

AGREEMENT FOR SERVICES #3592
Acute Inpatient Mental Health Services

THIS AGREEMENT is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and BHC Health Services of Nevada, Inc., a Nevada corporation, doing business as West Hills Hospital, whose principal place of business is 1240 East Ninth Street, Reno, Nevada 89512 and whose Agent for Service of Process CSC Services of Nevada, Inc., 2215-B Renaissance Drive, Las Vegas, Nevada 89119 (hereinafter referred to as "Contractor");

RECITALS

WHEREAS, County has a legal obligation to provide eligible County residents (adults and children) with access to designated mental health services, including acute psychiatric care, in accordance with Welfare and Institutions Code (WIC) sections 5600 et seq., 5775 et seq., 14000 et seq., and 17000 et seq., and pursuant to applicable laws and agreements with the State of California; and

WHEREAS, Contractor is willing to provide inpatient acute psychiatric services in accordance with this Agreement to persons for whom County has undertaken in order to provide designated mental health services, including Bronzan-McCorquodale (hereinafter referred to as Short-Doyle in accordance with WIC 5600 (b)), Uniform Method of Determining Ability to Pay (UMDAP) medically indigent individuals and Medi-Cal Specialty Mental Health Services (SMHS) patients (collectively "Clients"); and

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

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

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

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

ARTICLE 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. (California Code of Regulations (CCR) title 9, sections 1810.201, 1810.238, 1810.350, and 1810.430(d)(5))
- B. Administrative Day Services: 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 that meet the needs of the client. (CCR title 9, sections 1810.202, 1810.238, and 1810.430(d)(5))
- C. Client: Shall mean both any person designated as a "Medi-Cal Beneficiary" and any "Short Doyle/Uninsured Client" as defined in this Agreement.
- D. County of Origin: For purposes of this Agreement, the county of origin is the County of El Dorado (the county of primary residence for the client).
- E. Hospital-based Ancillary Services: Those services received by a client admitted to a hospital, other than routine hospital services, including but not limited to prescription drugs, laboratory services, x-ray, electroconvulsive therapy (ECT), and magnetic resonance imaging (MRI). (CCR title 9, section 1810.220)
- F. Medi-Cal Beneficiary: Any person certified as eligible for Medi-Cal in the County of El Dorado according to CCR title 22, section 50024 and WIC section 14252, and as indicated by a number 09 County code in their Medi-Cal identification number.
- G. Mental Health Plan (MHP): The State of California authorizes counties to provide mental health services to the community via an Agreement with the State. Thereafter, the County so designated is referred to as the MHP for that locality.
- H. Inpatient Psychiatric Support Services: Specialty mental health services provided to a Medi-Cal Beneficiary by a licensed psychiatrist with hospital admitting privileges while the beneficiary is in a hospital receiving psychiatric inpatient hospital services. Inpatient Psychiatric Support services do not include routine hospital services or hospital based ancillary services. (CCR title 9, section 1810.237.1)
- I. Psychiatric Inpatient Hospital Services: Shall mean both Acute Psychiatric Inpatient Hospital Services and Administrative Day Services provided in a hospital. (CCR title 9, section 1810.238)
- J. Short Doyle/Uninsured Client: Shall mean a client without Medi-Cal or other health insurance, or a Medi-Cal beneficiary between the ages of twenty-two (22) through sixty-four (64), inclusive, for whom Contractor cannot receive Medi-Cal reimbursement due to the Federal Institution for Mental Disease (IMD) exclusion, but has been referred for treatment by County as documented by a completed and signed Short Doyle / Uninsured Client Referral attached hereto as Exhibit A and incorporated by reference herein.

ARTICLE II

Scope of Services: Contractor acknowledges that this Agreement is funded in whole or in part with funds from the State of California and Federal Government.

A. Contractor Responsibilities:

- 1) Program Services
 - a) Contractor shall provide Acute Psychiatric Inpatient Hospital Services and Administrative Day Services at its facility in the County of Washoe for clients of County of El Dorado, in a manner consistent with the terms and provisions of this Agreement, and the requirements established in Article IV titled "Compensation for Services." (CCR title 9, sections 1810.430 (d), 1810.238, 1810.201, 1810.202 and 1810.350)
 - b) Contractor shall provide Inpatient Psychiatric Support Services for the treatment of acute episodes of mental illness meeting the medical necessity criteria and documentation requirements covered by the existing regulations, according to the requirements and standards as promulgated by this Agreement, to residents of the County of El Dorado who meet the criteria for mental health services pursuant to WIC section 5600.3 in accordance with Contractor's license and in accordance with CCR title 9, Division 1 and Medi-Cal billing requirements.
 - c) Contractor shall ensure all required assessments and documentation are completed within the following timeframes:
 - i. Within eight (8) hours of admission, the Contractor's Registered Nurse shall complete a Nursing Assessment, including history of illness, Client's legal status, and reason for admission as stated by the Client and/or others significantly involved. This should culminate in development of a nursing care plan for the Client by the nursing staff.
 - ii. Within twenty-four (24) hours of admission, a Psychiatrist or Nurse Practitioner/Physician Assistant under the supervision of Contractor's Psychiatrist shall complete a Psychiatric History, which includes a mental health status examination; onset of illness and circumstances leading to admission; attitudes and behavior; estimate of intellectual functioning, memory functioning, and orientation; substance abuse history and an inventory of the Client's assets in descriptive, not interpretive, fashion.
 - iii. Within twenty-four (24) hours of admission, an Admission History and Physical will be completed in accordance with CCR title 22. Contractor will ensure access to appropriate medical/specialty services as needed per licensing regulations.
 - iv. Within sixty (60) hours of admission, a complete Psychosocial Assessment of the Client shall be completed by a licensed Social Worker, which includes reports of interviews with Client(s), family members and others.
 - v. Within seventy-two (72) hours of admission, an initial Treatment Plan shall be developed by a multi-disciplinary team, following the initial treatment planning conference. The Treatment Plan will be a customized response to the Client's specific issues and treatment goals.

- d) On a daily basis, the Client shall receive in-person face-to-face contact by a Psychiatrist or Nurse Practitioner/Physician Assistant under the supervision of Contractor's Psychiatrist with documentation of the intervention(s) provided. Psychiatric staff shall complete comprehensive psychiatric and medication evaluations, and ensure provision of daily medication as indicated.
 - e) Contractor shall comply with State requirements in providing timely notification of admission to County Utilization Review Unit.
 - f) To request payment, Contractor shall:
 - i. Medi-Cal Clients: Submit to County Utilization Review Unit a Treatment Authorization Request (TAR) or subsequent treatment authorization form, with supporting medical records, for each Medi-Cal Beneficiary within fourteen (14) days of discharge. Contractor may appeal a County disallowance as provided in CCR title 9, section 1850.315.
 - ii. Short-Doyle / Uninsured Clients: Submit to County, pursuant to Article IV titled "Compensation for Services," an invoice with supporting medical records and a copy of the initial Short-Doyle / Uninsured Client Referral, for each Short-Doyle/Uninsured Client. County shall review the request and retroactively determine the authorized length of stay for each client based on medical necessity as documented in the medical records. Contractor may appeal a Short-Doyle/Uninsured Client disallowance in writing to the County. County's determination of Contractor's disallowance appeal will be final.
- 2) Administrative Services - Assurances
- a) No provision of this contract shall be construed to replace or conflict with the duties of "County patients' rights advocate" designated in WIC section 5500 et seq.
 - b) Individual psychiatrists and other mental health professionals will render professional services to eligible voluntary or involuntary clients at the same level of services as they care for other clients in Contractor's facility and will not discriminate against these clients in any manner, including hours of operation, admission practices, placement in special wings or rooms, or provision of special or separate meals. (CCR title 9, sections 1810.430 (d)(1) and 1810.430 (d)(2))
 - c) Attending psychiatrists shall be members of the medical staff of Contractor and shall be subject to the rules and regulations of said staff. Attending psychiatrists who are subcontractors shall be subject to the rules and regulations of Contractor's medical staff and requirements of this Agreement. Duration and limitation of services will be under the control of the attending psychiatrist but will at all times meet broadly accepted community standards of quality of care and be subject to Contractor utilization review decisions.

B. County Responsibilities

- 1) Referral of Short Doyle/Uninsured Clients: County shall document all referrals of Short Doyle/Uninsured clients by completing and submitting to Contractor a Short-Doyle Referral attached hereto as Exhibit A. The parties agree that County may

replace Exhibit A with an updated Exhibit A by giving notice in accordance with Article XIV titled "Notice to Parties" to the original Agreement without requiring amendment to this Agreement. County will authorize payment for Short Doyle/Uninsured clients only if initially referred for admission by County. County shall review all inpatient services retrospectively for medical necessity and payment as defined in paragraph B herein.

- 2) County shall provide retroactive review of client medical records submitted by Contractor to determine authorization for payment:
 - a) Medi-Cal Beneficiaries: Upon receipt and review of the TAR and medical record, County Utilization Review shall approve or deny days requested. County Utilization Review shall then fax or mail the completed TAR to the State's Fiscal Intermediary, Conduent, or subsequent replacement Fiscal Intermediary, for payment of approved per diem rates. Utilization Review shall fax a copy of the same document to Contractor for Contractor's records.
 - i. Authorized Inpatient Psychiatric Support Services will be submitted to County on a separate invoice and shall be paid from County directly to Contractor.
 - b) Short-Doyle / Uninsured Clients: County Utilization Review will approve or deny request for payment based on review of invoice and attached medical records as submitted by Contractor. Short-Doyle / Uninsured Client invoices may reflect separate per diem rates and Inpatient Psychiatric Support Services rates, or may be incorporated into a single combined rate, based on the Contractor's Agreement with the County.

ARTICLE III

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the dates from March 1, 2019 and continue until terminated by one of the parties pursuant to the provisions contained herein this Agreement under Article XIII titled "Default, Termination, and Cancellation" or Article XII titled "Fiscal Considerations."

ARTICLE IV

Compensation for Services:

- A. Rates: For the duration of this Agreement, reimbursement for services provided to both children and adults under this Agreement shall be at the rates established between the Contractor and the County for services for children or adults. In the event that the Agreement between Contractor and County establishes only a rate for adults, only a rate for children, or one rate for both adults and children all services provided under this Agreement shall be charged at the single rate set forth in Exhibit B, "Rate Schedule Medi-Cal and Short Doyle Clients" attached hereto and incorporated by reference herein. The appropriate 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 such admission and discharge is not within twenty-four (24) hours of a prior discharge. In the event Client is discharged and then re-

admitted within twenty-four (24) hours of discharge, the day of admission shall not be chargeable.

