

Internal Contract No: 240-174-M-E2010  
Purchasing Contract No: 184-S1110  
Index Code: 419100

# CONTRACT ROUTING SHEET

January 5, 2011  
(sooner if possible;  
contract is retro)

Date Prepared: December 20, 2010

Need Date: [Redacted]

## PROCESSING DEPARTMENT:

Department: Health Svcs - Mental Health

Dept. Contact: Tom Michaelson x6203

2<sup>nd</sup> Contact: Kathy Lang

Department: [Redacted]

Head Signature: [Signature]

*AWR*  
Neda West, Director

## CONTRACTOR:

Name: BHC Heritage Oaks Hospital, Inc.

Address: 4250 Auburn Blvd.  
Sacramento, CA 95841

Phone: (916) 830-2213

## CONTRACTING DEPARTMENT: Health Services Department - Mental Health Division

Service Requested: Children's Inpatient Services

Contract Term: 7-1-10 to 6-30-13

Contract Value: [Redacted] \$58,500

Compliance with Human Resources requirements? Yes  No

Compliance verified by: N/A

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

Approved:  Disapproved:  Date: 12/29/2010 By: [Signature]

Approved:  Disapproved:  Date: 3/1/11 By: [Signature]

Approved:  Disapproved:  Date: 3/28/11 By: [Signature]

PLEASE FORWARD TO RISK MANAGEMENT. THANKS!

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

Approved:  Disapproved:  Date: 1/26/2011 By: [Signature]

Approved:  Disapproved:  Date: 3/14/11 By: [Signature]

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

Departments: \_\_\_\_\_

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

Approved: \_\_\_\_\_ Disapproved: \_\_\_\_\_ Date: \_\_\_\_\_ By: \_\_\_\_\_

[Signature]  
Program Manager / date  
10/27/10

2011 MAR 22 PM 11:05  
7350000 114  
[Signature]  
Finance / date

AGREEMENT FOR SERVICES #240-174-M-E2010

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THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "COUNTY") and BHC Heritage Oaks Hospital, Inc., a Tennessee Corporation dba Heritage Oaks Hospital, duly qualified to conduct business in the State of California, whose principal place of business is 4250 Auburn Boulevard, Sacramento, CA 95841 (hereinafter referred to as "CONTRACTOR");

RECITALS

WHEREAS, COUNTY has determined that it is necessary to engage a CONTRACTOR to provide mental health services on an "as requested" basis to Clients referred by the Health Services Department, Mental Health Division; and

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

WHEREAS, it is the intent of the parties hereto that such services be in conformity with all applicable Federal, State and local laws; and

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

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

**Article I. SCOPE OF SERVICES**

CONTRACTOR agrees to furnish licensed facilities and personnel necessary to provide the services set forth in Exhibit A, marked "Scope of Services," incorporated herein and made by reference a part hereof.

**Article II. TERM**

This Agreement shall be effective July 1, 2010 and shall expire June 30, 2013, unless terminated earlier pursuant to provisions of Article XIV or Article XV herein.

**Article III. COMPENSATION FOR SERVICES**

Section 3.01 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 Health Services Department (HSD) Director or Director's designee granting an extension of the time to complete billing for services or expenses. For billing purposes, a "service month" shall be defined as a calendar month during which CONTRACTOR provides services in accordance with Article I, "Scope of Services" herein.

Section 3.02 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. For the purposes of this Agreement, billing shall be in accordance with Exhibit B, marked "Fiscal Provisions," incorporated herein and made by reference a part hereof. Payment shall be made for actual services rendered and shall not be made for service units the Client did not attend or receive. Each invoice shall describe: a) units of service by individual Client served, and b) dates of service detail for each Client.

Section 3.03 CONTRACTOR reserves the right to increase or decrease provisional rates from those established herein to reflect changes in cost by giving COUNTY thirty (30) days written notice of such proposed change, not to exceed the Statewide Maximum Allowances (SMA) rates for allowable services. Rate increases or decreases will only become effective upon written acceptance of the HSD Director or designee. The HSD Director or designee may designate an effective date of such increase or decrease.

Section 3.04 In accordance with Title 9, California Code of Regulations, Section 565.5, reimbursement for services under this Agreement shall be limited to persons who are unable to obtain private care. Such persons are those who are unable to pay for private care or for whom no private care is available within a reasonable distance from their residence.

Section 3.05 CONTRACTOR agrees to offset invoices submitted to the COUNTY for any reimbursements received on behalf of Clients covered by this Agreement on the invoices for the month in which the revenue was received, unless otherwise directed by the County HSD Director. Invoice for final payments must be submitted within sixty (60) days of the expiration date of this Agreement.

Section 3.06 Invoices are to be sent to the following address:

County of El Dorado Health Services Department, Mental Health Division  
Attn: Accounts Payable  
929 Spring Street  
Placerville, CA 95667

Section 3.07 Total amount of this Agreement shall not exceed \$58,500.

**Article IV. TERMS AND CONDITIONS**

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

**Article V. LIMITATION OF COUNTY LIABILITY FOR DISALLOWANCES**

Notwithstanding any other provision of the Agreement, COUNTY shall be held harmless from any Federal or State audit disallowance resulting from payments made to CONTRACTOR pursuant to this Agreement. To the extent that a Federal or State audit disallowance results from a claim for which CONTRACTOR has received reimbursement for services provided, COUNTY shall recoup within thirty (30) days from CONTRACTOR through offsets to pending and future claims or by direct billing, amounts equal to the amount of the disallowance in that fiscal year. All subsequent claims submitted to COUNTY applicable to any previously disallowed claim may be held in abeyance, with no payment made, until the Federal or State disallowance issue is resolved.

CONTRACTOR shall reply in a timely manner to any request for information or to audit exceptions by COUNTY, Federal and State audit agencies that directly relate to the services to be performed under this Agreement.

**Article VI. CERTIFICATION OF PROGRAM INTEGRITY**

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

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

NOTE: Authority: Sections 5775, 14043.75 and 14680 Welfare and Institutions Code.

**Article VII. HIPAA COMPLIANCE**

All data, together with any knowledge otherwise acquired by CONTRACTOR during the performance of services provided pursuant to this Agreement, shall be treated by CONTRACTOR and CONTRACTOR's staff as confidential information. CONTRACTOR shall

not disclose or use, directly or indirectly, at any time, any such confidential information. If the CONTRACTOR receives any individually identifiable health information ("Protected Health Information" or "PHI"), the CONTRACTOR shall maintain the security and confidentiality of such PHI as required by applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and the regulations promulgated thereunder.

