delivery.

First Class Mail: When mailed first class to the last address of the recipient known to the party giving notice, notice is effective three (3) mail delivery days after deposit in a United States Postal Service office or mailbox. Certified Mail: When mailed certified mail, return receipt requested, notice is effective on receipt, if delivery is confirmed by a return receipt.

Overnight Delivery: When delivered by overnight delivery (Federal Express/Airborne/United Parcel Service/DHL WorldWide Express) with charges prepaid or charged to the sender's account, notice is effective on delivery, if delivery is confirmed by the delivery service.

Facsimile transmission: When sent by facsimile to the facsimile number of the recipient known to the party giving notice, notice is effective on receipt, provided that, (a) a duplicate copy of the notice is promptly given by first-class or certified mail or by overnight delivery, or (b) the receiving party delivers a written confirmation of receipt. Any notice given facsimile shall be deemed received on the next business day if it is received after 5:00 p.m. (recipient's time) or on a non-business day.

Addresses for purpose of giving notice are as follows:

To COUNTY: COUNTY OF MENDOCINO
HHS Behavioral Health and Recovery Services
1120 S. Dora St.
Ukiah, CA 95482
Attn: Melinda Driggers

To CONTRACTOR: FEI.com, Inc.
9755 Patuxent Woods Dr. #300
Columbia, MD 21046
ATTN: Nikki Brann-Tyson

Any correctly addressed notice that is refused, unclaimed, or undeliverable because of an act or omission of the party to be notified shall be deemed effective as of the first date that said notice was refused, unclaimed, or deemed undeliverable by the postal authorities, messenger, or overnight delivery service.

Any party may change its address or facsimile number by giving the other party notice of the change in any manner permitted by this Agreement.

11. USE OF COUNTY PROPERTY: CONTRACTOR shall not use COUNTY property (including equipment, instruments and supplies) or personnel for any purpose other than in the performance of his/her obligations under this Agreement.
12. EQUAL EMPLOYMENT OPPORTUNITY PRACTICES PROVISIONS: CONTRACTOR certifies that it will comply with all Federal, State, and local laws, rules and regulations pertaining to nondiscrimination in employment.
 - a. CONTRACTOR shall, in all solicitations or advertisements for applicants for employment placed as a result of this Agreement, state that it is an "Equal Opportunity Employer" or that all qualified applicants will receive consideration for employment without regard to their race, creed, color, pregnancy, disability, sex, sexual orientation, gender identity, ancestry, national origin, age, religion, Veteran's status, political affiliation, or any other factor prohibited by law.
 - b. CONTRACTOR shall, if requested to so do by the COUNTY, certify that it has not, in the performance of this Agreement, engaged in any unlawful discrimination.
 - c. If requested to do so by the COUNTY, CONTRACTOR shall provide the COUNTY with access to copies of all of its records pertaining or relating to

its employment practices, except to the extent such records or portions of such records are confidential or privileged under State or Federal law.

- d. Nothing contained in this Agreement shall be construed in any manner so as to require or permit any act which is prohibited by law.
 - e. The CONTRACTOR shall include the provisions set forth in this paragraph in each of its subcontracts.
13. **DRUG-FREE WORKPLACE:** CONTRACTOR and CONTRACTOR's employees shall comply with the COUNTY's policy of maintaining a drug-free workplace. Neither CONTRACTOR nor CONTRACTOR's employees shall unlawfully manufacture, distribute, dispense, possess or use controlled substances, as defined in 21 U.S. Code § 812, including, but not limited to, marijuana, heroin, cocaine, and amphetamines, at any COUNTY facility or work site. If CONTRACTOR or any employee of CONTRACTOR performing work in furtherance of this Agreement is convicted or pleads *nolo contendere* to a criminal drug statute violation occurring at a COUNTY facility or work site, the CONTRACTOR, within five days thereafter, shall notify the head of the COUNTY department/agency for which the contract services are performed. Violation of this provision shall constitute a material breach of this Agreement.
14. **ENERGY CONSERVATION:** CONTRACTOR agrees to comply with the mandatory standards and policies relating to energy efficiency in the State of California Energy Conservation Plan, (Title 24, California Administrative Code).
15. **COMPLIANCE WITH LICENSING REQUIREMENTS:** CONTRACTOR shall comply with all necessary licensing requirements and shall obtain appropriate licenses and display the same in a location that is reasonably conspicuous, as well as file copies of same with the County Executive Office.

Before the COUNTY will issue a notice to proceed with the Services, CONTRACTOR and any subcontractors must acquire, at their expense, a business license from COUNTY in accordance with MCC 6.0. Such licenses must be kept valid throughout the Agreement term.

CONTRACTOR represents and warrants to COUNTY that CONTRACTOR and its employees, agents, and any subcontractors have all licenses, permits, qualifications, and approvals of whatsoever nature that are legally required to practice their respective professions.

16. **AUDITS; ACCESS TO RECORDS:** The CONTRACTOR shall make available to the COUNTY, its authorized agents, officers, or employees, for examination any and all ledgers, books of accounts, invoices, vouchers, cancelled checks, and other records or documents evidencing or relating to the expenditures and disbursements charged to the COUNTY, and shall furnish to the COUNTY, within

sixty (60) days after examination, its authorized agents, officers or employees such other evidence or information as the COUNTY may require with regard to any such expenditure or disbursement charged by the CONTRACTOR.

The CONTRACTOR shall maintain full and adequate records in accordance with COUNTY requirements to show the actual costs incurred by the CONTRACTOR in the performance of this Agreement. If such books and records are not kept and maintained by CONTRACTOR within the County of Mendocino, California, CONTRACTOR shall, upon request of the COUNTY, make such books and records available to the COUNTY for inspection at a location within COUNTY. CONTRACTOR shall provide such assistance as may be reasonably required in the course of such inspection. The COUNTY further reserves the right to examine and reexamine said books, records and data during the four (4) year period following termination of this Agreement or completion of all work hereunder, as evidenced in writing by the COUNTY, and the CONTRACTOR shall in no event dispose of, destroy, alter, or mutilate said books, records, accounts, and data in any manner whatsoever for four (4) years after the COUNTY makes the final or last payment or within four (4) years after any pending issues between the COUNTY and CONTRACTOR with respect to this Agreement are closed, whichever is later.

