

# ORIGINAL

## AGREEMENT FOR SERVICES #4121

### Substance Use Disorder Treatment Services

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**THIS AGREEMENT** is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as “County”) and WellSpace Health, a California non-profit public benefit corporation qualified as a tax exempt organization under Title 26 Code of Federal Regulations Section 1.501(c)(3) of the Internal Revenue Code of 1986 and a Federally Qualified Health Center, whose principal place of business is 1820 J Street, Sacramento, CA 95811, and whose Agent for Service of Process is Alisdair J. Porteus, 1304 O Street, #336, Sacramento, CA 95816 (hereinafter referred to as “Contractor”);

### RECITALS

**WHEREAS**, County has determined that it is necessary to obtain a Contractor to provide inpatient detoxification, residential alcohol and drug treatment services, counseling services, and substance abuse testing on an “as requested” basis for clients referred by the County of El Dorado Health and Human Services Agency (HHSa); and

**WHEREAS**, Contractor has represented to County that it is specially trained, experienced, expert, and competent to perform the special services required hereunder and County has determined to rely upon such representations; and

**WHEREAS**, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State (all references to “State” in this Agreement shall mean the State of California unless otherwise specified) and local laws; and

**WHEREAS**, County has determined that the provision of these services provided by Contractor is in the public's best interest, and that these services are more economically and feasibly performed by outside independent Contractors as well as authorized by County of El Dorado Charter, Section 210 (b) (6) and/or Government Code 31000.

**NOW, THEREFORE**, County and Contractor mutually agree as follows:

**ARTICLE I**

**Scope of Services:**

**County Responsibilities:** County shall be responsible for the assessment of each Client identified as eligible for services pursuant to this Agreement. As applicable, County's Contract Administrator or designee shall complete and submit a "Treatment Authorization Form" (Authorization) attached hereto as Exhibit A and incorporated by reference herein, authorizing services for each Client. The Authorization may be modified as necessary and as agreed to by Contractor and Contract Administrator. In addition, County shall be responsible for the following:

- Annual site inspection to evaluate the work performed or being performed hereunder, including subcontracted supported activities and the premises in which it is being performed.
- Monitoring of invoices and services to verify adherence to the funding requirements.
- Monitoring of program to verify adherence to terms and conditions pursuant to this Agreement.

**Contractor Responsibilities:** Consistent with applicable federal and state laws, Contractor shall provide the personnel and services necessary to provide alcohol and drug program services (service) on an "as requested" basis to clients (Client) referred by the County's Health and Human Services Agency (HHS) - Substance Use Disorder Services. All services provided pursuant to this Agreement shall be in accordance with the terms and conditions set forth herein. Contractor shall provide a cohesive system for the intervention, assessment, education, and treatment of Clients referred by HHS.

Services may include, but are not limited to the following:

- Residential treatment services
- Withdrawal Management (Detoxification) services

Within twenty-one (21) days of initial intake, Contractor shall submit to HHS SUDS case manager, a progress report and a copy of the signed Treatment Plan for all referred clients. Upon request, but no less than monthly, Contractor shall provide further client progress updates utilizing the County-provided progress report format, attached hereto as Exhibit B and incorporated by reference herein. Contractor shall report to HHS – SUDS case manager when a client successfully completes the drug treatment program within ten (10) days of completion of the program. Contractor shall notify the HHS Substance Use Disorder Services case manager within ten (10) days of the date Contractor learns of client non-compliance with the program.

**ARTICLE II**

**Term:** This Agreement shall cover the period of November 1, 2019 through June 30, 2021 unless terminated earlier pursuant to the provisions contained herein this Agreement under the Article(s) titled "Default, Termination, and Cancellation" or "Fiscal Considerations."

**ARTICLE III**

**Compensation for Services:**

A. Rates:

SERVICE	COUNTY STANDARDIZED RATE STRUCTURE
<p><b>Client Progress Reports.</b> Upon Program Coordinator’s request and/or no later than thirty (30) days after the end of each service month, Contractor shall provide the Program Coordinator, at no charge to the County, with a brief written progress report outlining the primary issues being addressed with each Client, their progress, and ongoing treatment goals.</p>	<p>No Charge</p>

Substance Abuse Testing:: Client(s) admitted to residential treatment or withdrawal management shall receive drug testing services. The cost of such drug testing services shall be included in Contractor’s rate for residential or withdrawal management services, and shall not be billed separately. All tests shall be sent to the lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days.

Contracted Service Rates: Contractor may only bill for residential services provided under this Agreement using the below negotiated rates.