**Article VIII. MANDATED REPORTER REQUIREMENTS**

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

**Article IX. DEBARMENT AND SUSPENSION CERTIFICATION**

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

By signing this agreement, the CONTRACTOR certifies to the best of its knowledge and belief, that it and its principals:

- A. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any Federal department or agency;
- B. Have not within a three (3) year period preceding this application/proposal/agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification 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 X. 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 XI. 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 XII. 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 XIII. 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 XIV. FISCAL CONSIDERATIONS**

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

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

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

**Article XV. DEFAULT, TERMINATION, AND CANCELLATION**

Section 15.01 Default: Upon the occurrence of any default of the provisions of this Agreement, a party shall give written notice of said default to the party in default (notice). If the party in default does not cure the default within ten (10) days of the date of notice (time to cure), then such party shall be in default. The time to cure may be extended at the discretion of the party giving notice. Any extension of time to cure must be in writing, prepared by the party in default for signature by the party giving notice and must specify the reason(s) for the extension and the date on which the extension of time to cure expires.

Section 15.02 Notice given under this section shall specify the alleged default and the applicable Agreement provision and shall demand that the party in default perform the provisions of this Agreement within the applicable period of time. No such notice shall be deemed a termination of this Agreement unless the party giving notice so elects in this notice, or the party giving notice so elects in a subsequent written notice after the time to cure has expired. In the event of termination for default, COUNTY reserves the right to take over and complete the work by contract or by any other means.

Section 15.03 Bankruptcy: This Agreement, at the option of the COUNTY, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of CONTRACTOR.

Section 15.04 Ceasing Performance: COUNTY may terminate this Agreement in the event CONTRACTOR ceases to operate as a business, or otherwise becomes unable to substantially perform any term or condition of this Agreement.

Section 15.05 Termination or Cancellation without Cause: Either party may terminate this Agreement without cause upon sixty (60) days prior written notice to the other party. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

**Article XVI. NOTICE TO PARTIES**

All notices to be given by the parties hereto shall be in writing and served by depositing same in the United States Post Office, postage prepaid and return receipt requested.

Notices to COUNTY shall be addressed as follows:

**COUNTY OF EL DORADO  
HEALTH SERVICES DEPARTMENT  
931 SPRING STREET  
PLACERVILLE, CA 95667  
ATTN: NEDA WEST, DIRECTOR**

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

**HERITAGE OAKS HOSPITAL  
4250 AUBURN BOULEVARD  
SACRAMENTO, CA 95841  
ATTN: CHRIS DIAMOND, CHIEF EXECUTIVE OFFICER**

or to such other location as the CONTRACTOR directs.

**Article XVII. INDEMNITY**

The CONTRACTOR shall defend, indemnify, and hold the COUNTY harmless against and from any and all claims, suits, losses, damages and liability for damages of every name, kind and description, including attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or



in any way arise out of or are connected with the CONTRACTOR's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the CONTRACTOR, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the COUNTY, its officers and employees, or as expressly prescribed by statute. This duty of CONTRACTOR to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

#### Article XVIII. INSURANCE

Section 18.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

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

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

Section 18.02 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 18.03 The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

Section 18.04 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, CONTRACTOR agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of the term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and CONTRACTOR agrees that no work or services shall be performed prior to the giving of such approval. In the event the CONTRACTOR fails to keep in effect at all times insurance coverage as herein provided, COUNTY may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

Section 18.05 The certificate of insurance must include the following provisions stating that:

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

Section 18.06 The CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR 's insurance and shall not contribute with it.

Section 18.07 Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Section 18.08 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.

Section 18.09 The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Section 18.10 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 18.11 In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Section 18.12 Certificate of insurance shall meet such additional standards as may be determined by the contracting COUNTY Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.

#### Article XIX. 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 XX. 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 XXI. 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 Article XV, "Default, Termination and Cancellation" herein.

**Article XXII. CALIFORNIA RESIDENCY (FORM 590)**

All independent contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The CONTRACTOR will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each payment made to the CONTRACTOR during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.

**Article XXIII. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)**

All independent contractors or corporations providing services to the COUNTY must file a Department of the Treasury Internal Revenue Service Form W-9, certifying their Taxpayer Identification Number.

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

Article XXV. ADMINISTRATOR

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

Article XXVI. AUTHORIZED SIGNATURES

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

Article XXVII. PARTIAL INVALIDITY

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


Article XXVIII. VENUE

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

Article XXIX. ENTIRE AGREEMENT

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

REQUESTING DEPARTMENT HEAD CONCURRENCE:

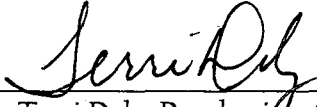
By   
Neda West, Director  
Health Services Department

Dated: 3-30-11

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


--COUNTY OF EL DORADO--

By:   
Terri Daly, Purchasing Agent  
Chief Administrative Office  
"COUNTY"

Dated: 5/25/11

-- CONTRACTOR --

BHC HERITAGE OAKS HOSPITAL, INC.  
A TENNESSEE CORPORATION dba  
HERITAGE OAKS HOSPITAL

By:   
Chris Diamond  
Chief Executive Officer  
"CONTRACTOR"

Dated: 5-17-2011

## Exhibit A

### Scope of Services

#### I. Definitions

- A. **Acute Psychiatric Inpatient Hospital Services:** Those routine hospital services and hospital-based ancillary services provided by a hospital to eligible Clients for whom the facilities, services and equipment are medically necessary for diagnosis or treatment of a mental disorder.
- B. **Administrative Days:** Those services provided to a Client who has been admitted to the hospital for acute psychiatric inpatient services, when the Client's stay at the hospital must be continued beyond the Client's need for acute psychiatric inpatient hospital services due to a temporary lack of residential placement options at appropriate, non-acute treatment facilities.
- C. **Hospital-based Ancillary Services:** Those services including but not limited to prescription drugs and laboratory services that are received by a Client admitted to a hospital, other than routine hospital services.
- D. **Medi-Cal Beneficiary:** Any person certified as eligible for Medi-Cal in the County of El Dorado according to Title 22 CCR, Section 51001, and as indicated by a number 09 County code in their Medi-Cal identification number.
- E. **Short Doyle/Uninsured Client:** A Client without Medi-Cal insurance who has been authorized for treatment by County.