B. Hospital Inpatient Medi-Cal Rate:

- 1) The per diem rate is all-inclusive and shall be considered payment in full, subject to third party liability and patient share of costs, for psychiatric inpatient hospital services to a beneficiary. (CCR title 9, 1810.430 (d) (4)).
- 2) The per diem rate shall not be structured to provide incentives for Contractor to deny, limit, or discontinue medically necessary services to any beneficiary. (CCR title 9, 1810.430 (e))

C. Hospital Inpatient Short Doyle/Uninsured Rate:

County will authorize payment for clients not eligible for Medi-Cal reimbursement or other third party payer at this facility only if the County initially refers client for admission. The rates are all-inclusive including hospital based ancillary services, professional fees, and routine hospital services.

D. Hospital Administrative Day Services: The rates established by the California Department of Health Care Services (DHCS) as specified in CCR title 22, section 51542(a)(3) for Fee-For-Service/Medi-Cal hospitals. All rates shall be as evidenced in a duly issued DHCS Information Notice and shall be effective upon the date specified in said Notice. Hospital Administrative Day rates reflect those services provided as described in Article I titled "Definitions."

- 1) *Administrative Day Medi-Cal Rate:* The rate shall be no greater than the daily rate negotiated between the Contractor and the County, and is inclusive of all inpatient hospital services including hospital based ancillary services, professional service fees, and routine hospital services.
- 2) *Administrative Day Short Doyle/Uninsured Rate:* Hospital Administrative Day Short Doyle/Uninsured Rate: The rates are intended to cover all inpatient hospital services including hospital based ancillary services and may include the Psychiatric Inpatient Professional Services Rates, only if services of a psychiatrist are provided.

E. Other Fiscal Provisions: 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 County's Director of HHSA or Director's designee.

County Short Doyle/Uninsured clients who may present at Contractor's facility without being referred by County per Article II titled "Scope of Services," and other applicable terms of this Agreement, are expressly excluded from reimbursement by County. County may provide retroactive authorization when special circumstances exist, as determined by the County's Director of HHSA or Director's designee, based on Contractor's written request.

County will perform eligibility and financial determinations, in accordance with State Department of Health Care Services UMDAP, for all clients. (WIC sections 5709 and 5710 and CCR title 9, section 524.)

F. 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/or co-payments. The Contractor shall not hold clients liable for debts as follows:

- 1) In the event that the County becomes insolvent;
- 2) For costs of covered services for which the State does not pay the County;
- 3) For costs of covered services for which the State or the County does not pay the Contractor;
- 4) For costs of covered services provided under this or other contracts not authorized by County;
- 5) For costs of covered services provided via referral or other arrangement not authorized by County; or
- 6) For payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a client with an emergency psychiatric condition.

Contractor shall bill any third party payer financially responsible for a client’s health care services, and in such cases, County shall not bear any financial responsibility. To the extent that County inadvertently makes payments to Contractor when a responsible third party payer is determined to exist, County shall be entitled to recoup such reimbursement.

It is expressly understood and agreed between the parties hereto that County shall not authorize payment to Contractor unless Contractor adheres to the terms and conditions of this Agreement. 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 Article XVIII titled “Insurance” of this Agreement. County may provide retroactive authorization when special circumstances exist, as determined by the County’s Director of HHSA, or Director’s designee.

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 County Utilization Review staff, or if County deems services are not satisfactory.

Invoices shall be submitted along with supporting medical records documentation as noted below, for review and authorization.

- G. Invoices/Remittances: Invoices / Remittance shall be addressed as indicated in the table below or to such other location as County or Contractor may direct per Article XIV titled “Notice to Parties.”

Mail invoices to:	Mail remittance to:
Health & Human Services Agency – Mental Health Utilization Review Unit 768 Pleasant Valley Road, Suite 201 Diamond Springs, CA 95619	West Hills Hospital 1240 E. Ninth Street Reno, NV 89512 Attn: Accounts Receivable

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, except as set forth in the paragraph titled "Other Fiscal Provisions" and the paragraph titled "Client Billing" herein.

ARTICLE V

Maximum Obligation: The maximum contractual obligation under this Agreement shall not exceed \$200,000 during any fiscal year. A fiscal year shall be defined as the period commencing July 1st and ending June 30th of the following calendar year.

ARTICLE VI

Audits, Inspections, Monitoring: Contractor and/or subcontractor shall comply with the requirements set forth in this Article. Contractor shall ensure any Subcontractors are aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code (PCC) section 10115.10.

Contractor shall comply with audit requests by the County, at no cost to the County, including granting County access to Contractor's medical records as they relate to services provided to individual Clients who received mental health services.

The Contractor shall maintain and make available to auditors at all levels, county, State, and federal, if applicable, accounting and program records including supporting source documentation, and cooperate with all auditors.

The Contractor, or auditors performing monitoring or audits of the Contractor, or its subcontracting service providers shall immediately report to the County any incidents of fraud, abuse, or other criminal activity in relation to this Agreement.

In the event any billings for services that are subject to recoupment, or otherwise disallowed, are identified through a County, State or federal audit, the County may recover from Contractor the amount subject to recoupment and/or disallowed. Reimbursement from Contractor to County shall be remitted to County no later than six (6) months following the notification of recoupment and/or disallowance. Based upon written approval by the HHS Director, this reimbursement may be made via monthly installment payments for up to six (6) months.

A. Audits/Thresholds:

- 1) *If the Contractor is a nonprofit organization, as defined in Health and Safety Code [HSC] section 38040, and receives \$25,000 or more from any State agency under a direct service contract or agreement; the Contractor agrees to conduct an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to GAAS. This audit does not fulfill the audit requirements of Paragraph 1c below. The audit shall be completed by the fifteenth (15th) day of the fifth (5th) month following the end of the Contractor's fiscal year, and/or*
- 2) *If the Contractor is a nonprofit organization, as defined in HSC section 38040, and receives less than \$25,000 per year from any State agency under a direct service contract or agreement, the Contractor agrees to conduct a biennial single,*

organization wide financial and compliance audit, unless there is evidence of fraud or other violation of State law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph 1(c) below. The audit shall be completed by the fifteenth (15th) day of the fifth (5th) month following the end of the Contractor's fiscal year, and/or

- 3) *If the Contractor* expends \$750,000 or more in federal awards, either as a result of direct federal awards or by way pass-through funding from a State, County, or community based organization, the Contractor agrees to conduct an annual single, organization wide, financial and compliance audit according to the requirements specified in 2 Code of Federal Regulations (CFR) 200, Subpart F, "Audit Requirements"(Commonly known as an A-133), and shall be completed by the end of the ninth month following the end of the audit period.
- 4) If the Contractor submits to DHCS a report of an audit other than a Single Audit as identified in 2 CFR 200.501(b), the Contractor must also submit a certification indicating the Contractor has not expended \$750,000 or more in federal funds for the year covered by the audit report.
- 5) Contractor acknowledges that if total compensation under this agreement is greater than \$10,000.00, this Agreement is subject to examination and audit by the California State Auditor for a period of three (3) years, or for any longer period required by law, after final payment under this Agreement, pursuant to California GC section 8546.7. In order to facilitate these potential examinations and audits, Contractor shall maintain, for a period of at least three (3) years, or for any longer period required by law, after final payment under the contract, all books, records and documentation necessary to demonstrate performance under the Agreement.
- 6) Contractor shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services and activities furnished under the terms of the subcontract, or determinations of amounts payable available at any time for inspection, examination, monitoring, audit, or copying by County, DHCS, Centers for Medicare & Medicaid Services (CMS), Health and Human Services (HHS) Inspector General, the United States Comptroller General, their designees, and other authorized federal and State agencies (42 CFR section 438.3(h)). This audit right will exist for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later (42 CFR section 438.230(c)(3)(iii).) County, DHCS, CMS, or the HHS Inspector General may inspect, evaluate, and audit the subcontractor at any time if there is a reasonable possibility of fraud or similar risk. (42 CFR section 438.230(c)(3)(iv))
- 7) The Contractor, and subcontractors, shall allow the Department, CMS, the Office of the Inspector General, the Comptroller General of the United States, and other authorized federal and State agencies, or their duly authorized designees, to evaluate Contractor's, and subcontractors', performance under this contract, including the quality, appropriateness, and timeliness of services provided, and to inspect, evaluate, and audit any and all records, documents, and the premises, equipment and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time. Contractor shall allow such inspection, evaluation and audit of its records, documents and facilities, and those of its subcontractors, for ten (10) years from the term end date of this Contract or in the

event the Contractor has been notified that an audit or investigation of this Contract has been commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later. (See 42 CFR sections 438.3(h), 438.230(c)(3)(i-iii).) Records and documents include, but are not limited to all physical and electronic records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract including working papers, reports, financial records and documents of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries.

- 8) The Contractor, and subcontractors, shall retain all records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract, including Beneficiary grievance and appeal records identified in Attachment 12, section 2 and the data, information and documentation specified in 42 CFR parts 438.604, 438.606, 438.608, and 438.610 for a period of no less than ten (10) years from the term end date of this Contract or in the event the Contractor has been notified that an audit or investigation of this Contract has been commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later. (42 CFR section 438.3(u); See also section 438.3(h).) Records and documents include, but are not limited to all physical and electronic records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this Contract including working papers, reports, financial records and documents of account, beneficiary records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for beneficiaries.
- 9) Contractor agrees that the County, DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States, shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. 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, the Contractor agrees to include a similar right of the County and/or State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR title 2, section 1896).

B. Inspection:

- 1) Inspection shall occur at the Contractor's and/or subcontractor's place of business, premises, physical facilities, facility, office, or such part thereof as may be engaged in the performance of this Agreement in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least ten (10) years from the close of the State fiscal year in which the contract was in effect.
- 2) The County or State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the Contractor or subcontractor, the Contractor shall provide and shall

require subcontractors to provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

- 3) County shall, at its sole discretion, perform annual, or more frequent, on-site and/or off-site audit of services provided under this Agreement. The County may inspect the facilities, systems, books, and records of the Contractor to monitor compliance with this Agreement. Identification of any exceptions or findings with regard to compliance with the terms and conditions of this Agreement shall be brought to the attention of the Contractor. Upon notification of an exception or finding, the Contractor shall submit a written CAP, including a proposed timeline for correction of said finding or exception, within thirty (30) days. The County will review and approve or revise the proposed CAP, and, if necessary, provide technical assistance to bring the vendor into compliance.
- 4) Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to CCR title 9, sections 1810.380 and 1810.385.
 - a) The fact that the County inspects, or fails to inspect, or has the right to inspect, the Contractor's facilities, systems, and procedures does not relieve the Contractor of its responsibilities to comply with this Agreement. The County failure to notify the Contractor or require the Contractor's remediation of any unsatisfactory practice does not constitute acceptance of such practices or a waiver of the County enforcement rights under this Agreement.