Contracted Services		Rate
<p><b>Residential Treatment Services Level 3.5</b></p>	<p>Per Individual Client</p>	<p>\$106.00 per bed day</p>
<p><b>Withdrawal Management Level 3.2WM</b> Includes medically monitored detoxification services, individual and group counseling, stress reduction, drug/alcohol information, access to Alcoholics Anonymous and Narcotics Anonymous meetings, exercise, and other community and referred resource services.</p>	<p>Per Individual Client</p>	<p>\$212.02 per bed day</p>

B. Funding Categories: Contractor shall maintain familiarity with Federal and State laws, rules, and regulations pertaining to the services provided under this Agreement, to ensure accurate service charges. Contractor shall submit separate invoices that clearly identify the Funding Category for the service provided. Funding categories include but are not limited to the following:

1. AB 109 Treatment Funding: Funding for services provided herein is provided by the 2011 El Dorado Public Safety Realignment Implementation Plan, and is subject to all laws and

regulations promulgated under California Assembly Bill (AB) 109, AB 116, AB 117, ABXI 16 and ABXI 17, Statutes of 2011. Contractor shall only use AB 109 funds, and shall not use any other funding sources, to provide services to AB 109 eligible clients. Services may only be provided if County refers a client to Contractor via an Authorization.

2. Mental Health funding for Substance Use Disorder Treatment: These services are funded with MHSA funds and may only be provided if County refers a client to Contractor via written Authorization.

Unspent funding may be carried forward from fiscal year to fiscal year, for the term of this Agreement, unless otherwise re-allocated by County in accordance with the Article titled "Changes to Agreement." County shall provide written approval to Contractor to carry over unspent funding.

C. Invoices: Contractor shall submit an original invoice that shall contain all of the following data:

1. Invoices shall follow the format specified by County and shall reference this Agreement #4121 on their faces and on any enclosures or backup documentation.
2. All services provided shall be billed at no more than the units of measure defined in the Article titled "Compensation for Services."
3. All invoices to County shall be supported at Contractor's facility by source documentation that substantiates the accuracy, appropriateness, and necessity of services billed. Such documentation may include, but is not limited to: Ledgers, books, vouchers, time sheets, payrolls, signed attendance rosters, client data cards, and cost allocation schedules. County may require Contractor to submit backup documentation that supports monthly invoices along with any or all invoices. Failure of Contractor to supply requested documentation in support of any invoice may result in denial of payment by County. County shall determine the format and content of monthly invoices and backup documentation, and may modify the format and/or content at any time by giving thirty (30) days advance notice to Contractor.
4. All Contractor costs must be allowable pursuant to applicable Federal and State laws, regulations, policies and procedures, as set forth herein.

County shall not pay for any invoices that have not been approved in writing by the Contract Administrator or designee, incomplete services, "no show" cancellations, telephone calls or for the preparation of progress reports. Contractor shall ensure that only billing information is included on the invoice. Information related to Client(s) diagnosis, prognosis or treatment is not permitted on the invoice. Invoices with "white-out" types of corrections shall not be accepted.

Contractor is strongly advised to submit monthly invoices along with written authorizations, as applicable, to perform invoiced services, to HHSA no later than fifteen (15) days following the end of a "service month." For billing purposes, a "service month" shall be defined as a calendar month during which Contractor provides Client services in accordance with the Article titled "Scope of Services." Failure to submit invoices by the 15<sup>th</sup> of the month following the end of a service month, failure to attach signed written authorization(s) as applicable to perform the invoiced service(s) or failure to submit all reports required hereunder shall result in a significant delay in reimbursement. Receipt by HHSA of invoices and associated paperwork submitted by Contractor for payment shall not be deemed evidence of allowable costs under this Agreement. Upon request by County, Contractor may be required to submit additional or new information, which may delay reimbursement.

Invoices shall be sent as follows, or as otherwise directed in writing by County:

Invoices
County of El Dorado Health and Human Services Agency 3057 Briw Road, Suite B Placerville, CA 95667 Attn: Fiscal Unit

Supplemental Invoices: For the purpose of this Agreement, supplemental invoices shall be defined as invoices submitted for additional services rendered during a month for which a prior invoice has already been submitted to County. Supplemental invoices should include the standard invoice format with description of services rendered and a detailed explanation why the invoice was not submitted in the approved timeframe.

- a. For the period **July 1<sup>st</sup> through April 30<sup>th</sup>** of this Agreement: Supplemental invoices for additional services as defined in the Article titled "Scope of Services" received after the second Monday in May, shall be neither accepted nor paid by the County.
- b. For the period **May 1<sup>st</sup> through June 30<sup>th</sup>** of this Agreement: Any supplemental invoices for additional services as defined in the Article titled "Scope of Services" received after the second Monday in July, shall be neither accepted nor paid by the County.