#### II. Description of Services

##### A. Program Services

Contractor shall provide acute psychiatric inpatient hospital services at its facility in Sacramento County on an "as requested" basis for Clients of the Health Services Department, Mental Health Division, in a manner consistent with the terms and provisions of the Agreement, and the requirements established in Exhibit B, marked "Fiscal Provisions."

Psychiatrists and psychologists affiliated with Contractor (employed by Contractor or a member in good standing on the hospital medical staff) shall provide mental health services on an "as requested" basis for the care and treatment of acute episodes of mental illness meeting the medical necessity criteria covered by the existing regulations, according to the requirements and

standards as promulgated by this Agreement, to residents of County who meet the criteria for mental health services under the California Community Mental Health Services Law, in accordance with Contractor's license.

Services shall be provided to eligible persons who may be either on a voluntary or involuntary status. Psychiatrists and psychologists affiliated with Contractor shall provide psychiatric evaluation and treatment for County residents admitted pursuant to this Agreement. The authorized length of stay of each Client shall be jointly determined by the County and the psychiatrists and psychologists affiliated with Contractor in accordance with the medical needs of each Client.

#### B. Referral of Short Doyle/Uninsured Clients

County is responsible for referral of Short Doyle/Uninsured Clients. **County will authorize payment for Short Doyle/Uninsured Clients, only if initially assessed and referred for admission by County or if a Short Doyle/Uninsured Client presents at facility as stipulated in Exhibit B, Section A, 2.a.** All inpatient services are retrospectively reviewed for medical necessity and payment by the County.

### III. Administrative Services

#### A. Quality Management and Utilization Review

Contractor shall comply with policies established including utilization controls as specified in Exhibit C, marked "State Required Terms and Conditions," and relevant Federal and State codes and regulations governing inpatient practice in California.

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.

Contractor has provided a statement which describes how it will conduct Performance Improvement activities, Exhibit D, marked "Heritage Oaks Hospital Performance Improvement Plan 2010," incorporated herein and made by reference a part hereof. This plan will continue until a subsequent plan is approved.

B. Records

Contractor shall maintain medical records required by the California Code of Regulations (CCR). Contractor shall maintain Client medical and/or clinical records for a period of seven (7) years, except that the records of persons under age eighteen (18) at the time of treatment shall be maintained: a) until one (1) year beyond the person's eighteenth (18<sup>th</sup>) birthday or b) for a period of seven (7) years beyond the date of discharge, whichever is later.

C. Assurances

Contractor shall adhere to Title XIX of the Social Security Act (42 U.S.C) and conform to all applicable Federal and State statutes and regulations.

No provision of a contract shall be construed to replace or conflict with the duties of County Clients' rights advocates designated in Welfare and Institutions Code Section 5500 et seq.

Individual psychiatrists, psychologists and other mental health professionals will render professional services to eligible voluntary or involuntary Clients on the same basis as they care for other Clients in Contractor's facility and will not discriminate against these Clients in any manner, including admission practices, placement in special wings or rooms, or provision of special or separate meals.

Attending psychiatrists and psychologists shall be members of the medical staff of Contractor, and be subject to the rules and regulations of said staff. Duration and limitation of services will be under the control of the attending psychiatrist or psychologist but will at all times meet broadly accepted community standards of quality of care and be subject to Contractor utilization review decisions.

D. Outcome Objectives

1. For completed episodes, there will be no more than ten percent (10%) recidivism of Clients within thirty (30) days following discharge.
2. For completed episodes, Contractor will maintain or reduce the 2009/10 combined average length of stay.

Contractor will make best efforts to meet such goals, but failure to meet any or all of these goals does not constitute a breach, material, or otherwise of the Agreement. County's payment obligation is in no way contingent on meeting any of the stated goals.



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

F. Contractor shall provide all pertinent documentation required for Federal Medi-Cal reimbursement.

G. Client Rights

Contractor will comply with County policies and procedures relating to Client's rights and responsibilities.

H. Availability and Accessibility of Service

Contractor shall offer hours of operation that are no less than the hours of operation offered to commercial enrollees, if the Contractor also serves enrollees of a commercial plan, or that are comparable to the hours the Contractor makes available for Medi-Cal services that are not covered by the County or another Mental Health Plan, if the Contractor serves only Medi-Cal Clients.

I. Compliance Plan and Code of Conduct

Contractors providing Federally funded health services may not employ any persons deemed an Ineligible Person by the Office of the Inspector General in the provision of services for the County through this agreement. Any employee(s) of contractor determined to be an Ineligible Person will be removed from responsibility for, or involvement with, County Clients or operations. An "Ineligible Person" is an individual who (1) is currently excluded, suspended, debarred or otherwise ineligible to participate in Federal health care programs, or (2) has been convicted of a criminal offense related to the provision of health care items or services and has not been reinstated in the Federal health care programs after a period of exclusion, suspension, debarment or ineligibility.

Contractors providing State funded health services may not employ any persons deemed an Ineligible Person by the California Department of Health Services (CDHS) in the provision of services for the County through this agreement. Any employee(s) of contractor determined to be an Ineligible Person will be removed from responsibility for, or involvement with, County Clients or operations. An "Ineligible Person" is an individual who has been (1) convicted of a crime involving fraud or abuse of the Medi-Cal program, or (2) suspended from the Federal Medicare program for any reason.

## Exhibit B

### Fiscal Provisions

In consideration of the services provided by Contractor in Exhibit A, marked "Scope of Services," County shall pay Contractor based on the following fee schedule:

#### A. Reimbursement Rates:

1. **Inpatient Hospital Medi-Cal Rate:** The per-diem rate established through negotiations between the provider and the MHP in the county in which the Contractor is located (host county) pursuant to Title 9 of the California Code of Regulations (CCR), Section 1751. Contractor shall provide County with a copy of this negotiated rate agreement with the host county annually, and that rate shall be effective concurrent with the dates specified in that agreement. This rate shall not include Inpatient Psychiatric Professional Fees.
2. **Inpatient Hospital Short Doyle/Uninsured Rate:** The per-diem rate established through negotiations between the provider and the MHP in the county in which the Contractor is located (host county) pursuant to Title 9 CCR, Section 1751. Contractor shall provide County with a copy of this negotiated rate agreement with the host county annually, and that rate shall be effective concurrent with the dates specified in that agreement. Separate rates shall be provided that include and that exclude Psychiatric Professional Fees.
  - a. County will authorize payment for non-Medi-Cal Clients only if the County initially assesses and refers Client for admission.
  - b. County will reimburse Contractor for any difference between the portion paid by a third party insurer and the Short Doyle/Uninsured rate.
3. **Hospital Administrative Day Rate:** The rate established by the California Department of Mental Health as specified in Title 22 CCR, Section 51542(a)(3) for Fee-For-Service/Medi-Cal hospitals. All rates shall be as evidenced in a duly issued California Department of Mental Health Information Notice and shall be effective upon the date specified in said Notice.

