

**AGREEMENT FOR SERVICES 552-S1411**  
Therapeutic Behavioral Services for Mentally Ill Minors

---

---

**THIS AGREEMENT** made and entered by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and JDT Consultants, Inc. a California corporation , duly qualified to conduct business in the State of California, whose principal place of business is 2501 West Shaw Avenue, Fresno, CA 93711, and whose Agent for Service of Process is Jana D. Todd, 1424 West Holland, Fresno, CA 93705 (hereinafter referred to as "Contractor");

**RECITALS**

**WHEREAS**, County has determined that it is necessary to obtain a contractor to provide Therapeutic Behavioral Services ("TBS") for mentally ill minors on an "as requested" basis for the Health and Human Services Agency, 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 (all references to "State" in this Agreement shall mean the State of California unless otherwise specified), and local laws; and

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

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

## ARTICLE I

### Service Definitions:

Therapeutic Behavioral Services	<p>1. In accordance with Department of Mental Health Information Notice #08-38<sup>1</sup>, the definition of TBS is one-to-one behavioral mental health service available to children/youth (“youth”), with serious emotional challenges who are under age 21 and who are eligible for a full array of Medi-Cal benefits without restrictions or limitations (full scope Med-Cal). TBS can help youth and parents/caregivers, foster parents, group home staff, and school staff (“caregivers”) learn new ways of reducing and managing challenging behaviors as well as strategies and skills to increase the kinds of behavior that will allow youth to be successful in their current environment.</p> <p>2. TBS are designed to help youth and caregivers manage these behaviors utilizes short term, measurable goals based on the needs of the youth and family. TBS is not a stand-alone therapeutic intervention. It is used in conjunction with another mental health service.</p>
TBS Class Eligibility	<p>All current and future beneficiaries of the Medicaid program below age 21 in California who:</p> <ol style="list-style-type: none"> <li>1. Are placed in a Rate Classification Level (RCL) facility of 12 or above and/or a locked treatment facility for the treatment of mental health needs;</li> <li>2. Are being considered for placement in these facilities; or</li> <li>3. Undergone at least one emergency psychiatric hospitalization related to their current presenting disability within the preceding 24 months.</li> </ol>
TBS Eligibility Criteria	<p>Once the child/youth is identified as meeting the requirements for class eligibility, the MHP then determines the need for TBS based upon the following criteria:</p> <ol style="list-style-type: none"> <li>1. The child/youth is receiving other Specialty Mental Health Services (“SMHS”); and</li> <li>2. The clinical judgment of the mental health provider indicates that it is highly likely that without the additional short-term support of TBS that: <ol style="list-style-type: none"> <li>a. The child/youth will need to be placed out-of-home, or into a higher level of residential care, including acute care, because of the child/youth’s behaviors or symptoms which jeopardize continued placement in the current facility; “acute care” includes acute psychiatric hospital inpatient services, psychiatric health facility services, and crisis residential treatment services or;</li> <li>b. The child/youth needs this additional support to transition to a home or foster home or lower level of residential placement. Although the child/youth may be stable in the current placement, a change in behavior or symptoms is expected and TBS are needed to stabilize the child/youth in the new environment. The MHP or its provider must document the basis for the expectation that the behavior or symptoms will change.</li> </ol> </li> </ol>
TBS Goals of the Program	<ol style="list-style-type: none"> <li>1. To assist children in maintaining in their current placements, in avoiding placement in a more restrictive setting and returning to a more normal and less restrictive setting within the shortest amount of time possible.</li> <li>2. To assist severely emotionally disturbed (“SED”) children to gain the</li> </ol>

<sup>1</sup> <http://www.dhcs.ca.gov/formsandpubs/MHArchives/InfoNotice08-38.pdf>

	<p>social and functional skills necessary for age-appropriate development and social integration.</p> <p>3. To assist caregivers in gaining an understanding of the social and psychological needs of their children and developing the skills necessary to support their children’s development and eventual return to the family home and community.</p>
TBS Objectives	<p>1. To provide the most effective treatment plan for a youth, tailored to meet the youth’s abilities and needs, and geared toward improving his/her capacity for success in their home and school environments.</p> <p>2. To reduce the frequency and severity of maladaptive behaviors which interfere with home, school, and community adjustment and replace these behaviors with positive productive skills.</p> <p>3. To develop each youth’s capacity to function as an independent individual commensurate with developmental age. Skills in this area include decision-making, problem solving, and the use of good judgment and reasoning.</p> <p>4. To increase each youth’s ability to assume responsibility for participation in the treatment process. This includes the ability to identify and understand one’s current problems, as well as the recognition of one’s own role in the self-management of emotional disorders.</p> <p>5. To prepare and support family member/primary caregivers for healthy involvement in their youth’s treatment, improve parenting skills, and enhance the level of functioning within the family system.</p>

**ARTICLE II**

**Scope of Services:**

**Contractor Responsibilities**

- A. Contractor acknowledges that this Agreement is funded in whole or in part with funds from the State of California and the Federal Government.
- B. Contractor agrees that services provided shall be in accordance with all governing regulations or requirements herein this Agreement, which shall have the meaning as they are currently interpreted, or as may be amended during the term of this Agreement.
- C. Contractor agrees to perform services necessary to provide TBS for mentally ill minors on an “as requested” basis for the MHD. All services provided by Contractor shall have prior written authorization by the County Health and Human Services Agency (“HHSA”) Director or designee.
  - 1. A youth may be approved for services from County via email or other written communication.
  - 2. TBS services require a separate authorization from the authorization of other SMHS.
  - 3. Conditional authorization/approval may be authorized for the provision of TBS for a maximum of 30 calendar days when;
    - a. Class eligibility cannot be established for a youth for up to 30 days or until class membership is established; and
    - b. When the youth presents with an urgent or emergency conditions that jeopardizes his/her current living arrangement.

- D. Contractor agrees to furnish all space, facilities, equipment, personnel, and supplies necessary to provide TBS to County- authorized minors.
- E. Contractor agrees to furnish professional personnel pursuant to California Code of Regulation (“CCR”), Chapter 11-Medi-Cal Specialty Mental Health Services 1810.100 et. seq. including any future changes or amendments thereto. Such personnel shall be qualified in accordance with all applicable requirements of said regulations and any amendments thereto
- F. Contractor agrees to make available to County on request a list of personnel, by name, title, professional degree, State license number (if applicable), and experience, who are to provide these services. Contractor’s key personnel as identified at the time of execution of this Agreement, in accordance with Exhibit “A” – JDT Consulting Key Personnel, attached hereto and incorporated by reference herein, may not be substituted without County Contract Administrator’s prior written approval.
- G. Contractor shall ensure that services are available at times and locations that are convenient for parents/care providers and acceptable to the youth. Services may be provided at any community location not otherwise prohibited by regulations. TBS can be provided in a variety of settings including at home, in a group home or foster home, after school programs, in the community, and during evening and weekend hours as needed.
- H. Contractor’s staff shall provide individualized one-on-one behavioral assistance and one-on-one interventions to accomplish outcomes specified in the written Treatment Plan approved by County. The minor must have a current Client Plan and be receiving other SMHS concurrent with TBS.
1. Specialty Mental Health Service as defined by the CA Code of Regulations<sup>2</sup>:
    - a. Rehabilitative Services, which includes mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential services, and psychiatric health facility services.
    - b. Psychiatric Inpatient Hospital Services; (c) Targeted Case Management;
    - c. Psychiatrist Services; (e) Psychologist Services;
    - d. EPSDT Supplemental Specialty Mental Health Services; and
    - e. Psychiatric Nursing Facility Services.
- I. Contractor shall develop a Transition Plan at the inception of TBS.
1. The Transition Plan shall outline the decrease and/or discontinuance of TBS when they are no longer needed, or appear to have reached a plateau in effectiveness.
  2. When applicable, Contractor shall include a plan for transition to adult services when the child/youth turns twenty-one (21) years old, and is no longer eligible for TBS.
- J. Contractor shall incorporate all goals and objectives on the Individualized Education Plan (IEP) related to the child/youth’s mental health needs into the child/youth’s TBS Client plan when appropriate.
- K. Contractor shall comply with all TBS policies and procedures developed by HHSA/MHD incorporated by reference as if fully set forth herein<sup>3</sup>.
- L. Contractor shall comply with all letters related to TBS readily available on the DHCS website, incorporated by reference as if fully set forth herein<sup>3</sup>.

<sup>2</sup> California Code of Regulations-Medical Specialty Mental Health Services §1810.247

<sup>3</sup> <http://www.dhcs.ca.gov/services/MH/Pages/EPSDT.aspx#medicalservices>

L. Contractor shall comply with TBS documentation Manual Service Function Code (“SFC”) 58 developed by the Department of Health Care Services/ Department of Mental Health (“DHCS/DMH”) incorporated by reference as if fully set forth herein.<sup>4</sup>

M. Contractor shall submit to County HHSa Director or designee, weekly written progress reports, data collection reports and expenditure reports in the time, form, and manner as required by County. Progress reports shall conform to requirements set forth in the Article titled “Publications and Reports.”