C. Monitoring:

- 1) Audits and/or inspections by any representative of the Federal government, State government, or County may include the review of any and all terms related to this agreement with the Contractor. Audits and/or inspections by the County may be performed by way of, but limited to, annual Contract Monitoring Surveys, administered by the County. Contractors receiving a Contract Monitoring Survey shall, within sixty (60) days of receipt, complete and return the survey along with all documentation, details, and supporting materials required by the survey or otherwise necessary for the County to verify compliance with the terms and conditions of the Agreement. Failure to return the survey within the specified time period may result in the withholding of payment from the Contractor until such time as compliance with the terms of the Agreement can be verified. Verifying compliance may necessitate additional on-site reviews should information submitted by the Contractor be deemed insufficient or inaccurate.
- 2) Upon notification of an exception or finding of non-compliance, the Contractor shall submit evidence of corrective action within thirty (30) days, or otherwise as specified in the notice of required corrective action provided by the County. Continued non-compliance will be considered a breach which may lead to termination of this Agreement in accordance with Article XIII titled "Default, Termination, and Cancellation."
- 3) Contractor and/or subcontractor shall participate in the monitoring, reviews and/or audits of the County's records and documents by other State or federal agencies upon request of County.

ARTICLE VII

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

ARTICLE VIII

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 IX

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 X

Assignment and Delegation:

- A. Contractor is engaged by County for its unique qualifications and skills as well as those of its employees and subcontracted medical providers and services. Contractor shall not subcontract, assign or delegate services to providers excluded from participation in Federal health care programs under either section 1128 or section 1128A of the Social Security Act. (42 CFR section 438.214(d).)
- B. Any work or services specified in this Agreement which will be performed by other than the Contractor shall be evidenced by a written Agreement and contain:
 - 1) The activities and obligations, including services provided, and related reporting responsibilities. (42 CFR section 438.230(c)(1)(i).)
 - 2) The delegated activities and reporting responsibilities in compliance with the Contractor's obligations in this Agreement. (42 CFR section 438.230(c)(1)(ii).)
 - 3) Subcontractor's agreement to submit reports as required by the Contractor and/or the County.
 - 4) The method and amount of compensation or other consideration to be received by the subcontractor from the Contractor.
 - 5) Requirement that the subcontract be governed by, and construed in accordance with, all laws and regulations, and all contractual obligations of the Contractor under this contract.
 - 6) Requirement that the subcontractor comply with all applicable Medicaid laws, regulations, including applicable sub-regulatory guidance and contract provisions. (42 CFR section 438.230(c)(2).)
 - 7) Terms of the subcontract including the beginning and ending dates, as well as methods for amendment and, if applicable, extension of the subcontract.
 - 8) Provisions for full and partial revocation of the subcontract, delegated activities or obligations, or application of other remedies permitted by State or federal law

when the County or the Contractor determine that the subcontractor has not performed satisfactorily. (42 CFR section 438.230(c)(1)(iii).)

- 9) The nondiscrimination and compliance provisions of this Agreement.
 - 10) A requirement that the subcontractor make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services and activities furnished under the terms of the subcontract, or determinations of amounts payable available at any time for inspection, examination or copying by the County, DHCS, CMS, HHS Inspector General, the United States Comptroller General, their designees, and other authorized federal and State agencies. (42 CFR section 438.3(h).) This audit right will exist for ten (10) years from the final date of the contract period or from the date of completion of any audit, whichever is later. (42 CFR section 438.230(c)(3)(iii).) The County, DHCS, CMS, or the HHS Inspector General may inspect, evaluate, and audit the subcontractor at any time if there is a reasonable possibility of fraud or similar risk. (42 CFR section 438.230(c)(3)(iv).)
 - 11) Inspection shall occur at the subcontractor's place of business, premises or physical facilities, in a form maintained in accordance with the general standards applicable to such book or record keeping, for a term of at least ten (10) years from the close of the State fiscal year in which the subcontract was in effect. Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the County.
 - 12) A requirement that the Contractor monitor the subcontractor's compliance with the provisions of the subcontract and this contract, and a requirement that the subcontractor provide a corrective action plan if deficiencies are identified as set forth in Article VII titled "Audits, Inspections, Monitoring" of this Agreement.
 - 13) Subcontractor's agreement to hold harmless the State, County and Clients in the event the Contractor cannot or does not pay for services performed by the subcontractor pursuant to the subcontract.
 - 14) Subcontractor's agreement to comply with the County and Contractor's policies and procedures on advance directives.
 - 15) The "Smoke-Free Workplace Certification" will be inserted into any subcontracts entered into that provide for children's services as described in the Pro-Children Act of 1994.
 - 16) The Contractor shall maintain and adhere to an appropriate system, consistent with federal, State and local law, for the award and monitoring of contracts that contain acceptable standards for insuring accountability.
 - 17) The system for awarding contracts will contain safeguards to ensure that the Contractor does not contract with any entity whose officers have been convicted of fraud or misappropriation of funds; or debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency.
- C. Subcontractors shall comply with the confidentiality requirements set forth in the item titled "Confidentiality" of this Agreement.
- D. Contractor shall monitor any subcontractor's compliance with the provisions of this agreement, and shall provide a corrective action plan if deficiencies are identified.
- E. No subcontract terminates the legal responsibility of the Contractor to the County to assure that all activities under this contract are carried out.

- F. Contractor shall take positive efforts to use small businesses, minority-owned firms and women's business enterprises, to the fullest extent practicable, including if the Contractor subcontracts services pursuant to Article X titled "Assignment and Delegation" Contractor shall:
- 1) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
 - 2) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
 - 3) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
 - 4) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

ARTICLE XI

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 XII

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

Notwithstanding any other provision of this Agreement to the contrary, County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget that does not provide for funds for the services, products, or equipment subject herein. Such notice shall become effective upon the adoption of a final budget which does not provide funding for this Agreement. Upon the

effective date of such notice, this Agreement shall be automatically terminated and County released from any further liability hereunder.

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

ARTICLE XIII

Default, Termination, and Cancellation:

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

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

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

ARTICLE XIV

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

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

or to such other location as the County directs.

with a copy to

COUNTY OF EL DORADO
Chief Administrative Office
Procurement and Contracts Division
2850 Fairlane Court, Bldg. C, 2nd Floor
Placerville, CA 95667
ATTN: Purchasing Agent

Notices to Contractor shall be addressed as follows:

WEST HILLS HOSPITAL
1240 E. Ninth Street
Reno, NV 89512
ATTN: Chief Executive Officer, or successor

or to such other location as the Contractor directs.

ARTICLE XV

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

ARTICLE XVI

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

indemnify and save County harmless includes the duties to defend set forth in California Civil Code section 2778.

ARTICLE XVII

Litigation:

- A. County, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Contractor must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Contractor of its indemnification obligations.
- B. Contractor, promptly after receiving notice thereof, shall immediately notify the County in writing of any claim or action against it which affects, or may affect, this Agreement, the terms and conditions hereunder, or the County or State of California, and shall take such action with respect to said claim or action which is consistent with the terms of this Agreement and the interest of the County and State.

ARTICLE XVIII

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

- A. Full Workers' Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.
- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to

any other remedies it may have, terminate this Agreement upon the occurrence of such event.

- H. The certificate of insurance must include the following provisions stating that:
1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 2. The County of El Dorado, its officers, officials, employees and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.
- O. Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for protection of the County.

ARTICLE 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 GC 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 XIII titled, "Default, Termination and Cancellation."

ARTICLE XXII

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

ARTICLE XXIII

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

ARTICLE XXIV

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

ARTICLE XXV

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

ARTICLE XXVI

Administrator: The County Officer or employee with responsibility for administering this Agreement is Jamie Samboceti, Deputy Director, HHSa, Behavioral Health Division, or successor.

ARTICLE XXVII

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

ARTICLE XXVIII

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

ARTICLE XXIX

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

ARTICLE XXX

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

ARTICLE XXXI

Additional Terms and Conditions:

- A. Contractor acknowledges and agrees that this Agreement is intended to implement the following programs and agreements:
- Agreement 17-94520 by and between the County of El Dorado and California Department of Health Care Services (known as the Performance Agreement), available at https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx;
 - Agreement 17-94580 by and between the County of El Dorado and California Department of Health Care Services (known as the Mental Health Plan or MHP), available at https://www.edcgov.us/Government/hhsa/Pages/hhsa_contractor_resources.aspx;

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

Pauline Dexter
Contractor

1-31-19
Date

B. Service Provider Requirements:

1) Staffing Requirements:

- a) For the purposes of this Agreement "staff" shall mean any person employed on a part-time, full-time, extra-help, temporary, subcontractor, or volunteer basis who works at, for, or with the Contractor during the term of this Agreement.
- b) Contractor agrees to furnish professional staff in accordance with the regulations, including all amendments thereto, issued by the State or County. Contractor shall operate continuously throughout the term of this Agreement with at least the minimum of staff required by law for provision of services hereunder; such staff shall be qualified in accordance with all applicable laws and regulations.
- c) Contractor shall at all times have the internal capacity to provide the services called for in this Agreement with staff that have the requisite cultural and linguistic competence required to provide mental health services under this Agreement.
- d) Contractor shall provide clinical supervision or consultation to all treatment staff, licensed, registered, waived, or unlicensed providing services under this Agreement.
- e) Staff seeking licensure shall receive clinical supervision in accordance with the appropriate State Licensure Board.

2) Credentialing, Re-Credentialing, and Licensing:

- a) Contractor shall perform credentialing and re-credentialing activities per Title 9 CCR, sections 1810.435(a) and 1810.435(b), and DHCS Mental Health and Substance Use Disorder Services (MHSUDS) Information Notice 18-019, (This and subsequent notices can be found at <https://www.dhcs.ca.gov/formsandpubs/Pages/MHSUDS-Information-Notices.aspx>), shall review its providers for continued compliance with standards at least once every three years, and shall make proof of those credentials upon request.
- b) Required Licenses and Credentials: Contractor hereby represents and warrants that Contractor and any of its staff or subcontractors providing services under this Agreement has all the applicable licenses, permits, and certifications that are legally required for Contractor, staff, and its subcontractors to practice its profession or provide the services or work contemplated under this Agreement in the State of California. Contractor and its subcontractors shall obtain or maintain said applicable licenses, permits, or certificates in good standing throughout the term of this Agreement.