The Hospital Administrative Day Rate listed in the negotiated rate agreement between the host county and Contractor shall be considered illustrative only. The Hospital Administrative Day Rate shall be as promulgated by the California Department of Mental Health pursuant to Title 22, CCR Section 51542(a)(3).

4. **Inpatient Psychiatric Professional Rate:** Shall be no greater than the daily rate negotiated between the Contractor and the host county for the period of service. Contractor shall provide County with a copy of this negotiated rate agreement with the host county annually, and that rate shall be effective concurrent with the dates specified in that agreement.
- B. County anticipates revenues from various sources to be used to fund services provided by Contractor through this Agreement. Should actual revenues be less than the amounts anticipated for any period of this Agreement, the maximum payment obligation and/or payment obligations for specific services may be reduced at the discretion of the Director of Health Services or designee.
- C. The Hospital Inpatient and Hospital Administrative Day Medi-Cal Rates, as negotiated between the Contractor and the host county, are inclusive of all inpatient hospital services including hospital based ancillary services and routine hospital services, but do not include psychiatrist or psychologist services rendered to Clients under this Agreement. The Inpatient Psychiatric Professional rate is intended to cover psychiatrist or psychologist services rendered to clients under this Agreement. **It is the responsibility of Contractor to pay psychiatrists and psychologists rendering services under this Agreement. Reimbursement by County to Contractor may then occur pursuant to the terms specified in Article III of this Agreement.**
- D. The services provided for Medi-Cal beneficiaries will be authorized retroactively by the County of El Dorado Health Services Department, Mental Health Division staff. County Short Doyle/Uninsured Clients who may present at Contractor's facility without being pre-authorized by County per paragraph A above and other applicable terms of this Agreement are expressly excluded from reimbursement by County.
- E. Contractor shall bill its customary charges and submit claims to the State Department of Health Services fiscal intermediary (currently EDS – Electronic Data Systems) for claims payment for all Medi-Cal psychiatric inpatient services rendered in accordance with existing Medi-Cal billing requirements as evidenced in Title 22 CCR and this Agreement.
- F. Contractor shall submit invoices directly to the County for any Inpatient Psychiatric Professional Services provided to Medi-Cal Clients, which may include services rendered on the date of discharge.
- G. County may refer County Short Doyle/Uninsured Clients to Contractor, and in this event all terms of this Agreement pertain except that the Client is not required to be a Medi-Cal beneficiary. The rates identified as the Inpatient Hospital Short Doyle/Uninsured Rates, as negotiated between the Contractor and the host county, are inclusive of all inpatient hospital services including hospital based ancillary services and routine hospital services. The Hospital Inpatient and Hospital Administrative Day Short Doyle/Uninsured rates which include Inpatient Psychiatric Professional Fees are intended to cover days that include

psychiatrist or psychologist services rendered to clients under this Agreement and the rates that exclude these Psychiatric Professional Fees will cover days not involving psychiatrist or psychologist services. **It is the responsibility of Contractor to pay psychiatrists and psychologists rendering services under this Agreement. Reimbursement by County to Contractor may then occur pursuant to the terms specified in Article III of this Agreement.**

- H. Contractor shall bill any third party payor financially responsible for a Client's health care services. County shall only bear financial responsibility for the rates negotiated between the Contractor and the host county, less third-party liability and any Client share of cost, and to the extent that County inadvertently makes payments to Contractor above this level, County shall be entitled to recoup such reimbursement.
- I. It is expressly understood and agreed between the parties hereto that County shall not authorize payment to Contractor unless Contractor adheres to the policies and procedures specified in Exhibit C, marked "State Required Terms and Conditions." It is further agreed that County shall not authorize payment for services unless Contractor has provided County with evidence of insurance coverage as outlined in Section XVIII of this Agreement. COUNTY may provide retroactive authorization when special circumstances exist, as determined by the Health Services Director or the Director's designee.
- J. It is understood that any payments received from County or third party insurers for services rendered under this Agreement shall be considered as payment in full and Contractor cannot look to the Client for reimbursement for the units of service provided under this Agreement, except as provided for under Medi-Cal Share of Cost regulations or third party insurer co-pay/share of cost requirements.
- K. The Inpatient Hospital per-diem rate shall be billed for each Client who meets admission and/or continued stay criteria, documentation requirements, treatment and discharge planning requirements and occupies a psychiatric inpatient hospital bed at 12:00 midnight in the facilities of Contractor. However, a day of service may be billed if the Client is admitted and discharged during the same day provided that such admission and discharge is not within twenty-four (24) hours of a prior discharge.
- L. County will perform eligibility and financial determinations, in accordance with State Department of Mental Health Uniform Method of Determining Ability to Pay, for all Clients.
- M. Claims Certification and Program Integrity - Contractor shall comply with the following requirements in the provision of mental health services:
  - 1. Contractor shall comply with all Federal and State statutory and regulatory requirements for certification of claims, including Title 42, Code of Federal Regulations (CFR) Part 438, Sections 438.604, 438.606, and, as effective August

13, 2003, Section 438.608, as published in the June 14, 2002 Federal Register (Vol. 67, No. 115, Page 41112), which are hereby incorporated by reference.

2. Contractor certifies the following to the County, in writing under penalty of perjury, for each claim submitted for reimbursement for each Medi-Cal beneficiary with services included in the claim:

- a. An assessment of the beneficiary was conducted in compliance with the requirements established in this Agreement.
- b. The beneficiary was eligible to receive services at the time the services were provided to the beneficiary.
- c. The services included in the claim were actually provided to the beneficiary.
- d. Medical necessity was established for the beneficiary as defined under Title 9 CCR, Division 1, Chapter 11, for the service or services provided, for the timeframe in which the services were provided.
- e. A Client Plan was developed and maintained for the beneficiary that met all Client Plan requirements established in this Agreement.
- f. For each beneficiary with specialty mental health services included in the claim, all requirements for Contractor payment authorization for specialty mental health services were met, and any reviews for such service or services were conducted prior to the initial authorization and any re-authorization periods as established in this Agreement.
- g. Services are offered and provided without discrimination based on race, religion, color, national or ethnic origin, sex, age, or physical or mental disability.