N. Contractor shall submit forty-five (45) days following the termination of this Agreement, to County’s HHSa Director or designee, a written Final Activity Report that shall include, but shall not be limited to, an evaluation of the quantity, quality, and impact of the work undertaken in providing services provided under this Agreement.

O. Cultural Competency

1. Contractor shall be responsible for using applicable staff resources to provide bilingual/bicultural services. Contractor shall be responsible for providing services to non- English speaking clients in their own language. Contractor shall be responsible for providing services that incorporate the cultural background of the client. This requirement takes into consideration the language, family structure, religion, and belief system of the client.

P. Records of Service

1. Records of services provided shall contain all data necessary in reporting to DHCS/DMH and, in addition, such other records as may be required by County’s HHSa Director on forms the Director may prescribe.
2. All clinical records will conform to Medi-Cal requirements and standards.

Q. Transition Plan

1. Transition planning is the joint responsibility of Contractor and County staff responsible for placement in the program. Transition planning is initiated at the time of admission and continues throughout the youth’s stay. Contractor will coordinate with the family/primary caregiver, County and other appropriate parties.
2. Collaborate on transition plan that describes the method the treatment team will use to decide how and when TBS will be decreased and ultimately discontinued, either when the identified benchmarks have been reached or when reasonable progress towards goals/benchmarks is not occurring and, in the clinical judgment of the treatment team developing the plan, are not reasonably expected to be achieved. This plan should address assisting parents/caregivers/school personnel with skills and strategies to provide continuity of care when TBS is discontinued.

R. Contractor shall provide a TBS Program Description, which is attached hereto as Exhibit “B,” which is incorporated herein for all intents and purposes.

S. Contractor shall participate in DHCS/DMH mandated Children’s Performance Outcomes System, incorporated by reference as if fully set forth herein<sup>5</sup>.

T. Contractor shall participate in Children’s System of Care Committee (CSOC) program<sup>6</sup> incorporated by reference as if fully set forth, herein, and other County evaluation activities deemed necessary by the HHSa Agency Director.

---

<sup>4</sup> [http://www.dhcs.ca.gov/services/MH/Documents/TBS\\_Documentation\\_Manual\\_10\\_26\\_09.pdf](http://www.dhcs.ca.gov/services/MH/Documents/TBS_Documentation_Manual_10_26_09.pdf)

<sup>5</sup> [http://www.dhcs.ca.gov/formsandpubs/Documents/Legislative%20Reports/Mental%20Health/SMHS\\_Perf\\_Outcomes\\_System-Plan11-01-13.pdf](http://www.dhcs.ca.gov/formsandpubs/Documents/Legislative%20Reports/Mental%20Health/SMHS_Perf_Outcomes_System-Plan11-01-13.pdf)

<sup>6</sup> <http://www.cmhda.org/go/committees/childrens-system-of-care-committee-csoc>

**County Responsibilities**

- A. County designated Contract Administrator will be the primary liaison between County and Contractor for the purpose of administrating this Agreement.
- B. Programmatic youth-specific coordination will occur between County’s liaison, and Contractor. The County’s liaison shall provide Contractor with a completed authorization form prior to each client admission in the TBS program.
- C. The County shall evaluate contractor’s performance under this Agreement after completion of the Agreement. A copy of any written evaluation shall be maintained in the County contract file. The County’s determination as to satisfactory work shall be final absent fraud or mistake.

**ARTICLE III**

**Term:** This Agreement shall become effective when fully executed by all parties hereto and shall cover the period of January 1, 2014 through December 31, 2016, unless terminated by one of the parties pursuant to the provisions under the Articles titled “Fiscal Considerations” and “Default, Termination, and Cancellation” herein.

**ARTICLE IV**

**Compensation for Services:** 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 County HHSA 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 the Article titled “Scope of Services.”

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 services rendered. In the event County determines that any services were not satisfactory, Contractor shall remedy such deficiency in services without charge to County.

- A. Rates: Rates shall be \$2.00 per minute for authorized Therapeutic Behavioral Services.
- B. Invoices/Remittances: Invoices / Remittance shall be addressed as indicated in the table below or to such other location as County or Contractor may direct per Article titled “Notice to Parties.”

<b>Mail invoices to:</b>	<b>Mail remittance to:</b>
County of El Dorado HHSA 3057 Briw Road, Suite A Placerville, CA 95667 Attn: Fiscal Unit	JDT Consultants 2501 West Shaw Avenue Fresno, CA 93711 Attn: Accounts Receivable

Contractor shall provide the number of service hours to the child/youth as indicated on the TBS Client plan. Billable service hours shall not exceed twenty- four (24) hours on any given day.

## ARTICLE V

**Maximum Obligation:** The maximum contractual obligation of the County under this Agreement shall not exceed \$200,000 for all of the stated services during the term of the Agreement.

## ARTICLE VI

**Agreement to Comply with State's Terms and Conditions:** Contractor agrees to comply with all applicable provisions of the State of California Standard Agreement between County and the California Department of Health Care Services for "Mental Health Plan" Available at <http://www.edcgov.us/HHSA/> Contractor Resources, "Mental Health Plan."<sup>7</sup> Noncompliance with the aforementioned terms and conditions may result in termination of this Agreement by giving written notice as detailed in the Article titled, "Default, Termination, and Cancellation."

The terms and conditions include, but are not limited to:

- Audit and Inspection Rights;
- Child Support Compliance Act, pursuant to Public Contract Code 7110;
- Claims Certification and Program Integrity, including Title 42 Code of Federal Regulations ("CFR") Part 439, §438.604 and §438.606 and, as effective August 13, 2003, §438.608 as published in the June 14, 2002 Federal Register (Vol. 67, No. 115, Page 41112), which are incorporated herein by reference;
- Client Rights;
  - Welfare and Institutions Code 5325.
  - Title 9, California Code of Regulations (CCR") §§ 860 through 868.
  - Title 42, Code of Federal Regulations, § 438.100.
  - Pursuant to Title 42 CFR § 438.100 (a) and Title 42, CFR §§ 438.100 (b) (1) and (b) (2), Contractor shall have written policies and procedures relating to client's rights and responsibilities.
- Drug Free Workplace - Workplace Act of 1990 (Government Code § 8350 et seq.);
- Mandated Reporter Requirements: Contractor acknowledges and agrees to comply with mandated requirements pursuant to the provisions of Article 2.5, commencing with § 11164, Chapter 2, Title I, Part 4 of the California Penal Code, also known as The Child Abuse and Neglect Reporting Act, and the Elder Abuse and Dependent Civil Protection Act, pursuant to Welfare and Institutions Code commencing with § 4900;
- Federal Law:
  - Title 42, United States Code;
  - Title 42, Code of Federal Regulations, to the extent that these requirements are applicable;
  - Title 42, CFR; Part 438 – Managed Care, limited to those provisions that apply to Prepaid Inpatient Health Plans ("PIHP"), if applicable;
  - Title 45, CFR, Parts 160 and 164, Subparts A and E, to the extent that these requirements are applicable;
  - Title VI of the Civil Rights Act of 1964;
  - Title IX of the Education Amendments of 1972;
  - Age Discrimination Act of 1975;
  - Rehabilitation Act of 1973;

---

<sup>7</sup><http://www.edcgov.us/HHSAForContractors/>

- Titles II and III of the Americans with Disabilities Act;
- Deficit Reduction Act of 2005; and
- Balanced Budget Act of 1997.
- State Law:
  - Division 5, Welfare and Institutions Code (W&I Code);
  - Part 2 (commencing with Section 5718), Chapter 3, W&I Code;
  - Part 2.5 (commencing with Section 5775), Chapter 4, Division 5, W&I Code;
  - Article 5 (Sections 14680 – 14685), Chapter 8.8, Division 9, W&I Code; and
- Title 9, California Code of Regulations, Chapter 11 (commencing with Section 1810.100) – Medi-Cal Specialty Mental Health Services, if applicable.
- Clean Air Act & Federal Water Pollution Control Act: 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.);
- Copeland Anti-Kickback Act: The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act (18 U.S.C. 874 and 40 U.S.C. 276c);
- Davis-Bacon Act: The Contractor shall comply with the provisions of Davis-Bacon Act, as amended (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").
- Federal Contractor Exclusions: Pursuant to Title 42, US Code § 1320a-7 and 1320c-5, and Welfare and Institutions Code § 14123.
- Work Standards Safety Act - Work Hours and Safety Standards Act (40 U.S.C. 327-333), sections 102 and 107 of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (Title 29, CFR, Part 5).

