

ORIGINAL

234-S1110

AGREEMENT FOR SERVICES #379-183-M-E2010 AMENDMENT I

This Amendment I to that Agreement for Services #379-183-M-E2010, 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 North Valley Behavioral Health, LLC; (hereinafter referred to as "CONTRACTOR");

RECITALS

WHEREAS, CONTRACTOR has been engaged by COUNTY to provide acute psychiatric inpatient services for mentally disordered adults for the County of El Dorado Health Services Department, Mental Health Division in accordance with Agreement for Services #379-183-M-E2010, effective August 1, 2010, incorporated herein and made by reference a part hereof; and

WHEREAS, the parties hereto have mutually agreed to amend *Article II - Term*; and

WHEREAS, the parties hereto have mutually agreed to amend *Article III - Compensation for Services*; and

WHEREAS, the parties hereto have mutually agreed to amend *Article VIII - Mandated Reporter Requirements*; and

NOW THEREFORE, the parties do hereby agree that Agreement for Services #379-183-M-E2010 shall be amended a first time as follows:

1) Article II, Term, shall be amended in its entirety to read as follows:

Article II. TERM

This Agreement shall be effective August 1, 2010 and shall expire June 30, 2012, unless terminated earlier pursuant to provisions under Article XV or Article XVI herein.

2) Article III, Compensation for Services, shall be amended in its entirety to read as follows:

Section 3.01 For the purposes of this Agreement, the all-inclusive billing rate from August 1, 2010 through June 30, 2011 shall be \$768 per day per person. Effective July 1, 2011, the all-inclusive billing rate shall be \$798 per day per person. Payment is due at the aforementioned rate for each day that client is at the facility, including the day of admission, excluding the day of discharge.

Section 3.02 CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where CONTRACTOR obtains written approval from HSD Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which CONTRACTOR provides services in accordance with ARTICLE I, "Scope of Services."

Section 3.03 For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within forty-five (45) days following the COUNTY's receipt and approval of itemized invoice(s) identifying service dates pursuant to Section 3.01.

Section 3.04 CONTRACTOR will provide all documentation necessary for COUNTY to bill Medi-Cal for those patients who are eligible Med-Cal beneficiaries.

Section 3.05 For all patients who are admitted with coverage under the County Medical Services Program (CMSP) the following payment procedures will apply:

- a. CONTRACTOR will bill Anthem Blue Cross for CMSP inpatient days when applicable.
- b. For COUNTY patients who are CMSP members, COUNTY will be charged the rate set forth in Section 3.01, less a credit for payment due from CMSP.
- c. Inpatient days that cannot be billed to CMSP shall remain the financial responsibility of COUNTY at the rate set forth in Section 3.01.
- d. Any credit provided to COUNTY for a CMSP billing that is subsequently disallowed shall be reimbursed by COUNTY to CONTRACTOR.

Section 3.06 It is expressly understood and agreed between the parties hereto that the COUNTY shall make no payment for COUNTY-responsible clients and have no obligation to make payment to CONTRACTOR unless the services provided by CONTRACTOR hereunder received prior written authorization from COUNTY. It is further agreed that COUNTY shall make no payments for services unless CONTRACTOR has provided COUNTY with evidence of insurance coverage as outlined in ARTICLE XIX hereof. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the HSD Director or the Director's designee, based upon CONTRACTOR's written request.

Section 3.07 In accordance with Title 9, California Code of Regulations (CCR), Section 565.5, reimbursement for services under this Agreement shall be limited to persons who are unable to obtain private care. Such persons are those who are unable to pay for private care or for whom no private care is available within a reasonable distance from their residence.

Section 3.08 The total amount of this Agreement shall not exceed \$58,000.

3) Article VIII, Mandated Reporter Requirements, shall be amended in its entirety to read as follows:

Article VIII. MANDATED REPORTER REQUIREMENTS

CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of: 1) the California Penal Code Section 11164 et seq., also known as the Child Abuse and Neglect Reporting Act and/or 2) Welfare and Institutions Code 15630 et seq. related to elder and dependent adults.

Except as herein amended, all other parts and sections of that Agreement #379-183-M-E2010 shall remain unchanged and in full force and effect.

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: 
Neda West, Director
Health Services Department

Dated: 5-19-11

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IN WITNESS WHEREOF, the parties hereto have executed this first Amendment to that Agreement for Services #379-183-M-E2010 on the dates indicated below.

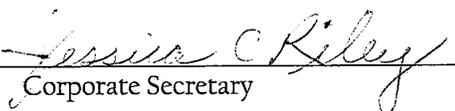
--COUNTY OF EL DORADO--

By:  Dated: 6/3/11
Theresa R. Daly, Purchasing Agent
Chief Administrative Office
"COUNTY"

--CONTRACTOR--

NORTH VALLEY BEHAVIORAL HEALTH, LLC

By:  Dated: 5-23-11
Thomas Ortner
Chief Executive Officer
"CONTRACTOR"

By:  Dated: 5-23-11
Corporate Secretary

Internal Contract No: 379-183-M-E2010
Purchasing Contract No: 234-S1110
Index Code: 419100

CONTRACT ROUTING SHEET

Date Prepared: October 28, 2010
~~September 29, 2010~~

Need Date: November 17, 2010
~~October 24, 2010~~

PROCESSING DEPARTMENT:

Department: Health Svcs Dept – MH Div.