N. Except as provided in Exhibit A, Section III, Paragraph B, relative to medical records, Contractor agrees to keep for a minimum period of three (3) years from the date of service a printed representation of all records, which are necessary to disclose fully the extent of services furnished to the Client. Contractor agrees to furnish these records and any information regarding payments claimed for providing the services, on request, within the State of California, to the California Department of Health Services; the Medi-Cal Fraud Unit; California Department of Mental Health; California Department of Justice; Office of the State Controller; U.S. Department of Health and Human Services, Managed Risk Medical Insurance Board or their duly authorized representatives, or the County.

O. Client Billing - Contractor shall not submit a claim to, demand or otherwise collect reimbursement from, the Client or persons acting on behalf of the Client for any specialty mental health or related administrative services provided under this contract except to collect other health insurance coverage, share of cost and co-payments. The Contractor shall not hold Clients liable for debts in the event that the County becomes insolvent, for costs of covered services for which the State does not pay the County, for costs of covered

services for which the State or the County does not pay the Contractor, for costs of covered services provided under this or other contracts, referral or other arrangement rather than from the County, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a Client with an emergency psychiatric condition.

- P. County May Withhold Payment - Contractor shall provide all pertinent documentation required for Federal Medi-Cal reimbursement (including initial and quarterly notices, assessment and service plans, and progress notes). The County may withhold payment for any and all services for which the required documentation is not provided, or if the documentation provided does not meet professional standards as determined by the County Utilization Review Coordinator.

## EXHIBIT C

### STATE REQUIRED TERMS AND CONDITIONS

#### **1. Utilization Review/Quality Assurance**

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

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

#### **2. Assurances**

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

#### **3. Cost Report**

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

#### **4. DMH -Special Terms and Conditions**

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

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

#### **5. NON-DISCRIMINATION CLAUSE**

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

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

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

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

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

## **6. AUDIT**

Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, the Auditor General, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).

## **7. Transfer of Care**

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

## **8. Inspection Rights**

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

b. The Contractor agrees to make all of its books and records, pertaining to the goods and services furnished under the terms of the Agreement, available for inspection, examination or copying by the DMH, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the Contractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the DMH's fiscal year in which the subcontract was in effect.

c. The Contractor agrees to include in any subcontractor's agreement the requirement to make all of its books and records, pertaining to the goods and services furnished under the terms of the subcontract, available for inspection, examination or copying by the DMH, DHS, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives, at all reasonable times at the subcontractor's place of business or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least five years from the close of the DMH's fiscal year in which the subcontract was in effect.

## **9. Additional Contract Provisions**

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

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



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

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

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

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

#### **10. Inpatient Contracts and Subcontracts**

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

#### **11. Assignment or Delegation**

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

#### **12. Hold Harmless**

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

#### **13. Additional Requirements Based on Federal Regulations**

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

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

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

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

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

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

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

**DEPARTMENT OF MENTAL HEALTH**  
**TITLE**  
**By (Contractor)**

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

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

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

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

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

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

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

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

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

#### LEGAL NOTICE

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

#### 7. PROVISIONS RELATING TO DATA.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

30. AUDITS, INSPECTION AND ENFORCEMENT.

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

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

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

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

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

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

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

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

1. CONFIDENTIALITY AND INFORMATION SECURITY PROVISIONS.
  - A. The Contractor shall comply with applicable laws and regulations, including but not limited to Sections 14100.2 and 5328 et seq. of the Welfare and Institutions Code, Section 431.300 et seq. of Title 42, Code of Federal Regulations, and the Health Insurance Portability and Accountability Act (HIPAA), including but not limited to Section 1320 d et seq. of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 142, 160, 162 and 164) regarding the confidentiality and security of individually identifiable health information (IIHI).
  - B. Permitted Uses and Disclosures of IIHI by the Contractor.
    - 1) *Permitted Uses and Disclosures.* Except as otherwise provided in this Agreement, the Contractor, may use or disclose IIHI to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate federal or state laws or regulations.
    - 2) *Specific Uses and Disclosures Provisions.* Except as otherwise indicated in the Agreement, the Contractor may:
      - a) Use and disclose IIHI for the proper management and administration of the Contractor or to carry out the legal responsibilities of the Contractor, provided that such use and disclosures are permitted by law.
      - b) Use IIHI to provide data aggregation services to DMH. Data aggregation means the combining of IIHI created or received by the Contractor for the purposes of this contract with IIHI received by the Contractor in its capacity as the Contractor of another HIPAA covered entity, to permit data analyses that relate to the health care operations of DMH.
  - C. Safeguards. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities. The information privacy and security program shall reasonably and appropriately protect the confidentiality, integrity, and availability of the IIHI that it creates, receives, maintains, or transmits; and prevent the use or disclosure of IIHI other than as provided for by this Agreement. The Contractor shall provide DMH with information concerning such safeguards as DMH may reasonably request from time to time.

The Contractor shall implement administrative, technical, and physical safeguards to ensure the security of DMH information on portable electronic media (e.g., floppy disks and CD-Rom) and in paper files. Administrative safeguards to be implemented shall include, but are not limited to training, instructions to employees, and policies and procedures regarding the HIPAA Privacy Rule. Technical safeguards to be implemented shall include, but are not limited to, role based access, computer passwords, timing out of screens, storing laptop computers in a secure location (never leaving the equipment unattended at workplace, home or in a vehicle) and encryption. Physical safeguards to be implemented shall include, but are not limited to, locks on file cabinets, door locks, partitions, shredders, and confidential destruct.
  - D. The Contractor shall implement appropriate authentication methods to ensure information system access to confidential, personal (e.g., IIHI) or sensitive data is only granted to properly authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), the Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-68 and the SANS Institute Password Protection Policy. The Contractor shall:
    - 1) Implement the following security controls on each server, workstation, or portable (e.g., laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
      - a) Network-based firewall and/or personal firewall
      - b) Continuously updated anti-virus software
      - c) Patch-management process including installation of all operating system/software vendor security patches

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

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

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

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

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



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

EXHIBIT D

HERITAGE OAKS HOSPITAL  
*PERFORMANCE IMPROVEMENT PLAN 2010*  
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**HERITAGE OAKS HOSPITAL  
PERFORMANCE IMPROVEMENT PLAN  
2010**

**MISSION**

Heritage Oaks Hospital is a private, for-profit facility providing collaborative mental health services to restore and improve patient mental health and quality of life.

