

**AGREEMENT FOR SERVICES 016-S1511
Alcohol and Drug Treatment Services**

THIS AGREEMENT made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Wellspace Health, a California Corporation and Federally Qualified Health Center, duly qualified to conduct business in the State of California, whose principal place of business is 1820 J Street, Sacramento, CA 95811, (hereinafter referred to as "Contractor"), and whose Agent for Service of Process is Alasdair J. Porteus, 1304 O Street, #336, Sacramento, CA 95816.

RECITALS

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

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

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

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

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

ARTICLE I

Scope of Services:

- A. County shall be responsible for the assessment of each Client identified as eligible for services pursuant to this Agreement. County shall assign a Program Coordinator from the County Alcohol and Drug Program (“ADP”) who shall complete and submit a Treatment Authorization Form, attached hereto as Exhibit “A” and incorporated by reference herein, to authorize services for each Client. In addition, County shall be responsible for:
1. Annual site audit;
 2. Monitoring of invoices and services to verify adherence to funding requirements; and
 3. Monitoring of program to verify adherence to terms and conditions of the Agreement.
- B. Contractor shall be responsible for provision of services in accordance with the Treatment Authorization Form for each Client that may include but are not limited to:
1. Case Management: This function shall be performed to integrate and coordinate all necessary services and to help ensure successful treatment and recovery. Case management may include but is not limited to evaluating payment resources, determining the nature of services to be provided, planning the delivery of treatment services, identifying appropriate treatment resources, referring Client(s) to other resources as appropriate, monitoring Client progress, documenting treatment, participating in case conferences, and other similar types of activities. The cost of said case management shall be included within Contractor’s rate for service and shall not be billed separately.
 2. Drug Testing: Client(s) admitted to residential treatment shall be tested for drug usage. The cost of said drug testing shall be included within Contractor’s rate for service and shall not be billed separately. Contractor may bill for drug testing for clients admitted to outpatient treatment services if so indicated on HHSA Treatment Authorization Form.
 3. Intake: Demographic, financial, health, family, living situation, and other pertinent information shall be collected as necessary to establish Client records and to support reporting requirements. Intake also includes dissemination of required information to Client(s) including but not limited to Contractor confidentiality policies, complaint procedures, and admission procedures. The cost of said intake shall be included within Contractor’s rate for service and shall not be billed separately.
 4. Detoxification Services: Contractor shall provide a treatment program to include medically supervised detoxification services, individual and group counseling, stress reduction, drug/alcohol information, nutrition, access to Alcoholics Anonymous or Narcotics Anonymous meetings, exercise, and other community and referred resource services.
 5. Residential Services: The provision of residential treatment beds if so indicated on HHSA Treatment Authorization Form. Client(s) admitted to residential treatment shall receive counseling services. The cost of said counseling services shall be included within Contractor’s rate for service and shall not be billed separately.
 6. Therapeutic Individual/Group/Family Counseling for Co-Occurring Disorder Clients: For clients not admitted to residential treatment, the provision of therapeutic individual/group/family counseling, if so indicated on HHSA Treatment Authorization Form. Compensation for said service shall be as set forth in the Article herein titled, “Compensation.”
 - a. Whenever possible, therapeutic counseling services shall be provided by a currently Licensed Clinical Social Worker (“LCSW”) or currently licensed Marriage and Family Therapist (“MFT”) whose license has been issued and is regulated by the

California Department of Consumer Affairs Board of Behavioral Sciences (“BBS”). Said license must be considered clear, i.e., license renewal fees have been paid, continuing education requirements (if applicable) have been met, and there have been no actions or revocations placed against it by the BBS.

- b. The BBS does not have reciprocity with any other state licensing board. Therefore, any LCSW or MFT who is providing HHSA approved services to a Client who is receiving services outside California must have a current, clear license issued and regulated by the appropriate certifying agency for the state in which they are practicing.
 - c. If any service is delegated to an intern, the intern must be pre-licensed by the appropriate certifying state agency and all service assignments must be under the direct supervision of a currently licensed LCSW or MFT as described above. No intern shall be the sole author of any written initial visit report or any other report that pertains to Client or Client’s treatment plan. All Client-related documents must be reviewed, approved, and signed by said LCSW or MFT.
7. Transitional Living Services: If so indicated on HHSA Treatment Authorization Form, provide cooperative living arrangements with a requirement to be free from alcohol and other drugs (sometimes referred to as a “sober living environment”), a sober living home, transitional housing, or alcohol and drug free housing.
 8. Treatment Plans: An individualized treatment plan shall be developed for each Client using information obtained in the intake and evaluation process. The treatment plan must be completed within thirty (30) days of the date the Client is admitted to treatment. The treatment plan shall identify problems to be addressed, goals to be reached, action steps, target dates, type, and frequency of services to be provided, and the assigned counselor. Treatment plans must be maintained in Client records and kept current as the treatment progresses. The cost of said treatment plans shall be included within Contractor’s rate for service and shall not be billed separately.

ARTICLE II

Term: This Agreement shall become effective upon final execution by both parties hereto and shall cover the period of November 1, 2013 through October 31, 2016 unless earlier terminated pursuant to the provisions under the Articles titled “Fiscal Considerations” and “Default, Termination and Cancellation” contained herein.

ARTICLE III

Compensation for Services:

All rates herein are inclusive of preparation and documentation time.

- A. Rates: Categories of treatment services defined under the Article titled “Scope of Services” billed to County shall use either the “County Standardized Rate” structure or the “County Negotiated Rate” structure. The “County Standardized Rate” structure shall use the most current California Drug Medi-Cal (“DMC”) Alcohol and Drug Services Program “Regular DMC” and “Perinatal DMC” rates (collectively “DMC rates”) as its benchmark and as set forth in the chart listed below.

Notwithstanding the foregoing, Federal Block Grants Management Guidelines require Contractor to ensure that Federal Block Grant funds are the “payment of last resort” for Alcohol and Other Drug Treatment Services subsidized under this Agreement. For that reason, Contractor shall comply with the following guidelines with regard to charges for services, including the establishment of a sliding scale fee schedule, attached hereto as Exhibit “C” and incorporated by reference herein, the sole purpose of which is for use in billing clients for Alcohol and Other Drug Counseling Treatment Services.

In addition, Contractor must demonstrate that they cannot collect at the “County Standardized Rate” from an insurance carrier or other benefit program, including but not limited to (1) the Social Security Act, including Title 19 CCR and Title 22 CCR programs, (2) any State compensation program, and (3) any other public assistance program for medical expenses, any grant program, or any other benefit program. Thereafter, Contractor may bill County for Alcohol and Other Drug Counseling Treatment Services using the below County Standardized Rate Structure any amount equal to the difference between the “County Standardized Rate” and the amount received by Contractor from a separate funding source.