- 3) Enrollment, Provider Selection, and Screening:
- a) Comply with the provisions of 42 CFR, sections 455.104, 455.105, 1002.203 and 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.
 - b) The Contractor shall ensure that all network providers are enrolled with the State as Medi-Cal providers consistent with the provider disclosure, screening, and enrollment requirements of 42 CFR part 455, subparts B and E. (42 CFR section 438.608(b).)
 - c) The Contractor may execute network provider agreements, pending the outcome of screening, enrollment, and revalidation, of up to one hundred twenty (120) days but must terminate a network provider immediately upon determination that the network provider cannot be enrolled, or the expiration of one (1) one hundred twenty (120) day period without enrollment of the provider, and notify affected beneficiaries. (42 CFR section 438.602(b)(2).)
 - d) The Contractor shall have written policies and procedures for selection and retention of providers. (42 CFR section 438.214(a).) Contractor's policies and procedures for selection and retention of providers must not discriminate against particular providers that serve high-risk populations or specialize in conditions that require costly treatment. (42 CFR section 438.12(a)(2), 438.214(c).)
 - e) The Contractor may not discriminate in the selection, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable State law, solely on the basis of that license or certification. (42 CFR section 438.12(a)(1).)
 - f) Contractor shall only use licensed, registered, or waived providers acting within their scope of practice for services that require a license, waiver, or registration. (Title 9 CCR, section 1840.314(d).)
 - g) The Contractor is not located outside of the United States. (42 CFR section 602(i).)
 - h) A background screening of all employees who may access personal health information (PHI) or personal information (PI) must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each employee's background check documentation for a period of three (3) years.
- 4) Debarment and Suspension Certification:
- a) Federal funds may not be used for any contracted services if Contractor is debarred, suspended, proposed for debarment, declared ineligible or voluntarily excluded from covered transactions by any federal department or agency.
 - b) In accordance with Title 45 CFR Part 76.100, Title 42 CFR sections 1128 and 1128A, Social Security Act; Title 42 CFR sections 438.214 and 438.610; and Mental Health Letter No. 10-05 and DHCS MHSUDS Information Notice 18-020, Contractor will comply with the Federal Health

and Human Services, Office of Inspector General's requirement that any provider excluded from participation in federal health care programs, including Medicare or Medicaid/Medi-Cal, may not provide services under this Agreement. Payment will be denied for any services provided by a person identified as excluded from participation in federal health care programs.

- c) Consistent with the requirements of 42 CFR part 455.436, the Contractor must confirm the identity and determine the exclusion status of all providers (employees and network providers) and any subcontractor, as well as any person with an ownership or control interest through checks of federal and State databases at intervals identified in MHSUDS Information Notice 18-019 as may be amended or replaced. The following identifies these databases:
 - 1) Office of Inspector General List of Excluded Individuals/Entities (LEIE)
 - 2) DHCS Medi-Cal List of Suspended or Ineligible Providers
 - 3) Social Security Administration's Death Master File
 - 4) National Plan and Provider Enumeration System (NPPES)
 - 5) Excluded Parties List System (EPLS)
- d) If the Contractor finds a party that is excluded, it must promptly notify the County (42 CFR section 438.608(a)(2),(4)) and the County will notify the State, and take action consistent with 42 CFR section 438.610((d) and cease billing for any services rendered by the excluded provider as of the effective date of the exclusion. The Contractor shall not certify or pay any excluded provider with Medi-Cal funds, and any such inappropriate payments or overpayments may be subject to recovery and/or be the basis for other sanctions by the appropriate authority.
- e) Allowing staff listed in any State or federal database to provide services performed under this Agreement will result in corrective action.
- f) Contractor shall not assign or continue the assignment of any employees, agents (including subcontractors), students, or volunteers ("Assigned Personnel") who have been convicted or incarcerated within the prior ten (10) years for any felony as specified in Penal Code sections 667.5 and/or 1192.7, to provide direct care to clients.
- g) By signing this Agreement, the Contractor agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR part 3017, 45 CFR part 76, 40 CFR part 32, or 34 CFR part 85.
- h) The Contractor shall not knowingly have any prohibited type of relationship with the following:
 - 1) An individual or entity that is debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in nonprocurement activities under regulations issued under Executive Order No. 12549 or under guidelines implementing Executive Order No. 12549. (42 CFR section 438.610(a)(1).)

- 2) An individual or entity who is an affiliate, as defined in the Federal Acquisition Regulation at 48 CFR 2.101, of a person described in this section. (42 CFR section 438.610(a)(2).)
- i) By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - 1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - 2) Have not within a period of three (3) years preceding this 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;
 - 3) 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 i(2) herein; and
 - 4) Have not within a three-year period preceding this agreement had one or more public transactions (federal, State or local) terminated for cause or default.
 - 5) Shall not knowingly enter into 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 transaction, unless authorized by the State.
 - 6) Will 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.
- j) If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the County Contract Administrator, or successor.
- k) The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order (FEO) 12549.

C. **Choice of Provider:** Contractor shall provide a beneficiary's choice of the person providing services to the extent possible and appropriate consistent with Title 9 CCR, section 1830.225, and 42 CFR part 438.3(I).

D. **Utilization Review:**

- 1) Contractor shall establish and maintain systems to review the quality and appropriateness of services in accordance with federal and State Program Requirements operative during the term of this Agreement.
- 2) Contractor shall submit to the County their Performance Improvement Plan, and shall submit updates and revisions annually to County by January 31st.

3) Contractor shall participate in all County-required Utilization Reviews.

E. **Problem Resolution and Beneficiary Rights:**

- 1) Problem Resolution: Contractor shall ensure that each Client is aware of, and has access to the County's Problem Resolution process.
- 2) Contractor shall comply with County written policies regarding the beneficiary rights, applicable laws and regulations relating to patients' rights, including but not limited to WIC 5325; Title 9 CCR, sections 862 through 868; and 42 CFR section 438.100. Should the Contractor receive approval to subcontract in accordance with Article XI titled "Assignment and Delegation," Contractor shall ensure that its subcontractors comply with all applicable patient's rights laws and regulations; including the right to:
 - a) Receive information in accordance with 42 CFR 438.10 (42 CFR section 438.100(b)(2)(i));
 - b) Be treated with respect and with due consideration for his or her dignity and privacy (42 CFR section 438.100(b)(2)(ii));
 - c) Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand (42 CFR section 438.100(b)(2)(iii))
 - d) Participate in decisions regarding his or her health care, including the right to refuse treatment (42 CFR section 438.100(b)(2)(iv));

F. **Documentation and Information Requirements:**

All documentation must be completed in compliance with Medi-Cal requirements.

1) Clinical Record:

- a) Contractor shall maintain adequate Client records, with a preference for an electronic clinical record, on each individual Client, which shall include Initial Assessments, History and Physical, Laboratory Work, Legal Authorizations for admissions, consultation reports, physician's orders, nursing assessment, social service evaluations, records of Client interviews, treatment plans, progress notes, and records of services provided by various professional and paraprofessional personnel, in sufficient detail to permit an evaluation of services, and other documents as required by Title 9 and Title 22 of the CCR. In addition, such records shall comply with all applicable federal, State, and county record maintenance requirements. Contractor shall ensure all written "Service Authorizations" documents shall become a part of the Client's clinical record.
- b) Contractor shall ensure compliance with documentation requirements, including a Physician Progress Note at least every twenty-four (24) hours, at least one Nursing Progress Note per shift, and a Registered Nurse Progress Note every day on all Clients admitted on WIC §5150 status.
- c) Contractor shall provide Clients with, and document in the Clients' clinical record the provision of the "Guide to Medi-Cal Mental Health Services," "Notice of Privacy Practices," and "Informed Consent" at the first appointment after receiving the Initial Authorization, at the time of re-assessment, and upon Client request. The "Guide to Medi-Cal Mental Health Services" can be accessed on the County Mental Health website, currently located at <https://www.edcgov.us/Government/MentalHealth>.
- d) Contractor shall inform Clients who are Medi-Cal Beneficiaries about grievance, appeal, expedited appeal, fair hearing, and expedited fair hearing

procedures and timeframes as specified in 42 CFR Part 438 and State guidance. Contractor shall provide Clients with a copy of the County's documents titled "What is a Grievance" and "Grievance Form," and document the provision of this information in the Clients' clinical record. These forms are included in Exhibit C. The parties agree that County may replace Exhibit C with an updated Exhibit C by giving notice in accordance with Article XIV titled "Notice to Parties" to the original Agreement without requiring amendment to this Agreement.

- e) Services Provided in Language Other Than English
 - 1) If services are provided to a Client in a language other than English, Contractor shall document the use of an alternate language in the Client's clinical record and identify the language in which services were provided.
 - 2) In the event of the use of an interpreter services in the provision of mental health services, Contractor shall document in the Clients' clinical record the name of the interpreter service and the language utilized.

2) Requirements Regarding Information Provided to Clients:

- a) The Contractor shall provide information in a manner and format that is easily understood and readily accessible to beneficiaries. (42 CFR section 438.10(c)(1).)
- b) The Contractor shall provide all written materials for Clients in easily understood language, format, and alternative formats that take into consideration the special needs of beneficiaries. (42 CFR section 438.10(d)(6).)
 - 1) Language: Contractor shall make its materials that are critical to obtaining services, including, at a minimum, provider directories, beneficiary handbooks, appeal and grievance notices, denial and termination notices, and Contractor's mental health education materials, available in the prevalent non-English languages in the County. (42 CFR section 438.10(d)(3). The Contractor shall include taglines provided in "Language Assistance," attached hereto as Exhibit D, and incorporated herein and made by reference a part hereof, in the prevalent non-English languages in the State, as well as large print, explaining the availability of written translation or oral interpretation to understand the information provided. (42 CFR section 438.10(d)(2).)
 - 2) Font: Contractor shall provide all written materials for potential Clients and Clients in a font size no smaller than 12 point (42 CFR section 438.10(d)(6)(ii)). "Large print" means printed in a font size no smaller than 18 point (42 CFR section 438.10(d)(3)).
 - 3) Alternate Formats: The Contractor shall ensure its informational materials are available in alternative formats, including large print, audio and/or braille depending upon the needs of the Clients, upon request of the potential Clients or Clients at no cost.
 - 4) Auxiliary Aids: The Contractor shall make auxiliary aids and services, such as TTY/TDY, available upon request and free of charge to each Client. (42 CFR section 438.10(d)(3)-(4).)

Contractor shall also notify Clients how to access these services. (42 CFR section 438.10(d) (5)(ii)-(iii).)

- 5) Interpretation: The Contractor shall make interpreter services, including American Sign Language (ASL), available and free of charge for any language. (42 CFR section 438.10(d)(2), (4)-(5).) Contractor shall notify Clients that the service is available and how to access those services. (42 CFR section 438.10(d)(5)(i), (iii).)
- c) The Contractor shall inform beneficiaries that information is available in alternate formats and how to access those formats. (42 CFR section 438.10.)
- 3) Cultural Competency Plan: Upon request, Contractor shall provide each Client with a copy of its Cultural Competency/Linguistic Policy and Procedure. Contractor shall provide its Cultural Competency/Linguistic Policy to County, upon request.