We do this through optimal use of human, fiscal, environmental and community resources while maintaining a safe, confidential, ethical and supportive continuum of care.

We accomplish this by continuous quality improvement, market responsiveness and regulatory compliance with our commitment to the values of compassion, integrity, respect and responsibility.

Our commitment embraces:

- Respect and sensitivity for the individual
- Fair and consistent treatment
- Provision of the appropriate level of care for all patients
- Encouragement of employee ideas and perspectives
- Involvement of employees in decisions that affect them
- Empowerment of employees to act upon decisions made
- Fostering teamwork and harmony
- Provide opportunities for skill development, education and professional growth
- A shared vision of the company's mission and strategic direction

Within the framework of this mission, we seek to provide quality customer service to all those listed above, and the best clinical outcome possible. The focus of our daily activities will be on our internal and external customers, with an attempt to meet the expectations of those we serve within the constraints of the ever-changing healthcare field.

Value in healthcare is the appropriate balance between good outcomes, excellent care and services, and costs. To add value to the care and services provided, Heritage Oaks Hospital staff need to understand the relationship between perception of care, outcomes, and costs and how the processes carried out affect these issues.

Performance improvement (PI) focuses on improving the important functions and processes of the organization in order to increase the quality of care and patient outcome, to enhance the value of its services and to improve operational efficiency.

## **I. PURPOSE:**

The purpose of the Performance Improvement Plan (PIP) is to:

1. Determine priorities for improving systems, processes, and patient safety activities.
2. Identify a framework for improving and sustaining improved performance of organization-wide systems and process through a planned systematic approach of plan, design, measurement, analysis and improvement of services provided.

This plan supports the concept that, through collaboration, systems will be more effective, staff will have greater skills, and patient outcome components will be improved.

Through ongoing endeavors of the leadership of the medical, professional, clinical support and administrative staff, this facility strives to provide the best possible care and services with available resources, while being consistent with the mission, vision, values, goals and objectives, and plans of the organization.

## **II. GOAL:**

To provide a framework and motivation for improvement of patient health outcomes and customer satisfaction by design of effective, organization-wide processes followed by measurement, assessment, and improvement of those processes.

### **OBJECTIVES:**

- To establish data bases internally and externally that will allow scientific measurement of the improvement processes, outcomes of the actions taken and reporting this information by aggregate or individual analysis
- To continue to provide staff education regarding the principles and tools of Performance Improvement
- To provide criteria for identifying and prioritizing improvement, and patient safety activities.
- To involve all services and disciplines in improvement activities
- To synthesize information obtained from performance outcome data when determining priorities for improving systems/ processes
- To facilitate the assessment of individual competence and performance including physician peer review on an ongoing basis
- To provide the framework for planning, directing, coordinating and improving patient care and patient safety for psychiatric and addiction services for Inpatient, Outpatient, and Partial Programs
- To support the design of new processes, assist in the implementation, determine criteria for assessment of effectiveness

## **III. Scope**

The Performance Improvement Plan is dedicated to improving patient care, patient safety, and value of service and thereby the performance of all professionals. In doing so, the provision of the highest quality and most appropriate care is achieved. The scope of the Performance Improvement Plan covers all aspects of the organization. Occurrences that are outside of the Hospital's expected performance standards will be evaluated. These will also

include evaluations of sentinel and adverse clinical events as defined by the Joint Commission of Accreditation of HealthCare Organizations.

#### **IV. ORGANIZATION AND RESPONSIBILITY**

The framework for the scope of care and services is identified by the leadership of the organization. This is accomplished through direction, implementation, and coordination. The ultimate improvement of services throughout the organization is recognized as the responsibility of all the leaders of the organization.

The scope of the PI Program includes at least the activities identified for the following structures:

##### **A. GOVERNANCE**

###### **Role**

The Board delegates responsibility of the implementation of the Performance Improvement Plan and day-to-day operations that are based on Performance Improvement to the Chief Executive Officer (CEO) & the Medical Staff. The Board further authorizes the CEO and Medical Staff to establish and maintain the appropriate departments and committees to execute this plan.

###### **Responsibility**

The Board of Directors has the ultimate authority and responsibility for adopting an organization-wide plan to assess and improve the quality of care provided and to assure quality care that is:

1. Efficacious and appropriate for each individual patient/resident
2. Available in a timely manner to those persons who need it
3. Effective and continuous with other care and care providers, and that it is efficient, caring, and respectful

##### **B. Medical Executive Committee**

###### **Role**

To direct specific performance improvement activities and provide peer review routinely and when patient care concerns are identified as well as determine the use of the information in the peer review process and in renewing or revising of clinical privileges.

###### **Responsibility**

The Medical Staff is responsible to participate in the performance improvement process to improve clinical and non-clinical processes that require medical staff/professional staff leadership or participation. Where a clinical process is the primary responsibility of physicians, physicians take the leadership role in improving the process.

The Medical Executive Committee, as the representative of the Medical Staff, is responsible for the organization of the performance improvement activities of the medical staff. The Medical Executive Committee carries out the following activities.

1. Receive and act on reports from Performance Improvement Council, medical staff committees, clinical programs and other department/service areas relevant to patient care.
2. Communicate to medical staff members' findings, conclusions, recommendations, and actions taken to improve organizational performance.

### C. Leadership

#### Role

The leaders set expectations, develop plans, and manage processes to assess, improve, and maintain the quality of governance, management, clinical, and support activities.

#### Membership

In addition to the Board of Directors, the leadership of the facility includes the Chief Executive Officer, Chief Financial Officer, officers of the Medical Staff, Facility Medical Director, Program Medical Directors, and members of the Senior Management Team which includes representation from all department/ services in the organization.

#### Responsibility

They are responsible for the implementation of the Performance Improvement Program.

1. **Planning**
  - a. Establish mission and vision statements for the organization that reflect range, strategic, and operational plans; resource allocation; and development of organizational and corporate policies
  - b. Directing and designing new services and processes for the delivery of services
  - c. Ensure that patient care and support services are well organized and directed and, through the annual review of performance evaluations, is staffed in a manner commensurate with the scope of services offered by each program
2. **Implementing and coordinating services.** After a service is planned, it is important to assure integration of patient care and support services throughout that continuum of care.
3. **Improving Services**
  - a. Establish and approve goals and objectives for each program, department, and any facility-wide services

- b. Oversee the design of a program to monitor performance through data collection, analyze current performance, and improve and sustain improved performance

## V. Performance Improvement Council

### Role

The role of the Performance Improvement Council is to facilitate the organization in the plan, design, analysis, and improvement of processes and patient safety activities. The Council has broad authority to solicit ideas and opinions from within the entire organization and enlist participation of any individuals within the facility.