**ARTICLE IV**

**Maximum Obligation:**

The total obligation for services provided during the term of this Agreement as stated herein below:

AB 109 Services: \$160,000.00

MHSA Services: \$165,000.00

**Total Maximum Contractual Obligation: \$325,000.00**

**ARTICLE V**

**Taxes:** Contractor certifies that as of today's date, it is not in default on any unsecured property taxes or other taxes or fees owed by Contractor to County. Contractor agrees that it shall not default on any obligations to County during the term of this Agreement.

**ARTICLE VI**

**Changes to Agreement:** This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

## ARTICLE VII

**Contractor to County:** It is understood that the services provided under this Agreement shall be prepared in and with cooperation from County and its staff. It is further agreed that in all matters pertaining to this Agreement, Contractor shall act as Contractor only to County and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with Contractor's responsibilities to County during term hereof.

## ARTICLE VIII

**Assignment and Delegation:** Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County.

## ARTICLE IX

**Independent Contractor/Liability:** Contractor is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. Contractor exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

Contractor shall be responsible for performing the work under this Agreement in a safe, professional, skillful, and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. County shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to Contractor or its employees.

## ARTICLE X

**Fiscal Considerations:** The parties to this Agreement recognize and acknowledge that County is a political subdivision of the State of California. As such, El Dorado County is subject to the provisions of Article XVI, Section 18 of the California Constitution and other similar fiscal and procurement laws and regulations and may not expend funds for products, equipment or services not budgeted in a given fiscal year. It is further understood that in the normal course of County business, County will adopt a proposed budget prior to a given fiscal year, but that the final adoption of a budget does not occur until after the beginning of the fiscal year.

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

In addition to the above, should the Board of Supervisors during the course of a given year for financial reasons reduce, or order a reduction, in the budget for any County department for which services were contracted to be performed, pursuant to this paragraph in the sole discretion of the County, this Agreement may be deemed to be canceled in its entirety subject to payment for services performed prior to cancellation.

#### **ARTICLE XI**

**Audit by California State Auditor:** Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California Government Code Section 8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.

#### **ARTICLE XII**

##### **Default, Termination, and Cancellation:**

A. **Default:** Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice, and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, County reserves the right to take over and complete the work by contract or by any other means.

- B. **Bankruptcy:** This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. **Ceasing Performance:** County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. **Termination or Cancellation without Cause:** County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no

event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

### **ARTICLE XIII**

**Notice to Parties:** All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested. Notices to County shall be addressed as follows:

COUNTY OF EL DORADO  
Health and Human Services Agency  
3057 Briw Road, Suite B  
Placerville, CA 95667  
ATTN: Contracts Unit

or to such other location as the County directs.

with a carbon copy to

COUNTY OF EL DORADO  
Chief Administrative Office  
Procurement and Contracts Division  
2850 Fair Lane Ct.  
Bldg. C, 2<sup>nd</sup> Fl.  
Placerville, CA 95667  
ATTN: Purchasing Agent

Notices to Contractor shall be addressed as follows:

WELLSPACE HEALTH  
1820 J Street  
Sacramento, CA 95811  
ATTN: CEO or successor

or to such other location as the Contractor directs.

### **ARTICLE XIV**

**Change of Address:** In the event of a change in address for Contractor's principal place of business, Contractor's Agent for Service of Process, or Notices to Contractor, Contractor shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be



necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XV**

**Indemnity:** The Contractor shall defend, indemnify, and hold the County harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorney's fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, County employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the Contractor's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the County, the Contractor, subContractor(s) and employee(s) of any of these, except for the sole, or active negligence of the County, its officers and employees, or as expressly prescribed by statute. This duty of Contractor to indemnify and save County harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### **ARTICLE XVI**

**Insurance:** Contractor shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that Contractor maintains insurance that meets the following requirements:

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. Contractor shall give County at least 30 days notice before the insurance is set to expire or before contractor cancels or replaces and/or amends Contractor's coverage. In the event that Contractor's insurance is proposed to be cancelled by the insurer, Contractor agrees to notify County with in five (5) working days of receiving notice or proposed cancellation. Failure to maintain insurance as identified above shall be considered a material breach, and County may, in addition to any other remedies it may have, terminate this Agreement upon occurrence of such event. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in

- effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that the County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
  - I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
  - J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
  - K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
  - L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
  - M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
  - N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
  - O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

#### **ARTICLE XVII**

**Interest of Public Official:** No official or employee of County who exercises any functions or responsibilities in review or approval of services to be provided by Contractor under this Agreement shall participate in or attempt to influence any decision relating to this Agreement which affects personal interest or interest of any corporation, partnership, or association in which he/she is directly or indirectly interested; nor shall any such official or employee of County have any interest, direct or indirect, in this Agreement or the proceeds thereof.