Dept. Contact: Thomas Michaelson

Phone #: 6203

Department: _____

Head Signature: Neda West
Neda West, Director

CONTRACTOR:

Name: North Valley Behavioral Health, LLC

Address: 1535 Plumas Court

Yuba City, CA 95991

Phone: 530-790-2520

CONTRACTING DEPARTMENT: Health Services Department – Mental Health Division

Service Requested: Acute psychiatric inpatient services for mentally disordered adults

Contract Term: 8/1/10 to 9/30/11 Contract Value: \$30,000

Compliance with Human Resources requirements? Yes No:

Compliance verified by: Chris Little

COUNTY COUNSEL: (Must approve all contracts and MOU's)

Approved: Disapproved: _____ Date: Nov. 10, 2010 By: [Signature]

Approved: _____ Disapproved: _____ Date: _____ By: _____

AA.III, p. 4, Exhibits A, A-1, and A-2
make requested change TM

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

RISK MANAGEMENT: (All contracts and MOU's except boilerplate grant funding agreements)

Approved: Disapproved: _____ Date: 11/10/10 By: [Signature]

Approved: _____ Disapproved: _____ Date: _____ By: _____

OTHER APPROVAL: (Specify department(s) participating or directly affected by this contract)

Departments: _____

Approved: _____ Disapproved: _____ Date: _____ By: _____

Approved: _____ Disapproved: _____ Date: _____ By: _____

[Signature]
Program Mgr/Date

[Signature] 10/1
Finance/Date

AGREEMENT FOR SERVICES #379-183-M-E2010

THIS AGREEMENT 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 North Valley Behavioral Health, LLC, a California Limited Liability Company, duly qualified to conduct business in the State of California, whose principal place of business is 1535 Plumas Court, Yuba City, CA, 95991; (hereinafter referred to as "CONTRACTOR");

RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a CONTRACTOR to provide acute psychiatric inpatient services for mentally disordered adults for the Health Services Department, Mental Health Division (MHD); 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 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 El Dorado County Charter, Section 210 (b) (6) and/or Government Code 31000;

NOW, THEREFORE, COUNTY and CONTRACTOR mutually agree as follows:

Article I. SCOPE OF SERVICES

Section 1.01 CONTRACTOR shall provide acute psychiatric inpatient services to residents of COUNTY who meet the eligibility requirements set forth in Section 1.04. Services will be provided, with prior authorization by COUNTY, to eligible persons who may be either on voluntary or involuntary status. COUNTY understands and accepts that patients are encouraged and permitted to sign in as a voluntary commitment when possible and appropriate.

Section 1.02 The length of stay of each mentally disordered person shall be determined by CONTRACTOR's professional staff, in collaboration with COUNTY's professional staff, pursuant to Section 1.09.

Section 1.03 Such services shall be provided by CONTRACTOR for COUNTY patients under the general supervision of the MHD Medical Director, or designee.

Section 1.04 Patients to be served under this contract must be age eighteen (18) or older and eligible for mental health services in conformance with all applicable Federal and State statutes.

Section 1.05 Referrals for admissions to CONTRACTOR's facility must be approved by CONTRACTOR's on-duty physician. CONTRACTOR shall not be required to accept referrals if it determines that there is insufficient bed capacity, nor shall CONTRACTOR be required to accept referrals for treatment of individuals housed in jail or other penal institutions. CONTRACTOR reserves the right to deny any referral at the sole discretion of the on-duty physician or Clinical Director.

Section 1.06 Services under this Agreement shall be rendered without regard to race, color, sex, religion, national origin, ancestry, handicap, physical or mental status as specified in applicable Federal and State laws. The specific admission procedures shall be mutually agreed upon by CONTRACTOR and COUNTY.

Section 1.07 As provided in Welfare and Institutions Code Section 5151, patients to be admitted under that code section shall be assessed to determine the appropriateness of the involuntary detention prior to admission at CONTRACTOR's facility.

Section 1.08 CONTRACTOR agrees that only those patients which COUNTY refers to CONTRACTOR for said program shall receive services, and that COUNTY shall not be required to pay for services until written authorization for those services has been given by COUNTY. COUNTY agrees to cooperate with the admission of COUNTY's patients to CONTRACTOR's facility.

Section 1.09 COUNTY and CONTRACTOR agree that both of their clinical staffs will fully communicate and cooperate in the development of treatment, planning, determination of length of stay, and readiness for discharge, and in the process of planned transition back to the COUNTY, community, or other appropriate placement, and to this end may freely exchange

patient information as a unitary treatment program. COUNTY agrees to facilitate timely placement for patients ready for discharge.

Section 1.10 It is recognized that to make efficient use of any inpatient facility, the provision of aftercare services is of extreme importance. To this end, it is the responsibility of COUNTY to maintain and/or arrange for adequate aftercare services, such that efficient referral to these services may be made as part of discharge planning of patients, including transportation, if necessary.

COUNTY staff will work with CONTRACTOR's staff prior to a patient's discharge to effect an appropriate placement; however, it is COUNTY's responsibility to assure appropriate aftercare treatment and placement of patients discharged from CONTRACTOR's facility.

Section 1.11 Documentation of services provided by CONTRACTOR for each patient of COUNTY shall be available for review by COUNTY upon request.

Article II. TERM

This Agreement shall be effective August 1, 2010 and shall expire September 30, 2011, unless terminated earlier pursuant to provisions under Article XV or Article XVI herein.

Article III. COMPENSATION FOR SERVICES

Section 3.01 For the purposes of this Agreement, the all-inclusive billing rate shall be \$768 per day per person. Payment is due at the aforementioned rate for each day that client is at the facility, including the day of admission, excluding the day of discharge.

Section 3.02 CONTRACTOR shall submit monthly invoices no later than thirty (30) days following the end of a "service month" except in those instances where CONTRACTOR obtains written approval from HSD Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which CONTRACTOR provides services in accordance with ARTICLE I, "Scope of Services."

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- a. CONTRACTOR will bill Anthem Blue Cross for CMSP inpatient days when applicable.

- b. For COUNTY patients who are CMSP members, COUNTY will be charged the rate set forth in Section 3.01, less a credit for payment due from CMSP.
- c. Inpatient days that cannot be billed to CMSP shall remain the financial responsibility of COUNTY at the rate set forth in Section 3.01.
- d. Any credit provided to COUNTY for a CMSP billing that is subsequently disallowed shall be reimbursed by COUNTY to CONTRACTOR.

Section 3.06 It is expressly understood and agreed between the parties hereto that the COUNTY shall make no payment for COUNTY-responsible clients and have no obligation to make payment to CONTRACTOR unless the services provided by CONTRACTOR hereunder received prior written authorization from COUNTY. It is further agreed that COUNTY shall make no payments for services unless CONTRACTOR has provided COUNTY with evidence of insurance coverage as outlined in ARTICLE XIX hereof. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the HSD Director or the Director's designee, based upon CONTRACTOR's written request.