**ARTICLE VII:** 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, and the Welfare and Institutions Code 15630 et seq. related to elder and dependent adults, as applicable.

**ARTICLE VIII.**

**HIPAA Compliance:** As a condition of Contractor performing services for the County of El Dorado, Contractor shall execute that Business Associate Agreement which is attached hereto as Exhibit "C", which is incorporated herein for all intents and purposes.

**ARTICLE IX**

**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 its 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). Contractor shall



comply with Exhibit "D" - Confidentiality and Information Security Provisions, attached hereto, and incorporated by reference herein.

Nondisclosure: Contractor shall not use or disclose confidential, individually identifiable, or sensitive information other than as permitted or required by the Agreement and as required by law.

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 County Contract Administrator. 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 Agreement 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 County or State's actions on the same, except to County or State staff or Contractor's own personnel involved in the performance of this Contract, or as required by law.

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

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

After any data or documents submitted have become a part of the public records of the County or the State of California, Contractor may at its own expense and upon written approval by the County Contract Administrator, 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.*

Provisions Relating to Data: "Data" as used in this Agreement 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 Agreement. 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 Contractor has collected, collated, recorded, deduced, read out, or postulated for utilization in the performance of this Agreement. Any electronic data processing program, model or software system developed or substantially modified by the Contractor in the performance of this Agreement 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 Agreement is required to be delivered to the County. Such data shall be property of the County.

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

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

## **ARTICLE X**

### **Publications and Reports**

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

- A. Incorporate any comments or revisions required by the County into any publication or report and shall not publish any material until it receives final County approval.
- B. Furnish two (2) copies of each publication and report required plus one reproducible original.
- C. Prepare all illustrations, maps, and graphs in a manner that 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 County 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:

California Department of Health Care Services/Department of Mental Health  
TITLE  
By (Contractor)

- F. County and the State of California reserve the right to use and reproduce all publications, reports, and data produced and delivered pursuant to this Agreement. County and the State of California further reserve 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.

G. If the publication and/or report are prepared by non-employees of the County and the State of California, 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).

Progress Reports: If progress reports are required by this Agreement, Contractor shall provide a progress report in writing, or orally if approved by the County Contract Administrator, at intervals to be determined by Contract Administrator. This progress report shall include, but not be limited to, a statement that the Contractor is or is not on schedule, any pertinent reports, interim findings and other information as directed by County. Contractor shall cooperate with and shall be available to meet with the County to discuss any difficulties, or special problems, so that solutions or remedies can be developed as soon as possible.

Presentation: Upon request, Contractor shall meet with the County to present any findings, conclusions, and recommendations required by the Agreement 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.

## **ARTICLE XI**

### **Additional Agreement Provisions:**

- A. Agreement Work Hours and Safety Standards Act: The Contractor shall comply with the provisions of the Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-333), as applicable. This Act 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 Agreement Work Hours and Safety Standards Act (40 U.S.C. 327-333), as supplemented by Department of Labor regulations (Title 29, CFR, Part 5).
- B. Captions: The clause headings appearing in this Agreement 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.
- C. Clean Air Act & Federal Water Pollution Control Act: 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.
- D. Copeland Anti-Kickback Act: 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").

- E. Davis-Bacon Act: 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").
- F. Debarment and Suspension: The Contractor shall comply with the provisions of Title 2, CFR, Section 180 as implemented by Title 2 CFR Section 376, 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.
- G. Federal Contractor Exclusions: Pursuant to Title 42, US Code Section 1320a-7 and 1320c-5, and Welfare and Institutions Code Section 14123, the Contractor shall not employ or enter into an Agreement 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.
- H. Federal Regulations Requirements: If applicable, based on the services provided under this Agreement, the Contractor agrees to comply as follows:
  - 1. 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 ninety (90) days after the effective date of the change.
  - 2. The Contractor shall obtain approval from County prior to implementing a Physician Incentive Plan as described at Title 42, CFR, Section 438.6(h). County shall confer with DHCS-DMH as necessary and shall approve the Contractor's request only if the proposed Physician Incentive Plan complies with all applicable Federal and State regulations.

## **ARTICLE XII**

### **License and Certifications**

- A. Inpatient Contracts and Subcontracts: If this Agreement is for inpatient services, the Contractor acknowledges that Contractor must maintain necessary licensing and certification, and must include in all subcontracts for inpatient services that subcontractors maintain necessary licensing and certification.
- B. Permits and Licenses: The Contractor shall procure and keep in full force and effect during the term of this Agreement all permits, registrations and licenses necessary to accomplish the work specified in this Agreement, and give all notices necessary and incident to the lawful execution of the work.

Contractor shall keep informed of, observe, comply with, and cause all of its agents, subcontractors and employees to observe and to comply with all prevailing Federal, State,

which in any way affect the conduct of the work of this Agreement. 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 County in writing.

Contractor shall submit a copy of any licensing report issued by a licensing agency to HHSA within ten (10) business days of Contractor's receipt of any such licensing report.

### **ARTICLE XIII**

**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 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 or destruction of records, making false statements, or receiving stolen property;
- C. Are not presently indicted for or otherwise criminally or civilly charged by a 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 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 XIV

**Non-Discrimination Provisions:** 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 human immunodeficiency virus ["HIV"] and acquired immune deficiency syndrome ["AIDS"]), mental disability, medical condition (e.g. cancer), age (over 40), marital status, and denial of family care leave. Contractor and any subcontractors shall ensure 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 (Government Code ["GC"] § 12990 (a-f) et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations ["CCR"] Title 2, § 7285 et seq.). The applicable regulations of the Fair Employment and Housing Commission implementing GC § 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 CCR, 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.

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.

Contractor shall comply with the provisions of § 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.

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

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

## ARTICLE XV

**Quality Assurance and Utilization Review:** 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.

Contractor shall comply with existing Federal regulations for utilization review pursuant to Title 42, Code of Federal Regulations, Subpart D. These shall include certification of need for care, evaluation and medical review, plans of care and utilization review plan. Contractor shall establish a Utilization Review Committee with the function to determine that admissions and

length of stay are appropriate to that level of care and to identify problems with quality of care. Composition of the committee shall meet minimum Federal requirements.

#### **ARTICLE XVI**

**Record Retention:** Contractor and its subcontractors providing services under this Agreement agree to make all of its books and records pertaining to the goods and services furnished under the terms of this Agreement available for inspection, examination, or copying by authorized County, the Comptroller General of the United States, State of California or Federal agencies, or their duly authorized representatives, at all reasonable times at Contractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five (5) years from the close of the County's fiscal year in which the Agreement was in effect, or longer period as may be required by Federal or State of California law, including, but not limited to any record retention laws pertaining to minors, psychiatric health facilities, psychology clinics, psychologists and/or other licensed professionals. If at the end of the applicable retention period, there is litigation or an audit or other investigation involving those books or records, Contractor will retain the books or records until the resolution of such litigation, audit, or investigation.

Records shall be maintained on all Clients admitted or accepted for treatment in accordance with Title 22, CCR § 71551.

#### **ARTICLE XVII**

**Transfer of Records:** In the event that Contractor ceases operation, all files that are subject to audit shall be transferred to the County for proper storage of physical records and electronic data. Contractor shall notify County of impending closure as soon as such closure has been determined, and provide County with a complete list of records in its possession pertaining to County clients and operational costs under this Agreement. County shall promptly advise Contractor which records are to be transferred to the custody of County. Records not transferred to custody of County shall be properly destroyed by Contractor, and Contractor shall provide documentation of proper destruction of all such records to County.

#### **ARTICLE XVIII**

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

#### **ARTICLE XIX**

**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 XX**

**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 XXI**

**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 XXII**

**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 XXIII**

**Continuous Operation:** Contractor shall operate continuously throughout the term of this Agreement with at least the minimum number and type of staff required to meet applicable Federal, State, and County requirements, and which are necessary for the provision of services hereunder.

**ARTICLE XXIX**

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



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

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

Hold Harmless: Contractor agrees to hold harmless the State of California and its beneficiaries in the event the County cannot or shall not pay for services performed by the Contractor pursuant to this Agreement.

#### **ARTICLE XXX**

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

#### **ARTICLE XXXI**

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

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

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

- B. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- C. Ceasing Performance: County may terminate this Agreement in the event Contractor ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.
- D. Termination or Cancellation without Cause: County may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by County without cause. If such prior termination is effected, County will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to Contractor, and for such other services, which County may agree to in writing as necessary for contract resolution. In no event, however, shall County be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, Contractor shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.
- E. Transfer of Care: Prior to the termination or expiration of this Agreement and upon request by the County or State of California DHCS-DMH, the Contractor shall assist in the orderly transfer of beneficiaries' mental health care. In doing this, the Contractor shall make available to County or the State of California 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 County. Costs of reproduction shall be borne by the County. In no circumstances shall a beneficiary be billed for this service.