#### **ARTICLE XVIII**

**Interest of Contractor:** Contractor covenants that Contractor presently has no personal interest or financial interest, and shall not acquire same in any manner or degree in either: 1) any other contract connected with or directly affected by the services to be performed by this Agreement; or, 2) any other entities connected with or directly affected by the services to be performed by this Agreement. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed by Contractor.

#### **ARTICLE XIX**

**Conflict of Interest:** The parties to this Agreement have read and are aware of the provisions of Government Code Section 1090 et seq. and Section 87100 relating to conflict of interest of public officers and employees. Contractor attests that it has no current business or financial relationship with any County employee(s) that would constitute a conflict of interest with provision of services under this contract and will not enter into any such business or financial relationship with any such employee(s) during the term of this Agreement. County represents that it is unaware of any financial or economic interest of any public officer or employee of Contractor relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement either party may immediately terminate this Agreement by giving written notice as detailed in the Article in the Agreement titled, "Default, Termination and Cancellation".

#### **ARTICLE XX**

**California Residency (Form 590):** If Contractor is a California resident, Contractors must file a State of California Form 590, certifying its California residency or, in the case of a corporation, certifying that it has a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or County shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

#### **ARTICLE XXI**

**Nonresident Withholding:** If Contractor is not a California resident, Contractor shall provide documentation that the State of California has granted a withholding exemption or authorized reduced withholding prior to execution of this Agreement or County shall withhold seven (7%) percent of each payment made to the Contractor during term of the Agreement as required by law. This requirement applies to any agreement/contract exceeding \$1,500.00. Contractor shall indemnify and hold the County harmless for any action taken by the California Franchise Tax Board.

#### **ARTICLE XXII**

**Taxpayer Identification Number (Form W-9):** All independent Contractors or corporations providing services to the County must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

#### **ARTICLE XXIII**

**County Business License:** It is unlawful for any person to furnish supplies or services, or transact any kind of business in the unincorporated territory of El Dorado County without possessing a County business license unless exempt under County Code Section 5.08.070.

**ARTICLE XXIV**

**Licenses:** Contractor hereby represents and warrants that Contractor and any of its subcontractors employed under this Agreement has all the applicable licenses, permits, certifications, approvals, waivers, and exemptions that are legally required for Contractor and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement. Contractor shall notify Contract Administrator immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of the appeal, such permits, licenses, approvals, certificates, waivers, and exemptions. Said inability shall be cause for termination of this Agreement.

**ARTICLE XXV**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Salina Drennan, Substance User Disorder Services Program Manager, or successor.

**ARTICLE XXVI**

**Authorized Signatures:** The parties to this Agreement represent that the undersigned individuals executing this Agreement on their respective behalf are fully authorized to do so by law or other appropriate instrument and to bind upon said parties to the obligations set forth herein.

**ARTICLE XXVII**

**Partial Invalidity:** If any provision of this Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remaining provisions will continue in full force and effect without being impaired or invalidated in any way.

**ARTICLE XXVIII**

**Venue:** Any dispute resolution action arising out of this Agreement, including, but not limited to, litigation, mediation, or arbitration, shall be brought in El Dorado County, California, and shall be resolved in accordance with the laws of the State of California.

**ARTICLE XXIX**

**No Third Party Beneficiaries:** Nothing in this Agreement is intended, nor will be deemed, to confer rights or remedies upon any person or legal entity not a party to this agreement.

**ARTICLE XXX**

**Additional Terms and Conditions:**

1. Contractor acknowledges and agrees that this Agreement is intended to implement the following programs and agreements:

- Agreement 17-94520 by and between the County of El Dorado and California Department of Health Care Services (known as the Performance Agreement), available at [https://www.edcgov.us/Government/hhsa/Pages/hhsa\\_contractor\\_resources.aspx](https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx), or as may be amended or replaced;
- Proposition 63, otherwise known as the Mental Health Services Act, was passed by California voters on November 2004, and is available at [http://www.dhcs.ca.gov/services/mh/Pages/MH\\_Prop63.aspx](http://www.dhcs.ca.gov/services/mh/Pages/MH_Prop63.aspx);
- MHSa Plan, and any Annual Updates, for the County of El Dorado that are currently in effect during the term of this Agreement, available at [https://www.edcgov.us/government/mentalhealth/mhsa/pages/mhsa\\_plans.aspx](https://www.edcgov.us/government/mentalhealth/mhsa/pages/mhsa_plans.aspx)

Contractor certifies that they have read and understand the three documents identified above, and shall comply with their provisions, including any updates hereto, during the term of this Agreement.