G. Accreditation Status:

- 1) The Contractor shall inform the County whether it has been accredited by a private independent accrediting entity.
- 2) If the Contractor has received accreditation by a private independent accrediting entity, the Contractor shall authorize the private independent accrediting entity to provide the County a copy of its most recent accreditation review, including:
 - a) Its accreditation status, survey type, and level (as applicable);
 - b) Accreditation results, including recommended actions or improvements, corrective action plans, and summaries of findings; and
 - c) The expiration date of the accreditation.

H. Advance Directives: Contractor shall comply with County policies and procedures on advance directives. For Clients age eighteen (18) and older, Contractor shall provide adult Clients with the written information on advance directives and shall not condition the provision of care or otherwise discriminate against an individual based on whether or not the individual has executed an advance directive. Contractor shall educate its staff concerning the County and Contractor's policies and procedures on advance directives. Any written materials prepared by the Contractor shall be updated to reflect changes in State laws governing advance directives as soon as possible, but no later than ninety (90) days after the effective date of the change.

I. Americans With Disabilities Act: Contractor agrees to ensure that services provided and deliverables developed and produced, pursuant to this Agreement shall comply with the accessibility requirements of section 508 of the Rehabilitation Act and the Americans with Disabilities Act of 1973 as amended (29 USC section 794(d)), and regulations implementing that Act as set forth in Part 1194 of Title 36 of the CFR. In 1998, Congress amended the Rehabilitation Act of 1973 to require federal agencies to make their electronic and information technology (EIT) accessible to people with disabilities. California GC section 11135 codifies section 508 of the Act requiring accessibility of electronic and information technology.

J. Child Support Compliance Act: For any Agreement in excess of \$100,000, the Contractor acknowledges in accordance with PCC 7110, that:

- 1) The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable State and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in

Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

- 2) The Contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.
- 3) Contractor agrees to furnish to Contract Administrator within thirty (30) calendar days of the award of this Agreement:
 - a) In the case of an individual Contractor, his/her name, date of birth, social security number and address of residence.
 - b) In the case of a Contractor doing business in a form other than as an individual, the name, date of birth, social security number, and residence address of each individual who owns an interest of ten percent (10%) or more in the contracting entity.
 - c) A signed "Child Support Compliance Act Certification", attached hereto as Exhibit E, incorporated by reference and made a part hereof, signifying that Contractor has fully complied with all applicable federal and State reporting requirements regarding its employees.
 - d) A certification that Contractor has fully complied with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, and will continue to so comply. Contractor is responsible to be knowledgeable of all current federal and State Regulations regarding Child Support Enforcement. Failure of Contractor to timely submit the data and/or certifications required under this section, or to comply with all federal and State reporting requirements for child support enforcement or to comply with all lawfully served Wage and Earnings Assignment Orders and Notices of Assignment, shall constitute a material breach of this Agreement. Failure to cure such breach within sixty (60) calendar days of notice from County shall constitute grounds for termination of this Agreement in accordance with Article XIII "Default, Termination and Cancellation."
 - e) It is expressly understood that this data will be transmitted to governmental agencies charged with the establishment and enforcement of child support orders, or as permitted by federal and/or State statute.

K. Client Liability for Payment:

- 1) The Contractor or an affiliate, vendor, contractor, or subcontractor of the Contractor shall not submit a claim to, or 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 (Title 9 CCR, section 1810.365 (a)).
- 2) The Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold Clients liable for debts in the event that the Contractor becomes insolvent; for costs of covered services for which the County does not pay the Contractor; for costs of covered services for which the County or the Contractor does not pay the Contractor's network providers; for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor; or for payment of subsequent screening and treatment needed to

diagnose the specific condition of or stabilize a beneficiary. (42 CFR section 438.106 and Title 9 CCR, section 1810.365(c).)

- 3) The Contractor shall ensure any subcontractors and providers do not bill Clients for covered services, any amount greater than would be owed if the Contractor provided the services directly (42 CFR section 483.106(c)).

L. **Confidentiality:**

1) Confidentiality of Information:

- a) The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure names and other identifying information concerning persons either receiving services pursuant to this Agreement or persons whose names or identifying information become available or are disclosed to the Contractor, its employees, agents, or subcontractors as a result of services performed under this Agreement, except for statistical information not identifying any such person.
- b) The Contractor and its employees, agents, or subcontractors shall not use such identifying information for any purpose other than carrying out the Contractor's obligations under this Agreement.
- c) The Contractor and its employees, agents, or subcontractors shall promptly transmit to the County all requests for disclosure of such identifying information not emanating from the client or person.
- d) The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the client, any such identifying information to anyone other than County without prior written authorization from the County Contract Administrator, or successor, except if disclosure is required by State or federal law.
- e) For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph.
- f) As deemed applicable by County, this provision may be supplemented by additional terms and conditions covering PHI, PI, personal identifiable information (PII), or personal, sensitive, and/or confidential information (PSCI). Said terms and conditions are outlined in County's Business Associate Agreement (BAA), attached hereto as Exhibit F, incorporated herein and made by reference a part hereof.

2) HIPAA Compliance:

- a) As a condition of Contractor performing services for the County of El Dorado, Contractor agrees to fully comply with all terms and conditions of Exhibit F.
- b) Confidentiality Requirements relating to HIPAA: The Contractor shall comply with applicable laws and regulations, including but not limited to sections 14100.2 and 5328 et seq. of the WIC, section 431.300 et seq. of Title 42, CFR, and HIPAA including but not limited to section 1320 d et seq. of Title 42, USC 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).
- c) Contractor agrees to comply with all confidentiality requirements in the Privacy and Information Security Provisions of the MHP Agreement

between DHCS and County, included in Exhibit F to that Agreement, incorporated by reference as if attached hereto.

M. **Conflict Resolution:** Should a dispute arise between the Contractor and the County relating to services provided under this Agreement:

- 1) County Contract Administrator and Contractor shall first informally discuss the problem. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the HHSA Assistant Director for Behavioral Health. The Assistant Director shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Assistant Director shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Assistant Director's decision, the Contractor may appeal to the final level.
- 2) When appealing to the final level, the Contractor must prepare an appeal indicating the reasons for disagreement with Assistant Director's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Assistant Director's decision. The appeal shall be addressed to the HHSA Director within ten (10) working days from receipt of the Assistant Director's decision. The HHSA Director, or his/her designee, shall meet with the Contractor to review the issues raised. A written decision signed by the HHSA Director shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.
- 3) Unless otherwise stipulated in writing by County, all dispute, grievance, and/or appeal correspondence shall be directed to the Contract Administrator.
- 4) Contractor shall continue with the responsibilities under this Agreement during any dispute.

N. **Covenant Against Contingent Fees:** The Contractor warrants that no person or selling agency has been employed or retained to solicit/secure this Agreement upon an agreement of understanding for a commission, percentage, brokerage, or contingent fee, except *bona fide* employees or *bona fide* established commercial or selling agencies retained by the Contractor for the purpose of securing business. For breach or violation of this warranty, County shall have the right to annul this Agreement without liability or in its discretion to deduct from the Agreement price or consideration, or otherwise recover, the full amount of such commission, percentage, and brokerage or contingent fee.

O. **Cultural Competence:**

- 1) The Contractor shall participate in the County and State's efforts to promote the delivery of services in a culturally competent manner to all beneficiaries, including those with limited English proficiency and diverse cultural and ethnic backgrounds, disabilities, and regardless of gender, sexual orientation or gender identity.

P. **Domestic Partners:** For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with PCC section 10295.3.

Q. **Drug-Free Workplace Requirements:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

- 1) Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.
- 2) Establish a Drug-Free Awareness Program to inform employees about:
 - a) The dangers of drug abuse in the workplace;
 - b) The person's or organization's policy of maintaining a drug-free workplace;
 - c) Any available counseling, rehabilitation and employee assistance programs; and,
 - d) Penalties that may be imposed upon employees for drug abuse violations.
- 3) Every employee who provides services under the terms of this Agreement will:
 - a) Receive a copy of Contractor's drug-free workplace policy statement; and,
 - b) Agree to abide by the terms of the Contractor's statement as a condition of employment under the terms of the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement in accordance with Article XIII titled "Default, Termination, or Cancellation" or both, and Contractor may be ineligible for award of any future County agreements if the County determines that any of the following has occurred: the Contractor has made false certification, or violated the certification by failing to carry out the requirements as noted above. (GC section 8350 et seq.)

R. Equal Opportunity Requirements:

- 1) Federal:
 - a) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 4212). Such notices shall State the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.

- b) The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, State that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c) The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d) The Contractor will comply with all provisions of and furnish all information and reports required by section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 USC 4212) and of the FEO No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e) The Contractor will furnish all information and reports required by FEO No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f) In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part in accordance with Article XIII "Default, Termination, and Cancellation," and the Contractor may be declared ineligible for further federal and State contracts in accordance with procedures authorized in FEO No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in FEO No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- g) The Contractor will include the provisions of Paragraphs 1 through 5 herein above in every subcontract or purchase order unless exempted by

rules, regulations, or orders of the Secretary of Labor issued pursuant to FEO No. 11246 as amended, including by Executive Order 11375, ‘Amending Executive Order 11246 Relating to Equal Employment Opportunity,’ and as supplemented by regulation at 41 CFR part 60, “Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor,” or section 503 of the Rehabilitation Act of 1973 or (38 USC 4212) of the Vietnam Era Veteran's Readjustment Assistance Act, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the Director of the Office of Federal Contract Compliance Programs or DHCS may direct as a means of enforcing such provisions including sanctions for noncompliance provided, however, that in the event the Contractor becomes involved in, or is threatened with litigation by a subcontractor or vendor as a result of such direction by DHCS, the Contractor may request in writing to DHCS, who, in turn, may request the United States to enter into such litigation to protect the interests of the State and of the United States.

2) State:

- a) The Contractor will comply with the California Fair Employment and Housing Act, Title 2, Division 3, Part 2.8, Chapter 6, sections 12940 through 12952, and the California Labor Code.

S. **Gender Identity:** For contracts of \$100,000 or more, Contractor certifies that Contractor is in compliance with PCC section 10295.35.

T. **Human Subjects Use Requirements:** By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 USC section 263a (Clinical Laboratory Improvement Amendments (CLIA)) and the regulations thereunder.