## **ARTICLE XXXII**

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

COUNTY OF EL DORADO  
HEALTH AND HUMAN SERVICES AGENCY  
3057 BRIW ROAD  
PLACERVILLE, CA 95667  
ATTN: CONTRACTS UNIT

And to:

COUNTY OF EL DORADO  
PROCUREMENT AND CONTRACTS  
360 FAIR LANE, LOWER LEVEL  
PLACERVILLE, CA 95667  
ATTN: TERRI DALY, PURCHASING AGENT

Notices to Contractor shall be addressed as follows:

JDT CONSULTANTS  
2501 WEST SHAW AVENUE  
FRESNO, CA 93711  
ATTN: JANA TODD, PRESIDENT

or to such other location as the Contractor directs.

#### **ARTICLE XXXIII**

**Change of Address:** In the event of a change in address for Contractor's/Consultant's principal place of business, Contractor's/Consultant's Agent for Service of Process, or Notices to Contractor/Consultant, Contractor/Consultant shall notify County in writing pursuant to the provisions contained in this Agreement under the Article titled "Notice to Parties". Said notice shall become part of this Agreement upon acknowledgment in writing by the County Contract Administrator, and no further amendment of the Agreement shall be necessary provided that such change of address does not conflict with any other provisions of this Agreement.

#### **ARTICLE XXXIV**

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

#### **ARTICLE XXXV**

**Litigation:** County, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Contractor must provide indemnification under this Agreement.

The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Contractor of its indemnification obligations.

Contractor, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

## ARTICLE XXXVI

**Waivers:** A failure of County to enforce strictly a provision of this Agreement shall in no event be considered a waiver of any part of such provision. No waiver by County of any breach or default by Contractor shall operate as a waiver of any succeeding breach of the same terms in the Agreement or other default or breach of any of Contractor's obligations under the Agreement. No waiver shall have any effect unless it is specific, irrevocable, and in writing.

## ARTICLE XXXVII

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

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. 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 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.
- H. The certificate of insurance must include the following provisions stating that:
  1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
  2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.

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

#### **ARTICLE XXXVIII**

**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 XXXIX**

**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 XL**

**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".

A. **Gratuities and Contingency Fees:** The County, by written notice to the Contractor, may terminate the right of Contractor to proceed under this Agreement if it is found, after notice and hearing by the County or the State of California, that gratuities were offered or given by the Contractor or any agent or representative of the Contractor to any officer or employee of the County or the State of California 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 Agreement is terminated as provided in the paragraph above, County shall be entitled (a) to pursue the same remedies against Contractor as it could pursue in the event of the breach of the Agreement 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 County provided in this clause shall not be exclusive and are in addition to any other rights and remedies provided by law or under this Agreement.

The Contractor warrants by execution of this Agreement that no person or agency has been employed or retained by it to solicit or secure this Agreement 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 County shall have the right to annul this Agreement without liability, paying only for the values of the work actually returned, or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, brokerage, or contingent fee.

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

1. 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,
2. 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 citizen, 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.

C. **Conflict of Interest Certification:** In accordance with State of California laws and State of California 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 State Conflict of Interest Code to file

statements of economic interest. In signing this Agreement, Contractor certifies that they have read and understand Government Code 19990.

**ARTICLE XLI**

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

**ARTICLE XLII**

**Release of Information:** Contractor shall ensure that the County of El Dorado Health and Human Services Agency is included as a receiving party on all Release of Information forms used in the performance of services under this Agreement.

**ARTICLE XLIII**

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

**ARTICLE XLIV**

**Taxpayer Identification Number (Form W-9) and County Payee Data Record Form:** All independent Contractors or Corporations providing services to County must file a Department of the Treasury Internal Revenue Service Form W-9 with County, which certifies their Taxpayer Identification Number. All independent Contractors or Corporations providing services to County may also be required to file a County-issued "Payee Data Record" form with County.

**ARTICLE XLV**

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

//

//

**ARTICLE XLVI**

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

**ARTICLE XLVII**

**Administrator:** The County Officer or employee with responsibility for administering this Agreement is Jamie Samboceti, Acting Manager of Mental Health Programs, Health and Human Services Agency or successor.

**ARTICLE XLVIII**

**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 XLIX**

**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 L**

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

**ARTICLE LI**

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

//

//

//

//

//

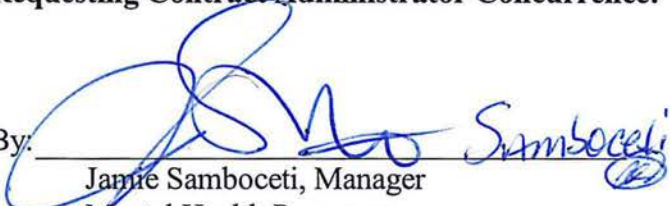
//



**ARTICLE LII**

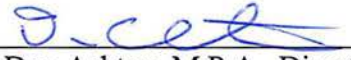
**Entire Agreement:** This document and the documents referred to herein or exhibits hereto are the entire Agreement between the parties and they incorporate or supersede all prior written or oral Agreements or understandings.

**Requesting Contract Administrator Concurrence:**

By:  Samboceti  
Jamie Samboceti, Manager  
Mental Health Programs  
Health & Human Services Agency

Dated: 5/14/14

**Requesting Department Head Concurrence:**

By:   
Don Ashton, M.P.A., Director  
Health & Human Services Agency

Dated: 5/15/14

//

//

//

//

//

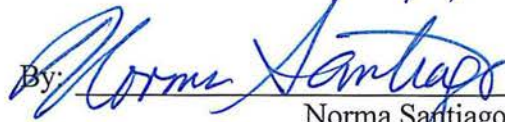
//

//

IN WITNESS WHEREOF, the parties hereto have executed this Agreement 552-S1411 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 6/24/14

By:   
Norma Santiago, Chair  
Board of Supervisors  
"County"

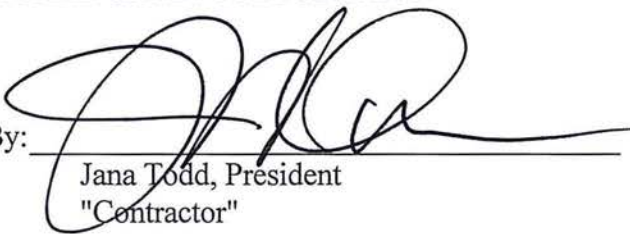
ATTEST:  
James S. Mitrisin  
Clerk of the Board of Supervisors

By:   
Deputy Clerk

Dated: 6/24/14

-- CONTRACTOR --

JDT CONSULTANTS, INC.  
A CALIFORNIA CORPORATION

By:   
Jana Todd, President  
"Contractor"

Dated: 5/21/14

By:   
Jana Todd, Secretary

Dated: 5/21/14

sk

EXHIBIT A

Suisun City Office  
 333 Sunset Ave, Suite 188  
 Suisun City, Ca. 94585  
 707-422-2121 Office  
 707-422-2962 Fax