### Structure

The Performance Improvement Council is a multidisciplinary team led by the CEO or designee and comprised of the leadership team and as needed, other representatives from the medical staff, and from all levels of the organization as designated by function necessary to the Council.

### Responsibility

The Performance Improvement Council is responsible for the following:

- A. Development of the Performance Improvement Plan (*design*)
- B. Coordinate organization-wide performance improvement activities as designed in the PI Plan (*function*)
  1. Ensure that patient care areas and organizational functions are included in the performance improvement process.
  2. Management of the hospital's patient safety program.
- C. Establish internal systems of measurement to evaluate compliance with community and Corporate-driven standards. Implementation of a systematic process to collect data used to: (*measure*)
  1. Monitor the performance of processes that involve risks or may result in sentinel events
  2. Monitor performance of areas targeted for future study
  3. Monitor improvements in performance
  4. Measure level of performance and stability of important existing processes
- B. Prioritize and select critical issues for improvement. Facilitation of facility-wide performance improvement activities of aggregation and analysis of data (*assess*)
  1. Ensures that data are systematically aggregated and analyzed on an ongoing basis
  2. Ensures that appropriate statistical techniques are used to analyze and display data
  3. Assists the organization to compare its performance over time and with other sources of information

4. Assists analyzing undesirable patterns or trends in performance that could lead to critical, or sentinel events
  5. Assists in identifying areas for possible improvement of existing processes and patient safety
  6. Ensure that improved performance is achieved and sustained
  7. Sanction Performance Improvement Teams, coordinate and delegate performance improvement activities
- E. Increase awareness and involve staff at all organizational levels in performance improvement activities (*improve*)
- F. Review the results of all monitoring evaluation and performance improvement activities, synthesize the collected data to evaluate the effectiveness of PI activities, modify activities based on findings (*design-redesign*)
1. Evaluate the effectiveness of the PI Program annually, assess achievement toward established goals, revise as indicated
  2. Ensure that new or modified processes are designed well
- G. Regular communication with the Medical Staff and Board of Directors through reporting of PI activities

## **VI. Performance Improvement Teams**

### Role

Performance Improvement Teams are identified and appointed by the Performance Improvement Council to evaluate processes, key functions, or services. Team members are selected based on their knowledge, experience, and involvement with the process and the mission boundaries.

### Responsibility

1. The teams will analyze the process selected using various statistical tools and techniques
2. The team leader will coordinate the meetings, and ensure that a record of all completed reviews, evaluations, and process improvement activities is maintained
3. The team leader will assign responsibility for time-keeper, scribe, and may assume responsibility for facilitator
4. A physician co-leader will be assigned as indicated
5. The teams will identify performance measures appropriate for monitoring performance of the process being studied, including but not limited to:
  - a. measures identifying events they were intended to measure
  - b. measures with a documented numerator and denominator statement or description to which measure is applicable
  - c. measures with defined data elements and allowable values
  - d. measures with detectable changes in performance over time
  - e. measures allowing comparison over time
6. The teams will present their recommendations for improvement of the defined process to the Performance Improvement Council



## VII. Scope of Performance Improvement Activities

### Plan

This facility uses a systematic approach for improving performance, and establishes necessary processes and mechanisms. In order to achieve appropriate collaboration in an interdisciplinary manner: an organized, systematic, organization wide approach to process design and performance measurement, analysis and improvement is indicated.

Priorities are identified through various organizational activities, which include but are not necessarily limited to, development of mission and vision, strategic planning and budget development. A data-driven prioritization shall be adhered to. The following criteria will be utilized when synthesizing data and reviewing recommendations to determine the prioritization of identified opportunities for improvement.

High Risk + High Frequency

High Risk + Low Frequency

Low Risk + High Frequency

Low Risk + Low Frequency

### Design

When a need or opportunity arises for a new process or service, or function or process significantly changes within the organization, the goal is to design an effective and safe process. The concepts of performance improvement will be applied to provide a basic set of performance expectations that can be measured, assessed, and improved over time.

The leadership, through the Senior Management Team and the Performance Improvement Council, designs and executes a mechanism through which the plan is carried out. They set priorities for improvement, and assign responsibility for improving organizational performance facility-wide. They provide necessary resources, recommend time and space, and promote collaboration.

The following parameters will be considered prior to implementation of new processes or projects:

1. Ensure that it is consistent with the mission and plans of the hospital
2. Ensure that patient safety has been considered
3. Ensure that the hospital has considered the latest information and literature
4. Ensure that we have considered comparative data to see if such a project has worked in other facilities
5. Ensure that baseline performance expectations have been established
6. Ensure that it is consistent with the needs and expectations of key constituents
7. Ensure that it is consistent with sound business practice/ principles

### Measure

To objectively review the organizations performance, data are systematically gathered on key processes and outcomes related to patient care and organizational processes. Information is gathered from a variety of sources. Data are collected by medical record review, from Information Management services, patient satisfaction surveys, employee surveys, and external sources (HBIPS), payers, etc. Data collection is based on our mission,

available resources, and functions as well as concerns from our patients, their families, staff, payers, and other customers. The following functions have been determined to have the greatest impact on outcomes at Heritage Oaks Hospital:

1. Patient-focused functions:
  - a. Patient rights and organizational ethics
  - b. Assessment of patients
  - c. Care of patients, including
    - i. Medication use
    - ii. Restraint use
    - iii. Seclusion
    - iv. Care or services provided to high-risk populations and
  - d. Education
  - e. Continuum of care
2. Organization functions:
  - a. Improving organization performance
  - b. Leadership
  - c. Management of the environment of care
  - d. Management of human resources
  - e. Management of information
3. Risk management
4. Utilization management
5. Quality control
6. Staff opinion & needs
7. Outcomes of processes or services
8. Customer needs and expectations
9. Infection control and surveillance reporting
10. Financial data
11. Appropriateness and effectiveness of pain management
12. Competency, patterns and trends of staff's learning needs
13. Staffing effectiveness

Data is also collected to monitor the performance of processes that involve risks or may result in sentinel events in other organizations. The Safety/ Risk Management Committee reviews pertinent information obtained from the Sentinel Event Alert published and distributed by Joint Commission. Annually the hospital reviews the Joint Commission Safety Goals, and implements those goals identified to improve the safety of our patients based on external and internal process improvements. The Safety/ Risk Management Committee determines whether the information reviewed is relevant to this organization and is responsible for making follow-up recommendations to the Performance Improvement Council.