Section 3.07 In accordance with Title 9, California Code of Regulations (CCR), Section 565.5, reimbursement for services under this Agreement shall be limited to persons who are unable to obtain private care. Such persons are those who are unable to pay for private care or for whom no private care is available within a reasonable distance from their residence.

Section 3.08 The total amount of this Agreement shall not exceed \$30,000.

Article IV. TERMS AND CONDITIONS

CONTRACTOR shall meet all terms and conditions specified in the County's agreement with California Department of Mental Health, as stated in Exhibits A, A-1 and A-2, marked "State Required Terms and Conditions," incorporated herein and made by reference a part hereof.

Article V. COST REPORT

CONTRACTOR shall submit the annual California Department of Mental Health's Cost Report (Cost Report) to COUNTY on or before October 31 of each year for the preceding fiscal period of July 1 through June 30 (Fiscal Period). CONTRACTOR shall prepare the Cost Report in accordance with the California Department of Mental Health's Cost and Financial Reporting System Local Program Financial Support Instruction Manual.

The Cost Report shall be the final financial record of services rendered under this Agreement, for subsequent audits, if any. Such reported costs and allocations shall be supported by source documentation maintained by CONTRACTOR and available at any time to Administrator upon reasonable notice.

There will be no additional payment made by COUNTY to CONTRACTOR or any refund made by CONTRACTOR to COUNTY as a result of this Cost Report.

Article VI. CERTIFICATION OF PROGRAM INTEGRITY

Maintaining current Medi-Cal site certification is the responsibility of CONTRACTOR. Site certifications must be renewed every three (3) years. Six (6) months before the expiration of the site certification, CONTRACTOR will advise County Utilization Review Coordinator of the upcoming expiration.

CONTRACTOR shall comply with all State and Federal statutory and regulatory requirements for certification of claims including Title 42, Code of Federal Regulations (CFR) Part 438.

Article VII. HIPAA COMPLIANCE:

As a condition of CONTRACTOR performing services for the County of El Dorado, CONTRACTOR shall comply with Exhibit B, marked "HIPAA Business Associate Agreement," incorporated herein and made by reference a part hereof.

Article VIII. MANDATED REPORTER REQUIREMENTS

CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as The Child Abuse and Neglect Reporting Act.

Article IX. DEBARMENT AND SUSPENSION CERTIFICATION

By signing this Agreement, the CONTRACTOR agrees to comply with applicable Federal suspension and debarment regulations including, but not limited to 45 CFR 76.

By signing this agreement, the CONTRACTOR 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 by any Federal department or agency;
- B. Have not within a three (3) year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense 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, falsification of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein;

- D. Have not within a three (3) year period preceding this application/proposal/agreement had one (1) or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier covered transaction with a person who is proposed for debarment under Federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
- F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

If the CONTRACTOR is unable to certify to any of the statements in this certification, the CONTRACTOR shall submit an explanation to COUNTY.

The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.

If the CONTRACTOR knowingly violates this certification, in addition to other remedies available to the Federal Government, COUNTY may terminate this Agreement for cause or default.

Article X. RECORDS RETENTION

CONTRACTOR shall keep books and records as prescribed by COUNTY for each client of the CONTRACTOR for five (5) years together with complete and adequate financial records for all expenditures made by CONTRACTOR in connection with the administration of the program. Such records shall be open for inspection on request by the COUNTY program manager, or designee, at times mutually agreed upon by the parties hereto.

Article XI. 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 XII. 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 XIII. 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 XIV. 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 XV. FISCAL CONSIDERATIONS

Section 15.01 The parties to this Agreement recognize and acknowledge that COUNTY is a political subdivision of the State of California. As such, the County of El Dorado 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.

Section 15.02 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.

Section 15.03 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 XVI. DEFAULT, TERMINATION, AND CANCELLATION

Section 16.01 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.

Section 16.02 Bankruptcy

This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

Section 16.03 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.

Section 16.04 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 XVII. 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 SERVICES DEPARTMENT
931 SPRING STREET
PLACERVILLE, CA 95667
ATTN: NEDA WEST, DIRECTOR

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

NORTH VALLEY BEHAVIORAL HEALTH
1535 PLUMAS COURT
YUBA CITY, CA 95991
ATTN: THOMAS ORTNER, CHIEF EXECUTIVE OFFICER

or to such other location as the CONTRACTOR directs.

Article XVIII. 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 attorneys 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 XIX. INSURANCE

Section 19.01 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 Workers' Compensation and Employers' Liability Insurance covering all employees of CONTRACTOR as required by law in the State of California; and
- b) Commercial General Liability Insurance of not less than \$1,000,000 combined single limit per occurrence for bodily injury and property damage;
- c) Automobile Liability Insurance of not less than \$1,000,000 is required in the event motor vehicles are used by the CONTRACTOR in the performance of the Agreement.

Section 19.02 In the event CONTRACTOR is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

Section 19.03 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.

Section 19.04 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.

Section 19.05 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. 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.

Section 19.06 The certificate of insurance must include the following provisions stating that:

- a) The insurer will not cancel the insured's coverage without thirty (30) days prior written notice to COUNTY, and;
- b) The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

Section 19.07 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 excess of the CONTRACTOR's insurance and shall not contribute with it.

Section 19.08 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.

Section 19.09 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.

Section 19.10 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.

Section 19.11 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 19.12 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.

Section 19.13 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 the protection of the COUNTY.

Article XX. 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 XXI. 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 XXII. 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 XXIII. CALIFORNIA RESIDENCY (FORM 590)

All independent contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they

have 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.

Article XXIV. 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 XXV. 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 the County of El Dorado without possessing a County business license unless exempt under County Code Section 5.08.070.

Article XXVI. ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Barry Wasserman, Manager of Mental Health Programs, Health Services Department, Mental Health Division, or successor.

Article XXVII. 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 XXVIII. 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.