All rates as noted in the County Standardized Rate table herein are inclusive of preparation and documentation time.

SERVICE	COUNTY STANDARDIZED RATE STRUCTURE
<p>Client Progress Reports. Upon Program Coordinator’s request and/or no later than (30) days after the end of each second service month, Contractor shall provide the Program Coordinator, at no charge to the County, with a brief written progress report outlining the primary issues being addressed with each Client, their progress, and ongoing treatment goals.</p>	<p>No Charge</p>
<p>Court Appearances. Upon subpoena by County, Contractor shall attend court sessions. County shall only pay Contractor for court appearances when County subpoenas Contractor. Contractor shall be paid for court appearances at the DMC rate for Regular DMC individual counseling session for time actually spent at the subpoenaed court session. Contractor shall provide documentation of attendance at Court appearances as backup to invoices. Travel time shall not be included in the reimbursement for these services.</p>	<p>Current Drug Medi-Cal Reimbursement Rate for (Regular DMC) Outpatient Drug Free Individual Counseling Unit of Service (“UOS”) Rate</p>
<p>Court Meetings. Upon notification from Court or as Court directs County, and at a rate equivalent to the individual counseling session for the time Contractor appeared in person at Court Meeting, and pro-rated for time actually spent at the pertinent court session. If Court’s meeting is cancelled by the Court less than 24 hours in advance of scheduled calendar time and is not</p>	<p>Current Drug Medi-Cal Reimbursement Rate for (Regular DMC) Outpatient Drug Free Individual Counseling UOS Rate.</p>

SERVICE	COUNTY STANDARDIZED RATE STRUCTURE
rescheduled for the same month, Contractor may invoice for the scheduled length of cancelled Court meeting, not to exceed two (2) hours. Contractor shall provide documentation of attendance at Court meetings as backup to invoices. Travel expenses including but not limited to travel time, meals, lodging, and mileage shall not be paid by County.	
Court Documents Preparation. Upon written request by County at a rate equivalent to the individual counseling session rate and up to a maximum limit of two (2)-session rates charged per report.	Current Drug Medi-Cal Reimbursement Rate for (Regular DMC) Outpatient Drug Free Individual Counseling UOS Rate
Family Therapy Session. 90 minutes per session upon written request by County and wherein one (1) or more therapists or counselors treat no more than twelve (12) family members at the same time.	Current Drug Medi-Cal Reimbursement Rate for (Regular DMC or Perinatal DMC) Outpatient Drug Free Group Counseling UOS Rate per client
Group Counseling Session. 90 minutes per session and per group therapy participant upon written request by County and wherein one (1) or more therapists or counselors treat no less than three (3) and no more than twelve (12) group therapy participants at the same time.	Current Drug Medi-Cal Reimbursement Rate for (Regular DMC or Perinatal DMC) Outpatient Drug Free Group Counseling UOS Rate
Individual Counseling Session. 50-60 minutes per session and per individual upon written request by County.	Current Drug Medi-Cal Reimbursement Rate for (Regular DMC or Perinatal DMC) Outpatient Drug Free Individual Counseling UOS Rate
Multidisciplinary Team Meeting. Upon written request by County and for time actually spent in the meeting. Contractor shall include support documentation in the form of time study attached to any invoice for Multidisciplinary Team Meeting Participation. The definition of multidisciplinary team meetings as it applies to this Agreement excludes any community-based teams in which County considers Contractor or Contractor's staff or assigns to be regular standing members.	Current Drug Medi-Cal Reimbursement Rate for (Regular DMC) for Outpatient Drug Free Individual Counseling UOS Rate

Substance Abuse Testing Services Rates: Contractor shall only bill County for Substance Abuse Testing provided in this Agreement using the below rates. Client(s) admitted to residential treatment or transitional living treatment shall receive substance abuse testing services. The cost of said substance abuse testing services shall be included within Contractor's rate for residential or transitional living treatment services and shall not be billed separately.

SUBSTANCE ABUSE TESTS	RATES
Substance Abuse Tests: Urinalysis collection and written analysis of findings. Multiple Units of Service shall be allowed upon approval of appropriate HHSA staff. Substance Abuse tests include 4 panel urinalysis and 80 hour EtG.	Urinalysis: \$20.00 per test EtG: \$20.00 per test

Residential Services Rates: Contractor may only bill County for residential services provided under this Agreement using the below negotiated rates.

Residential Services		County Negotiated Rate
Residential	Men's Residential Services	\$80.00 per bed day
	Non-parenting Women's Residential Services	\$80.00 per bed day
	Parenting Women's Residential Services*	\$80.00 per bed day
	Perinatal Women's Residential Services**	\$97.72 per bed day***
	Children with Parenting or Perinatal Women's Residential Services	\$20.00 per day for first child; \$10.00 per day – additional children
	Detoxification Services	\$80.00 per bed day
Transitional Living	Men's Transitional Living Services	\$19.73 per day (\$600 per month)
	Women's Transitional Living Services, includes Perinatal Women	\$19.73 per day (\$600 per month)
	Children with Parenting or Perinatal Women in Transitional Living Services	\$25.00 per month, per child
Detoxification Services	Per Individual Client	\$155.00 per day

**Parenting Woman:* A female who is in one or more of the following categories: 1) Has custody of a dependent child age 0-17 years; 2) Is attempting to regain legal custody of a child age 0-17 years; 3) Has voluntarily placed a child age 0-17 years with a caregiver and is attempting to parent.

***Perinatal Drug Medi-Cal:* Drug Medi-Cal substance abuse services that are provided to pregnant or postpartum women. The Drug Medi-Cal defined postpartum period is sixty (60) days from the date pregnancy terminated plus the days remaining until the end of the month in which the pregnancy terminated.

****Current Drug Medi-Cal Rate:* DCM for Perinatal Residential, the County standardized rate structure.

For the purposes of this Agreement:

1. DMC rates are for reimbursement reference purposes only and any descriptive information contained within the DMC rate schedule shall not apply to this Agreement unless otherwise specifically addressed. California-approved Drug Medi-Cal (DMC) reimbursement rates are located on the California Department of Health Care Services (“DHCS”) website at the following website address: <http://www.dhcs.ca.gov/>.¹
 2. DMC rates shall be subject to an annual adjustment in order to match the most current State-approved DMC rate schedule. Any adjustments to the DMC rate schedule by the State shall become effective the first day of the month that follows California’s announcement that its governor has signed the Budget Bill for that particular Fiscal Year, thereby enacting the State’s Budget Act.²
- B. Funding Types: Contractor shall maintain familiarity with Federal and State laws, rules, and regulations in accordance with services provided under this Agreement so that it can correctly charge services described in the Scope of Work to funding types that allow payment for those services:
1. AB 109 Treatment Services: Funding for services provided herein is provided by the 2011 El Dorado Public Safety Realignment Implementation Plan, and is subject to all laws and regulations promulgated under California Assembly Bill (“AB”) 109, AB 116, AB 117, ABXI 16 and ABXI 17, Statutes of 2011. Contractor shall only use AB 109 funds, and shall not use any other funding sources, to provide services to AB 109 eligible clients. Services may only be provided if County refers client to Contractor via a Treatment Authorization Form.
 2. Drug Court Treatment Services: These services are funded with Local Realignment Revenue and shall only be provided if County refers client to Contractor via a Treatment Authorization Form.
 3. Alcohol and Other Drug Counseling and Treatment Services (“AOD” Counseling Services): These services are provided to clients who may be referred to Contractor by County and shall only be provided if County refers client to Contractor via a Treatment Authorization Form. There are two funding components to AOD Counseling Services: 1) Drug Medi-Cal and 2) Federal Block Grant Funds.
 - a. 2012 Realignment Drug Medi-Cal (DMC): Drug Medi-Cal is a treatment program as defined in Title 22, California Code of Regulations. Contractor shall bill County in accordance with Title 22 CCR service definitions and utilizing the “County Standardized Rate Structure” under Item A titled “Rates” of the Article titled “Compensation for Services.” Effective July 1, 2011 Local Realignment Revenues are used to fund DMC services to Drug Medi-Cal clients, including Minor Consent Services.
 - i. Federal Financial Participation (“FFP”) or Federal match on DMC: This funding is the Federal share of the Drug Medi-Cal (Medicaid) Program. The match, which varies by year, is usually at or near fifty percent (50%).
 - b. Services under the Alcohol and Other Drug Counseling and Treatment Services

¹ The California ADP Bulletin contains information on the most current DMC rates, which can be found at the CA Dept. of Health Care Services (<http://www.dhcs.ca.gov/formsandpubs/Pages/ADPBulletinsLtrs.aspx>). This link will open the “Alcohol and Drug Bulletins and Letters” page. Click on the link titled “Proposed Drug Medi-Cal Rates for Fiscal Year ____” (most current fiscal year) or click on the Exhibit link to open the DMC rate chart.

² The most current information on the status of the enactment of the California budget act may usually be found at the following website: <http://senweb03.senate.ca.gov/focus/budget/default.aspx>.

category that are not funded by Drug Medi-Cal shall be funded by the Federal Block Grant – Substance Abuse Prevention and Treatment (“SAPT”): These are Federal funds which are to be used for specific services as follows:

- i. SAPT Discretionary: These are Federal block grant funds, which are to be used in a discretionary manner for substance abuse treatment, prevention, and recovery services.
- ii. SAPT Federal Block Grant Perinatal Set Aside: These funds are for substance abuse services designated for pregnant/postpartum women.
- iii. SAPT Federal Block Grant Adolescent and Youth Treatment Programs: These funds are for substance abuse services to youth age 12 through 17 years (inclusive), as described in ADP’s Youth Treatment Guidelines (2002).
 - a) Client Fees: Contractor may charge a fee to clients for whom services are provided pursuant to this Agreement, assessing ability to pay based on individual expenses in relation to income, assets, estates, and responsible relatives. Client fees shall be based upon the person’s ability to pay for services, but shall not exceed the actual cost of service provided. No person shall be denied services because of inability to pay. Determination of fees shall be established in accordance with a fee scale developed by Contractor, approved by the Contract Administrator, and attached hereto as Exhibit C.
 - b) Client Financial Assessment: Contractor shall certify all clients whose alcohol and drug treatment services are subsidized under this Agreement as unable to pay the amount charged to this Agreement. The certification of each client who is unable to pay shall be documented in writing on a Client Financial Assessment Form, which is developed by Contractor and approved by Contract Administrator. This completed document shall be maintained by the Contractor in the client’s file.

C. Funding for Service Categories: Unspent funding may be carried forward from fiscal year to fiscal year for the term of this Agreement unless otherwise re-allocated by County in accordance with the Article titled “Changes to Agreement.”

D. Invoices:

1. Contractor shall submit an original invoice referencing this Agreement that shall contain all of the following data:
 - a. All services provided shall be billed at no more than the units of measure defined in the “County Standardized Rate Structure” or “County Negotiated Rate” under the Article titled “Compensation for Services” in Item A titled “Rates.”
 - b. All invoices to County shall be supported at Contractor’s facility by source documentation that substantiates the accuracy, appropriateness, and necessity of services billed. Such documentation may include, but is not limited to: ledgers; books; vouchers; journals; time sheets; payrolls; signed attendance rosters; appointment schedules; client data cards; client payment records; client charges documenting services rendered; client treatment plans; cost allocation schedules; invoices; bank statements; cancelled checks; receipts; and receiving records. County may require Contractor to submit backup documentation that supports monthly invoices along with any or all invoices. Failure of Contractor to supply requested documentation in support of any invoice may result in denial of payment by County. County shall determine the format and content of monthly invoices and backup

documentation, and may modify the format and/or content at any time by giving thirty (30) days advance notice to Contractor.

- c. All Contractor costs must be allowable pursuant to applicable Federal and State laws, regulations, policies, and procedures, as set forth herein.
- 2. County shall not pay for any invoices that have not been approved in writing by the Contract Administrator or designee, incomplete services, “no show” cancellations, telephone calls or for the preparation of progress reports. Contractor shall ensure that only billing information is included on the invoice. Information related to Client(s) diagnosis, prognosis or treatment is not permitted on the invoice. Invoices with “white-out” types of corrections shall not be accepted.
- 3. Contractor shall submit monthly invoices along with written Treatment Authorization Form to HHSA no later than fifteen (15) days following the end of a “service month. For billing purposes, a “service month” shall be defined as a calendar month during which Contractor provides Client services in accordance with “Scope of Services. Failure to submit invoices by the 15th of the month following the end of a service month, failure to attach signed written authorization(s), or failure to submit all reports required hereunder shall result in a significant delay in reimbursement. Receipt by HHSA of invoices and associated paperwork submitted by Contractor for payment shall not be deemed evidence of allowable costs under this Agreement. Upon request by County, Contractor may be required to submit additional or new information, which may delay reimbursement.
- 4. Invoice / remittance to be sent as follows:

Invoices	Remittance
County of El Dorado-HHSA 3057 Briw Road, Suite B Placerville, CA 95667 Attn: Fiscal Unit	Wellspace Health 1820 J Street Sacramento, CA 95811 Attn: Fiscal Department