17. **DOCUMENTS AND MATERIALS:** CONTRACTOR shall maintain and make available to COUNTY for its inspection and use during the term of this Agreement, all Documents and Materials, as defined in Paragraph 8 of this Agreement. CONTRACTOR's obligations under the preceding sentence shall continue for four (4) years following termination or expiration of this Agreement or the completion of all work hereunder (as evidenced in writing by COUNTY), and CONTRACTOR shall in no event dispose of, destroy, alter or mutilate said Documents and Materials, for four (4) years following the COUNTY's last payment to CONTRACTOR under this Agreement.
18. **TIME OF ESSENCE:** Time is of the essence in respect to all provisions of this Agreement that specify a time for performance; provided, however, that the foregoing shall not be construed to limit or deprive a party of the benefits of any grace or use period allowed in this Agreement.
19. **TERMINATION:** The COUNTY has and reserves the right to suspend, terminate or abandon the execution of any work by the CONTRACTOR without cause at any time upon giving to the CONTRACTOR forty-five (45) days prior written notice. Such notice shall be in writing and may be issued by any COUNTY officer authorized to execute or amend the contract, the County Chief Executive Officer, or any other person designated by the County Board of Supervisors. In the event that the COUNTY should abandon, terminate or suspend the CONTRACTOR's work, the CONTRACTOR shall be entitled to payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment. Said payment shall be computed in accordance with Exhibit B hereto, provided that the maximum amount payable to

CONTRACTOR for its services as listed in Exhibit A shall not exceed \$63,056.72 payment for services provided hereunder prior to the effective date of said suspension, termination or abandonment or lack of funding.

20. **NON APPROPRIATION:** If COUNTY should not appropriate or otherwise make available funds sufficient to purchase, lease, operate or maintain the products set forth in this Agreement, or other means of performing the same functions of such products, COUNTY may unilaterally terminate this Agreement only upon thirty (30) days written notice to CONTRACTOR. Upon termination, COUNTY shall remit payment for all products and services delivered to COUNTY and all expenses incurred by CONTRACTOR. In the event of notice of termination pursuant to this provision, CONTRACTOR is relieved from any and all further work under this Agreement for which COUNTY cannot remit payment. COUNTY shall have no rights in ownership, access, or whatsoever to services, deliverables, or Documents and Materials as defined in Section 8 (Ownership of Documents) whether completed, in progress, or otherwise, for which it cannot remit payment.
21. **CHOICE OF LAW:** This Agreement, and any dispute arising from the relationship between the parties to this Agreement, shall be governed by the laws of the State of California, excluding any laws that direct the application of another jurisdiction's laws.
22. **VENUE:** All lawsuits relating to this contract must be filed in Mendocino County Superior Court, Mendocino County, California.
23. **WAIVER:** No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by the provisions of this Agreement shall be effective unless it is in writing and signed by the party waiving the breach, failure, right or remedy. No waiver of any breach, failure, right or remedy shall be deemed a waiver of any other breach, failure, right or remedy, whether or not similar, nor shall any waiver constitute a continuing waiver unless the writing so specifies.
24. **ADVERTISING OR PUBLICITY:** CONTRACTOR shall not use the name of COUNTY, its officers, directors, employees or agents, in advertising or publicity releases or otherwise without securing the prior written consent of COUNTY in each instance. This provision shall not apply to bids, Requests for Proposals, or any other form of solicitation of business by, for, or on behalf of CONTRACTOR.
25. **ENTIRE AGREEMENT:** This Agreement, including all attachments, exhibits, and any other documents specifically incorporated into this Agreement, shall constitute the entire agreement between COUNTY and CONTRACTOR relating to the subject matter of this Agreement. As used herein, Agreement refers to and includes any documents incorporated herein by reference and any exhibits or attachments. This Agreement supersedes and merges all previous understandings, and all other agreements, written or oral, between the parties

and sets forth the entire understanding of the parties regarding the subject matter thereof. This Agreement may not be modified except by a written document signed by both parties. In the event of a conflict between the body of this Agreement and any of the Exhibits, the provisions in the body of this Agreement shall control.

26. HEADINGS: Herein are for convenience of reference only and shall in no way affect interpretation of this Agreement.
27. MODIFICATION OF AGREEMENT: This Agreement may be supplemented, amended or modified only by the mutual agreement of the parties. No supplement, amendment or modification of this Agreement shall be binding unless it is in writing and signed by authorized representatives of both parties.
28. ASSURANCE OF PERFORMANCE: If at any time the COUNTY has good objective cause to believe CONTRACTOR may not be adequately performing its obligations under this Agreement or that CONTRACTOR may fail to complete the Services as required by this Agreement, COUNTY may request from CONTRACTOR prompt written assurances of performance and a written plan acceptable to COUNTY, to correct the observed deficiencies in CONTRACTOR's performance. CONTRACTOR shall provide such written assurances and written plan within thirty (30) calendar days of its receipt of COUNTY's request and shall thereafter diligently commence and fully perform such written plan. CONTRACTOR acknowledges and agrees that any failure to provide such written assurances and written plan within the required time is a material breach under this Agreement.
29. SUBCONTRACTING/ASSIGNMENT: CONTRACTOR shall not subcontract, assign or delegate any portion of this Agreement or any duties or obligations hereunder without the COUNTY's prior written approval.
 - a. Neither party shall, on the basis of this Agreement, contract on behalf of or in the name of the other party. Any agreement that violates this Section shall confer no rights on any party and shall be null and void.
 - b. Only the department head or his or her designee shall have the authority to approve subcontractor(s).
 - c. CONTRACTOR shall remain fully responsible for compliance by its subcontractors with all the terms of this Agreement, regardless of the terms of any agreement between CONTRACTOR and its subcontractors.
30. SURVIVAL: The obligations of this Agreement, which by their nature would continue beyond the termination on expiration of the Agreement, including without limitation, the obligations regarding Indemnification (Paragraph 2),

Ownership of Documents (Paragraph 8), and Conflict of Interest (Paragraph 9), shall survive termination or expiration for two (2) years.