2. **Employee Qualifications:** Contractor shall only employ individuals as substance abuse counselors who meet all applicable State requirements pertaining to certification and/or licensure, and who are qualified and competent to perform the tasks assigned to them. Any individual providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients, or residents in an ADP-licensed or certified program is required to be certified as defined in Title 9, CCR, Division 4, Chapter 8 (<http://www.calregs.com>). Contractor shall regularly evaluate the performance of its entire treatment staff and implement immediate corrective action if any performance problems are identified. The County may request in writing that the Contractor investigate incidents of suspected poor performance by Contractor treatment staff, and the Contractor shall do so within the timeframes and under the terms contained in HHSA's written request. Contractor shall report findings of said investigation to the Contract Administrator, along with a plan for corrective action.
3. **Code of Conduct:** Contractor shall establish a written Code of Conduct for employees, volunteers, interns, and the Board of Directors, which shall include but not be limited to standards related to the use of drugs and/or alcohol, staff relationships with Clients, prohibition of sexual conduct with Clients, and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees, volunteers, and interns shall agree, in writing, to maintain the standards set forth in the Code of Conduct. A copy of the Code of Conduct shall be provided to each client and shall be posted in writing in a prominent place in Contractor's facility(ies).
5. **Record Retention:** Contractor agrees to make all of its books and records pertaining to the goods and services furnished under the terms of the contract available for inspection, examination, or copying by authorized County, State, or Federal agencies, or their duly authorized representatives, at all reasonable times at Contractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five (5) years from the close of the County's fiscal year in which the contract was in effect, or any longer period as may be required by Federal or State law including, but not limited to any record retention laws pertaining to minors, psychiatric health facilities, psychology clinics, psychologists, and/or other licensed professionals. If, at the end of the applicable retention period, there is litigation or an audit or other investigation involving those books or records,

Contractor will retain the books or records until the resolution of such litigation, audit, or investigation. Contractor shall keep and maintain records for each service rendered, to whom it was rendered, and the date of service.

**6. Federal and State Law Requirements:** Contractor shall comply with, and accept as binding, all applicable governmental laws, regulations, policies, and standards as they exist now or may be hereafter amended or changed. These laws, regulations, policies, and standards shall include, but not be limited to, the following:

- Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 UC Sections 6101 - 6107), which prohibits discrimination based on age.
- Age Discrimination in Employment Act (29 CFR Part 1625).
- Executive Order 11246 (42 USC 2000(e) et seq. and 41 CFR Part 60) regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.
- Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination based on alcohol abuse or alcoholism.
- Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination based on drug abuse.
- Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
- Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), which prohibits discrimination based on handicap.
- Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment and Americans with Disabilities Act (ADA) of 1990 (42USC12101 et seq.)
- Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
- Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
- Title VI of the Civil Rights Act of 1964, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
- Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.
- No state or federal funds shall be used by the Contractor or its subcontractors for sectarian worship, religious instruction, or proselytization. No state funds shall be used by the Contractor or its subcontractors to provide direct, immediate, or substantial support to any religious activity. If an organization conducts such activities, it must offer them separately, in a time or location, from the programs or services for which it provides services funded through this Agreement, and Client participation must be voluntary. If a Client has an objection to the religious charger of the organization, County shall refer Client to another provider.
- Public Law 106-310, which addresses nondiscrimination and institutional safeguards for religious providers, and which is implemented through Title 42, USC, Section 300x-65 and Title 42, CFR, Part 54.
- California State Department of Alcohol and Drug Programs Certification Standards (July 1999).