- 5. Supplemental Invoices: For the purpose of this Agreement, supplemental invoices shall be defined as invoices submitted for additional services rendered during a month for which a prior invoice has already been submitted to County. Supplemental invoices should include the standard invoice format with description of services rendered and a detailed explanation why the invoice was not submitted in the approved timeframe. Written Treatment Authorization Forms shall be submitted with invoices.
 - a. For the period July 1st through April 30th of this Agreement: Supplemental invoices for additional services as defined in the Article titled “Scope of Services” received after May 10th, shall be neither accepted nor paid by the County.
 - b. For the period May 1st through June 30th of this Agreement: Any supplemental invoices for additional services as defined in the Article titled “Scope of Services” received after July 10th shall be neither accepted nor paid by the County.
- E. Payment: County shall pay Contractor monthly in arrears. Monthly payments are standardized payments only and subject to final settlement in accordance with the Article herein titled “Cost Report.”
 - 1. County shall pay Contractor for the actual costs of providing service, less any revenues actually received from client fees, insurance, and/or other third party payers, provided that:
 - a. Drug Medi-Cal services shall be billed to County by unit of service at an amount not

- exceeding the rates specified in the Article titled "Compensation for Services." The total payments shall not exceed HHSAs Total Maximum Obligation.
- b. All Contractor costs must be allowable pursuant to applicable State and Federal laws, regulations, policies and procedures, as set forth herein.
 - c. Costs shall be reconciled annually in the cost report as detailed in the Article herein titled "Cost Report." The cost report settlement is the process that determines whether standardized rates were an accurate representation of actual costs.
 - d. Settlement based on Cost Report findings shall pertain to Drug Medi-Cal only.
2. Payment Withholding: Contract Administrator may withhold or delay any payment if Contractor fails to comply with any provisions of this Agreement. In addition, as a means to ensure continuous operation of Contractor's facility, County may defer payments as described in the Article titled "Continuous Operation" of this Agreement.

ARTICLE IV

Maximum Obligation: The maximum contractual obligation under this Agreement shall not exceed \$100,000 for all of the stated services and during the term of the Agreement.

ARTICLE V

Cost Report

- A. Contractor shall submit a State Alcohol and Drug Cost Report ("Cost Report") to HHSAs on or before September 15 for each year of this Agreement, covering all expenditures for services provided herein.
- B. Contractor shall prepare the Cost Report in accordance with all Federal, State, and County requirements and generally accepted accounting principles. Contractor shall allocate direct and indirect costs to and between programs, cost centers, services, and funding sources in accordance with such requirements and consistent with prudent business practice. Such costs and allocations shall be supported by source documentation maintained by Contractor and available at any time to Contract Administrator upon reasonable notice.
- C. Contractor shall document that costs are reasonable and allowable, and directly or indirectly related to the services provided hereunder. The Cost Report shall be the final financial record of services rendered under this Agreement for subsequent audits, if any.
- D. Final Settlement shall be based upon the actual and reimbursable costs for services hereunder. Contractor shall not claim expenditures to County that are not reimbursable pursuant to applicable federal, State, and County laws, regulations, and requirements. Any payment made by County to Contractor, which is subsequently determined to have been for a non-reimbursable expenditure or service, shall be repaid by Contractor to County in cash within forty-five (45) days of submission of the Cost Report.
- E. If the Cost Report shows the actual and reimbursable cost of services provided pursuant to this Agreement is lower than the aggregate of monthly payments to Contractor, Contractor shall remit the difference to County. Such reimbursement shall be made with the submission of the Cost Report.
- F. When the State reconciliation of costs occurs, if the State settlement shows that the aggregate of monthly payments to Contractor for covered services provided under this agreement exceeds Contractor's allowable cost, in accordance with Title 22, California Code of

Regulations Section 51516.1, Contractor shall remit the difference to County. Contractor shall pay County the difference within forty-five (45) days after verification of amount owed or the completion of an Appeal Process through County, whichever comes first. In the event of a State Alcohol and Drug cost report audit and/or program audit, both Local Realignment Revenue and Federal Medicaid portions of all Contractor disallowances shall be reimbursed to County within forty-five (45) days of completion of an appeal process following receipt of a final Audit Report or the completion of an Appeal Process through County, whichever comes first.

ARTICLE VI

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

ARTICLE VII

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

//

//

ARTICLE VIII

Sub Recipient Terms and Conditions: Contractor agrees to comply with all applicable provisions of the State of California Standard Agreement between County and the California Department of Health Care Services for "Negotiated Net Amount ("NNA") Agreement" available at <http://www.edcgov.us/HHSAForContractors/>, "Negotiated Net Amount

Agreement.”³ Noncompliance with the aforementioned terms and conditions may result in termination of this Agreement by giving written notice as detailed in the Article herein titled, “Default, Termination, and Cancellation.”

By signing this Agreement, Contractor acknowledges that, as a sub recipient of Federal and State funding, Contractor is obligated to adhere to all terms and conditions defined in the Agreement in effect at the time services are provided between County and California Department of Health Care Services, “Negotiated Net Amount (NNA)” Available at <http://www.edcgov.us/HHSAForContractors/>, Health and Human Services Agency Contractor Resources, “Negotiated Net Amount Agreement (NNA),” including but not limited to:

1. Age Discrimination Act of 1975 (45 Code of Federal Regulations (“CFR”) Part 90), as amended (42 UC Sections 6101 - 6107), which prohibits discrimination based on age.
2. Age Discrimination in Employment Act (29 CFR Part 1625).
3. California Code of Regulations (“CCR”), Title 22.
4. California Code of Regulations, Title 9, Division 4.
5. California Health and Safety Code (“HSC”) Sections 11812 and 11845.5.
6. California Health and Safety Code, Divisions 10.5 and 10.6, and Section 11758.12(d).
7. California State Department of Alcohol and Drug Programs Certification Standards (July 1999).
8. California State Department of Alcohol and Drug Programs Perinatal Services Network Guidelines (1997).
9. California State Department of Health and Human Services Health Care Financial Administration Manual 15.
10. California Welfare and Institutions Code, Section 14100.2.
11. Civil Code Section 1798.80 through 1798.82 - Customer Records (breach of security).
12. Civil Code Section 1798.85 - Confidentiality of Social Security Numbers.
13. Civil Code Sections 56 through 56.37 - Confidentiality of Medical Information Act.
14. Code of Federal Regulations (CFR), Title 21, Title 41, Title 42 and Title 45.
15. Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination based on alcohol abuse or alcoholism.
16. Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination based on drug abuse.
17. Drug-Free Work Place Act of 1990 (Government Code Section 8355 et seq.).
18. Equal Employment Opportunity Act in conformance with Federal Executive Order No. 11246 and Section 503 of the Rehabilitation Act of 1973 (as amended).
19. Executive Order 11246 (42 USC 2000(e) et seq. and 41 CFR Part 60) regarding nondiscrimination in employment under federal contracts and construction contracts greater than \$10,000 funded by federal financial assistance.
20. Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
21. Fair Employment and Housing Act (Government Code Section 12900 et seq.) and the applicable regulations promulgated thereunder (California Administrative Code, Title 2, Section 7285.0 et seq.).