<b>JDT Consultants, INC., Key Personnel</b>			
<b>Name</b>	<b>Phone #</b>	<b>Email Address</b>	<b>Title/Position</b>
Tomikka Lee, MSW/ASW	559-981-6818 Cell 559-999-9871 Cell 707-720-4574 Home	<a href="mailto:tomikka.lee@jdtts.com">tomikka.lee@jdtts.com</a>	Clinical Supervisor
Jenna Barry- Highfield, MA	530-941-8416	<a href="mailto:jenna.barry@jdtts.com">jenna.barry@jdtts.com</a>	TBS Coach
Olivia Briceno, AA	707-761-3646	<a href="mailto:olivia.briceno@jdtts.com">olivia.briceno@jdtts.com</a>	Admin Asst./TBS Coach
Chris Gugino	916-833-5249	<a href="mailto:chris.gugino@jdtts.com">chris.gugino@jdtts.com</a>	Mental Health Resource Specialist
Cheryl Carlson, MFTI	559-666-8036 925-548-2025	<a href="mailto:cheryl.carlson@jdtts.com">cheryl.carlson@jdtts.com</a>	Clinical Supervisor
David Firebaugh, AA	707-290-6323 Cell 707-435-0559 Home	<a href="mailto:david.firebaugh@jdtts.com">david.firebaugh@jdtts.com</a>	TBS Coach
Angela Jenkins, BA	916-239-9443	<a href="mailto:angela.jenkins@jdtts.com">angela.jenkins@jdtts.com</a>	TBS Coach
James Keil, BS	916-622-6898	<a href="mailto:james.keil@jdtts.com">james.keil@jdtts.com</a>	TBS Coach
Cesar Lozano, BA	530-638-9642	<a href="mailto:cesar.lozano@jdtts.com">cesar.lozano@jdtts.com</a>	TBS Coach
Avis McQueen	510-852-3768	<a href="mailto:avis.mcqueen@jdtts.com">avis.mcqueen@jdtts.com</a>	TBS Coach
Marina Morales, ASW	916-833-9416	<a href="mailto:marina.morales@jdtts.com">marina.morales@jdtts.com</a>	TBS Coach
Lucinda Nahinu	209-275-9098	<a href="mailto:lucinda.nahinu@jdtts.com">lucinda.nahinu@jdtts.com</a>	TBS Coach
Sarah Reid, BA	661-993-6970	<a href="mailto:sarah.reid@jdtts.com">sarah.reid@jdtts.com</a>	TBS Coach
Vonda Rizzo, BA	425-299-8441	<a href="mailto:vonda.rizzo@jdtts.com">vonda.rizzo@jdtts.com</a>	TBS Coach
Katherine Roper, MSW/ASW	916-915-7671	<a href="mailto:katherine.roper@jdtts.com">katherine.roper@jdtts.com</a>	TBS Coach
Jeanna Taylor	707-761-2850	<a href="mailto:jeanna.taylor@jdtts.com">jeanna.taylor@jdtts.com</a>	TBS Coach
Sonya Washington, MFTI	510-517-2989	<a href="mailto:sonya.washington@jdtts.com">sonya.washington@jdtts.com</a>	TBS Coach
Leah Whatley, BS	707-372-0768	<a href="mailto:leah.whatley@jdtts.com">leah.whatley@jdtts.com</a>	TBS Coach
Jana Todd, LCSW	559-790-2662	<a href="mailto:jdtconsultant@aol.com">jdtconsultant@aol.com</a>	President/CEO
Cari Adams	559-681-4324	<a href="mailto:cari.adams@jdtts.com">cari.adams@jdtts.com</a>	Secretary
Nydia Karrerah, MSW/ASW	559-779-2507	<a href="mailto:nydia.karrerah@jdtts.com">nydia.karrerah@jdtts.com</a>	Program Manager
Monica Hennecke, MS	559-281-3164	<a href="mailto:monica.hennecke@jdtts.com">monica.hennecke@jdtts.com</a>	Program Manager

## A. PROGRAM SERVICE DESCRIPTION

### 1) Program Philosophy

JDT Consultants, Inc., hereinafter, JDT, has been providing TBS Services to children throughout the State of California since 2004. JDT Currently has three locations, the corporate office located in Fresno, Ca, and satellite sites in Suisun City, Ca, and Monterey Ca. JDT currently provides TBS services to 27 California Counties either under contract or purchase order. JDT has the capacity to serve clients located in most regions of the State of California. JDT's Program Mission Statement is as follows:

JDT provides mental health services to children, adolescents, adults and families in a culturally competent and sensitive manner. JDT is committed to the dignity and value of all individuals and seeks to enhance each person, recognizing their rights to self-determination, capitalizing on their strengths. We are committed to collaborating with individuals and agencies within the community, and highly value teamwork and a consistent approach that is inclusive and avoids the duplication of or counterproductive services. We are committed to providing our services so that individuals can be successful in their home, school/place of employment, and in the community.

### Language and Culture

JDT is committed to the recognition and appreciation of cultural diversity among service delivery staff, clients, and community collaboratives. It is the policy of the Agency that all services will be provided to clients in their primary or preferred language.

It is the goal of JDT is to employ a Therapeutic Behavioral Services staff from diverse cultural and language backgrounds. Subsequently, JDT currently employs part-time staff from a multitude of cultural backgrounds, which include; African-American, Hispanic, Caucasian, South East Asian Arabic and American Indian. Our language capabilities in service delivery include; Spanish, English, Laotian, Hmong, Khmer, and American Sign Language.

As consumers are referred for TBS services, their language and cultural needs will be matched with an appropriate TBS Coach. In the event that JDT does not have a coach with the appropriate cultural knowledge and language skills to meet a consumer's need, one of the two following resolutions will occur:

- JDT will employ a coach who can effectively meet the consumer's cultural and linguistic needs, or
- The consumer will be referred back to the County so that a culturally appropriate provider can be assigned.

To ensure cultural competency among Coaches, JDT's TBS staff will receive an initial four hours of Cultural Diversity Training. In this initial training, the

following areas are addressed; Cultural Competence, Ethnic Specific Populations, and Cultural Competence Standards in Managed Care Mental Health Services: For Underserved/Underrepresented Racial/Ethnic Groups and Cultural Sensitivity. Additionally, staff will receive a minimum of four hours annually of training related to cultural competency.

### TBS Model

The goal of JDT's Therapeutic Behavioral Services service delivery model is to provide short-term assistance to children and their care providers to increase symptom management and develop replacement behaviors for the maladaptive ones. The following are critical tenants in the Agency's TBS service delivery model:

- The purpose of TBS interventions is to Teach, not Control. Children need to learn how to make informed choices, weighing potential consequences and rewards for their choices.
- When provided with successful interventions, care providers can effectively manage their child's behaviors.
- All children have a need and desire to be successful, liked, and appreciated by adults and their peers. However, the manner in which they attempt to get their needs met is often not appropriate. Through one-to-one support and education, they can learn to meet their needs in a more successful manner.

Interventions will focus on positive reinforcement that that will support the development of replacement behaviors.

- All behavior is intentional and has a purpose to the child. Through determining the outcome desired by the child, successful interventions can be developed to achieve this outcome.
- Children and their care providers are valued members of the treatment team and should be included in all aspects of service delivery.
- There is always hope for a positive outcome, regardless of the child's history or symptoms. The ability of the treatment team to maintain hope and faith in the child and their positive outcome is imperative to success.
- All children and their care providers deserve competent and ethical services provided in a consistent manner.
- The coach will also identify the child and care takers' strengths, in doing so it will begin to help the care takers identify their own strengths and continue to develop the strengths they already possess. Building upon the child and care takers strengths will assist in self-esteem building and will assist the care takers in finding things that the child is also doing right.

### Fees for Services

As you will see in this proposal, Therapeutic Behavioral Services (TBS) to be offered by JDT Consultants is exceedingly intensive and therapeutic, and very closely supervised by highly experienced, licensed clinicians. JDT's coaches have extensive education and/or experience requirements and receive

substantial initial and ongoing training to meet the needs of an often very challenging population. The proposed fee for TBS services is \$2.30 per minute. JDT Consultants bills a maximum of 30 minutes for travel and documentation, regardless of the distance traveled.

#### Dates and Times of TBS Service Delivery

JDT is available to deliver TBS services to clients referred seven days a week, twenty-four hours a day. Additionally, Jana D. Todd, LCSW, will provide on-call services to clients and their care providers twenty-four hours a day, seven days a week. On-call services are designed to provide crisis assistance, linking to community agencies, and support as needed by children and care providers receiving TBS services.

#### Client Referral/Authorization Process and Plan of Care Development

JDT will be available to accept referrals for TBS service delivery on a daily basis. Once referred, a Plan of Care will be developed for each client. The Plan of Care development will involve a comprehensive review of the child with the County.

The TBS Plan of Care will address critical areas that include the following:

1. Behaviors exhibited by the child that are rendering their current placement at risk and are in need of intervention will be identified.
2. For each of the target behaviors, the precipitating events, as well as frequency and duration of the behaviors will be identified.
3. Specific interventions to be employed to address the target behaviors will be identified.
4. The strategies for involving the child's care provider will be identified.
5. A plan for transition to adult services when the beneficiary turns twenty-one old and is no longer eligible for TBS services will be discussed.
6. The plan for the titration and discontinuance of TBS services will be determined as improvements occur.
7. The days and hours of service will be determined. The days and times of service will be based on the client's needs.
8. A Safety Plan will also be an additional form that will be completed at the assessment. The Safety Plan will include vital information for an anticipated crisis and what the interventions are to be when TBS is not with the child and care taker.

Following the authorization of the Plan of Care, the provider will match the child with a coach or coaches. The matching process between the child and coach(s) is an important component of the TBS model and takes into consideration factors that include:

- Cultural background
- The child and/or care provider primary language
- Client age and gender
- The coach(s) experience and training in working with the child's target behaviors
- The child's disabilities or handicaps

- Known child and care provider needs, strengths, and family dynamics

Additionally, as suggested in the Family to Family Model, in matching coaches to the children referred, the coach's knowledge of the child's community and neighborhood resources will be evaluated. Agency coaches will then develop additional community partnerships to strengthen the child's bond and meet the child's needs within their neighborhood.