31. SEVERABILITY: If a court of competent jurisdiction holds any provision of this Agreement to be illegal, unenforceable, or invalid in whole or in part for any reason, the validity and enforceability of the remaining provisions, or portions of them, will not be affected, unless an essential purpose of this Agreement would be defeated by the loss of the illegal, unenforceable, or invalid provision.
32. INTELLECTUAL PROPERTY WARRANTY: CONTRACTOR warrants and represents that it has secured all rights and licenses necessary for any and all materials, services, processes, software, or hardware ("CONTRACTOR PRODUCTS") to be provided by CONTRACTOR in the performance of this AGREEMENT, including but not limited to any copyright, trademark, patent, trade secret, or right of publicity rights. CONTRACTOR hereby grants to COUNTY, or represents that it has secured from third parties, an irrevocable license (or sublicense) to reproduce, distribute, perform, display, make, use, import, use in commerce, or otherwise utilize CONTRACTOR PRODUCTS to the extent reasonably necessary to use the CONTRACTOR PRODUCTS in the manner contemplated by this agreement.

CONTRACTOR further warrants and represents that it knows of no allegations, claims, or threatened claims that the CONTRACTOR PRODUCTS provided to COUNTY under this Agreement infringe any patent, copyright, trademark or other proprietary right. In the event that any third party asserts a claim of infringement against the COUNTY relating to a CONTRACTOR PRODUCT, CONTRACTOR shall indemnify and defend the COUNTY pursuant to Paragraph 2 of this AGREEMENT

In the case of any such claim of infringement, CONTRACTOR shall either, at its option, (1) procure for COUNTY the right to continue using the CONTRACTOR Products; or (2) replace or modify the CONTRACTOR Products so that that they become non-infringing, but equivalent in functionality and performance.

33. ELECTRONIC COPIES: The parties agree that an electronic copy, including facsimile copy, email, or scanned copy of the executed Agreement, shall be deemed, and shall have the same legal force and effect as, an original document.
34. COOPERATION WITH COUNTY: CONTRACTOR shall cooperate with COUNTY and COUNTY staff in the performance of all work hereunder.
35. PERFORMANCE STANDARD: CONTRACTOR shall perform all work hereunder in a manner consistent with the level of competency and standard of care normally observed by a person practicing in CONTRACTOR's profession. COUNTY has relied upon the professional ability and training of CONTRACTOR

as a material inducement to enter into this Agreement. CONTRACTOR hereby agrees to provide all services under this Agreement in accordance with generally accepted professional practices and standards of care, as well as the requirements of applicable Federal, State, and local laws, it being understood that acceptance of CONTRACTOR 's work by COUNTY shall not operate as a waiver or release. If COUNTY determines that any of CONTRACTOR 's work is not in accordance with such level of competency and standard of care, COUNTY, in its sole discretion, shall have the right to do any or all of the following: (a) require CONTRACTOR to meet with COUNTY to review the quality of the work and resolve matters of concern; (b) require CONTRACTOR to repeat the work at no additional charge until it is satisfactory; (c) terminate this Agreement pursuant to the provisions of paragraph 19 (Termination) or (d) pursue any and all other remedies at law or in equity.

[END OF GENERAL TERMS AND CONDITIONS]

EXHIBIT A

DEFINITION OF SERVICES

CONTRACTOR (FEI.com, Inc.) shall provide support and maintenance services for Mendocino's version of the Web-based Infrastructure for Treatment Services ("MendoWITS") software system; MendoWITS Ad-hoc Reporting service/system; and various enhancements to the MendoWITS modules to comply with requests from Mendocino County users and California Department of Health Care Services. CONTRACTOR shall:

I. Support and Maintain the MendoWITS Software System

Provide tier three support which shall include:

- A. Unlimited telephone and e-mail support services to the MendoWITS Systems Administrator or other named single point of contact between the hours of 8:00 AM to 6:00 PM Eastern Standard Time, Monday through Friday, except on County Holidays.
- B. Maintenance of the MendoWITS software which shall include, but not be limited to:
 1. Correcting any problem that has been reported by the COUNTY and does not meet agreed upon MendoWITS specification;
 2. Updating the MendoWITS system with all corrections and enhancements on a date and time agreed to by the COUNTY and the CONTRACTOR;
 3. Updating all data files affected by any correction and/or enhancement;
 4. Correcting any problem caused by business rule changes or minor adjustments to the MediCAL and CalOMS applications at the state level.
 - a. "Minor" is defined as requiring less than eight hours of development time.
 - b. Estimates will be provided on a case by case basis, and those work items requiring more than eight hours of development time will be handled through the "enhancement process" of time & cost estimation, review and approval. The "enhancement process" involves the following steps:
 - i. Customer defines a need.
 - ii. Customer works with CONTRACTOR staff to turn that need into a defined requirement for system change / improvement.
 - iii. CONTRACTOR provides quote for building defined requirement into the system. If this enhancement presents cost sharing opportunities with other California Counties or other WITS customers, CONTRACTOR agrees to abide by the cost sharing guidelines agreed upon by the interested members.

EXHIBIT A – PAGE 2

DEFINITION OF SERVICES

- iv. Customer approves / rejects enhancement based on price quote.
 - v. If approved, CONTRACTOR builds the enhancement into the system, and places it on Mendocino County's User Acceptance Site for review.
 - vi. Once COUNTY approves the enhancement as meeting their defined requirements, CONTRACTOR will bill County for the enhancement, and it will be scheduled to be moved to the Production environment.
5. Acknowledging the reported problem, providing an action plan for resolving the reported problem, and reporting the status and/or resolving the reported problem no later than the time limits specified in the Problem Level Matrix below.