U. **International Classification of Diseases and Related Health Problems (ICD-10):**

- 1) The Contractor shall use the criteria sets in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5) as the clinical tool to make diagnostic determinations
- 2) Once a DSM-5 diagnosis is determined, the Contractor shall determine the corresponding mental health diagnosis, in the International Classification of Diseases and Related Health Problems, Tenth Revision (ICD-10).
- 3) The Contractor shall use the ICD-10 diagnosis code(s) to submit a claim for SMHS to receive reimbursement of Federal Financial Participation (FFP) in accordance with the covered diagnoses for reimbursement of inpatient Medi-Cal SMHS listed in MHSUDS Information Notice 17-004E.
- 4) The lists of covered ICD-10 diagnosis codes in MHSUDS Information Notice 17-004E are subject to change and the Department may update them during the term of this contract. Changes to the lists of covered ICD-10 covered diagnoses do not require an amendment to this contract and the Department may implement these changes via Mental Health and Substance Use Disorder Services Information Notices.

- 5) In determining whether a service is covered under this contract based on the diagnosis of the beneficiary, the Contractor shall not exclude a beneficiary solely on the ground that the provider making the diagnosis has used the International Classification of Diseases (ICD) diagnosis system rather than the system contained in the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association.

V. **Lobbying Prohibition:** United States Code Title 31, section 1352 prohibits the use of any federal funds for lobbying activities. Contractor shall not use any funds paid from this agreement for any lobbying activities as defined in said code. Any lobbying activities performed by the Contractor that are funded through other, non-federal sources must be accurately tracked and properly allocated to ensure compliance with this provision.

W. **Miscellaneous Provisions:**

- 1) Disclaimer: The County makes no warranty or representation that compliance by the Contractor with this Agreement, HIPAA or the HIPAA regulations shall be adequate or satisfactory for the Contractor's own purposes or that any information in the Contractor's possession or control, or transmitted or received by the Contractor is, or will be, secure from unauthorized use or disclosure. The Contractor is solely responsible for all decisions made by the Contractor regarding the safeguarding of PHI, PI, and PII.
- 2) Assistance in Litigation or Administrative Proceedings: The Contractor shall make itself, and use its best efforts to make any subcontractors, employees or agents assisting the Contractor in the performance of its obligation under this Agreement, available to the County or State at no cost to the County or State to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the County and/or State, their 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 the Contractor or its subcontractor, employee or agent is named adverse party.
- 3) Interpretation: The terms and conditions in this Agreement shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, HIPAA regulations, and any other applicable federal, State or local 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, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant State and federal laws.
- 4) 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.
- 5) Survival: The respective rights and obligations of the Contractor under herein this Agreement shall survive the termination or expiration of this Agreement.
- 6) Fulfillment of Obligation: No covenant, condition, duty, obligation, or undertaking continued or made a part of this Agreement shall be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply. Until

performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party shall have the right to invoke any remedy available under this contract, or under law, notwithstanding such forbearance or indulgence.

- 7) No Waiver of Obligations: No change, waiver, or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 8) Signatures: This Agreement is of no force and effect until signed by both of the parties hereto. The Contractor shall not commence performance prior to the beginning of this Agreement or upon final approval.
- 9) Administrative Manual: Contractor shall maintain a current administrative manual which includes: personnel policies and procedures, general operating procedures, service delivery policies, any required State or federal notices, and procedures for reporting unusual occurrences relating to health and safety issues.

X. **Nondiscrimination:**

- 1) Consistent with the requirements of applicable federal law, such as 42 CFR part 438.3(d)(3) and (4), and State law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of Clients, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, gender identify, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap or disability.
- 2) 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 federal 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.
- 3) Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Title 9 CCR, sections 1830.205 and/or 1830.210, prior to providing covered services to a beneficiary.
- 4) Contractor's signature shall provide any certifications necessary under the federal laws, the laws of the State of California, including but not limited to GC section 12990 and Title 2, CCR section 8103.

Y. **Officials Not to Benefit:** No members of or delegate of Congress or the State Legislature shall be admitted to any share or part of this Agreement, or to any benefit that may arise therefrom. This provision shall not be construed to extend to this Agreement if made with a corporation for its general benefits.

Z. **Physician Incentive Plans:** Contractor agrees to comply with obligations for Physician Incentive Plans, if applicable based on the services provided under this Agreement.

AA. **Priority Hiring Considerations:** If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under WIC section 11200 in accordance with PCC section 10353.

BB. **Program Integrity:** To the extent that the Contractor is delegated responsibility for coverage of services and the result of supplying that information:

- 1) The Contractor shall implement and maintain a compliance program designed to detect and prevent fraud, waste, and abuse that must include:
 - a) Written policies, procedures, and standards of conduct that articulate the organization's commitment to comply with all applicable requirements and standards under the contract, and all applicable federal, State and County requirements.
 - b) A Compliance Officer (CO) who is responsible for developing and implementing policies, procedures, and practices designed to ensure compliance with the requirements of the contract and who reports directly to the Contractor's Executive Director, or equivalent.
 - c) A system for training and education for the CO, the organization's senior management, and the organization's employees for the federal and State standards and requirements under the contract.
 - d) Effective lines of communication between the CO and the organization's employees.
 - e) Enforcement of standards through well-publicized disciplinary guidelines.
 - f) The establishment and implementation of procedures and a system for routine internal monitoring and auditing of compliance risks, prompt response to compliance issues as they are raised, investigation of potential compliance problems as identified in the course of self-evaluation and audits, correction of such problems promptly and thoroughly (or coordination of suspected criminal acts with law enforcement agencies) to reduce the potential for recurrence, and ongoing compliance with the requirements under the contract. (42 CFR section 438.608(a), (a)(1).)
- 2) Fraud Reporting Requirements:
 - a) Contractor shall implement and maintain arrangements or procedures designed to detect and prevent fraud, waste and abuse that include prompt reporting to the County and DHCS (42 CFR section 455.(a)(1) on the following:
 - 1) Any potential fraud, waste, or abuse (42 CFR section 438.608(a),(a)(7));
 - 2) All overpayments identified or recovered, specifying the overpayments due to potential fraud (42 CFR section 438.608(a),(a)(2));
 - 3) Information about changes in a beneficiary's circumstances that may affect the beneficiary's eligibility including changes in the beneficiary's resident or the death of the beneficiary (42 CFR section 438.608(a), (a)(3));
 - 4) Information about a change in a network provider's circumstances that may affect the network provider's eligibility to participate in the managed care program, including the termination of the provider agreement with the County (42 CFR section 438.608(a),(a)(4));
 - b) If the Contractor identifies an issue or receives notification of a complaint concerning an incident of potential fraud, waste or abuse, in addition to notifying the Department, the Contractor shall conduct an internal investigation to determine the validity of the issue/complaint, and develop and implement corrective action, if needed.

- c) The Contractor shall implement and maintain written policies for all employees, and of any subcontractor or agent, that provide detailed information about the False Claims Act and other federal and State laws, including information about rights of employees to be protected as whistleblowers. (42 CFR section 438.608(a), (a)(6).)
 - d) The Contractor shall implement and maintain arrangements or procedures that include provision for the Contractor's suspension of payments to a network provider for which there is a credible allegation of fraud. (42 CFR section 438.608(a), (a)(8).)
- 3) Disclosures:
- a) Disclosure of five percent (5%) or More Ownership Interest:
 - 1) Contractor shall submit the disclosures outlined below regarding Contractor's ownership and control. Any person who has or obtains an interest of five percent (5%) or more of any mortgage, deed of trust, note or other obligation secured by Contractor, and that interest equals at least five percent (5%) of Contractor's property or assets, then the Contractor will make the following disclosures:
 - i. The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
 - ii. Date of birth and Social Security Number (in the case of an individual);
 - iii. The Contractor shall provide any such disclosure upon execution of this contract, upon its extension or renewal, and within thirty-five (35) days after any change in Contractor ownership or upon request of the County.
 - 2) The Contractor shall ensure that its subcontractors, if any, and network providers submit the disclosures below to the Contractor regarding the network providers' (disclosing entities') ownership and control. The Contractor's network providers must be required to submit updated disclosures to the Contractor upon submitting the provider application, before entering into or renewing the network providers' contracts, within thirty-five (35) days after any change in the subcontractor/network provider's ownership, annually and upon request during the re-validation of enrollment process under 42 CFR Regulations part 455.104. Disclosures to be provided:
 - i. The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
 - ii. Date of birth and Social Security Number (in the case of an individual);

- iii. Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a five percent (5%) or more interest);
 - iv. Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care entity has a five percent (5%) or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;
 - v. The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and
 - vi. The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.
- 3) For each provider in Contractor's provider network, Contractor shall provide the County with all disclosures before entering into a network provider contract with the provider and annually thereafter and upon request from the Department during the re-validation of enrollment process under 42 CFR part 455.104.
- b) Disclosures Related to Business Transactions – Contractor must submit disclosures and updated disclosures to the Department or HHS including information regarding certain business transactions within thirty-five (35) days, upon request. The following information must be disclosed:
- 1) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and
 - 2) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.
 - 3) Contractor must obligate Network Providers to submit the same disclosures regarding network providers as noted under subsection b.1. and b.2. within thirty-five (35) days upon request.
- c) Disclosures Related to Persons Convicted of Crimes:
- 1) Contractor shall submit the following disclosures to the County regarding the Contractor's management:
 - i. The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 CFR section 455.106(a)(1),(2).)

- ii. The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 CFR section 455.106(a)(1), (2).) For this purpose, the word "agent" has the meaning described in 42 CFR part 455.101.
 - 2) The Contractor shall supply the disclosures before entering into the contract and at any time upon the Department's request.
 - 3) Network providers should submit the same disclosures to the Contractor regarding the network providers' owners, persons with controlling interest, agents, and managing employees' criminal convictions. Network providers shall supply the disclosures before entering into the contract and at any time upon the Department's request.
- CC. **Prohibited Use of State Funds for Software:** Contractor certifies that it has appropriate systems and controls in place to ensure that State funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- DD. **Provider Beneficiary Communications**
 - 1) The Contractor shall not prohibit nor otherwise restrict, a licensed, waived, or registered professional, as defined in Title 9 CCR, sections 1810.223 and 1810.254, who is acting within the lawful scope of practice, from advising or advocating on behalf of a beneficiary for whom the provider is providing mental health services for any of the following:
 - a) The beneficiary's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;
 - b) Information the beneficiary needs in order to decide among all relevant treatment options;
 - c) The risks, benefits, and consequences of receiving treatment or not receiving treatment; and
 - d) The beneficiary's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions. (42 CFR section 438.102(a)(1).)
- EE. **Provider Notifications:** The Contractor shall inform providers and subcontractors, at the time they enter into a contract, about:
 - 1) Beneficiary grievance, appeal, and fair hearing procedures and timeframes as specified in 42 CFR 438.400 through 42 CFR 438.424.
 - 2) The beneficiary's right to file grievances and appeals and the requirements and timeframes for filing.
 - 3) The availability of assistance to the beneficiary with filing grievances and appeals.
 - 4) The beneficiary's right to request a State fair hearing after the County has made a determination on a beneficiary's appeal, which is adverse to the beneficiary.
 - 5) The beneficiary's right to request continuation of benefits that the County or Contractor seeks to reduce or terminate during an appeal or State fair hearing filing, if filed within the allowable timeframes, although the beneficiary may be liable for the cost of any continued benefits while the appeal or State fair hearing is pending if the final decision is adverse to the beneficiary.

