

**AGREEMENT FOR SERVICES # 484-S1210
AB 109 Substance Abuse 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 Progress House, Inc., a California non-profit public benefit corporation qualified as a tax exempt organization under Title 26 Code of Federal Regulations Section 1.501 (c) (3) commonly referred to as Section 501 (c) (3) of the Internal Revenue Code of 1986, whose principal place of business is 2844 Coloma Street, Placerville, CA 95667 (hereinafter referred to as CONTRACTOR);

RECITALS

WHEREAS, COUNTY has determined that it is necessary to obtain a contractor to provide substance abuse treatment services for those offenders who are eligible pursuant to Assembly Bill (AB) 109, for treatment under the El Dorado Public Safety Realignment Implementation plan funded by Local Realignment 2011 (California Government Code Section 30025, paragraph f, subparagraph (4) as amended by Assembly Bill 118); 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 (hereinafter, all references to "State" shall mean the State of California) 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. DEFINITION OF ELIGIBLE CLIENTS

AB 109 Offender eligibility includes:

- Certain non-violent, non-serious, non-sex offenders who are no longer eligible for commitment to California Department of Corrections, but rather are only eligible for commitment to county jail for the term prescribed by law;
- Post Release Community Supervision (PCRS) offenders who are now subject to supervision by the Probation Department, rather than State parole; and
- Mandatory Community Supervision (MCS) offenders where the Court may suspend a portion of the county jail commitment and require the offender serve the suspended portion on mandatory supervision by the Probation Department.

Article II. SCOPE OF SERVICES

Section 2.01 COUNTY will:

- (a) Assign a Health and Human Services Agency (HHSA) Alcohol and Drug Program (ADP) Health Education Coordinator to be the AB 109 Coordinator.
- (b) Define the AB 109 Coordinator responsibilities, including but not limited to:
 - (i) Participation on a Multi-Disciplinary Team comprised of the AB 109 Coordinator, Probation Department staff, and CONTRACTOR;
 - (ii) Assessment of each client identified as eligible under California Assembly Bill (AB) 109;
 - (iii) Completion and submission of the Treatment Authorization Form attached hereto as Exhibit A, and incorporated by reference herein, in the manner and form specified on Exhibit A.

Section 2.02 CONTRACTOR will:

- (a) Attend all Multi-Disciplinary Team meetings, Collaborative Case Management meetings and Court sessions.
- (b) CONTRACTOR agrees to provide residential treatment beds to eligible offenders with written approval from the AB 109 Coordinator. Clients admitted to treatment may be tested for drug usage; however, the cost of drug testing shall be included within CONTRACTOR's rate for service and shall not be billed separately.
- (c) Provide the following services to those clients for whom a Treatment Authorization form is received:
 - (i) Residential Services:
 - 1) CONTRACTOR agrees to provide residential treatment beds to eligible offenders with written approval from the AB 109 Coordinator on an approved Treatment Authorization Form, which designates that the client has been determined eligible for AB 109 Public Safety Realignment funding.

- 2) Residential services will be provided at the vendor's facilities located in Alta, Camino, Coloma, Garden Valley, Nevada City and Yolo facilities during the term of this Agreement.
- (ii) Outpatient Services, as indicated on Exhibit A – AB 109 Services Treatment Authorization Form, including but not limited to:
- 1) Level I – Low Intensity
 - a) One (1) group session per week;
 - b) Random drug testing;
 - c) One (1) individual counseling session per month.
 - 2) Level II – Medium Intensity
 - a) Two (2) group sessions per week;
 - b) Random drug testing;
 - c) One (1) individual session per month.
 - 3) Level III – High Intensity
 - a) Three (3) group sessions per week;
 - b) Random drug testing;
 - c) Up to two (2) individual counseling sessions per month.
- (iii) Recovery Support Sessions
 Recovery support refers to an individual counseling session for participants designed to address threats or perceived threats to a participant's recovery. These services shall be provided on an "as needed" basis and must be recommended by the Multi-Disciplinary Team and pre-authorized in writing by the AB 109 Coordinator.
- (d) Provide Client Progress Reports
- (i) CONTRACTOR will report client progress to the COUNTY Probation Department and AB 109 Coordinator in the form of a Progress Report and copy of the signed Treatment Plan within twenty-one- (21) days of initial intake. CONTRACTOR will provide further client progress updates utilizing the Progress Report format upon request, but not less than quarterly. In addition, CONTRACTOR shall report client progress at the Multi-Disciplinary Team meetings.
 - (ii) CONTRACTOR will report to the Multi-Disciplinary Team when a client successfully completes the drug treatment program within ten (10) days of completion of the program.
 - (iii) CONTRACTOR will notify the COUNTY Probation Department within ten (10) days of the date CONTRACTOR learns of client non-compliance with the program; Probation Department will in turn notify the Court.
- (e) Submit Data Reporting
- (i) CONTRACTOR will submit data into the COUNTY's California Outcomes Measurements System (CalOMS) on a monthly basis. This data shall include, but

- may not be limited to, client counts and characteristics, and capacity/waiting list information per Title 9, California Code of Regulations, Chapter 2.5, § 9535 (b) (2).
- (ii) CONTRACTOR may be requested to supply additional data, as needed for COUNTY to comply with State statistical reporting requirements.