Please note that hours in following chart represent business hours (9:00 AM EST to 6:00 PM EST)

Problem level	Acknowledgement	Action Plan/First follow up	Status reporting and or Resolution
Critical	2-3 hours	4-8 hours	12 hours
High	2-3 hours	8-12 hours	24 hours
Medium	4 Hours	24 hours	40 hours
Low	4 hours	40 hours	80 hours

The start of the time limit begins when the problem is reported and received by the CONTRACTOR. All problems reported by the COUNTY must have a problem level specified by the COUNTY of critical (cannot continue working until problem resolved); moderately critical (can do work, but processes disrupted with loss of productivity); or non-critical (problem resolution can wait, but needs to be resolved as soon as possible). If no problem level is specified, the problem level shall be deemed to be non-critical.

EXHIBIT A – PAGE 3

DEFINITION OF SERVICES

- C. Providing, supporting, and maintaining a MendoWITS Training Site that shall be functionally identical to the MendoWITS Production Site and shall include, and not be limited to:
 - 1. Availability seven days a week, 7:00 AM – 7:00 PM Pacific Standard Time (PST);
 - 2. Updates to the latest version of the MendoWITS Production System software within forty-eight hours after any updates are made to the MendoWITS Production System;
 - 3. Full database backup at least once a week; and
 - 4. Use Pacific Standard Time when displaying date and time on all MendoWITS screens and reports, if applicable, and when date and time-stamping of records are required.

- D. Providing and maintaining a MendoWITS Test Site that shall be used to test any correction and enhancement prior to updating the MendoWITS Production Site and MendoWITS Training Sites.

II. MendoWITS Software System Network Infrastructure

Support and maintain the MendoWITS software system by providing, maintaining, and supporting the hardware, software, and network infrastructure required to host the MendoWITS Production Site and be accessible over the internet. The MendoWITS Production Site shall:

- A. Be a secure website that is Health Information Portability and Accountability Act of 1996 (“HIPAA”) compliant;
- B. Be accessible twenty-four hours a day, seven days a week to all MendoWITS users such that MendoWITS data may be entered and displayed;
- C. Be accessible by all MendoWITS users a minimum of 98% of each day, excluding the times required for data backups and planned system upgrades;
- D. Use PST as the default date and time for date and time stamping data records and when displaying date and time on all MendoWITS screens and reports;
- E. Have all MendoWITS database(s) backed up daily, at a minimum incrementally (with only updates made since the last backup), with a full database backup at least once a week. All backup times shall be agreed to by the COUNTY and the CONTRACTOR. The CONTRACTOR shall publish on MendoWITS Production System the backup schedule for the COUNTY.

EXHIBIT A – PAGE 4

DEFINITION OF SERVICES

III. MendoWITS Ad Hoc Reporting System

Support the MendoWITS Ad Hoc Reporting System which shall include, but not be limited to:

- A. All hardware and system software (operating system and database software licenses) required to run the Ad Hoc Reporting System such that the Ad Hoc Reporting System shall not impede the performance to the MendoWITS Production system.
- B. Setting up the MendoWITS Ad Hoc Reporting System to be fully functional to the COUNTY and its contracted service providers. Setup shall include, but not be limited to:
 1. Setting up the hardware and software for use by the Ad Hoc Reporting System.
 2. Analyzing the MendoWITS Production system data and working with the COUNTY to determine what data shall be included in the Ad Hoc Reporting System database.
 3. Designing the Ad Hoc Reporting System database.
 4. Developing the copy program to extract data from MendoWITS Production database and create the Ad Hoc Reporting System database. This program shall run every night.
 5. Integrating Ad Hoc user accounts with the MendoWITS user accounts to ensure that only MendoWITS users can access the Ad Hoc Reporting System database and generate reports.
 6. Designing and developing a data dictionary for Ad Hoc users.
 7. Designing the system interface such that it is readable by MendoWITS users.
- C. Capability to generate, at a minimum, the following types of reports:
 1. Table (columnar);
 2. Matrix; and
 3. Charts.
- D. Capability to export, at a minimum, data in the following formats:
 1. Microsoft Excel;
 2. Portable Document Format (“PDF”);
 3. Image;
 4. Extensible Markup Language (“XML”); and
 5. Comma Separated Values (“CSV”).

EXHIBIT A – PAGE 5

DEFINITION OF SERVICES

- E. Capability to:
 - 1. Filter data based on user defined criteria;
 - 2. Save reports created by users;
 - 3. Run saved reports; and
 - 4. Group and sort reports by user specified report data.

 - F. Ability to restrict the data used in the Ad Hoc reports to only the data that is associated with the MendoWITS provider agency using the Ad Hoc Reporting System. A MendoWITS provider agency must not be allowed to access or report on any other MendoWITS provider agency data. The only exception shall be the Single County Authority (“SCA”) and MendoWITS contracting agencies. The SCA agency must be able to access and run reports on all substance abuse data from all MendoWITS provider agencies. MendoWITS contracting agencies must be able to generate reports on only clients for which services were rendered and paid for by their contracts.

 - G. Support is defined to be telephone support service which includes answering questions as it pertains to the use of the MendoWITS Ad Hoc Reporting System.

 - H. Maintenance is defined to be the creating or updating of data views whenever there are new data elements added to or removed from the MendoWITS Production database. Maintenance also includes the support of the hardware and software that is used by the MendoWITS Ad Hoc Reporting System to ensure that it is performing optimally, including taking the necessary precautions for protecting the system from unauthorized access by external sources.
- IV. In carrying out the Scope of Work contained in this Exhibit A, CONTRACTOR shall comply with all requirements to the satisfaction of the COUNTY, in the sole discretion of the COUNTY. For any finding of CONTRACTOR’s non-compliance with the requirements contained in the Exhibit A, COUNTY shall within ten (10) working days of discovery of non-compliance notify CONTRACTOR of the requirement in writing. CONTRACTOR shall provide a written response to COUNTY within five (5) working days of receipt of this written notification. If the non-compliance issue has not been resolved through response from CONTRACTOR, COUNTY shall notify CONTRACTOR in writing that this non-compliance issue has not been resolved. COUNTY may withhold monthly payment until such time as COUNTY determines the non-compliance issue has been resolved. Should COUNTY determine that CONTRACTOR’s non-compliance has not been addressed to the satisfaction of COUNTY for a period of thirty (30) days from the date of first Notice, and due to the

EXHIBIT A – PAGE 6

DEFINITION OF SERVICES

fact that it is impracticable to determine the actual damages sustained by CONTRACTOR's failure to properly and timely address non-compliance, COUNTY may additionally require a payment from CONTRACTOR in the amount of fifteen percent (15%) of the monthly amount payable to CONTRACTOR for each month following the thirty (30) day time period that CONTRACTOR's non-compliance continues. The parties agree this fifteen percent payment shall constitute liquidated damages and is not a penalty. CONTRACTOR's failure to meet compliance requirements, as determined by COUNTY, may lead to termination of this contract by the COUNTY with a forty-five (45) day written notice.