FF. **Record Keeping, Record Retention:**

- 1) Records and Documents: Records and documents include, but are not limited to, all physical and electronic records and documents originated or prepared pursuant to Contractor or subcontractor's performance under this contract, including books, work papers, reports, financial records and documents of account, Client records, prescription files, subcontracts, any other documentation pertaining to covered services and other related services for beneficiaries, and other evidence, accounting procedures and practices, sufficient to properly reflect all services provided and direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses.
- 2) Record Retention:
 - a) Contractor and any subcontractors shall maintain and retain all records and documents originated or prepared pursuant to Contractor's or subcontractor's performance under this contract, including beneficiary grievance and appeal records, and information and documentation specified in 42 CFR parts 438.604, 438.606, 438.608 and 438.610 for a period of no less than ten (10) years from the term end date of this contract or in the event the Contractor has been notified that an audit or investigation of this contract has commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later (42 CFR section 438.3(u)) (see also section 438.3(h)).
 - b) Contractor and any subcontractors shall agree to maintain and preserve all Client records for a minimum of ten (10) years from the date of discharge and in the case of minors, for at least one (1) year after the minor client's eighteenth (18th) birthday, but in no case less than ten (10) years from the date of discharge.
 - c) Contractor and any subcontractors shall agree to maintain and preserve all financial records for a term of at least seven (7) years from the close of the County's fiscal year in which the contract was in effect, or any longer period as may be required by federal or State law.
 - d) Contractor and any subcontractors shall agree to maintain and preserve all other records and documents, until seven (7) years after termination of this Agreement and final payment from DHCS to the County, to permit DHCS, County or any duly authorized representative to have access to, examine or audit any pertinent books, documents, papers, and records related to the subcontract and to allow interviews of any employees who might reasonably have information related to such records.
 - e) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for the required retention period from the date of any resulting final settlement. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the required retention period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular retention period, whichever is later.

GG. Smoke-Free Workplace Certification:

- 1) Public Law 103-227, also known as the Pro-Children Act of 1994, requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education or library services to children under the age of eighteen (18), if the services are funded by federal programs either directly or through State or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where WIC coupons are redeemed.
- 2) Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- 3) By signing this Agreement, Contractor certifies that it will comply with the requirements of the Pro-Children Act of 1994 and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Pro-Children Act of 1994.
- 4) Contractor further agrees that it will insert this certification into any subcontracts entered into that provide for children's services as described in the Pro-Children Act of 1994.

HH. State and Federal Law Governing this Contract: Contractor agrees to comply with all applicable federal and State laws, including but not limited to the statutes and regulations specifically referenced in the County's MHP agreement with DHCS, which are set forth below.

- 1) Federal Law:
 - a) Title 42 USC, Chapter 102;
 - b) 42 CFR, Chapter IV;
 - c) 42 CFR part 438, Medicaid Managed Care, limited to those provisions that apply to Prepaid Inpatient Health Plans (PIHPs);
 - d) 42 CFR section 455;
 - e) Title VI of the Civil Rights Act of 1964;
 - f) Title IX of the Education Amendments of 1972;
 - g) Age Discrimination Act of 1975;
 - h) Rehabilitation Act of 1973;
 - i) Americans with Disabilities Act;
 - j) Section 1557 of the Patient Protection and Affordable Care Act;
 - k) Deficit Reduction Act of 2005;
 - l) Balanced Budget Act of 1997;
 - m) Provisions of the Copeland Anti-Kickback Act, 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;
 - n) Provisions of the Davis-Bacon Act, as amended, which provides 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, as supplemented by Department of Labor regulations;

- o) Provisions of the Contract Work Hours and Safety Standards Act which require 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 the Contract Work Hours and Safety Standards Act;

2) State Law:

- a) Division 5, WIC sections 5000 through 5912;
- b) WIC sections 14680-14685.1;
- c) WIC sections 14700-14726;
- d) Chapter 7, part 3, Division 9, WIC, Article 1.5;
- e) Title 9 CCR, section 1810.100 et. seq. – Medi-Cal Specialty Mental Health Services;
- f) Title 22 CCR, sections 50951 and 50953; and
- g) Title 22 CCR, sections 51014.1 and 51014.2

- 3) State Regulations: Pursuant to WIC section 14704, a regulation or order concerning Medi-Cal SMHS adopted by DHCS (formerly the State Department of Mental Health) pursuant to Division 5 (commencing with section 5000), in effect during the term on this Agreement, shall remain in effect and shall be fully enforceable, unless and until the readoption, amendment, or repeal of the regulation or order by DHCS, or until it expires by its own terms.

II. **Waiver of Default:** Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this contract shall not be deemed to be a waiver of any other or subsequent breach, and shall not be constructed to be a modification of the terms of this contract.

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ARTICLE XXXII

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

Requesting Contract Administrator Concurrence:

By: 

Jamie Samboceti, Deputy Director
Behavioral Health Division
Health and Human Services Agency

Dated: 1/31/19

Requesting Department Head Concurrence:

By: 

Don Semon
Director
Health and Human Services Agency

Dated: 2-4-19

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

-- COUNTY OF EL DORADO --

Dated: _____

By: _____

Sue Novasel, Chair
Board of Supervisors
"County"

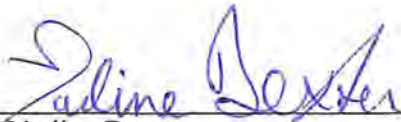
ATTEST:
James S. Mitrisin
Clerk of the Board of Supervisors

By: _____
Deputy Clerk

Dated: _____

-- CONTRACTOR --

BHC HEALTH SERVICES OF NEVADA
A NEVADA CORPORATION
DOING BUSINESS AS WEST HILLS HOSPITAL

By: 
Nadine Dexter
Chief Executive Officer
"Contractor"

Dated: 1-31-19

lkk

Exhibit "A"

County of El Dorado

HEALTH AND HUMAN SERVICES AGENCY

Behavioral Health Division

AUTHORIZATION STATEMENT

Services rendered to the client identified below as requested herein have been authorized by the Health and Human Services Agency Behavioral Health Division in accordance with the conditions of Agreement for Services 3592.

Date: ____/____/____

Client: _____ D.O.B: ____/____/____

Address: _____ City: _____ State: ____ Zip: _____

AUTHORIZED SIGNATURE:

I attest to the fact that I am an employee of the County and as such am duly authorized to execute this document.

Signature: _____ Date: ____/____/____

Exhibit B
COUNTY of EL DORADO
HEALTH AND HUMAN SERVICES AGENCY

Rate Schedule
Medi-Cal and Short-Doyle Clients

Current Psychiatric Inpatient Hospital Provider No: 1730287319
 Provider Type 72; border provider.

Accommodation / Revenue Code		Description		Rate
00124	PA	Rm/Brd – Semi Private, 2 Bed Psych	Adolescent	\$1,094.00
00124	PB		Adult	\$1,094.00
00169		Administrative Day	All	\$521.19

What is a Grievance?

El Dorado County Mental Health Frequently Asked Questions

What is a Grievance?

A Grievance is defined by the State Department of Mental Health as, “An expression of dissatisfaction about any matter other than an Adverse Benefit Determination.” This means that if you are unhappy with anything (except for payments, or denial or reduction of service) pertaining to the services you receive at Mental Health you are encouraged to file a Grievance. You may examine your case file at any time, including medical records and any other documents and records considered during the Grievance process. You will not be subjected to any discrimination or penalty for filing a Grievance. You have a right to know the status of your Grievance at any point and anyone can assist you with that.

Where do I receive a Grievance Form?

Grievance forms are available at all El Dorado County Mental Health clinic sites. You can also ask any Mental Health employee for this form. If you are in need of any assistance, please phone (530) 621-6321 or (800) 929-1955.

How do I file a Grievance?

We hope you will discuss any complaints or issues about your Mental Health services with your Service Provider. You may file a Grievance by talking to your Service Provider, or any other Mental Health staff with whom you feel comfortable. You do not have to complete this form to file a Grievance. If you want to phone in a Grievance, call (530) 621-6321 or (800) 929-1955. You may also ask any Mental Health employee to help you with this process.

If you need additional assistance in filing a Grievance, the Patients’ Rights Advocate can be reached at (530) 621-6183 or any staff person can help you.

What should I expect after filing a Grievance?

El Dorado County’s Utilization Review Coordinator (or designee) will investigate your Grievance with the goal of resolving your dissatisfaction. You will receive 2 written responses to your Grievance. The first letter will be a notice (sent within one working day of receipt of the Grievance) that we have received your Grievance. The second letter will be sent to you within 90 days with the results of the investigation.

What if I do not agree with the results of the investigation?

If you do not agree with the outcome of the Grievance that you have filed, you have the right to speak with the Director of the Mental Health Department or person designated by the Director or you may file another Grievance.

PLEASE READ AND SIGN BELOW:

You may authorize another person to act on your behalf and this representative may use the Grievance process if requested by you. Any staff person can assist you throughout the Grievance process and keep you informed of the status of your Grievance. The Mental Health Plan (MHP) will ensure that you are not subject to any discrimination or penalty for filing a Grievance. You may examine your case file at any time, including medical records and any other documents and records considered during the Grievance process.

If you need further information regarding the Grievance process, please call the El Dorado Problem Resolution Coordinator at (530) 621-6321 or (800) 929-1955.

For the purpose of resolving this Grievance, I authorize the following person to act on my behalf or help me with the Grievance process:

Name and phone number of my representative:	
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I also understand that the Utilization Review Coordinator (or designee) will be authorized to contact my representative (as named above). The Utilization Review Coordinator will also be authorized to discuss any and all information that shall be needed to evaluate and resolve this Grievance.

Signature

Date

When you have completed, signed and dated this form please mail it to:

Problem Resolution Coordinator
768 Pleasant Valley Road, Suite 201
Diamond Springs, CA 95619

¿Qué es una Queja?

Salud Mental del Condado de El Dorado Preguntas Frecuentes Sobre Cómo Presentar Quejas

¿Qué es una queja?