#### HBIPS –

The organization also participates in the Hospital Based Inpatient Psychiatric Services (HBIPS) Quality Core Measures in collaboration with Joint Commission. HBIPS is an

external monitoring system, which provides both an internal and external reference database on comparison issues that affect a substantial patient population. It measures and tracks patient treatment outcomes. The HBIPS indicators are as follows:

- HBIPS-1: Admission screening within 3 days for violence risk, substance abuse, psychological trauma history and patient strengths.
- HBIPS-2: Hours of physical restraint use
- HBIPS-3: Hours of seclusion use
- HBIPS-4: Patients discharged on 2 or more antipsychotic medications.
- HBIPS-5: Patients discharged on 2 or more antipsychotic medication with documented justification
- HBIPS-6: Post discharge continuing care plan created
- HBIPS-7: Post discharge continuing care plan transmitted to the next provider by the 5<sup>th</sup> post discharge day

### Aggregation and Analysis

The data collected are transformed into information by aggregating and analyzing the data so that conclusions may be drawn about its performance of a process or the nature of the outcome. An attempt is made to answer the following questions when completing data analysis:

1. What is our current level of functioning?
2. How stable are our current processes?
3. Are there areas that could be improved?
4. Was a strategy to stabilize or improve performance effective?
5. Did we meet design specifications for processes?

Data is systemically aggregated and analyzed on an ongoing basis. The frequency with which the data is aggregated is determined by the activity being studied. Appropriate statistical techniques are utilized to analyze and display data. Some tools include, but are not limited to:

1. Run charts
2. Control charts
3. Histograms
2. Pareto charts
4. Cause-and-effect or fishbone diagrams

The organization compares performance over time with similar organizations, with standards, and best practices. External sources for comparison include:

1. Performance compared to performance of similar processes in other organizations
2. Performance compared to external sources of information.
3. Recent scientific, clinical and management literature
4. Well-formulated practice guidelines or parameters
5. Performance measures
6. Standards that are periodically reviewed and revised

Undesirable patterns or trends in performance are intensively analyzed per policy if comparisons show that:

1. Important single events, levels of performance, patterns or trends vary significantly from those expected

2. Performance varies significantly and undesirably from other organizations
3. Performance varies significantly and undesirably from recognized standards or practice guidelines
4. When a Sentinel Event occurs

Intense analysis (Root Cause Analysis) will be performed when, but not limited to when the following events occur:

1. The event has resulted in the unanticipated death of major loss of function not related to the natural course of the patient's illness or underlying condition
2. Suicide of an inpatient.
3. Rape

Failure Mode Effects Analysis (FMEA) are selected each year as a prevention measure, the selection process is based upon a numerical value totaling severity, occurrence and detection systems.

### Improve

Performance improvement is achieved and sustained through prioritization of improvement activities, using appropriate resources and involving appropriate staff, disciplines and departments closest to the process, function, or service identified for improvement.

Changes to improve performance are identified, planned, and tested. Effective changes are incorporated into standard operating procedure. As well, improvements are sustained through staff education, data collection on the improvement and feedback between staff and leaders.

## **VIII. Organization Wide Approach Performance Improvement Model**

The Focus-PDCA Model, which is an extension of the Shewhart/ Deming Model, is the approved methodology for Performance Improvement Team activities. To ensure that consistent databases can be developed and shared, this will be the only approach.

Phases of this Model include: (preliminary steps): Focus

- F - Find a process to improve
- O - Organize a team that knows the-process
- C - Clarify current knowledge of the process
- U - Understand causes of process variation
- S - Select the process improvement

Analysis and Improvement Step: PDCA

- P - Plan (set goals, design process)
- D - Do (data collection and analysis)
- C - Check (verify results and variances in performance)
- A - Act (implement revisions/corrective actions)

All employees are educated on the use of this model during new employee orientation.

### **IX. Annual Review and Evaluation of Performance Improvement Program**

The Performance Improvement Plan is reviewed and evaluated at least annually to ensure that the program is comprehensive, shows minimal duplication of effort, is cost effective, maintains performance improvement principles, results in improved patient care outcomes and clinical performance and meets the needs of the organization and the community it serves.

In evaluating the PI Plan, the following questions will be considered:

1. Are the plan's goals being met with the current objectives?
2. Are the strengths of the program maintained? Are weaknesses corrected?
3. Are the plan's goals and activities meeting current standards, regulations and other review requirements?
4. Are the program's activities comprehensive, involving all relevant functions?
5. Are the leaders cognizant of their roles?
6. Are important and meaningful problems/ issues identified, analyzed, and resolved?
7. Are program activities adequately and accurately documented?
8. Are reporting mechanisms adequate (frequent enough? clear communication tools?)
9. Are PI findings being used to plan education programs to facilitate resource allocation and to compliment performance appraisals and the appointment/ reappointment process?
10. Is the program coordination conducted efficiently and effectively?

Outcomes from the analysis are integrated into the goals and the objectives of the facility, programs, and departments/services. Revisions to the program will be presented to the Medical Executive Committee, and the Board of Directors for review and approval.

### **X. Confidentiality**

Policies pertaining to confidentiality are strictly enforced. All Council members will sign a confidentiality agreement annually to protect any information disclosed during the meeting. *(See attachment A)*

Performance improvement/ quality management information is maintained in a manner that will preserve its character as not discoverable or admissible in a court of law as provided by Federal and State law.

Reference: Joint Commission Standards Manual

Attachment A

**Heritage Oaks Hospital  
Confidentiality Agreement**

As a member of the Quality Council or Medical Executive Committee I will be involved in the measurement, assessment and performance improvement of governance, management, clinical and/ or support functions and processes of the organization. I will also be involved in the in-depth assessment of patient care information to support the quality management, utilization management, and governing bodies.

As a Council/ Committee member, I recognize that I will be dealing with confidential information. I agree to respect and maintain the confidentiality of all disclosures, deliberations, records and other information generated in connection with my activities and to make no disclosure of such information except to persons authorized to receive it in the conduct of administrative, governing body, and/ or medical staff activities.

This agreement is made to support and comply with the applicable provisions of the Federal Health Care Quality Improvement Act of 1986 as described in Section 3, Title 10USC 1102.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_

Position: \_\_\_\_\_ Department: \_\_\_\_\_