- V. Maintain compliance with California Code of Regulations Title 22, California Code of Regulations Title 42, The Health Insurance and Accountability Act of 1996 (HIPAA) regulations, state and federal laws, and other Mendocino County requirements for client confidentiality and record security.
- VI. Notify COUNTY of all communications with Media, including, but not limited to, press releases, interviews, articles, etc. CONTRACTOR shall not speak on behalf of COUNTY in any communications with Media but is encouraged to describe the services it provides and respond to questions about those services. CONTRACTOR is also encouraged, where appropriate, to provide timely and factual responses to public concerns.
- VII. Prior to terminating this Agreement, CONTRACTOR shall give at least forty-five (45) days written notice of termination to COUNTY.

[END OF DEFINITION OF SERVICES]

EXHIBIT B

PAYMENT TERMS

1. COUNTY will pay CONTRACTOR \$4,648.35 monthly upon receipt of invoice, as follows:

Service	Monthly	FY18
WITS Hosting	\$1,360.48	\$16,325.76
WITS Support	\$2,267.51	\$27,210.12
SSRS Hosting & Support	\$1,020.36	\$12,244.32
Total	\$4,648.35	\$55,780.20

2. This contract provides authority for COUNTY to pay CONTRACTOR a maximum amount of \$7,200 for authorized enhancements as described in Exhibit A, Sec. I.B.4.
3. An additional \$76.52 is available to cover unexpected charges with prior approval from Behavioral Health and Recovery Services Director or designee.
4. CONTRACTOR will bill COUNTY on a monthly basis on an approved invoice. (Attachment 1)
5. Invoices are due by 10th of the month following month of services. Invoices not received within 30 days will not be honored.
6. Invoices will be submitted to:

COUNTY OF MENDOCINO
Behavioral Health and Recovery Services
1120 S. Dora Street
Ukiah, CA 95482
Attn: Art Davidson

The maximum amount payable under this Agreement shall not exceed Sixty-Three Thousand Fifty-Six Dollars and Seventy-Two Cents (\$63,056.72) for the term of this Agreement.

[END OF PAYMENT TERMS]

EXHIBIT C

INSURANCE REQUIREMENTS

Insurance coverage in a minimum amount set forth herein shall not be construed to relieve CONTRACTOR for liability in excess of such coverage, nor shall it preclude COUNTY from taking such other action as is available to it under any other provisions of this Agreement or otherwise in law. Insurance requirements shall be in addition to, and not in lieu of, CONTRACTOR's indemnity obligations under Paragraph 2 of this Agreement.

CONTRACTOR shall furnish to COUNTY certificates of insurance with Automobile Liability/General Liability Endorsements evidencing at a minimum the following:

- a. Combined single limit bodily injury liability and property damage liability - \$1,000,000 each occurrence.
- b. Vehicle / Bodily Injury combined single limit vehicle bodily injury and property damage liability - \$500,000 each occurrence.

[END OF INSURANCE REQUIREMENTS]

EXHIBIT D
CONTRACTOR ASSURANCE OF COMPLIANCE WITH
THE MENDOCINO COUNTY
HEALTH & HUMAN SERVICES AGENCY
**NONDISCRIMINATION IN STATE
AND FEDERALLY ASSISTED PROGRAMS**

NAME OF CONTRACTOR: **FEI.com, Inc.**

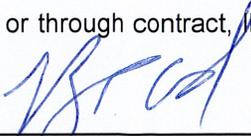
HEREBY AGREES THAT it will comply with Title VI and VII of the Civil Rights Act of 1964 as amended; Section 504 of the Rehabilitation Act of 1973 as amended; the Age Discrimination Act of 1975 as amended; the Food Stamp Act of 1977, as amended and in particular section 272.6; Title II of the Americans with Disabilities Act of 1990; California Civil Code Section 51 et seq., as amended; California Government Code section 11135-11139.5, as amended; California Government Code section 12940 (c), (h) (1), (i), and (j); California Government Code section 4450; Title 22, California Code of Regulations section 98000 – 98413; Title 24 of the California Code of Regulations, Section 3105A(e); the Dymally-Alatorre Bilingual Services Act (California Government Code Section 7290-7299.8); Section 1808 of the Removal of Barriers to Interethnic Adoption Act of 1996; Section 106 (g) of the Trafficking Victims Protection Act of 2000 as amended (22 U.S.C. 7104); 45 CFR 96.131 (a)-(c) Admission Priority and Interim Services for Pregnant Women; CLAS (Culturally and Linguistically Appropriate Services National Standards); Civil Rights, Division 21 and ADA as amended; Title 42, CFR, Part 54 (Charitable Choice); Title 42, United States Code (USC), Section 300x-24 (b) (7) (A) and (B), Title 45 Code of Regulations (CFR), Section 96.128 (a) (4) Requirements regarding Human Immunodeficiency Virus (HIV) and other applicable federal and state laws, as well as their implementing regulations [including 45 Code of Federal Regulations (CFR) Parts 80, 84, and 91, 7 CFR Part 15, and 28 CFR Part 42], by ensuring that employment practices and the administration of public assistance and social services programs are nondiscriminatory, to the effect that no person shall because of ethnic group identification, age, sex, sexual orientation, color, disability, medical condition, national origin, race, ancestry, marital status, religion, religious creed or political belief be excluded from participation in or be denied the benefits of, or be otherwise subject to discrimination under any program or activity receiving federal or state financial assistance; and HEREBY GIVE ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all federal and state assistance; and THE CONTRACTOR HEREBY GIVES ASSURANCE THAT administrative methods/procedures which have the effect of subjecting individuals to discrimination or defeating the objectives of the California Department of Social Services (CDSS) Manual of Policies and Procedures (MPP) Chapter 21, will be prohibited.