- California State Department of Alcohol and Drug Programs Perinatal Services Network Guidelines (2015).
  - Trafficking Victims Protection Act of 2000.
  - California Health and Safety Code, Divisions 10.5 and 10.6, and Section 11758.12(d).
  - CCR Title 22.
  - CCR Title 9, Division 4.
  - Code of Federal Regulations (CFR), Title 21, Title 41, Title 42, and Title 45.
  - OMB Uniform Grants Guidance.
  - Public Law 103-227, also known as the Pro-Children Act of 2001.
  - California Government Code Section 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations.
  - California Labor Code Section 6404.5.
  - Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.
  - Contract Work Hours and Safety Standards Act.
  - Copeland “Anti-Kickback” Act.
  - Davis-Bacon Act.
  - Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2 Section 7285.0 et seq.).
  - Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135.
  - Title 31.
  - Title 9, Division 4, Chapter 6 of the CCR, commencing with Section 10800.
7. **Drug-Free Workplace Requirements:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and any subsequent amendments, and will provide a drug-free workplace by taking the following actions:
- Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying action so be taken against employees for violations.
  - Establish a Drug-Free Awareness Program to inform employees about the dangers of drug abuse in the workplace, the organization’s policy of maintaining a drug-free workplace, the available counseling/rehabilitation/and employee assistance programs, and penalties that may be imposed upon employees for drug abuse violations.
  - Contractor shall provide employees with a copy of the organization’s drug-free workplace policy statement, and employees shall agree to comply with the terms of the organization’s policy statement as a condition of employment.
- Failure to comply with these requirements may result in the suspension of payments, termination of this Agreement, or both suspension of payments and termination of this Agreement, and the Contractor may be ineligible for future State-funded contracts with the County.
8. **Continuous Operation:** Contractor shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff required to meet applicable federal, state, and County requirements, and which are necessary for the provision of services hereunder.

**ARTICLE XXXI**

**HIPAA Compliance:** By signing this Agreement, Contractor agrees to comply with Exhibit C, Business Associate Agreement, and Exhibit D, Confidentiality and Information Security Provisions/Confidentiality attached hereto and incorporated by reference herein.

**ARTICLE XXXII**


**Counterparts:**

This Agreement may be executed in any number of counterparts and by the parties hereto in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same agreement.

**ARTICLE XXXIII**

**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By:   
Salina Drennan  
Substance Use Disorder Services Program Manager  
Health and Human Services Agency

Dated: 8/23/19

**Requesting Department Head Concurrence:**

By:   
Don Semon  
Director  
Health and Human Services Agency

Dated: 8-16-19



IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 10/8/19  
By:   
~~SUE NOVASEL~~ ~~Ron Mikulaco~~, Chair  
Board of Supervisors  
"County"

ATTEST:  
~~James S. Mitrisin~~ **KIM DAWSON**  
Clerk of the Board of Supervisors

By:   
Deputy Clerk Dated: 10/8/19

-- CONTRACTOR --

WELLSPACE HEALTH  
(A CALIFORNIA CORPORATION)


By:   
A. Jonathan Porteus, Ph.D.  
CEO  
"Contractor" Dated: 8/12/19



Exhibit A



EL DORADO COUNTY  
HEALTH AND HUMAN SERVICES AGENCY  
Behavioral Health

Treatment Authorization Form

Client Name: \_\_\_\_\_

Case #: \_\_\_\_\_

Client is directed to contact provider to schedule an intake appointment by:

\_\_\_\_\_

(Time & Date)

Wellspace Health  
1820 J Street  
Sacramento, CA 95811

Phone # 916-921-6598  
Fax #916-921-6604

Authorized Dates: \_\_\_\_\_

to

\_\_\_\_\_

Funding Stream:

Authorized Services:

# of authorized days

AB 109 Treatment Services

Withdrawal Management

days

MHSA Funding

Residential

days

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Treatment Plan and First Progress Report are due within 10 days of intake date.

Authorization By:

\_\_\_\_\_  
Authorized Signer

\_\_\_\_\_  
Date

Print Name/Title

Program Name:

(530) /Fax:(530)

The Client contacted the Provider, but failed to show for intake on:

\_\_\_\_\_

The Client failed to contact Provider as directed.

Date

Comments:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Provider Signature and printed name

\_\_\_\_\_  
Date

Exhibit B



**Alcohol and Drug Programs  
Treatment Services  
TREATMENT PROVIDER'S PROGRESS REPORT**

Please fax to Case Manager: \_\_\_\_\_ at 530-295-2596  
(Enter Client's Case Manager Name)

CLIENT NAME: \_\_\_\_\_ Date: \_\_\_\_\_

Reporting Period: \_\_\_\_\_ to \_\_\_\_\_ Intake Date: \_\_\_\_\_ TX Plan Date: \_\_\_\_\_

Current Level of Care: \_\_\_\_\_ Projected Date of Completion: \_\_\_\_\_

PROGRESS: Describe client's progress toward tx plan goals, goals achieved and/or any modifications made to tx plan.

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

TREATMENT ATTENDANCE: \_\_\_\_\_ # of Group Sessions Attended \_\_\_\_\_ # of Individual Sessions Attended  
\_\_\_\_\_ # of Group Session Absences \_\_\_\_\_ # of Individual Session Absences

Describe any attendance issues and interventions regarding attendance: \_\_\_\_\_  
\_\_\_\_\_

DRUG TESTING: List dates of Urinalysis Tests: \_\_\_\_\_

Were all tests negative? \_\_\_\_\_ Yes \_\_\_\_\_ No If No, list date of positive test and specify which substance was detected: \_\_\_\_\_

Describe intervention following positive UA: \_\_\_\_\_

SUPPORT GROUP ATTENDANCE:

Per client's treatment plan, client is assigned to attend \_\_\_\_\_ support group meetings per week.