³ <http://www.edcgov.us/HHSAForContractors/>

22. Federal Grants Management Handbook, Part 92, Subpart L(a)(2).
23. Government Code Section 16367.8.
24. Government Code, Article 7, Federally Mandated Audits of Block Grant Funds Allocated to Local Agencies, Chapter 1, Part 1, Division 2, Title 5, commencing at Section 53130, if applicable.
25. Government Code, Title 2, Division 3, Article 9.5, commencing with Section 11135.
26. Health Information Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules.
27. California Health and Safety Code Sections 123110 through 123149.5 - Patient Access to Health Records.
28. California Health and Safety Code, Division 10.5, commencing with Section 11760.
29. Office of Management and Budget (“OMB”) Circular A-133.
30. Public Law 103-227, also known as the Pro-Children Act of 2001.
31. Public Law 106-310, which addresses nondiscrimination and institutional safeguards for religious providers, and which is implemented through Title 42, CFR, Part 54.
32. Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), which prohibits discrimination based on handicap.
33. State Administrative Manual (SAM), Chapter 7200 (General Outline of Procedures).
34. The Single Audit Act Amendments of 1966 (Title 31, USC Sections 7501-7507) and the OMB Circular A-133 revised June 27, 2003, if applicable.
35. Title 21, CFR, Sections 1301.01 through 1301.93, Department of Justice, Controlled Substances, if applicable.
36. Title 31, Section 319, U.S.C.
37. Title 42, CFR Part 2.
38. Title 42, CFR Part 96, Sec. 96.132(e).
39. Title 42, CFR, Sections 8.1 through 8.34, if applicable.
40. Title 42, United States Code (USC), Sections 300x-21 through 300x-31, 300x-34, 300x-57, and 330x-65 and 66, if applicable.
41. Title 42, USC 1320d through 1320d-8.
42. Title 42, USC Section 290 dd-2.
43. Title 45, CFR Parts 160, 162, and 164 - the Health Insurance.
44. Title 45, Code of Federal Regulations (CFR), Sections 96.30 through 96.33 and Sections 96.120 through 96.137, if applicable.
45. Title 9, California Code of Regulations, (CCR) (herein referred to as Title 9), Division 4, commencing with Section 9000.
46. Title 9, Division 4, Chapter 6 of the CCR, commencing with Section 10800.
47. Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
48. Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
49. Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
50. Title VI of the Civil Rights Act of 1964, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
51. Title VIII of the Civil Rights Act of 1968 (42 USC 3601 et seq.) prohibiting discrimination on the basis of race, color, religion, sex, handicap, familial status or national origin in the sale or rental of housing.

ARTICLE IX

Reporting to County:

- A. State Data Submission: Contractor shall submit to County ADP in accordance with Health and Safety Code Section 11758.12 (c), that information required by the State in a manner identified by, or on forms provided by, ADP. The data shall include, but is not limited to Drug and Alcohol Treatment Access Report (“DATAR”) and Drug and Alcohol Services Information System (“DASIS”) Uniform Facilities Data Set (“UFDS”).
- B. California Outcomes Measurement Systems ("CalOMS"): Contractor shall enter treatment admissions and discharge information into a specific database as directed by County and shall, on a monthly basis, submit same to HHSA Alcohol and Drug Program designee for submission to the State CalOMS database.
- C. County Data Submission: Contractor shall report to HHSA any problems in implementing the provisions of this Agreement, staff changes, status of licenses and/or certifications, changes in modalities and/or populations served, and reasons for any such changes. Further, when requested to do so by HHSA, Contractor shall submit documents related to Client services, administrative activities, or other program operation functions.
- D. Board of Director’s Minutes: Contractor shall provide Contract Administrator the minutes of all Contractors’ monthly Board of Director's meetings to include monthly Treasurer's report.
- E. Notification of Injury or Death: Contractor shall notify Contract Administrator, in writing, within twenty-four (24) hours of becoming aware of any occurrence that may expose County to liability. Such occurrences shall include, but not be limited to accidents, injuries, death, acts of negligence, and loss of or damage to any County property in possession of Contractor.

ARTICLE X

Communicable Diseases: As applicable, Contractor shall provide tuberculosis (“TB”) services directly or by referral to the County of El Dorado HHSA Public Health Division or another appropriate provider. These TB services shall consist of the following:

- A. Counseling with respect to tuberculosis.
- B. Testing to determine whether the individual has been infected and to determine the appropriate form of treatment.
- C. Provision for, or referral of, infected Clients for medical examination and treatment.

A Health Questionnaire shall be completed for all Clients admitted for residential or nonresidential alcohol and/or other drug services. Contractor shall use either form ADP 10100-A-E for its health questionnaire or it may develop one, which contains, at a minimum, the information requested in ADP 10100-A-E. Contractor staff shall review each completed questionnaire. When appropriate, the Client shall be referred to licensed medical professionals for physical and laboratory examinations. A medical clearance or release shall be obtained prior to admission whenever a Client is referred to a licensed medical professional for such examinations.

Prior to obtaining a medical clearance, Contractor shall not accept persons who have communicable diseases, with the exception of persons with asymptomatic HIV (Human

Immunodeficiency Virus) disease, symptomatic HIV disease, and AIDS (Acquired Immunodeficiency Syndrome) Indicator Conditions.

Contractor shall perform activities that help prevent and delay the progression of HIV infection. This includes encouraging Clients to receive testing, collecting test samples (which are then sent to a lab for processing), and providing both pre- and post-test counseling.

ARTICLE XI

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

ARTICLE XII

Drug-Free Workplace: Contractor agrees to maintain a drug-free workplace and remain in compliance with the Federal Drug-Free Workplace Act of 1988 (41 U.S.C. Chapter 10) and the California Drug-Free Workplace Act of 2000 (Gov't Code §8350 et seq.) and any subsequent amendments to either Act thereto. A “drug free workplace” means the site(s) for the performance of work done by Contractor at which Contractor and employees of the Contractor are prohibited from engaging in the unlawful manufacture, distribution, dispensing, possession, or use of any controlled substance. A list of controlled substances can be found in Schedules I through V of §202 of the Controlled Substances Act (21 U.S.C. 812) and as further defined in Regulation 21 CFR 1308.11 – 1308.15.

ARTICLE XIII

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

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

A. Permitted Uses and Disclosures of PII by Contractor.

1. Permitted Uses and Disclosures. Contractor shall develop and maintain an information privacy and security program that includes the implementation of administrative, technical, and physical safeguards appropriate to the size and complexity of Contractor’s operations and the nature and scope of its activities. The information privacy and security programs must reasonably and appropriately protect the confidentiality, integrity, and availability of the PII that it creates, receives, maintains, or transmits; and prevent the use or disclosure of PII other than as provided for in this Agreement. Except as

otherwise provided in this Agreement, Contractor, may use or disclose PII to perform functions, activities or services identified in this Agreement provided that such use or disclosure would not violate Federal or State laws or regulations.