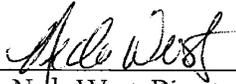
Article XXIX. VENUE

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

Article XXX. 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 DEPARTMENT HEAD CONCURRENCE:

By:  Dated: 11-16-10
Neda West, Director
Health Services Department

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

--COUNTY OF EL DORADO--

By:  Dated: 12/15/10
Gayle Erbe-Hamlin, Purchasing Agent
Chief Administrative Office
"COUNTY"

-- CONTRACTOR --

NORTH VALLEY BEHAVIORAL HEALTH

By:  Dated: 11-29-10
Thomas Ortner
Chief Executive Officer
"CONTRACTOR"

By:  Dated: 11-29-10
Corporate Secretary

EXHIBIT A

STATE REQUIRED TERMS AND CONDITIONS

1. Utilization Review/Quality Assurance

Contractor shall establish and maintain systems to review the quality and appropriateness of services in accordance with applicable Federal and State statutes and regulations and guidelines operative during the term of this Agreement.

The California Department of Mental Health (DMH) may review the existence and effectiveness of any utilization review systems of the Contractor as necessary.

2. Assurances

Contractor shall provide services in accordance with all applicable Federal and State statutes and regulations.

3. Cost Report

The Contractor shall submit a fiscal year-end cost report, due to DMH no later than December 31 following the close of the fiscal year, in accordance with W&I Section 5651(a)(4), 5664(a) and (b), 5705(b)(3), 5718(c) and guidelines established by DMH.

4. DMH -Special Terms and Conditions

California Department of Mental Health Exhibit A-1, Special Terms and Conditions, is hereby incorporated by reference as if fully set forth herein. By signing this Agreement, Contractor agrees to comply with all these provisions incorporated hereto.

California Department of Mental Health Exhibit A-2, Confidentiality and Information Security Provisions, is hereby incorporated by reference as if fully set forth herein. By signing this Agreement, Contractor agrees to comply with all these provisions incorporated hereto.

5. NON-DISCRIMINATION CLAUSE

a. During the performance of this Agreement, Contractor and its subcontractors shall not unlawfully discriminate, harass, or allow harassment against any employee or applicant for employment because of sex, race, color, ancestry, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition (cancer), age (over 40), marital status, and denial of family care leave. Contractor and subcontractors shall insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Contractor and subcontractors shall comply with the provisions of the Fair Employment and Housing Act (Gov. Code §12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, Section 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing Government Code Section 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Contractor and its subcontractors shall give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other Agreement.

b. Consistent with the requirements of applicable federal or state law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap.

c. The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.

d. Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Title 9, CCR, Section 1820.205, Section 1830.205 or Section 1830.210, prior to providing covered services to a beneficiary.

e. Contractor shall include the nondiscrimination and compliance provisions of this clause in all subcontracts to perform work under the Agreement.

6. AUDIT

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, the Auditor General, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated.

Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

7. Transfer of Care

Prior to the termination or expiration of this contract and upon request by the DMH, the Contractor shall assist the State in the orderly transfer of beneficiaries' mental health care. In doing this, the Contractor shall make available to the DMH copies of medical records, patient files, and any other pertinent information, including information maintained by any subcontractor, necessary for efficient case management of beneficiaries, as determined by the DMH. Costs of reproduction shall be borne by the DMH. In no circumstances shall a beneficiary be billed for this service.

8. Inspection Rights

a. The Contractor shall allow the DMH, California Department of Health Care Services (DHS), California Health and Human Services Agency (HSS), the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this contract, and to inspect, evaluate, and audit any and all books, records, and facilities maintained by the Contractor and subcontractors, pertaining to such services at any time during normal business hours. Books and records include, but are not limited to, all physical records originated or prepared pursuant to the performance under this contract including working papers, reports, financial records and books of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries. Upon request, at any time during the period of this contract, the Contractor shall furnish any such record, or copy thereof, to the DMH, DHS, or HHS. Authorized agencies shall maintain the confidentiality of such books and records in accordance with applicable laws and regulations.

b. The Contractor agrees to make all of its books and records, pertaining to the goods and services furnished under the terms of the Agreement, available for inspection, examination or copying by the DMH, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the 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 years from the close of the DMH's fiscal year in which the subcontract was in effect.

c. The Contractor agrees to include in any subcontractor's agreement the requirement to make all of its books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying by the DMH, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the subcontractor'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 years from the close of the DMH's fiscal year in which the subcontract was in effect.

9. Additional Contract Provisions

a. The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c), which requires that all contracts and subcontracts in excess of \$2,000 for construction or repair awarded by the Contractor and its subcontractors shall include a provision for compliance with the Copeland Anti-Kickback Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (Title 29, CFR, Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States").

b. The Contractor shall comply with the provisions of Davis-Bacon Act, as amended (40 U.S.C. 276a to a-7), which requires that, when required by Federal Medicaid program legislation, all construction contracts awarded by the Contractor and its subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a-7) as supplemented by Department of Labor regulations (Title 29, CFR, Part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction").

c. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as applicable, which requires that all subcontracts awarded by the Contractor in excess of \$2,000 for construction and in excess of \$2,500 for other subcontracts that involve the employment of mechanics or laborers shall include a provision for compliance with sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (Title 29, CFR, Part 5).

d. The Contractor shall comply with the provisions of Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended, which provide that contracts and subcontracts of amounts in excess of \$100,000 shall contain a provision that requires the Contractor or subcontractor to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act and the Federal Water Pollution Control Act. Violations shall be reported to the Centers for Medicare and Medicaid Services.

e. The Contractor shall comply with the provisions of Title 42, CFR, Section 438.610 and Executive Orders 12549 and 12689, "Debarment and Suspension," which excludes parties listed on the General Services Administration's list of parties excluded from federal procurement or nonprocurement programs from having a relationship with the Contractor.

f. The Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in Federal health care programs under either Section 1128 or 1128A of the Social Security Act. Federal financial participation is not available for amounts expended for providers excluded by Medicare, Medicaid, or the State Children's Insurance Program, except for emergency services.