BY ACCEPTING THIS ASSURANCE, CONTRACTOR agrees to compile data, maintain records and submit reports as required, to permit effective enforcement of the aforementioned laws, rules and regulations and permit authorized CDSS and/or federal government personnel, during normal working hours, to review such records, books and accounts as needed to ascertain compliance. If there are any violations of this assurance, CDSS shall have the right to invoke fiscal sanctions or other legal remedies in accordance with Welfare and Institutions Code section 10605, or Government Code section 11135-11139.5, or any other laws, or the issue may be referred to the appropriate federal agency for further compliance action and enforcement of this assurance.

THIS ASSURANCE is binding on CONTRACTOR directly or through contract, license, or other provider services, as long as it receives federal or state assistance.

6/5/18
Date


CONTRACTOR Signature

9755 Patuxent Woods Dr. #300, Columbia, MD 21046

Appendix A
CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, and OTHER RESPONSIBILITY MATTERS
LOWER TIER COVERED TRANSACTIONS

This certification is required by the regulations implementing Executive Order 12549, Debarment and Suspension, 29 CFR Part 98, Section 98.510, Participants' responsibilities. The regulations were published as Part VII of the May 26, 1988 Federal Register (pages 19160-19211).

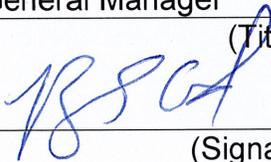
- (1) The primary principal certifies to the best of its knowledge and belief, that it and its principals:
- (a) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;
 - (b) Have not within a three-year period preceding this proposal been convicted of or had a civil judgment tendered against them for commission of fraud or a criminal offence in connection with obtaining, attempting to obtain, or performing a public (Federal, State, or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsifications or destruction of records, making false statements, or receiving stolen property;
 - (c) Are not presently indicted for or otherwise criminally or civilly charged by a government entity (Federal, State, or local) with commission of any of the offenses enumerated in paragraph (1) (b) of this certification, and
 - (d) Have not, within a three-year period preceding this application/proposal, had one or more public transactions (Federal, State, or local) terminated for cause or default.
- (2) Where the primary principal is unable to certify to any of the statements in this certification, such principal shall attach an explanation.

Rodney Conrad

 (Type Name)

General Manager

 (Title)



 (Signature)

FEI.com, Inc.

 (Organization Name)

9755 Patuxent Woods Dr. #300
 Columbia, MD 21046

 (Organization Address)



 (Date)

ADDENDUM A
Business Associate – Qualified Service Organization Agreement

THIS HIPAA BUSINESS ASSOCIATE and QUALIFIED SERVICE ORGANIZATION AGREEMENT (the "Agreement") is entered into effective July 1, 2018 (the "Effective Date"), by and between **FEI.com, Inc.**, ("Business Associate") and **Mendocino County** (the "Covered Entity").

Business Associate and Covered Entity have a business relationship (the "Relationship" or the "Agreement") in which Business Associate may perform functions or activities on behalf of Covered Entity involving the use and/or disclosure of protected health information received from, or created or received by, Business Associate on behalf of Covered Entity. Business Associate is also a Qualified Service Organization (QSO) under 42 CFR, Part 2 and agrees to certain mandatory provisions regarding the use and disclosure of substance abuse treatment information. Therefore, if Business Associate is functioning as a Business Associate or QSO to Covered Entity, Business Associate agrees to the following terms and conditions set forth in this Business Associate Agreement.

Definitions

Catch-all definition:

The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use. Terms used, but not otherwise defined, in this agreement shall have the same meaning as those terms in the HIPAA and CFR 42 Part 2 Regulations. Protected Health Information (PHI) includes electronic Protected Health Information (ePHI).

Specific definitions:

- (a) **Business Associate**. "Business Associate" shall generally have the same meaning as the term "Business Associate" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean ***FEI.com, Inc.***
- (b) **Qualified Service Organization**. "Qualified Service Organization" shall generally have the same meaning as defined in 42 CFR 2.11, and in reference to the party to this agreement, shall mean ***FEI.com, Inc.***
- (c) **Covered Entity**. "Covered Entity" shall generally have the same meaning as the term "Covered Entity" at 45 CFR 160.103, and in reference to the party to this agreement, shall mean ***Mendocino County***.

- (d) **HIPAA Rules.** "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164 as well as the HITECH Act.
- (e) **CFR 42 Part 2.** "CRF 42 Part 2" shall mean the federal law governing Confidentiality of Alcohol and Drug Abuse Patient Records and its implementing regulations.

Obligations and Activities of Business Associate

Business Associate agrees to:

- (a) **Limitations on Uses and Disclosures of PHI.** Business Associate shall not, and shall ensure that its directors, officers, employees, and agents do not, use or disclose PHI in any manner that is not permitted or required by the Relationship, this Agreement, or required by law. All uses and disclosures of, and requests by Business Associate, for PHI are subject to the minimum necessary rule of the Privacy Standards and shall be limited to the information contained in a limited data set, to the extent practical, unless additional information is needed to accomplish the intended purpose, or as otherwise permitted in accordance with Section 13405(b) of HITECH and any implementing regulations. See Permitted Uses and Disclosures by Business Associate below.
- (b) **Required Safeguards To Protect PHI.** Use, and document the implementation of, appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by this Agreement;
- (c) **Reporting of Improper Use and Disclosures or Breaches of Unsecured PHI.** Report to Covered Entity within 24 business hours of Business Associate becoming aware of any use or disclosure of protected health information not provided for by the Agreement. Business Associate shall also report to Covered Entity within 24 business hours any breaches of unsecured protected health information as required at 45 C.F.R. §§ 164.400-414, and any security incident of which it becomes aware. Report should be made to:

Compliance Officer
Mendocino County Behavioral Health
1-866-791-9337

- (d) **Mitigation of Harmful Effects.** Business Associate agrees to mitigate, to the extent practicable, any harmful effect of a use or disclosure of PHI by Business

Associate in violation of the requirements of this Agreement, including, but not limited to, compliance with any state law or contractual data breach requirements. Business Associate shall cooperate with Covered Entity's breach notification and mitigation activities, and shall be responsible for all costs incurred by Covered Entity for those activities.