### Initial Assessment Process

The assessment process ensures that the child meets eligibility criteria and demonstrates medical necessity criteria as outlined by the County. During the initial assessment process, the specific and measurable target behaviors exhibited by the child to be addressed will be identified in collaboration with the child (when appropriate), their care provider, and the County. To promote collaboration for client benefit, a signed release of information will be requested at the time of the initial assessment so that communication can occur with the child's primary therapist and/or other treating parties.

The frequency and duration of the child's challenging behaviors will be obtained to enable accurate outcome data to be obtained following treatment services being provided to the child. (TBS services are designed to provide short-term assistance to the child that will provide increased symptom management on the part of the client for long-term benefit.) During the comprehensive assessment process, the clinician will thoroughly explain the assessment and treatment planning process; TBS service delivery, case review, and the transition process to both the child and care provider.

An important factor in the assessment process is to determine antecedents to the child's problematic behavior. Antecedents are not always apparent at the time of assessment, and therefore determining antecedents to problematic behaviors is often incorporated into the child's treatment plan.

Following the comprehensive assessment, an Individualized TBS Plan of Care is developed. This Individualized TBS Plan will be developed by a Licensed Mental Health professional and will take into account both the client's strengths areas that need of intervention. It is the practice of JDT that the child, his/her care provider(s), and other significant individuals/agencies determined to be appropriate will participate in the development of the child's TBS Treatment Plan.

The Individualized TBS Plan of Care will identify specific target behaviors and/or symptoms that are jeopardizing the current placement or are presenting a significant barrier to transitions. A careful review of the presenting symptoms and subsequent behaviors to be targeted will be prioritized, with the plan focusing on two or three goals at a time, as not to overwhelm the client. The initial goals to be targeted will address the behavior(s) that are most likely to disrupt the client's placement or that will lead to placement in a higher level of care.

It is of utmost importance that goals in the TBS Plan of Care are clearly stated in specific and measurable terms. The goals are intended to reflect the client's baseline performance in targeted areas so that progress can be accurately recognized. Prior to services being rendered, the data obtained is intended to offer accurate information related to the consumer's baseline performance and involves reports by both the child and care provider(s). Each target behavior is stated in descriptive and measurable means. Interventions to target each behavior are determined, and specific measurable outcomes are identified.

### TBS Interventions

The Individualized Plan of Care for TBS consumers is carefully developed to address measurable and specific goals that are mutually identified by the Treatment Team following a comprehensive assessment. TBS interventions are designed to help the child develop improved emotional and control skills that will lead to the client and care provider(s) ability to manage the child's symptoms once treatment goals have been met and services have been discontinued. The TBS interventions will be provided on-site with the client through one-to-one client and TBS Coach therapeutic contact and will be shared with the client's care provider.

Interventions will be stated in a clear and concise manner and will reflect the methods that will be employed to meet the desired goals or outcomes. Interventions are designed build skills and provide child with tools to address their areas of difficulty; i.e. anger, threats, impulsivity. Interventions help to increase the child's ability to cope with situations that lead to behaviors/choices, which jeopardize the child's success in their home, school, or community.

The TBS Coach will possess expertise in providing behavioral interventions to emotionally and/or behaviorally challenged child. As stated in the TBS Treatment Plan, goals are accomplished through interventions, which commonly include; role modeling, intermittent and planned reinforcements, teaching the child coping skills and strategies for symptom management, and empowerment. Coaches will focus on the child's strengths and hobbies in developing intervention strategies. Through planned and systematic interventions, the child will learn to exhibit self-control, learn to act responsibly, feel empowered and successful, and through a trusting one-to-one relationship with their Coach will benefit interpersonally. The Coach will share effective interventions with the child's care provider verbally as well as through modeling these strategies. Through sharing successful strategies for managing the child's behaviors, the care provider(s) will learn to manage these behaviors with effective interventions when the TBS coach is not present, increasing the child's stability. The coach will also identify the child and care takers' strengths, In doing so it will begin to help the care takers identify their own strengths and continue to develop the strengths they already possess. Building upon the child and care takers strengths will assist in self-esteem building and will assist the care takers in finding thing that the child is also doing right. Meaningful incentives and consequences to the child will be determined and a plan for either intermittent or planned reinforcements will be included in the Child's Treatment Plan to reinforce interventions.



### TBS Services Documentation

- TBS services documentation is of utmost importance during the service delivery process to County clients, and the Agency shall document services in strict compliance with State Medical and County guidelines. TBS coaches will be required to submit and sign a client progress note for each date of service, in the format specified by the County. The Agency requires that each TBS progress note contain the coaches written name, signature, and date of service. Progress notes and documentation standards will be reviewed weekly during the TBS supervision. Feedback and training related to documentation will be provided as determined appropriate.
- 
- The TBS supervisor will thoroughly read and countersign each progress note. Progress notes will contain the consumer's name, CMHC number, date of service, length of service (in minutes) and an overview of services provided. Additionally, each progress note will review the client's progress, interventions employed; care provider's response, and meaningful outcomes.

Documentation - TBS progress notes will be submitted to the County on at least monthly basis, prior to the tenth of the following month, along with the required billing form(s) specified by the County for reimbursement. The Agency will retain a copy of each note in the client's file for review purposes. Occasionally, the County will require that progress notes also be forwarded to additional community providers (case managers, therapists) for review, and the Agency shall comply with this request. Additionally, progress notes may be requested by the County to be forwarded in intervals at less than one month, and in this case, the Agency shall comply.

### TBS Case Reauthorization

The reauthorization process is of utmost importance in monitoring the success of TBS interventions and reviewing the child's progress toward reducing the Plan of Care target behaviors. Reauthorization conferences for TBS clients will occur at intervals requested by the County. During the reauthorization conference, the client's progress over the past review period will be discussed in detail. Increases, titrations, and the discontinuance of TBS services will be based on the child's progress toward targeted behaviors and discussed at reauthorization periods. Reauthorization conferences between the Provider and the County will include the following:

1. Child's progress toward behaviors targeted in his/her Plan of Care in measurable terms. The current frequency and duration of behaviors will be compared to the prior authorization period.
2. Behaviors by the child as well as precipitating events that are rendering their current placement at risk will be identified, and a specific intervention plan will be determined.

3. Successful interventions in decreasing the child's target behaviors during the prior review period will be discussed. Types of interventions to be employed in the next authorization period will be overviewed.
4. The strategies and effectiveness of involving the child's care provider during the previous reauthorization period will be discussed. Additional strategies for involving the child's care provider during the upcoming authorization period will be identified.
5. The plan for the titration and discontinuance of TBS services in the upcoming authorization period will be determined.
6. The days and hours of service will be identified.
7. The next reauthorization date will be established.

A lack of a child's response to TBS service delivery will be discussed during reauthorization periods and a critical factor outlined by the State Department of Mental Health will be evaluated. The DMH Letter requests that when "TBS services are intensive and last for several months without observable improvement toward treatment goals, the residential placement/living situation may not be appropriate."

The appropriateness of the child's living situation will be assessed initially and throughout the service delivery process, to ensure the physical and emotional safety of children served. When a child's living situation does not appear appropriate, as often evidenced by TBS services being intensively provided without success, the Provider will discuss the appropriateness of the child's placement with the County. When the Provider has potentially useful feedback and recommendations to assist in determining appropriate placement for a child, this information will be shared with the County.

The ongoing assessment process of the child's behavioral changes will occur through daily observation, the obtaining of reports and information from care providers, and the evaluation of the frequency of targeted behaviors. In determining progress, the current frequency and duration of symptoms/targeted behaviors will be determined for comparison to baseline data obtained during the initial assessment process and monthly reviews.

To effectively reflect outcomes related to the provision of services, a child's progress will be stated in measurable and specific terms throughout TBS involvement. Treatment Plan modifications result from the case review process between the Coach, Supervising Clinician and Treatment Team.

### **TBS Case Review**

#### **Weekly TBS Supervision**

Weekly TBS supervision with coaches will be held for one to two hours in duration and facilitated by the TBS supervisor. The supervision forum will be non-punitive in nature, focused on addressing issues at hand, and working as a team to determine solutions. Areas of focus in weekly TBS supervision will include the following:

- An evaluation of each child's progress toward each of the Plan of Care targeted behaviors. To determine progress, the frequency and duration of the target behaviors will be discussed. As progress toward existing goals is made, adjustments to the child's Plan of Care will occur. When target behaviors in need of intervention become apparent, adjustments to the child's Plan of Care will be presented to the County.
- The interventions employed and child's response to these interventions will be discussed. When current interventions are not successful, alternative interventions will be identified to address the target behaviors.
- Often, a child's frequency of need of TBS services results in the use of multiple coaches. When multiple coaches are involved in a case, the TBS supervisor will ensure that consistency and continuity of care is present among TBS coaches. Coaches will have the opportunity to share information and interventions during supervision for client benefit.
- The care providers' response to TBS services and their progress toward obtaining the needed skills and interventions to successfully manage their child's behaviors will be discussed.
- Significant changes in the child's life (i.e. family composition, care providers, losses) will be discussed.
- Resources or services needed for the child and/or care provider will be identified. Strategies for obtaining these supports will be determined.
- Information needed for the reauthorization of TBS services will be obtained as needed.
- Barriers to TBS services effectiveness will be explored and methods to counteract barriers will be determined and implemented.
- The child's transition plan for the reduction and eventual elimination of TBS services will be discussed.
- Cases in the process of termination will be carefully reviewed so that a successful titration and discontinuance of services can occur.
- Difficulties or personal issues that coaches are experiencing will be addressed. Coaches will be encouraged to be honest in sharing their struggles, frustrations, and/or challenges in working with clients.
- Coach effectiveness in meeting client needs and the need for additional TBS supervisor assistance and intervention will be assessed.