10. Inpatient Contracts and Subcontracts

If this contract is for inpatient services, the Contractor acknowledges that they must maintain necessary licensing and certification. All inpatient subcontracts must require that subcontractors maintain necessary licensing and certification.

11. Assignment or Delegation

Contractor agrees that assignment or delegation of this Agreement shall be void, unless prior written approval is obtained from County.

12. Hold Harmless

Contractor agrees to hold harmless both the State and beneficiaries in the event the County cannot or shall not pay for services performed by the Contractor pursuant to this Agreement.

13. Additional Requirements Based on Federal Regulations

If applicable, based on the services provided under this Agreement, the Contractor agrees to comply with:

a. The Contractor shall maintain written policies and procedures respecting advance directives in compliance with the requirements of Title 42, Code of Federal Regulations (CFR), Sections 422.128 and 438.6(i)(1), (3) and (4). Any written materials prepared by the Contractor for beneficiaries shall be updated to reflect changes in state laws governing advance directives as soon as possible, but no later than 90 days after the effective date of the change.

b. The Contractor shall obtain approval from the DMH prior to implementing a Physician Incentive Plan as described at Title 42, CFR, Section 438.6(h). The DMH shall approve the Contractor's request only if the proposed Physician Incentive Plan complies with all applicable federal and state regulations.

EXHIBIT A-1 rev Mar 2008
CALIFORNIA DEPARTMENT OF MENTAL HEALTH
SPECIAL TERMS AND CONDITIONS

1. **SUBCONTRACTS.** Except for subcontracts identified in the proposal in accordance with the Request for Proposal or Invitation for bid, Contractor shall submit any subcontracts which are proposed to be entered into in connection with this Contract to the State Agency (State) for its prior written approval before entering into the same. No work shall be subcontracted without the prior written approval of the State. Upon the termination of any subcontract, State shall be notified immediately. Any subcontract shall include all the terms and conditions of this Contract and its attachments.

2. **PUBLICATIONS AND REPORTS.**

If a publication and/or report is required under this Contract, Contractor shall:

- A. Incorporate any comments or revisions required by the State into any publication or report and shall not publish any material until it receives final State approval.
- B. Furnish two copies of each publication and report required plus one reproducible original.
- C. Prepare all illustrations, maps and graphs in a manner which allows the complete illustration to be contained on a single 8-1/2 by 11 page unless specific written approval is given to the contrary.
- D. Print all graphs, illustrations and printed materials in a single color throughout each publication unless prior State approval is granted.
- E. Place the Contractor's name only on the cover and title page of publications and reports and summaries. Covers and title pages shall read as follows:

DEPARTMENT OF MENTAL HEALTH
TITLE
By (Contractor)

The State reserves the right to use and reproduce all publications, reports, and data produced and delivered pursuant to this Contract. State further reserves the right to authorize others to use or reproduce such materials, provided the author of the report is acknowledged in any such use or reproduction.

If the publication and/or report are prepared by non-employees of the State, and the total cost for such preparation exceeds \$5,000, the publication and/or report shall contain the numbers and dollar amounts of all contracts and subcontracts relating to the preparation of the publication and report in a separate section of the report (Government Code Section 7550).

3. **PROGRESS REPORTS.** If progress reports are required by the Contract, Contractor shall provide a progress report in writing, or orally if approved by the State Contract Manager, at least once a month to the State Contract Manager. This progress report shall include, but not limited to, a statement that the Contractor is or is not on schedule, any pertinent reports, or interim findings. Contractor shall cooperate with and shall be available to meet with the State to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.
4. **PRESENTATION.** Upon request, Contractor shall meet with the State to present any findings, conclusions, and recommendations required by the Contract for approval. If set forth in the Contract, Contractor shall submit a comprehensive final report for approval. Both the final meeting and the final report shall be completed on or before the date indicated in the Contract.
5. **DEPARTMENT OF MENTAL HEALTH STAFF.** Department of Mental Health staff shall be permitted to work side by side with Contractor's staff to the extent and under conditions as directed by the State Contract Manager. In this connection, Department of Mental Health staff shall be given access to all data, working papers, etc., which Contractor seeks to utilize.
6. **CONFIDENTIALITY OF DATA AND DOCUMENTS.**

Contractor shall not disclose data or documents or disseminate the contents of the final or any preliminary report without written permission of the State Contract Manager. However, all public entities shall comply with California Public Records Act (Government Code Sections 6250 et seq.) and the Freedom of Information Act (Title 5 of the United States Code Section 552), as applicable.

Permission to disclose information or documents on one occasion shall not authorize Contractor to further disclose such information or documents on any other occasions except as otherwise provided in the Contract or required by law.

Contractor shall not comment publicly to the press or any other media regarding the data or documents generated, collected, or produced in connection with this contract, or the State's actions on the same, except to the Department of Mental Health staff, Contractor's own personnel involved in the performance of this Contract, or as required by law.

If requested by State, Contractor shall require each of its employees or officers who will be involved in the performance of this Contract to agree to the above terms in a form to be approved by State and shall supply State with evidence thereof.

Each subcontract shall contain the foregoing provisions related to the confidentiality of data and nondisclosure.

After any data or documents submitted has become a part of the public records of the State, Contractor may at its own expense and upon written approval by the State Contract Manager, publish or utilize the same data or documents but shall include the following Notice:

LEGAL NOTICE

This report was prepared as an account of work sponsored by the Department of Mental Health (Department), but does not necessarily represent the views of the Department or any of its employees except to the extent, if any, that it has formally been approved by the Department. For information regarding any such action, communicate directly with the Department at P.O. Box 952050, Sacramento, California, 94252-2050. Neither said Department nor the State of California, nor any officer or employee thereof, or any of its contractors or subcontractors makes any warranty, express or implied, or assumes any legal liability whatsoever for the contents of this document. Nor does any party represent that use of the data contained herein, would not infringe upon privately owned rights without obtaining permission or authorization from any party who has any rights in connection with the data.