- (e) **Agreements by Third Parties.** In accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any subcontractors that create, receive, maintain, or transmit protected health information on behalf of the Business Associate agree in writing to the same restrictions, conditions, and requirements that apply to the Business Associate with respect to such information;
- (f) **Access to Information.** Within five (5) business days of a request by the Covered Entity, make available protected health information in a designated record set as necessary to satisfy Covered Entity's obligations under 45 CFR 164.524. In the event an individual delivers directly to the Business Associate a request for access to protected health information, the Business Associate shall within two (2) business days forward such request to the Covered Entity;
- (g) **Availability of PHI for Amendment.** Within five (5) business days of request of a Covered Entity, make amendment(s) to protected health information in a designated record set as directed or agreed to by the Covered Entity pursuant to 45 CFR 164.526, or take other measures as necessary to satisfy Covered Entity's obligations under 45 CFR 164.526. This includes, but is not limited to, the Business Associate providing such information to the Covered Entity for amendment and incorporation of any such amendment(s) in the protected health information. In the event an individual delivers directly to the Business Associate a request for amendment(s) to protected health information, the Business Associate shall within two (2) business days forward such request to the Covered Entity;
- (h) **Documentation of Disclosures.** Maintain a record of all disclosures of protected health information and information related to such disclosures, including the name of the recipient and the date of disclosure. If known, the records shall also include, the address of the recipient of the protected health information, a brief description of the protected health information disclosed, and the purpose of the disclosure which includes an explanation of the basis of such disclosure;
- (i) **Accounting of Disclosures.** Within five (5) days of notice by Covered Entity to Business Associate that it has received a request for an accounting of disclosures of PHI regarding an individual during the six (6) years prior to the

date on which the accounting was requested, Business Associate shall make available to Covered Entity information to permit Covered Entity to respond to the request for an accounting of disclosures of PHI, as required by 45 C.F.R. § 164.528. In the case of an electronic health record maintained or hosted by Business Associate on behalf of Covered Entity, the accounting period shall be three (3) years and the accounting shall include disclosures for treatment, payment and healthcare operations, in accordance with the applicable effective date of Section 13402(a) of HITECH. In the event the request for an accounting is delivered directly to Business Associate, Business Associate shall within two (2) days forward such request to Covered Entity;

- (j) **Availability of Books and Records.** Business Associate shall make its internal practices, books, and records relating to the use and disclosure and privacy protection of PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of the Covered Entity, available to the Covered Entity, the State of California, and the Secretary of the Department of Health and Human Services, in the time and manner designated by the Covered Entity, State or Secretary, for purposes of determining Covered Entity's compliance with the Privacy Standards. Business Associate shall notify the Covered Entity upon receipt of such a request for access by the State or Secretary, and shall provide the Covered Entity with a copy of the request as well as a copy of all materials disclosed.

- (k) **Electronic PHI.** To the extent that Business Associate creates, receives, maintains or transmits electronic PHI (ePHI) on behalf of Covered Entity, Business Associate shall:
 - (i) Comply with 45 C.F.R. §§164.308, 301, 312, and 316 in the same manner as such sections apply to Covered Entity, pursuant to Section 13401(a) of HITECH, and otherwise implement administrative, physical and technical safeguards that reasonably and appropriately protect the confidentiality, integrity and availability of electronic PHI;
 - (ii) Ensure that any agent to whom Business Associate provides electronic PHI agrees to implement reasonable and appropriate safeguards to protect it; and
 - (iii) Report to Covered Entity any security incident of which Business Associate becomes aware.

- (l) **Business Associate as Agent of Covered Entity.** To the extent the Business Associate is to carry out one or more of Covered Entity's obligation(s) under Subpart E of 45 CFR Part 164, Business Associate shall comply with the

requirements of Subpart E that apply to the Covered Entity in the performance of such obligation(s).

Permitted Uses and Disclosures by Business Associate

- (a) Business Associate may only use or disclose protected health information:
 - (i) To carry out its duties to the Covered Entity pursuant to the terms of the Relationship;
 - (ii) For its own proper management and administration; and
 - (iii) To carry out its legal responsibilities.
- (b) Business Associate may use or disclose protected health information as required by law.
- (c) Business Associate agrees to limit uses and disclosures and requests for protected health information to the minimum amount necessary to accomplish the purpose of the request, use, or disclosure, and consistent with the Covered Entity's minimum necessary policies and procedures.
- (d) Business Associate may disclose protected health information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided the disclosures are required by law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that the information will remain confidential and used or further disclosed only as required by law or for the purposes for which it was disclosed to the person. Additionally, Business Associate must obtain an agreement from the receiving party to immediately notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (e) Business Associate may provide data aggregation services relating to the health care operations of the Covered Entity.

Provisions for Covered Entity to Inform Business Associate of Privacy Practices and Restrictions

- (a) Covered Entity shall notify Business Associate within five (5) business days of notice of any limitation(s) in the notice of privacy practices of Covered Entity under 45 CFR 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of protected health information.