Documentation of TBS supervision will be maintained through a sign-in sheet, along with a summary of issues/needs/recommendations on each TBS case. TBS progress notes will be reviewed and signed by the TBS supervisor. The TBS supervisor will keep the County and community providers (case managers and therapists) advised of critical issues that arise during TBS supervision.

In addition to weekly supervision, the TBS coaches submit their progress notes to the TBS supervisor after each contact for review. The Supervisor and coach discuss cases several times weekly to address issues as they arise.

#### TBS Care Coordination

As indicated in the above TBS Model and Case Review process, TBS Care Coordination is a very important factor in the referral, assessment, and ongoing case review process. Throughout TBS service delivery, our TBS Model focuses

significantly on the importance of involvement of the child's "Treatment Team." Members of this Treatment Team includes the child, primary therapist, care provider(s), placement worker, County Staff, TBS Coaches and the TBS Supervisor. Any person or Agency who is "significant" member of the child's life, with the approval of the child's care provider(s) may become a treatment team member. A "significant person" may include an adult sibling, extended family member, Godparent, or mentor.

Ongoing contact between Treatment Team members will occur throughout the TBS service delivery process. As indicated in the case review process, a Daily Care Provider Report will be obtained and discussed during weekly supervision and with collaborative agencies as appropriate. Weekly supervision with coaches will be held to discuss the child's progress, needs, strengths, and the care provider's response to interventions. Bi-monthly contacts will be held between the TBS Supervisor and the child's therapist to review the client's progress, needs, and the child's overall placement stability. Other critical parties, i.e. placement workers, CASA workers will also be contacted at least monthly by the TBS supervisor to coordinate services and share treatment progress information.

The parent/care provider/guardian will be requested to sign a Release of Information for coordination and communication between the Agency staff and outside parties. Documentation of releases of information, contacts with community agencies, and care coordination contacts/attempts to contact will be documented in the client's file.

#### TBS Termination

As indicated in the State Department of Mental Health Letter No. 99-03, TBS services are designed to be "short-term supplemental services...that must include a transition plan from the inception of this service to decrease and/or discontinue therapeutic behavioral services when they are no longer needed or appear to have reached a plateau in the benefit effectiveness." This letter also requires that "a plan for transition to adult services when the beneficiary turns 21 years old and is no longer eligible for therapeutic behavioral services."

In response to the DMH requirements, the short-term nature and transition and/or termination requirements and procedures will be thoroughly discussed with the child and care provider(s) during the initial assessment process. The Plan of Care goals and objectives will be stated in measurable and meaningful terms to enable the client progress to be determined. Criteria for decreases and/or increases and the in the intensity of TBS services and eventual elimination of these services will be based on the child's progress toward targeted behaviors in his/her Plan of Care. During weekly Case Reviews between the coaches and supervising clinician, decreases in the child's targeted behaviors will be quantified. Based on the child's progress, the frequency and/or duration of services will be recommended for decreases. These transitions in TBS service delivery will be communicated with the care provider(s), child, and the County at reauthorization periods or between these periods as determined appropriate. In determining decreases in services, the domain requiring continued intervention and hours of intervention needed will

be carefully reviewed and based on the child's current display of targeted behaviors.

From the inception of services, throughout the transition of services, and prior to discharge, the TBS coach and supervising clinician will be discussing with the child and their family's adjustment to these transitions. Decreases and the successful elimination of services will be communicated to the client and family as a very positive experience, as they have been successful for this to occur. Incentives, rewarding the success of the client in progress in their targeted behaviors will occur as services are decreased.

As required in the DMH Letter, when "TBS services are intensive and last for several months without observable improvement toward treatment goals, the residential placement/living situation may not be appropriate." The appropriateness of the child's living situation will be assessed initially and throughout the service delivery process. To prevent inappropriate changes in placement and address a lack of client progress, strategies of our TBS Model include the following:

- The lack of progress/lack of the child's response to the treatment plan will be discussed throughout the case review process, both internally, and with the Treatment Team.
- When a child is unresponsive to TBS services being delivered, continual weekly efforts will occur to locate interventions and strategies to elicit a positive behavioral response. The treatment team will be contacted to obtain their feedback.
- Barriers to TBS services effectiveness will be explored and methods to counteract barriers will be determined and implemented.
- Depending on the age of the child it may be important to share the consequences for their continued lack of response, or perhaps effort, so that they are aware of the consequences of their choices.
- The Coach and supervising clinician will discuss with the child their lack of progress and obtain their feedback on why they feel that success is not occurring.
- When a child's behavior increases or progress is not being made, the Coach, supervising clinician, and Treatment Team will discuss possibilities and risk factors that may be present. Examples of this may include a lack of support in the home, negative statements by care providers that may impede progress, or possible abuse or substance abuse issues in the home.

### Coach Termination

TBS coaches will be trained on the importance of preparing children and care providers served for the eventual titration and discontinuation of services, as this can often be experienced as a significant loss. Training will teach coaches to help the clients and care providers view decreases in and the elimination of services as a positive accomplishment. Providing children with a tangible object that they can refer to and feel good about has been suggested in the research to be helpful in terminating mental health services with children. Therefore, coaches will be trained to create transitional objects (i.e. cards, pictures from

the graduation celebration) for children who struggle with the termination process.

To promote the discontinuation of TBS services as a success, a 'Graduation Party' will be held for each child who discontinues TBS services (dining out, a movie, and trip to an arcade). The coach will involve the child and care provider in the planning of the graduation party during last 30 days of TBS service delivery, making this transition a happy and meaningful one. The Provider will ask the coach to submit a budget for this event and with the Agency paying for all related costs. A framed Certificate of Accomplishment will be presented to each child at their graduation party.

Additionally, within the final 30 days of TBS service delivery, the coach will develop a Setback Prevention and Response Plan with the child and their care provider prior to the discontinuance of services. The Success Plan is designed to further promote the discontinuance of TBS services as a positive accomplishment, as well as recap the child's skills learned as a result of TBS services being delivered. The following areas highlighted in the Success Plan:

- The child overviews their strengths.
- Attention to patterns, circumstances, and antecedents to previous challenging behaviors and situations are identified.
- Support Systems available to the child and care provider(s) are documented.
- Community resources and agencies that are available to provide support are outlined.
- An overview of skills learned to assist the child when faced with challenging behaviors are documented.
- Positive goals that the child would like to accomplish are determined.
- A positive statement from their coach(s) will be included.

As services decrease and termination nears, this will be addressed during weekly and bi-monthly case reviews between the Supervising Clinician and Coach as well as the Treatment Team. The role of the Treatment Team during the last 30 days will be to discuss the termination, receive feedback as to how the child is responding, plans on responding to the child's reactions, and development of the Setback Prevention Plan. The termination of TBS services will also be carefully processed by the coach and TBS Supervisor with the child's care provider. The care provider will receive reassurance and reinforcement as to their ability to continue to manage the child's behaviors when TBS services are no longer being provided.

## **B. PROGRAM STAFFING**

### **Administration/Management Staff –**

Jana Todd, LCSW, is the CEO/President of JDT Consultants, Inc. and oversees management staff. In addition to Ms. Todd, JDT employs 7 full time TBS Supervisors who have a Masters Degree in Either Social Work, or Marriage,

Family, Child Counseling to provide supervision and oversight to TBS Coaches providing services.

### **Direct Service Staff**

JDT currently employs 45 TBS Coaches to provide TBS services to children in numerous Counties throughout California. Each TBS client will have a primary coach assigned, and additional coaches will serve the client as needed. JDT will employ additional coaches as needed to meet the needs of clients served.