Is client in adherence to treatment plan regarding support group attendance? \_\_\_\_\_ Yes \_\_\_\_\_ No

Describe intervention to bring client into adherence with support group attendance goal: \_\_\_\_\_  
\_\_\_\_\_

OTHER COMMENTS OR RECOMMENDATIONS: You may attach any other comments/recommendations to this form.

\_\_\_\_\_  
Print Counselor Name & Agency Name

\_\_\_\_\_  
Certification/License Title

\_\_\_\_\_  
Counselor Signature

**Exhibit C**  
**HIPAA Business Associate Agreement**

This Business Associate Agreement is made part of the base contract (“Underlying Agreement”) to which it is attached, as of the date of commencement of the term of the Underlying Agreement (the “Effective Date”).

**R E C I T A L S**

**WHEREAS**, County and Contractor (hereinafter referred to as Business Associate (“BA”) entered into the Underlying Agreement pursuant to which BA provides services to County, and in conjunction with the provision of such services, certain Protected Health Information (“PHI”) and Electronic Protected Health Information (“EPHI”) may be disclosed to BA for the purposes of carrying out its obligations under the Underlying Agreement; and

**WHEREAS**, the County and BA intend to protect the privacy and provide for the security of PHI and EPHI disclosed to BA pursuant to the Agreement in compliance with the Health Insurance Portability and Accountability Act, Pub. L. No. 104-191 of 1996 (“HIPAA”), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (the “HITECH” Act), and regulation promulgated thereunder by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws as may be amended from time to time; and

**WHEREAS**, County is a Covered Entity, as defined in the Privacy Rule and Security Rule, including but not limited to 45 CFR Section 160.103 ; and

**WHEREAS**, BA, when a recipient of PHI from County, is a Business Associate as defined in the Privacy Rule, the Security Rule, and the HITECH Act, including but not limited to 42 USC Section 17938 and 45 CFR Section 160.103; and

**WHEREAS**, “Individual” shall have the same meaning as the term “individual” in 45 CFR § 164.501 and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.202(g);

**WHEREAS**, “Breach” shall have the meaning given to such term under the HITECH Act under 42 USC Section 17921; and

**WHEREAS**, “Unsecured PHI” shall have the meaning to such term under the HITECH Act and any guidance issued pursuant to such Act including, but not limited to 42 USC Section 17932(h).

**NOW, THEREFORE**, in consideration of the mutual promises and covenants contained herein, the Parties agree as follows:

1. **Definitions.** Unless otherwise provided in this Business Associate Agreement, capitalized terms shall have the same meanings as set forth in the Privacy Rule, as may be amended from time to time.

2. Scope of Use and Disclosure by BA of County Disclosed PHI
- A. BA shall not disclose PHI except for the purposes of performing BA's obligations under the Underlying Agreement. Further, BA shall not use PHI in any manner that would constitute a violation of the minimum necessary policies and procedures of the County, Privacy Rule, Security Rule, or the HITECH Act.
  - B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Business Associate Agreement or required by law, BA may:
    - (1) Use the PHI in its possession for its proper management and administration and to fulfill any legal obligations.
    - (2) disclose the PHI in its possession to a third party for the purpose of BA's proper management and administration or to fulfill any legal responsibilities of BA, or as required by law
    - (3) Disclose PHI as necessary for BA's operations only if:
      - (a) Prior to making a disclosure to a third party, BA will obtain written assurances from such third party including:
        - (i) To hold such PHI in confidence and use or further disclose it only for the purpose of which BA disclosed it to the third party, or as required by law; and,
        - (ii) The third party will immediately notify BA of any breaches of confidentiality of PHI to extent it has obtained knowledge of such breach.
    - (4) Aggregate the PHI and/or aggregate the PHI with that of other data for the purpose of providing County with data analyses related to the Underlying Agreement, or any other purpose, financial or otherwise, as requested by County.
    - (5) Not disclose PHI disclosed to BA by County not authorized by the Underlying Agreement or this Business Associate Agreement without patient authorization or de-identification of the PHI as authorized in writing by County.
    - (6) De-identify any and all PHI of County received by BA under this Business Associate Agreement provided that the de-identification conforms to the requirements of the Privacy Rule, 45 CFR and does not preclude timely payment and/or claims processing and receipt.
  - C. BA agrees that it will neither use nor disclose PHI it receives from County, or from another business associate of County, except as permitted or required by this Business Associate Agreement, or as required by law, or as otherwise permitted by law.
3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
- A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308,164.310,164.312, and 164.504(e)(2). BA shall comply with the policies, procedures, and documentation requirements of the HIPAA Security Rule.