7. PROVISIONS RELATING TO DATA.

"Data" as used in this Contract means recorded information, regardless of form or characteristics, of a scientific or technical nature. It may, for example, document research, experimental, developmental or engineering work; or be usable or be used to define a design or process; or support a premise or conclusion asserted in any deliverable document called for by this Contract. The data may be graphic or pictorial delineations in media, such as drawings or photographs, charts, tables, mathematical modes, collections or extrapolations of data or information, etc. It may be in machine form, as punched cards, magnetic tape, computer printouts, or may be retained in computer memory.

"Generated data" is that data, which a Contractor has collected, collated, recorded, deduced, read out or postulated for utilization in the performance of this Contract. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Contract at State expense, together with complete documentation thereof, shall be treated in the same manner as generated data.

"Deliverable data" is that data which under terms of this Contract is required to be delivered to the State. Such data shall be property of the State.

Prior to the expiration of any legally required retention period and before destroying any data, Contractor shall notify the State of any such contemplated action; and State may within 30 days of said notification determine whether or not this data shall be further preserved. The State shall pay the expense of further preserving this data. State shall have unrestricted reasonable access to the data that is preserved in accordance with this Contract.

Contractor shall use best efforts to furnish competent witnesses to identify such competent witnesses to testify in any court of law regarding data used in or generated under the performance of this Contract.

8. APPROVAL OF PRODUCT. Each product to be approved under this Contract shall be approved by the Contract Manager. The State's determination as to satisfactory work shall be final absent fraud or mistake.
9. SUBSTITUTIONS. Contractor's key personnel as indicated in its proposal may not be substituted without Contract Manager's prior written approval.
10. NOTICE. Notice to either party shall be given by first class mail properly addressed, postage fully prepaid, to the address beneath the name of each respective party. Such notice shall be effective when received as indicated by post office records or if deemed undeliverable by post office, such notice shall be effective nevertheless 15 days after mailing. Alternatively, notice may be given by personal delivery by any means whatsoever to the party, and such notice shall be deemed effective when delivered.
11. WAIVER. No waiver of any breach of this Contract shall be held to be a waiver of any other or subsequent breach. All remedies afforded in this Contract shall be taken and construed as cumulative; that is, in addition to every other remedy provided therein or by law. The failure of State to enforce at any time the provisions of this Contract, or to require at any time performance by the Contractor of any of the provisions, shall in no way be construed to be a waiver of such provisions not to affect the validity of this Contract or the right of State to enforce said provisions.

12. **GRATUITIES AND CONTINGENCY FEES.** The State, by written notice to the Contractor, may terminate the right of Contractor to proceed under this Contract if it is found, after notice and hearing by the State, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the State with a view toward securing a contract or securing favorable treatment with respect to the awarding, amending, or performing of such contract.

In the event this Contract is terminated as provided in the paragraph above, State shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Contract by the Contractor, and (b) as a predetermined amount of liquidated damages, to exemplary damages in an amount which shall not be less than three times the cost incurred by the Contractor in providing any such gratuities to any such officer or employee.

The rights and remedies of the State provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Contract.

The Contractor warrants by execution of this Contract that no person or selling agency has been employed or retained to solicit or secure this Contract upon a Contract or understanding for a commission, percentage, brokerage or contingent fee, excepting bona fide employees of Contractor, for the purpose of securing business. For breach or violation of this warranty, the State shall have the right to annul this Contract without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the contract price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

13. **INSURANCE.** Contractor hereby warrants that it carries and shall maintain in full force and effect during the full term of this contract and any extensions to said term:

Sufficient and adequate Worker's Compensation Insurance for all of its employees who shall be engaged in the performance of this Contract and agrees to furnish to State satisfactory evidence thereof at any time the State may request the same; and

Sufficient and adequate Liability Insurance to cover any and all potential liabilities and agrees to furnish to State satisfactory evidence thereof upon request by State.

14. **CONTRACT IS COMPLETE.** Other than as specified herein, no document or communication passing between the parties hereto shall be deemed a part of this Contract.
15. **CAPTIONS.** The clause headings appearing in this Contract have been inserted for the purpose of convenience and ready reference. They do not purport to and shall not be deemed to define, limit or extend the scope or intent of the clauses to which they pertain.
16. **PUBLIC HEARINGS.** If public hearings on the subject matter dealt with in this Contract are held within one year from the contract expiration date, Contractor shall make available to testify the personnel assigned to this Contract at the hourly rates specified in the Contractor's proposed budget. State shall reimburse Contractor for travel of said personnel at the contract rates for such testimony as may be requested by State.
17. **DVBE.** Unless specifically waived by the Deputy Director of Administrative Services of the Department, Contractor shall comply with the Disabled Veteran Business Enterprises participation goal in accordance with the provisions of Public Contract Code Section 10115 et seq.
18. **FORCE MAJEURE.** Neither the State nor the Contractor shall be deemed to be in default in the performance of the terms of this Contract if either party is prevented from performing the terms of this Contract by causes beyond its control, including without being limited to: acts of God, interference, rulings or decision by municipal, Federal, State or other governmental agencies, boards or commissions; any laws and/or regulations of such municipal, State, Federal, or other governmental bodies; or any catastrophe resulting from flood, fire, explosion, or other causes beyond the control of the defaulting party. If any of the stated contingencies occur, the party delayed by force majeure shall immediately give the other party written notice of the cause of delay. The party delayed by force majeure shall use reasonable diligence to correct the cause of the delay, if correctable, performance under this Contract.
19. **PERMITS AND LICENSES.** The Contractor shall procure and keep in full force and effect during the term of this Contract all permits, registrations and licenses necessary to accomplish the work specified in this Contract, and give all notices necessary and incident to the lawful prosecution of the work.
20. The Contractor shall keep informed of, observe, comply with, and cause all of its agents and employees to observe and to comply with all prevailing Federal, State, and local laws, and rules and regulations made pursuant to said Federal, State, and local laws, which in any way affect the conduct of the work of this Contract. If any conflict arises between provisions of the plans and specifications and any such law above referred to, then the Contractor shall immediately notify the State in writing.
21. **LITIGATION.** The State, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the State or its officers or employees for which the contractor

must provide indemnification under this Contract. The failure of the State to give such notice, information, authorization or assistance shall not relieve the Contractor of its indemnification obligations. The Contractor shall immediately notify the State of any claim or action against it which affects, or may affect, this Contract, the terms and conditions hereunder, or the State, and shall take such action with respect to said claim or action which is consistent with the terms of this Contract and the interest of the State.