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

42 CFR Part 2 – Substance Abuse Treatment PHI

- (a) **Qualified Service Organization Status.** To the extent that in performing its services for or on behalf of Covered Entity, Business Associate uses, discloses, maintains, or transmits protected health information that is protected by 42 CFR, Part 2, Business Associate acknowledges and agrees that it is a QSO for the purpose of such federal law. Business Associate/QSO acknowledges that in receiving, storing, processing or otherwise dealing with any PHI from the Covered Entity, it is fully bound by HIPAA and 42 C.F.R. Part 2.
- (b) **Judicial and Administrative Proceedings.** Business Associate/QSO will resist any efforts, including judicial proceedings, to obtain PHI except as provided in 42 C.F.R. Part 2. In the event Business Associate receives a subpoena, court or administrative order or other discovery request or mandate for release of PHI, Covered Entity shall have the right to control Business Associate's response to such request. Business Associate shall notify Covered Entity of the request as soon as reasonably practicable, but in any event within two (2) days of receipt of such request.
- (c) **Limitations.** Business Associate/QSO may use and/or disclose PHI for the proper management and administration of its business, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate/QSO may use and/or disclose PHI to carry out its legal responsibilities, except as otherwise limited by the Agreement or 42 C.F.R. Part 2. Business Associate/QSO may use PHI to report violations of law as permitted by HIPAA and 42 C.F.R. Part 2.
- (d) **Notification.** Covered Entity will notify Business Associate/QSO of any changes in or revocation of, authorization by an Individual to use or disclose PHI. Covered Entity will notify Business Associate of any Individual requests for restrictions to

the use or disclosure of PHI. Business Associate acknowledges it is fully bound by HIPAA and 42 C.F.R. Part 2.

- (e) **CFR 42 Part 2 Precedence.** Mandatory provisions of HIPAA preempt provisions of the Agreement. Provisions of the Agreement not mandated by HIPAA but nonetheless permitted by HIPAA will control. In the event of inconsistencies between HIPAA and 42 C.F.R. Part 2, the more restrictive rule will control.

Parties will comply with any and all federal, state and local laws pertaining to client confidentiality including, but not limited to, state mental health and developmental disability confidentiality law, state and federal drug and alcohol confidentiality laws and state AIDS/HIV confidentiality laws.

Term and Termination

- (a) **Term.** The Term of this Agreement shall be effective as of July 1, 2018 and shall terminate at the time FEI.com, Inc. ceases to provide its support and maintenance services for the Web-based Infrastructure for Treatment Services software system services for Mendocino County or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- (b) **Termination for Cause.** Business Associate authorizes termination of this Agreement by Covered Entity, if Covered Entity determines Business Associate has violated a material term of the Agreement. At the Covered Entity's option, the Covered Entity may permit the Business Associate to cure or end any such violation within the time specified by the Covered Entity. Covered Entity's option to have cured a breach of this Agreement shall not be construed as a waiver of any other rights Covered Entity has in the Relationship, this Agreement or by operation of law or in equity.
- (c) **Obligations of Business Associate Upon Termination.**
- (i) Upon termination of this Agreement for any reason, Business Associate shall return to Covered Entity or, at the Covered Entity's discretion and direction, destroy all protected health information received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, that the Business Associate still maintains in any form. This provision shall apply to protected health information that is in the possession of the Business Associate or agents of the Business Associate. Business Associate shall retain no copies of the protected health information.

(ii) Notwithstanding Section C (i) upon termination of this Agreement for any reason, Business Associate may retain certain protected health information for its own management and administration or to carry out its legal responsibilities at the discretion of the Covered Entity. With respect to such protected health information necessary for Business Associate's own management and administration or to carry out its legal responsibilities which was received from Covered Entity, or created, maintained, or received by Business Associate on behalf of Covered Entity, Business Associate shall:

- 1) Retain only that protected health information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
- 2) Return to Covered Entity, or if agreed to by Covered Entity, destroy the remaining protected health information that the Business Associate still maintains in any form;
- 3) Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information to prevent use or disclosure of the protected health information, other than as provided for in this Section, for as long as Business Associate retains the protected health information;
- 4) Not use or disclose the protected health information retained by Business Associate other than for the purposes for which such protected health information was retained and subject to the same conditions set out at paragraph (d) above under "Permitted Uses and Disclosures By Business Associate" which applied prior to termination; and
- 5) Return to Covered Entity or, if agreed to by Covered Entity, destroy the protected health information retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.

(d) **Survival**. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

Miscellaneous

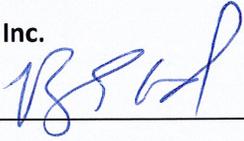
(a) **Regulatory References**. A reference in this Agreement to a section in the HIPAA Rules means the section as in effect or as amended.

(b) **Amendment**. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for compliance with the requirements of the HIPAA, CFR 42 Part 2, HITECH, the Privacy Standards, Security Standards or Transactions Standards and any other applicable law.

- (c) **Interpretation**. Any ambiguity in this Agreement shall be interpreted to require compliance with the HIPAA Rules and CFR 42, Part 2.
- (d) **Injunctive Relief**. Business Associate stipulates that its unauthorized use or disclosure of protected health information while performing services pursuant to this Agreement would cause harm to Covered Entity, and in such event, Covered Entity shall be entitled to institute proceedings in any court of competent jurisdiction to obtain damages and injunctive relief.
- (e) **Indemnification**. Business Associate shall indemnify and hold harmless Covered Entity and its officers, trustees, employees, and agents from any and all claims, penalties, fines, costs, liabilities or damages, including but not limited to reasonable attorney fees, incurred by Covered Entity arising from a violation by Business Associate of its obligations under this Agreement.
- (f) **Exclusion from Limitation of Liability**. To the extent that Business Associate has limited its liability under the terms of this Agreement, whether with a maximum recovery for direct damages or a disclaimer against any consequential, indirect or punitive damages, or other such limitations, all limitations shall exclude any damages to Covered Entity arising from Business Associate's breach of its obligations relating to the use and disclosure of protected health information.
- (g) **Owner of Protected Health Information**. Under no circumstances shall Business Associate be deemed in any respect to be the owner of any protected health information used or disclosed by or to Business Associate by Covered Entity.
- (h) **Third Party Rights**. The terms of this Agreement do not grant any rights to any parties other than Business Associate and Covered Entity.
- (i) **Independent Contractor Status**. For the purposes of this Agreement, Business Associate is an independent contractor of Covered Entity, and shall not be considered an agent of Covered Entity.

IN WITNESS WHEREOF, each Party hereby executes this Agreement as of the Effective Date.

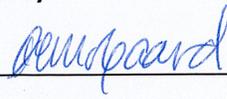
FEI.com, Inc.

By: 

Name: Rodney Conrad

Title: General Manager

Mendocino County

By: 

Name: Anne Molgaard

Title: HHSA Acting Director