2. Specific Uses and Disclosures provisions. Except as otherwise indicated in the Agreement, Contractor shall:
 - a. Use and disclose only PII for the proper management and administration of Contractor or to carry out the legal responsibilities of Contractor, provided that such use and disclosures are permitted by law; and
 - b. Take all reasonable steps to destroy, or arrange for the destruction of a client's records within its custody or control containing personal information that is no longer to be retained by Contractor by (1) shredding, (2) erasing, or (3) otherwise modifying the personal information in those records to make it unreadable or undecipherable through any means.

B. Responsibilities of Contractor.

1. Contractor agrees to safeguards:
 - a. To prevent use or disclosure of PII other than as provided for by this Agreement. Contractor shall provide County with information concerning such safeguards as County may reasonably request from time to time; and
 - b. Contractor shall restrict logical and physical access to confidential, personal (e.g., PII) or sensitive data to authorized users only; and
 - c. Contractor shall implement a system to identify appropriate authenticated and authorized persons. If passwords are used in user authentication (e.g., username/password combination), Contractor shall implement strong password controls on all compatible computing systems that are consistent with the National Institute of Standards and Technology (NIST) Special Publication 800-86 and SANS Institute Password Protection Policy.
2. Contractor shall implement the following security controls on each server, workstation, or portable (e.g. laptop computer) computing device that processes or stores confidential, personal, or sensitive data:
 - a. Network based firewall or personal firewall; and
 - b. Continuously updated anti-virus software; and
 - c. Patch-management process including installation of all operating system/software vendor security patches.
3. Mitigation of Harmful Effects. Contractor shall mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PII by Contractor or its subcontractors.
4. Agents and Subcontractors of Contractor. The same restrictions and conditions that apply through this Agreement to Contractor, shall also apply to Contractor's subcontractors and agents.
5. Notification of Electronic Breach or Improper Disclosure. During the term of this Agreement, Contractor shall notify County immediately upon discovery of any breach of PII or data, where the information or data are reasonably believed to have been acquired by an unauthorized person. Immediate notification shall be made to County Privacy Officer, within two business days of discovery, at (530) 621-5565. Contractor shall take prompt corrective action to cure any deficiencies and any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

Contractor shall investigate such breach and provide a written report of the investigation to County Privacy Officer, postmarked within thirty (30) working days of the discovery of the breach.

ARTICLE XIV

Accounting Systems and Financial Records: Contractor shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all federal funds received, including all matching funds from the State, County and any other local or private organizations. Contractor's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR Part 92 and all current revisions of OMB Circular A-122. More particularly, Contractors are responsible for complying with OMB Circular A-122 and 45 CFR Part 92, and the allowability of the costs covered therein. Contractor must obtain written approval from a member of the HHSA Executive Management prior to the expenditure of any "special" or unusual costs in order to avoid possible disallowances or disputes based on any potential unreasonableness or unallowability of expenditures as detailed under the specific cost principles of OMB Circular A-122. In order to obtain the most current regulations, the user should consult not only the latest version of the CFR, but also the List of (CFR) Sections Affected ("LSA") issued in the current month. The *Federal Register* home page (<http://www.gpoaccess.gov/nara/index.html>) offers links to both the *Federal Register* and the CFR. An electronic CFR ("e-CFR") is available at <http://www.gpoaccess.gov/ecfr/>. The e-CFR is an unofficial editorial compilation of CFR material and *Federal Register* amendments. It is a current, daily updated version of the CFR; however, it is not an official legal edition of the CFR. Please note that on-line versions of the CFR may not be the most current available.

ARTICLE XV

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

ARTICLE XVI

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

ARTICLE XVII

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 XVIII

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 XIX

Assignment and Delegation: Contractor is engaged by County for its unique qualifications and skills as well as those of its personnel. Contractor shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of County. In the event County agrees in writing that Contractor may subcontract for services under this Agreement, Contractor shall require that all subcontractors comply with all terms and conditions of this Agreement, and all pertinent Federal and State statutes and regulations.

ARTICLE XX

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 XXI

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

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

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

This Agreement is subject to the availability of State and/or Federal funding.

ARTICLE XXII

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 XXIII

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 A
PLACERVILLE, CA 95667
ATTN: CONTRACTS UNIT

With a copy to:

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

Or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

WELLSPACE HEALTH
1820 J STREET
SACRAMENTO, CA 95811
ATTN: JONATHAN PORTEUS, PH.D.

Or to such other location as the Contractor directs.

ARTICLE XXIV

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

ARTICLE XXV

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

ARTICLE XXVI

Indemnity: The Contractor shall defend, indemnify, and hold the County, its Officers, employees, agents, and representatives 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 XXVII

Debarment and Suspension Certification: By signing this agreement, the Contractor agrees to comply with applicable federal suspension and debarment regulations including, but not limited to

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

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

- C. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State, or local) with commission of any of the offenses enumerated in Paragraph b(2) herein;
- D. Have not within a three (3)-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default;
- E. Shall not knowingly enter in to any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., **48 CFR part 9, subpart 9.4**), debarred, suspended, declared ineligible or voluntarily excluded from participation in such transactions, unless authorized by the State; and
- F. Shall include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

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

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

If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, County may terminate this agreement for cause or default.

ARTICLE XXVIII

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

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Consultant 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 Consultant in the performance of the Agreement.
- D. In the event Consultant 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. Consultant 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. Consultant 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, Consultant 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 Consultant agrees that no work or services shall be performed prior to the giving of such approval. In the event the Consultant 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 Consultant'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 Consultant'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 Consultant 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. Consultant's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Consultant cannot provide an occurrence policy, Consultant 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 XXIX

Fingerprinting: Pursuant to California Penal Code §11105.3(a), "Notwithstanding any other law, a human resource agency or an employer may request from the Department of Justice records of all convictions or any arrest pending adjudication involving the offenses specified in subdivision (1) of §15660 of the Welfare and Institutions Code of a person who applies for a license, employment, or volunteer position, in which he or she would have supervisory or disciplinary power over a minor or any person under his or her care." Therefore, Contractor warrants that its employees, subcontractors, assignees, volunteers and any other persons who,

while providing services under this Agreement, have or may have supervisory or disciplinary power over any person or minor under his or her care, have successfully passed a background check, using fingerprinting as the method to determine whether they have a criminal history that would compromise the safety of persons or minors with whom they have contact in the course of provision of services under this Agreement. Contractor further warrants that said employees, subcontractors, assignees, volunteers and other persons have been cleared by Contractor to perform the services described in this Agreement. All fingerprinting services shall be at Contractor's sole expense. More specifically, Contractor agrees that:

- A. Each applicant for paid or volunteer employment by Contractor who shall or may have a supervisory or disciplinary power over a minor or any person under his or her care shall be fingerprinted in order to determine whether they have a criminal history, which would compromise the safety of such minor, or person(s) under his or her care. All fingerprinting shall be at Contractor's sole expense.
- B. The fingerprinting process as set forth above shall be completed and the results of the process shall be obtained before any of the Contractor's employees, subcontractors, assignees or volunteers are assigned or permitted to work with any minor or person referred to Contractor by County. Alternatively, the Contractor may set a hire date prior to obtaining fingerprinting results contingent on the applicant certifying that: (1) his or her employment application truthfully and completely discloses whether he or she has ever been convicted of a felony or misdemeanor or been on parole or probation and (2) that the applicant understands that a background check shall be conducted and that he or she shall be immediately dismissed from employment if he or she has failed to provide information regarding convictions, has provided incomplete information regarding convictions, has omitted information regarding convictions or if the fingerprinting results reveal any conviction incompatible with employment with Contractor.
- C. Contractor shall maintain, and make immediately available to County upon request, a written fingerprint certification for each employee, volunteer or applicant for paid or volunteer employment for whom fingerprinting is required as detailed above. Such certification shall state that the individual has been fingerprinted, shall provide the date of said fingerprinting, and shall state whether or not the process has disclosed any criminal history of the individual, which may compromise the safety of minors or other persons with whom that individual has contact. Fingerprint information received from Department of Justice ("DOJ") by Contractor shall be retained or disposed of pursuant to current DOJ directives.

ARTICLE XXX

Compliance with All Federal, State and Local Laws and Regulations: Contractor shall comply with all Federal, State and local laws including, but not limited to, the Americans with Disabilities Act (ADA) of 1990 (42USC12101 et. seq.) and California Government Code Sections 11135-11139.5, and all regulations, requirements, and directives pertinent to its operations. Contractor shall abide by manuals, directives and other guidance issued by the State of California. All appropriate manuals and updates shall be available for review or reference by Contractor from County's Health and Human Services Agency.

Contractor shall further comply with all applicable laws relating to wages and hours of employment and occupational safety and to fire, safety, and health and sanitation regulations.

Such laws shall include, but not be limited to, the Copeland "Anti-Kickback" Act, the Davis-Bacon Act, the Contract Work Hours and Safety Standards Act, the Clean Air Act and amendments, the Clean Water Act and amendments, and the Federal Water Pollution Control Act.

Contractor further warrants that it has all necessary licenses, permits, notices, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws and regulations of the United States, the State of California, the County of El Dorado and all other appropriate governmental agencies and shall maintain these throughout the term of the Agreement.

ARTICLE XXXI

Lobbying Certification: The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:

- A. No federally appropriated funds have been paid or will be paid, by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.
- B. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or an employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. This certification is a prerequisite for making or entering into this transaction imposed by Section 1352, Title 31, U. S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

ARTICLE XXXII

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

ARTICLE XXXIII

Litigation: County, promptly after receiving notice thereof, shall notify the Contractor in writing of the commencement of any claim, suit, or action against the County or State of California or its officers or employees for which the Contractor must provide indemnification under this Agreement. The failure of the County to give such notice, information, authorization, or assistance shall not relieve the Contractor of its indemnification obligations.

ARTICLE XXXIV

Conflict Prevention and Resolution: The terms of this Agreement shall control over any conflicting terms in any referenced document, except to the extent that the end result would constitute a violation of Federal or State law. In such circumstances, and only to the extent the conflict exists, this Agreement shall be considered the controlling document.

ARTICLE XXXV

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 XXXVI

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 XXXVII

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

ARTICLE XXXVIII

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

ARTICLE XXXIX

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 XL

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

ARTICLE XLI

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

ARTICLE XLII

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 XLIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Shirley White, Program Manager, or successor.

ARTICLE XLIV

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 XLV

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 XLVI

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

ARTICLE XLVII

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 XLVIII

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: Shirley White Dated: 4/29/14
Shirley White, Program Manager
Health and Human Services Agency

REQUESTING DEPARTMENT HEAD CONCURRENCE:


By: Don Ashton Dated: 4/29/2014
Don Ashton, M.P.A., Director
Health and Human Services Agency

IN WITNESS WHEREOF, the parties hereto have executed this Agreement 016-S1511 on the dates indicated below.

-- COUNTY OF EL DORADO --

Dated: 6/10/14
By: 
Norma Santiago, Chair
Board of Supervisors
"County"

ATTEST:
Jim Mitrisin,
Clerk of the Board of Supervisors

By:  Dated: 6/10/14
Deputy Clerk

- - CONTRACTOR - -

WELLSPACE HEALTH
A CALIFORNIA CORPORATION AND FEDERALLY QUALIFIED HEALTH CENTER

By:  Dated: 4/28/14
A. Jonathan Porteus, Ph.D., CEO
"Contractor"

By:  Dated: 4/28/14
Regina Blackwell, Corporate Secretary

sk

EXHIBIT A



EL DORADO COUNTY HEALTH AND HUMAN SERVICES AGENCY Don Ashton, M.P.A., Director

Mental Health

Treatment Authorization Form

Client Name: _____ Court Case #: _____

Client is directed to contact the provider to schedule an intake appointment: by: _____ (Time & Date)

Wellspace Health 1820 J Street Sacramento, CA 95811

New Leaf 1254 High Street Auburn, CA 95603

Community Recovery Resources 180 Sierra College Drive Grass Valley, CA 95945

Authorization Dates: _____ Treatment Plan Due Date: _____

Treatment Service [] Detoxification [] Residential [] Transitional

Form section for Counseling, Residential, and Transitional services with checkboxes and fields for frequency and duration.

Comments: _____

You will be contacted when Progress Reports are due.