22. **DISPUTES.** Contractor shall first discuss and attempt to resolve any dispute arising under or relating to the performance of this Contract, which is not disposed of by the Contract, informally with the State Contract Manager. If the dispute cannot be disposed of at this level, then the dispute shall be decided by the Department of Mental Health's Deputy Director of Administration. All issues pertaining to this dispute shall be submitted in written statements and addressed to the Deputy Director of Administration, Department of Mental Health, 1600 9th Street, Room 150, Sacramento, California 95814. Such written notice must contain the Contract Number. The decision of the Deputy Director of Administrative Services shall be final and binding to all parties. Within ten days of receipt of the written grievance report from the Contractor, the Deputy Director of Administration Director of Administration or his/her designee, the Contractor shall proceed diligently with the performance of the Contract. Neither the pendency of a dispute, nor its consideration by the Deputy Director of Administration, shall excuse the Contractor from full and timely performance of the services required in accordance with the terms of the contract.
23. Notwithstanding any other provisions of this Contract, after recourse to the procedure set forth in the paragraph above, any controversy or claim arising out of or relating to this Contract or breach thereof shall be settled by arbitration at the election of either party in accordance with California Public Contract Code Section 10240 et. seq. and judgment upon the award rendered by the arbitration may be entered in any court having jurisdiction thereof.
24. **EVALUATION OF CONTRACTOR'S PERFORMANCE.** The Contractor's performance under this Contract shall be evaluated by the State after completion of the contract. A copy of the written evaluation shall be maintained in the contract file and may be submitted to the Office of Legal Services, Department of General Services.
25. **TRAVEL.** Contractor's headquarters for purposes of payment of travel shall be the city designated in the signature block unless otherwise specified in the contract.
26. For travel necessary to the performance of this Contract, contractor shall use and submit travel reimbursement forms provided by the Department . All reimbursements shall be made in accordance with, and shall not exceed the rates authorized by, the State Administrative Manual and the Policies and Procedures of the Department. All requests to exceed any base reimbursement rate established in the State Administrative Manual or the Policies and Procedures of the Department must be made and approved prior to the date of travel and must be submitted in writing to the State's Contract Manager.
27. **TERMINATION.** Unless otherwise specified, either party may terminate this Contract by giving 30 days written notice to the other party. The notice of termination shall specify the effective date of termination. Upon the Contractor's receipt of notice of termination from the State, and except as otherwise directed in the notice, the Contractor shall:
 - A. Stop work on the date specified in the notice.
 - B. Place no further orders or enter into any further subcontracts for materials, services or facilities except as necessary to complete work under the Contract up to effective date of termination.
 - C. Terminate all orders and subcontracts;
 - D. Promptly take all other reasonable and feasible steps to minimize any additional cost, loss, or expenditure associated with work terminated, including, but not limited to reasonable settlement of all outstanding liability and claims arising out of termination of orders and subcontracts;
 - E. Deliver or make available to the Department all data, drawings, specifications, reports, estimates, summaries, and such other information and materials as may have been accumulated by the Contractor under this Contract, whether completed, partially completed, or in progress.

In the event of termination, an equitable adjustment in the price provided for this Contract shall be made. Such adjustment shall include reasonable compensation for all services rendered, materials supplies, and expenses incurred pursuant to this Contract prior to the effective date of termination.

28. **CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS.** The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), and it's implementing regulations (including but not limited to Title 45, CFR, Parts 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).
29. **NONDISCLOSURE.** Contractor shall not use or disclose confidential, individually identifiable, or sensitive information other than as permitted or required by the Contract and as required by law.

30. AUDITS, INSPECTION AND ENFORCEMENT.

- A. From time to time, the State may inspect the facilities, systems, books and records of Contractor to monitor compliance with the Contract.
- B. Contractor shall promptly remedy any violation of any provision of the Contract and shall certify the same to the Department Information Security Officer in writing.
- C. The fact that the State inspects, or fails to inspect, or has the right to inspect Contractor's facilities, systems, and procedures does not relieve Contractor of its responsibility to comply with the Contract.
- D. The State's failure to detect or the State's detection of any unsatisfactory practices, but failure to notify Contractor or require Contractor's remediation of the unsatisfactory practices does not constitute acceptance of such practice or a waiver of the State's enforcement rights under the Contract.

31. Use of State Funds. Contractor, including its officers and members, shall not use funds received from the Department pursuant to this contract to support or pay for costs or expenses related to the following:

- A. Campaigning or other partisan activities to advocate for either the election or defeat of any candidate for elective office, or for or against the passage of any proposition or ballot measure; or,
- B. Lobbying for either the passage or defeat of any legislation.

This provision is not intended and shall not be construed to limit any expression of a view, opinion, or position of any member of Contractor as an individual or private citizens, as long as state funds are not used; nor does this provision limit Contractor from merely reporting the results of a poll or survey of its membership.

32. Drug-Free Workplace Certification. Contractor shall comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code Section 8350 et seq.) and shall provide a drug-free workplace.

33. Conflict of Interest Certification. In accordance with State laws and Departmental policy, no employees (including contractors) shall participate in incompatible activities, which are in conflict with their job duties. In addition, State law requires employees whose positions are designated in the Department's Conflict of Interest Code to file statements of economic interest. Employees whose positions have been designated will be notified by the Department if a statement is required.

In signing this contract, I certify that I have read and understand GOVERNMENT CODE 19990.

EXHIBIT A-2 rev Mar 2008
CALIFORNIA DEPARTMENT OF MENTAL HEALTH
CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS

1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS.

A. The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 d et seq. of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 142, 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).

B. Permitted Uses and Disclosures of IIHI by the Contractor.

1) *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the Contractor, may use or disclose IIHI 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, the Contractor may:

a) Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.

b) Use IIHI to provide data aggregation services to DMH. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this contract with IIHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of DMH.