De acuerdo con el Departamento de Salud Mental del Estado, la definición de una queja es: “Es una expresión de descontento sobre cualquier situación con excepción de una Determinación de Beneficios Adversos.” Esto significa que si usted no está contento con los servicios que usted recibió del programa de salud mental correspondiente a una situación (con la excepción de pagos, o negación o reducción de servicios), le aconsejamos que presente una queja. Puede revisar sus archivos en cualquier momento, incluso sus archivos médicos y cualquier otro expediente y documentos durante el proceso de su queja. No será ni discriminado ni multado por el hecho de haber presentado una queja. Usted tiene el derecho de saber el status de su queja en cualquier momento y cualquier persona le puede ayudar.

¿Dónde puedo obtener un formulario de quejas?

Los formularios para presentar quejas están disponibles en todos los locales de las Clínicas de Salud Mental del Condado de El Dorado. Usted también puede preguntarle a cualquier empleado de Salud Mental por este formulario. Si usted necesita ayuda por favor llame al teléfono (530) 621-6321 o (800) 929-1955.

¿Cómo puedo presentar una queja?

Deseamos que usted hable sobre cualquier queja o situaciones sobre los servicios de salud mental con un Proveedor de Servicios o Coordinador de Resoluciones de Quejas. Usted puede poner una queja hablando con el Proveedor de Servicios o Coordinador de Resoluciones de Quejas o cualquier empleado de Salud Mental con el cual usted se sienta en confianza. Usted no tiene que completar el formulario de queja para presentar una queja. Si usted desea presentar una queja por teléfono, llame al (530) 621-6321 o (800) 929-1955. Usted también le puede solicitar ayuda con este proceso de cualquier empleado de Salud Mental.

Si necesita asistencia adicional sobre como presentar una queja, el Defensor de Derechos del Paciente (Patients’ Right Advocate, como se conoce en inglés) que puede ser localizado llamando al número (530) 621-6183 le puede ayudar.

¿Qué debo esperar después de haber presentado una queja?

El Coordinador de Resolución de Problemas del Condado de El Dorado (o persona asignada) investigará su queja con la meta de resolver su descontento. Usted recibirá dos respuestas por escrito sobre su queja. La primera carta será un aviso (el cual será enviado a mas tardar un día hábil después de que recibamos su queja) de que hemos recibido su queja. La segunda carta será enviada a usted dentro de 90 días con la resolución a su queja.

¿Qué tal si no estoy de acuerdo con la respuesta a mi queja?

Si usted no está de acuerdo con la resolución de la queja que usted presentó, usted tiene derecho de hablar con el Director del Departamento de Salud Mental o la persona que el designe o usted puede presentar otra queja.

SALUD MENTAL DEL CONDADO DE EL DORADO

FORMA PARA PRESENTAR QUEJAS

Le aconsejamos que usted hable con su Proveedor de Servicios o el Coordinador de Resoluciones de Problemas sobre cualquier queja o problema que usted tenga con los servicios de Salud Mental. Usted puede poner una queja hablando con su Proveedor de Servicios o Coordinador de Resoluciones de Problemas, o con cualquier empleado de Salud Mental con el cual usted se sienta más en confianza. Usted tiene la opción de llenar esta forma o hablar por teléfono sobre su queja con la siguiente persona: Coordinador de Resoluciones de Problemas (530) 621-6321 o (800) 929-1959.

Su Nombre:	
Su Fecha de Nacimiento:	
Su número de Teléfono:	
Su dirección:	
DESCRIBA LA QUEJA (Por favor incluya fechas y nombres, si es posible; utilice páginas adicionales si es necesario):	

Yo entiendo también que el Coordinador de Resoluciones de Problemas (o persona designada) será autorizado para que se comunique con a cualquier Proveedor implicado para resolver mi queja. El Coordinador de Resoluciones de Problemas (o persona designada) será autorizado también para hablar sobre cualquier y toda la información que sea necesaria para evaluar y resolver esta queja.

Su Firma

Fecha

POR FAVOR LEE LA SEGUNDA PAGINA

POR FAVOR LEA Y FIRME:

Usted puede autorizar a otra persona para que actúe en su favor, o ayudarlo si usted lo solicita, y éste representante puede utilizar el proceso de quejas. El Coordinador de la Resolución de Problemas (Problem Resolution Coordinator, como es conocido en inglés) o el Defensor de Derechos del Paciente (Patient's Rights Advocate, como es conocido en inglés) pueden ayudarlo a usted a tramitar el proceso de quejas. El plan de salud mental (MHP) se asegurará de que usted no esté sujeto a ninguna multa por presentar una queja o por solicitar una Audiencia Estatal.

Si necesita más información sobre el Proceso de Quejas, por favor llame al Coordinador de la Resolución de Problemas (Problem Resolution Coordinator): (530) 621-6321 o (800) 929-1955.

Con el fin de resolver esta queja, Yo autorizo a la siguiente persona para que actúe en mi favor. (Escriba por favor "n/a" si usted no desea tener una persona que actúe en su favor):

Nombre y número de teléfono del representante:	
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Yo entiendo también que el Coordinador de Resoluciones de Problemas (o persona designada) será autorizado para que se comunique con mi representante (nombrado arriba). El Coordinador de Resoluciones de Problemas (o persona designada) será autorizado también para hablar sobre cualquier y toda la información que sea necesaria para evaluar y resolver esta queja.

Su Firma

Fecha

Una vez que haya completado, firmado y fechado este formulario, por favor envíelo a la siguiente dirección:

Coordinador de Resoluciones de Problemas (Problem Resolution Coordinator)
768 Pleasant Valley Road, Suite 201
Diamond Springs, CA 95619

EXHIBIT D

LANGUAGE ASSISTANCE

English

ATTENTION: If you speak another language, language assistance services, free of charge, are available to you. Call _____ (TTY: _____).

ATTENTION: Auxiliary aids and services, including but not limited to large print documents and alternative formats, are available to you free of charge upon request. Call _____ (TTY: _____).

Español (Spanish)

ATENCIÓN: Si habla español, tiene a su disposición servicios gratuitos de asistencia lingüística. Llame al _____ (TTY: _____).

Tiếng Việt (Vietnamese)

CHÚ Ý: Nếu bạn nói Tiếng Việt, có các dịch vụ hỗ trợ ngôn ngữ miễn phí dành cho bạn. Gọi số _____ (TTY: _____).

Tagalog (Tagalog – Filipino)

PAUNAWA: Kung nagsasalita ka ng Tagalog, maaari kang gumamit ng mga serbisyo ng tulong sa wika nang walang bayad. Tumawag sa _____ (TTY: _____).

한국어 (Korean)

주의: 한국어를 사용하시는 경우, 언어 지원 서비스를 무료로 이용하실 수 있습니다. _____ (TTY: _____) 번으로 전화해 주십시오.

繁體中文 (Chinese)

注意：如果您使用繁體中文，您可以免費獲得語言援助服務。請致電 _____ (TTY: _____)。

Հայերեն (Armenian)

ՈՒՇԱԴՐ ՈՒԹՅՈՒՆ Եթե խոսում եք հայերեն, ապա ձեզ անվճար կարող են տրամադրվել լեզվական աջակցություններ: Ձանգահարեք _____ (TTY: _____).

Русский (Russian)

ВНИМАНИЕ: Если вы говорите на русском языке, то вам доступны бесплатные услуги перевода. Звоните _____ (TTY: _____).

فارسی (Farsi)

توجه: اگر به زبان فارسی گفتگو می کنید، تسهیلات زبانی بصورت رایگان برای شما فراهم می باشد. با (TTY: _____) تماس بگیرید.

日本語 (Japanese)

注意事項：日本語を話される場合、無料の言語支援をご利用いただけます。
_____ (TTY: _____) まで、お電話にてご連絡ください。

Hmoob (Hmong)

LUS CEEV: Yog tias koj hais lus Hmoob, cov kev pab txog lus, muaj kev pab dawb rau koj. Hu rau _____ (TTY: _____).

ਪੰਜਾਬੀ (Punjabi)

ਧਿਆਨ ਦਿਓ: ਜੇ ਤੁਸੀਂ ਪੰਜਾਬੀ ਬੋਲਦੇ ਹੋ, ਤਾਂ ਭਾਸ਼ਾ ਵਿੱਚ ਸਹਾਇਤਾ ਸੇਵਾ ਤੁਹਾਡੇ ਲਈ ਮੁਫਤ ਉਪਲਬਧ ਹੈ।
_____ (TTY: _____) 'ਤੇ ਕਾਲ ਕਰੋ।

آرەبى (Arabic)

ملحوظة: إذا كنت تتحدث اذكر اللغة، فإن خدمات المساعدة اللغوية تتوافر لك بالمجان. اتصل برقم
_____ (رقم هاتف الصم والبكم): _____

हिंदी (Hindi)

ध्यान दें: यदि आप हिंदी बोलते हैं तो आपके लिए मुफ्त में भाषा सहायता सेवाएं उपलब्ध हैं।
[_____ (TTY: _____) पर कॉल करें।

ภาษาไทย (Thai)

เรียน: ถ้าคุณพูดภาษาไทยคุณสามารถใช้บริการช่วยเหลือทางภาษาได้ฟรี โทร
_____ (TTY: _____).

ខ្មែរ (Cambodian)

ប្រយ័ត្ន: អ្នកដែលនិយាយភាសាខ្មែរ, សេវាជំនួយមនុស្សធម៌ភាសា រោមមិនគិតថ្លៃ
គឺអាចមានសំណុំ ០០៧ អូធើ នក។ ចូ ទូ ស្តី _____ (TTY: _____)។

ພາສາລາວ (Lao)

ໂປດຊາບ: ຖ້າວ່າ ທ່ານເວົ້າພາສາ ລາວ, ການບໍລິການຊ່ວຍເຫຼືອດ້ານພາສາ,
ໂດຍບໍ່ເສັຽຄ່າ, ແມ່ນມີພ້ອມໃຫ້ທ່ານ. ໂທຣ _____ (TTY: _____).

EXHIBIT E

CHILD SUPPORT COMPLIANCE ACT CERTIFICATION

Agency shall comply with applicable federal and state laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of part 5 of Division 9 of the Family Code: and

- A. Agency, to the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Employee Registry maintained by the California Employment Development Department (EDD).
- B. Failure to comply with the above requirements may result in suspension of payments under the agreement or termination of the agreement or both, and the agency may be ineligible for award of future subgrants with the County, if the County determines that any of the following has occurred:
 - 1. the false certification; or
 - 2. violation of the certification by failing to carry out the requirements as noted above.

Organization

Name & Title of Authorized Representative

Signature

Date

Exhibit F

HIPAA Business Associate Agreement

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

R E C I T A L S

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

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

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

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

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

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

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

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

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

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

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

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

(2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.

D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.

5. Obligations of County.

A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.

C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.

E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:

(1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.

(2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or

(3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.

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

7. Indemnity

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

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