- B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
  - C. Report to County in writing of any access, use, or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
  - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment, and Disclosure Accounting. BA agrees to:
- A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).
  - B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
  - C. To assist the County in meeting its disclosure accounting under HIPAA:
    - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy

of the individual's authorization, or a copy of the written request for disclosure.

- (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
      - D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.
5. Obligations of County.
  - A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
  - C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.
  - D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
  - E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.
6. Term and Termination.
  - A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
  - B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
    - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
    - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
    - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.



- C. Effect of Termination.
- (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
  - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.

- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.
8. Amendment. The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
  9. Survival. The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
  10. Regulatory References. A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
  11. Conflicts. Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.

**Exhibit D**  
**Confidentiality and Information Security Provisions/Confidentiality**

**Confidentiality and Information Security Provisions:** Contractor shall comply with applicable laws and regulations, including but not limited to CFR 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII).

Personally identifiable information means any information that identifies, relates to, describes, or is capable of being associated with, a particular individual, including but not limited to, his or her name, signature, social security number, passport number, driver's license or state identification card number, insurance policy number, education, employment, employment history, bank account number, credit card number, or any other financial information.

**A. Permitted Uses and Disclosures of PII by Contractor**

1. **Permitted Uses and Disclosures:** Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Contractor's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, Contractor may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
2. **Specific Uses and Disclosures provisions:** Except as otherwise indicated in the agreement, Contractor shall:
  - a) Use and disclose PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
  - b) Take all reasonable steps to destroy, or arrange for the destruction of a customer's records within its custody or control containing personal information, which is no longer to be retained by Contractor by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or indecipherable through any means.

**B. Responsibilities of Contractor**

1. **Contractor agrees to safeguards:**
  - a) To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time; and
  - b) Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
  - c) Contractor shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.

2. Contractor shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
  - a) Network based firewall and/or personal firewall; and
  - b) Continuously updated anti-virus software; and
  - c) Patch-management process including installation of all operating system/software vendor security patches.
3. Mitigation of Harmful Effects: To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors in violation of the requirements of this Agreement.
4. Agents and Subcontractors of Contractor: To ensure that any agent, including a subcontractor to which Contractor provides PII received from County, or created or received by Contractor, for the purposes of this Agreement shall comply with the same restrictions and conditions that apply through this Agreement to Contractor with respect to such information.
5. Notification of Electronic Breach or Improper Disclosure: During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of PII and/or data, where the information and/or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within twenty-four (24) hours of discovery, at (530) 621-5852. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations. Contractor shall investigate such breach and provide a written report of the investigation to the County Privacy Officer, postmarked within ten (10) working days of the discovery of the breach.

**Confidentiality:** Contractor agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all confidential information that it creates, receives, maintains, or transmits in accordance with laws and regulations as outlined below.

Contractor shall provide HHSa with information concerning such safeguards upon request. Contractor shall comply with applicable laws and regulations, including but not limited to The Code of Federal Regulations, Title CFR 45, parts 160-164, regarding the confidentiality and security of Personally Identifiable Information (PII), as well as the following:

- A. Civil Code Section 1798.80 through 1798.82 - Customer Records (breach of security)
- B. Civil Code Section 1798.85 - Confidentiality of Social Security Numbers
- C. Civil Code Sections 56 through 56.37 - Confidentiality of Medical Information Act
- D. HSC Sections 11812 and 11845.5
- E. HSC Sections 123110 through 123149.5 - Patient Access to Health Records
- F. Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
- G. Title 22, California Code of Regulations (hereinafter referred to as Title 22), Section 51009, which is specific to Medi-Cal
- H. Title 42, CFR Part 2
- I. Title 45, CFR Parts 160, 162, and 164 - the Health Insurance

HIPAA Compliance: All data, together with any knowledge otherwise acquired by Contractor during the performance of services provided pursuant to this Agreement, shall be treated by Contractor and Contractor's staff as confidential information. Contractor shall not allow access to, disclose, or use, directly or indirectly, at any time any such confidential information. If Contractor receives any individually identifiable health information ("Protected Health Information" or "PHI" and Electronic Protected Health Information or "EPHI"), Contractor shall maintain the security and confidentiality of such PHI or EPHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the regulations promulgated thereunder.