C. Safeguards. 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 the Contractor's operations and the nature and scope of its activities. The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.

The Contractor shall implement administrative, technical, and physical safeguards to ensure the security of DMH information on portable electronic media (e.g., floppy disks and CD-Rom) and in paper files. Administrative safeguards to be implemented shall include, but are not limited to training, instructions to employees, and policies and procedures regarding the HIPAA Privacy Rule. Technical safeguards to be implemented shall include, but are not limited to, role based access, computer passwords, timing out of screens, storing laptop computers in a secure location (never leaving the equipment unattended at workplace, home or in a vehicle) and encryption. Physical safeguards to be implemented shall include, but are not limited to, locks on file cabinets, door locks, partitions, shredders, and confidential destruct.

D. The Contractor shall implement appropriate authentication methods to ensure information system access to confidential, personal (e.g., IIHI) or sensitive data is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), the 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 800-68 and the SANS Institute Password Protection Policy. The Contractor shall:

1) 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

b) Continuously updated anti-virus software

c) Patch-management process including installation of all operating system/software vendor security patches

- 2) Encrypt all confidential, personal, or sensitive data stored on portable electronic media (including, but not limited to, CDs and thumb drives) and on computing devices (including, but not limited to, desktop computers, laptop computers and PDAs) with a solution that uses proven industry standard algorithms.
- 3) Prior to disposal, sanitize all DMH confidential data contained in hard drives, memory devices, portable electronic storage devices, mobile computing devices, and networking equipment in a manner consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-88.

The Contractor shall not transmit confidential, personal, or sensitive data via e-mail or other Internet transport protocol over a public network unless, at minimum, a 128-bit encryption method (for example AES, 3DES, or RC4) is used to secure the data.

- E. Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI by Contractor or its subcontractors in violation of the requirements of this Agreement.
- F. Reporting of Improper Disclosures. Contractor shall report to DMH within twenty-four (24) hours during a work week, of discovery by Contractor that PHI has been used or disclosed other than as provided for by this Agreement.
- G. Agents and Subcontractors of the Contractor. Contractor shall ensure that any agent, including a subcontractor to which the Contractor provides PHI received from, or created or received by the Contractor on behalf of DMH, shall comply with the same restrictions and conditions that apply through this Agreement to the Contractor with respect to such information.
- H. Internal Practices. Contractor shall make Contractor's internal practices, books and records relating to the use and disclosure of PHI received from DMH, or created or received by the Contractor on behalf of DMH, available to DMH or to the Secretary of the U.S. Department of Health and Human Services in a time and manner designated by DMH or by the Secretary, for purposes of determining DMH's compliance with the HIPM regulations.
- I. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify DMH immediately upon discovery of any breach of Medi-Cal IHI and/or data, where the information and/or data is reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to the DMH Information Security Officer, within two business days of discovery, at (916) 651-6776. 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 DMH Information Security Officer, postmarked within thirty (30) working days of the discovery of the breach to the address below:

**Information Security Officer
Office of HIPAA Compliance
California Department of Mental Health
1600 9th Street, Room 102
Sacramento, CA 95814**

- J. Employee Training and Discipline: Contractor shall train and use reasonable measures to ensure compliance with the requirements of this Agreement by employees who assist in the performance of functions or activities on behalf of DMH under this Agreement and use or disclosure of IHI; and discipline such employees who intentionally violate any provisions of this Agreement, including by termination of employment.
- K. Effect of Termination. Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all IHI received from DMH (or created or received by Contractor on behalf of DMH) that Contractor still maintains in any form, and shall retain no copies of such IHI or, if return or destruction is not feasible, it shall continue to extend the protections of this Agreement to such information, and limit further use of such IHI to those purposes that make the return or destruction of such IHI infeasible. This provision shall apply to IHI that is in the possession of subcontractors or agents of the Contractor.
- L. Miscellaneous Provisions.
 - 1) Disclaimer. DMH makes no warranty or representation that compliance by Contractor with this Agreement, HIPAA or the HIPAA regulations shall be adequate or satisfactory for Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor, is or shall be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of IHI.

- 2) Assistance in Litigation or Administrative Proceedings. Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to DMH at no cost to DMH to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against DMH, its directors, officers or employees for claimed violation of HIPAA, the HIPAA regulations or other laws relating to security and privacy based upon actions or inactions of the Contractor and/or its subcontractor, employee, or agent, except where Contractor or its subcontractor, employee, or agent is a named adverse party.
 - a) No Third-Party Beneficiaries. Nothing expressed or implied in the terms and conditions of this Agreement is intended to confer, nor shall anything herein confer, upon any person other than DMH or Contractor and their respective successors or assignees, any rights remedies, obligations or liabilities whatsoever.
 - b) Interpretation. The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HIPAA regulations and applicable State laws. The parties agree that any ambiguity in the terms and conditions of this Agreement shall be resolved in favor of a meaning that complies and is consistent with HIPAA and the HIPAA regulations.
 - c) Regulatory References. A reference in the terms and conditions of this Agreement to a section in the HIPAA regulations means the section as in effect or as amended.
 - d) Survival. The respective rights and obligations of Contractor under Section 6.C of this Agreement shall survive the termination or expiration of this Agreement.
- 3) Violations reported to U.S. Department of Health and Human Services. Upon DMH's knowledge of a material breach of this Agreement by Contractor, that has not been cured or for which termination of the Agreement is not feasible, the DMH Information Security Officer shall report the violation to the Secretary of the U.S. Department of Health and Human Services.
- 4) Judicial or Administrative Proceedings. DMH may terminate this Agreement, effective immediately, if (i) Contractor is found guilty in a civil or criminal proceeding for a violation of the HIPAA Privacy or Security Rule or (ii) a finding or stipulation that the Contractor has violated a privacy or security standard or requirement of HIPAA, or other security or privacy laws is made in an administrative or civil proceeding in which the Contractor is a party.

Agreement 379-183-M-E2010, Exhibit B 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”).

RECITALS

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 and 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 know, 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.