#### **Language Competency -**

The TBS staff is culturally diverse, with ethnic backgrounds including; African American, Caucasian, Asian, Hispanic, and Native American heritage. We have coaches who are fluent in English, Spanish, and American Sign Language. Staff will be assessed for their language competency and will be determined to be fluent to provide translation services to program clients. Competency will be determined by assessing the following factors:

- Number of years speaking the language
- Primary language in their home and family of origin
- Education/credentials in foreign language(s)

Each candidate for employment who states they are bi-lingual will be evaluated for linguistic competency by an employee or consultant who is demonstrated to be fluent their language fluently. This staff member will offer feedback as to the ability of the individual to accurately engage in a discussion in the language spoken. Once hired, the TBS Supervisor will monitor the employee's competency in their language skills by their ongoing ability to accurately communicate with agency staff and clients.

Minimum qualification for Coaches - JDT prefers that minimum education for TBS Coaches is a Bachelors degree in the Behavioral Sciences. Many of JDT's coaches have advanced degrees. A minimum of 30 college units in the Behavioral Sciences field is required for TBS Coaches. However, in efforts to meet linguistic and cultural needs of County consumers, some substitutions will be made for individuals with cultural and linguistic expertise and experience in the population serviced for education.

### **3) Policies and Procedures**

Coach Certifications - Employee files will be maintained on all JDT Consultants employees who will be providing TBS services. The coach files will contain a multitude of documents and clearances, including; fingerprint, DOJ, and Megan's Law, CPR and First Aid Training, DMV Printout, and college transcripts. JDT will maintain an Employee File with current information on all employees and this may be reviewed by the County at request.

Non Discrimination in Employment Practices - Jana D. Todd, LCSW, JDT Consultants, is proud of its employee diversity in areas, which include race, gender, culture, language, disabilities, sexual preference, age, and religion. We strive for this diversity, as it very closely mirrors the diversity in our

community, and feel that this is important in providing services to the children and families in our community. JDT will not tolerate any form of discrimination or harassment toward employees based on their unique attributes. Any violation of or EOE Policy may result in immediate termination. A copy of our Non-Discrimination Policy is located in Appendix E.

Insurance - JDT will maintain Professional Liability, Auto Insurance Coverage, Personal Liability Coverage, and Worker's Compensation Insurance Coverage at all times. Counties contracted with JDT will be named as Additionally Insured on all policies.

### C. SERVICE SITE

Medical Records Keeping Procedure - Client Medical Records are of utmost importance and confidentiality to the Agency and are centrally stored at our Corporate Office in Fresno, Ca. It is the agency's policy that all consumer medical records will be secured, stored, properly maintained, and inaccessible to unauthorized access.

#### Procedures

- Records will be stored in a locked filing cabinet that is inaccessible to unauthorized personnel. Inactive records will be maintained for seven years or for seven years beyond the age of maturity for minors, as per State and Federal requirements.
- Beneficiary's information and records will be protected for confidentiality according to the Confidentiality of Medical Records Act.
- All other materials containing the consumer's name shall be locked in metal filing cabinets at the end of each working day. In addition, the room containing the clinical records will be locked at the end of each working day. Only the Licensed Supervisors, TBS Coaches, and Medical Records Clerk will have access to client files.
- Client records will not be authorized to leave the office. If providers need information obtained in medical records, they can make a copy of the information needed.
- All medical records will be maintained in an orderly fashion, with each client having his or her own record. The County will have access to all of their client's records/files.
- Information contained in client records will not be shared with parties other than JDT Consultants or the County without a proper Release of Information signed by the appropriate party.



## D. QUALITY IMPROVEMENT

**Program Outcome Monitoring** - Client Satisfaction Surveys are distributed to the child and care provider on at the termination of TBS services. There are two program surveys, one for the child receiving services and the other for their parent/care provider. The Client Satisfaction Surveys are intended to determine the following:

1. Impact in improving behaviors following TBS involvement.
2. Impact of the coach and/or supervising clinician.
3. Comfort in approaching program staff when they feel a need.
4. Client overall rating of the effectiveness of our TBS Program Model and service delivery.
5. Areas that we can improve our program to better meet their needs.

JDT is very committed to providing services to clients that are meeting their needs. We are equally committed to making changes in our model and service delivery according to consumer satisfaction and feedback from consumers who have received services. JDT will submit to the County a copy of all Client Satisfaction Surveys to the County by July 31, the close of each fiscal year.

**Post Services Program Outcomes** - JDT began post-service outcome tracking approximately eighteen months ago. Clients are being tracked at 3 month intervals after leaving the program for two years. JDT is in the process of compiling post-service outcome information and this will eventually be shared with Counties, as well as the DMH.

**Grievances** - JDT has an internal grievance process that will be available to all program staff and clients. When a grievance is submitted, the TBS Supervisor will review and investigate the grievance immediately. A meeting with the consumer/employee filing the grievance and TBS Supervisor will occur within five business days. At this meeting, the nature of the complaint, desired outcome, initial findings, and recommendations for remedying the grievance will be discussed. The TBS Supervisor will address the grievance and determine a satisfactory resolution with the consumer/employee, and the appropriate follow-up actions to prevent a future reoccurrence. Grievances will specify actions taken to resolve the issue and will be submitted to the County within three business of resolving the grievance. A Grievance Log will be maintained by the TBS Supervisor and at the end of each month will be faxed to the County for review.

### Staff Training Needs

TBS Coaches and Supervising Clinicians will receive twenty hours of initial training within the first thirty days of employment, and twenty hours annually thereafter. All coaches will also receive a minimum of Eight hours of shadowing with a TBS client prior to independently providing services. Additional shadowing will occur as deemed necessary. The training is specific to the needs of children typically receiving TBS services, and focuses on cultural diversity and competency in service delivery. Trainings provided will be specifically

intended to meet the unique needs of children and families receiving TBS services. Staff will be encouraged to attend outside trainings as well that focus on behavioral strategies and interventions with children. Staff can submit a request to attend training to the TBS Supervisor, and these opportunities will be made available to staff whenever possible.

As indicated in the Training Plan, staff will receive twenty initial hours of initial training. Topics will address behavioral interventions, safety and emergency response, and coach boundaries, cultural competency and ethics. Additionally, all staff will have current CPR and First Aid.

Confidentiality - JDT will strictly maintain consumer confidentiality at all times. The consumer or parent/guardian prior to any release of records or discussion about clients must sign a signed Release to Exchange Confidential Information. Consumers will also be presented with the exceptions to confidentiality during the initial meeting with the TBS Supervisor, and will sign this document acknowledging their understanding of the exceptions to client confidentiality.

Consumers are notified of the following exceptions to confidentiality:

1. The consumer authorizes the release of information and a Release of Information form is signed by the client, parent/guardian, or placement worker.
2. The TBS supervisor or coach is ordered by a court of law to release information.
3. Information is shared among Agency staff and referring/treating parties to assist in effectively providing mental health services to client and their care provider(s).
4. A client presents a physical danger to self or others.
5. Child, elder, or dependent adult abuse or neglect are suspected.

In the latter two cases (4 & 5); we are required by law as mandated reporters to inform potential victims and legal authorities of these situations so that protective measures can be taken.

## **Exhibit "C"**

### **HIPAA Business Associate Agreement**

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

#### **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.

## **Exhibit D**

### **Confidentiality and Information Security Provisions:**

A. The Consultant shall comply with applicable laws and regulations, including but not limited to The Code of Federal Regulations, Title CFR45, parts 160-164, regarding the confidentiality and security of personal identifiable information (PII).

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

B. Permitted Uses and Disclosures of PII by the Consultant.

(1) Permitted Uses and Disclosures. The Consultant 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 Consultant's operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as otherwise provided in this Agreement, the Consultant, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.

(2) Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, the Consultant will:

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

(b) Take all reasonable steps to destroy, or arrange for the destruction of a customer's records within its custody or control containing personal information which is no longer to be retained by the Consultant by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

C. Responsibilities of the Consultant.

The Consultant agrees to:

Safeguards. To prevent use or disclosure of PII other than as provided for by this Agreement. The Consultant shall provide the County with information concerning such safeguards as the County may reasonably request from time to time.

The Consultant shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only.

The Consultant shall implement appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), the Consultant shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.

The Consultant shall:

Implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:

- (a) Network based firewall and/or personal firewall
- (b) Continuously updated anti-virus software
- (c) Patch-management process including installation of all operating system/software vendor security patches.

D. Mitigation of Harmful Effects. To mitigate, to the extent practicable, any harmful effect that is known to Consultant of a use or disclosure of PII by Consultant or its subcontractors in violation of the requirements of this Agreement.

E. Agents and Subcontractors of the Consultant. To ensure that any agent, including a subcontractor to which the Consultant provides PII received from the County, or created or received by the Consultant, for the purposes of this contract shall comply with the same restrictions and conditions that apply through this Agreement to the Consultant with respect to such information.

F. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Consultant shall notify the County immediately upon discovery of any breach of PII 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 County Privacy Officer, within two business days of discovery, at (530) 621-5852. Consultant 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. Consultant shall investigate such breach and provide a written report of the investigation to the County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.