Authorization By:

El Dorado County Alcohol and Drug Program Staff _____ Date _____

Name (Printed) _____ (530) _____ /Fax: (530) _____

[] The Client failed to contact the Provider as directed. [] The Client contacted the Provider, but failed to show for intake on: _____ Date _____

Comments: _____

Provider Signature _____ Date _____

Name (Printed) _____

Exhibit “B”

HIPAA Business Associate Agreement

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

RECITALS

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

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

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

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

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

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

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

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

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

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

3. Obligations of BA. In connection with its use of PHI disclosed by County to BA, BA agrees to:
 - A. Implement appropriate administrative, technical, and physical safeguards as are necessary to prevent use or disclosure of PHI other than as permitted by the Agreement that reasonably and appropriately protects the confidentiality, integrity, and availability of the PHI in accordance with 45 CFR 164.308, 164.310, 164.312, and 164.504(e)(2). BA shall comply with the policies and procedures and documentation requirements of the HIPAA Security Rule.
 - B. Report to County within 24 hours of any suspected or actual breach of security, intrusion, or unauthorized use or disclosure of PHI of which BA becomes aware and/or any actual or suspected use or disclosure of data in violation of any applicable federal or state laws or regulations. BA shall take prompt corrective action to cure any such deficiencies and any action pertaining to such unauthorized disclosure required by applicable federal and state laws and regulations.
 - C. Report to County in writing of any access, use or disclosure of PHI not permitted by the Underlying Agreement and this Business Associate Agreement, and any Breach of Unsecured PHI of which it becomes aware without unreasonable delay and in no case later than five (5) days. To the extent the Breach is solely a result of BA's failure to implement reasonable and appropriate safeguards as required by law, and not due in whole or part to the acts or omissions of the County, BA may be required to reimburse the County for notifications required under 45 CFR 164.404 and CFR 164.406.
 - D. BA shall not use or disclose PHI for fundraising or marketing purposes. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates. BA shall not directly or indirectly receive remuneration in exchange of PHI, except with the prior written consent of the County and as permitted by the HITECH Act, 42 USC Section 17935(d)(2); however, this prohibition shall not affect payment by County to BA for services provided pursuant to the Agreement.
4. PHI Access, Amendment and Disclosure Accounting. BA agrees to:
 - A. Provide access, at the request of County, within five (5) days, to PHI in a Designated Record Set, to the County, or to an Individual as directed by the County. If BA maintains an Electronic Health Record, BA shall provide such information in electronic format to enable County to fulfill its obligations under the HITECH Act, including, but not limited to, 42 USC Section 17935(e).

- B. Within ten (10) days of receipt of a request from County, incorporate any amendments or corrections to the PHI in accordance with the Privacy Rule in the event that the PHI in BA's possession constitutes a Designated Record Set.
 - C. To assist the County in meeting its disclosure accounting under HIPAA:
 - (1) BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. However, accounting of disclosure from Electronic Health Record for treatment, payment, or health care operations purposes are required to be collected and maintained for only three (3) years prior to the request, and only to the extent that BA maintains an electronic health record and is subject to this requirement. At the minimum, the information collected shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if know, the address of the entity or person; (iii) a brief description of PHI disclosed and; (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the individual's authorization, or a copy of the written request for disclosure.
 - (2) Within in 30 days of notice by the County, BA agrees to provide to County information collected in accordance with this section to permit the County to respond to a request by an Individual for an accounting of disclosures of PHI.
 - D. Make available to the County, or to the Secretary of Health and Human Services (the "Secretary") , BA's internal practices, books and records relating to the use of and disclosure of PHI for purposes of determining BA's compliance with the Privacy Rule, subject to any applicable legal restrictions. BA shall provide County a copy of any PHI that BA provides to the Secretary concurrently with providing such information to the Secretary.
5. Obligations of County.
- A. County agrees that it will promptly notify BA in writing of any restrictions on the use and disclosure of PHI agreed to by County that may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
 - B. County agrees that it will promptly notify BA in writing of any changes in, or revocation of, permission by any Individual to use or disclose PHI, if such changes or revocation may affect BA's ability to perform its obligations under the Underlying Agreement, or this Business Associate Agreement.
 - C. County agrees that it will promptly notify BA in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect BA's use of disclosure of PHI.

- D. County shall not request BA to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by County, except as may be expressly permitted by the Privacy Rule.
- E. County will obtain any authorizations necessary for the use or disclosure of PHI, so that BA can perform its obligations under this Business Associate Agreement and/or the Underlying Agreement.

6. Term and Termination.

- A. Term. This Business Associate Agreement shall commence upon the Effective Date and terminate upon the termination of the Underlying Agreement, as provided therein when all PHI provided by the County to BA, or created or received by BA on behalf of the County, is destroyed or returned to the County, or, or if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- B. Termination for Cause. Upon the County's knowledge of a material breach by the BA, the County shall either:
 - (1) Provide an opportunity for the BA to cure the breach or end the violation and terminate this Agreement if the BA does not cure the breach or end the violation within the time specified by the County.
 - (2) Immediately terminate this Agreement if the BA has breached a material term of this Agreement and cure is not possible; or
 - (3) If neither termination nor cures are feasible, the County shall report the violation to the Secretary.
- C. Effect of Termination.
 - (1) Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, the BA shall, at the option of County, return or destroy all PHI that BA or its agents or subcontractors still maintain in any form, and shall retain no copies of such PHI.
 - (2) In the event that the County determines that returning or destroying the PHI is infeasible, BA shall provide to the County notification of the conditions that make return or destruction infeasible, and . BA shall extend the protections of this Agreement to such PHI to those purposes that make the return or destruction infeasible, for so long as the BA maintains such PHI. If County elects destruction of the PHI, BA shall certify in writing to County that such PHI has been destroyed.

7. Indemnity

- A. BA shall indemnify and hold harmless all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives (collectively "County") from any liability whatsoever, based or asserted upon any services of BA, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to BA's performance under this Business Associate Agreement, including but not limited to property damage, bodily injury, or death or any other element of any kind or nature whatsoever including fines, penalties or any other costs and resulting from any reason whatsoever to the extent arising from the performance of BA, its officers, agents, employees, subcontractors, agents or representatives under this Business Associate Agreement. BA shall defend, at its sole expense, all costs and fees including but not limited to attorney fees, cost of investigation, defense and settlements or awards against the County in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by BA, BA shall, at its sole cost, have the right to use counsel of its choice, subject to the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes BA's indemnification of County as set forth herein. BA's obligation to defend, indemnify and hold harmless County shall be subject to County having given BA written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at BA's expense, for the defense or settlement thereof. BA's obligation hereunder shall be satisfied when BA has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.
- C. The specified insurance limits required in the Underlying Agreement of this Business Associate Agreement shall in no way limit or circumscribe BA's obligations to indemnify and hold harmless the County herein from third party claims arising from the issues of this Business Associate Agreement.
- D. In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code Section 2782. Such interpretation shall not relieve the BA from indemnifying the County to the fullest extent allowed by law.
- E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Business Associate Agreement, this indemnification shall only apply to the subject issues included within this Business Associate Agreement.

8. Amendment The parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time as is necessary for County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.
9. Survival The respective rights and obligations of this Business Associate Agreement shall survive the termination or expiration of this Business Associate Agreement.
10. Regulatory References A reference in this Business Associate Agreement to a section in the Privacy Rule means the section as in effect or as amended.
11. Conflicts Any ambiguity in this Business Associate Agreement and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, 45 CFR, and HIPAA generally.