Article III. TERM

This Agreement shall become effective upon final execution by both parties hereto and shall cover the period March 1, 2012 through June 30, 2012 unless earlier terminated pursuant to the provisions under Article XIV and Article XV herein. Further, CONTRACTOR shall be obligated to perform such duties as would normally extend beyond this term, including but not limited to, obligations with respect to confidentiality, indemnification, audits, reporting and accounting.

Article IV. COMPENSATION FOR SERVICES

Section 4.01 By signing this Agreement, CONTRACTOR acknowledges 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 will not use any other funding sources to provide services to AB 109 eligible clients.

Section 4.02 Invoices

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

Section 4.03 Rates

Unless as otherwise defined in this Agreement, provided services shall be billed using the COUNTY standardized rate structure, which 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. Furthermore, for the purposes of this Agreement:

- 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 Alcohol and Drug Programs (ADP) website at the following website address: <http://www.adp.ca.gov>.¹

¹ Using the internet, the California ADP Bulletin containing information on the most current DMC reimbursement rates can be found at <http://www.adp.ca.gov> and by clicking on "ADP Bulletins & Letters." Locate and open the most recent ADP Bulletin with either the title, "Proposed Drug Medi-Cal Rates for Fiscal Year ____" (most current fiscal year) or "Current Drug Medi-Cal Rates for Fiscal Year ____" (most current fiscal year). The link to open the chart containing current DMC rates will be contained within the Bulletin as an Exhibit entitled either "Proposed Drug Medi-Cal Rates for Fiscal Year ____" (most current fiscal year) or "Current Drug Medi-Cal Rates for Fiscal Year ____" (most current fiscal year). Click on the Exhibit link to go to

- DMC rates shall be subject to an annual adjustment in order to match the most current State-approved DMC rate schedule. Any rate adjustments shall become effective the first day of the month that follows the State's announcement of its formal adoption of the State budget.

| SERVICE | COUNTY STANDARDIZED DMC RATE |
|--|--|
| Bimonthly Client Progress Reports. No later than (30) days after the end of each second service month, Contractor shall provide the caseworker, 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. | No Charge |
| Court Appearances. Upon request by County and pro-rated for time actually spent at the pertinent court session. Travel time shall not be included in the reimbursement for these services. | Current Drug Medi-Cal Reimbursement Rate for Program Code 20 (Regular DMC) Outpatient Drug Free (ODF) Individual Counseling UOS Rate |
| 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 Program Code 20 (Regular DMC) Outpatient Drug Free (ODF) 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. Multiple Units of Service shall be allowed upon approval of Caseworker. | Current Drug Medi-Cal Reimbursement Rate for Program Code 20 (Regular DMC) Outpatient Drug Free (ODF) Group Counseling UOS Rate per each attending family member |
| 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. Multiple Units of Service shall be allowed upon approval of Caseworker. | Current Drug Medi-Cal Reimbursement Rate for Program Code 20 (Regular DMC) Outpatient Drug Free (ODF) Group Counseling UOS Rate |
| Individual Counseling Session. 50-60 minutes per session and per individual upon written request by County. Multiple Units of Service shall be allowed upon approval of Caseworker. | Current Drug Medi-Cal Reimbursement Rate for Program Code 20 (Regular DMC) Outpatient Drug Free (ODF) Individual Counseling UOS Rate |
| Initial Visit Report(s). Within 21 calendar days of Client's initial visit and at no charge to County, Contractor shall provide Caseworker with a written initial visit report that shall detail Contractor's professional evaluation of Client's needs including the recommended type of therapy to be | No Charge |

the most current DMC rate chart.

| SERVICE | COUNTY STANDARDIZED DMC RATE |
|--|--|
| utilized, the recommended number/frequency of sessions and whether or not additional or different services may be required or recommended. | |
| Multidisciplinary Team Meeting. Upon written request by County and for time actually spent in the meeting. 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 Program Code 20 (Regular DMC) for Outpatient Drug Free (ODF) Individual Counseling UOS Rate |
| Transitional Living - 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. | \$20.00 per day |
| ETG 80 Hour Urine Test. Detects for the presence of alcohol for up to 80 hours after it is consumed. All tests shall be sent to the lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days. | \$45.00 per test |
| ETG/UA. Combination package of ETG 80 Hour Urine Test and Instant 5 Panel Urine Test. All tests results - positive and negative - shall be sent to lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days. | \$90.00 per test |
| Instant 5 Panel Urine Test. On-site test checks for the presence of Amphetamine/Methamphetamine, THC, Cocaine, Opiates and Benzodiazepines. All test results - positive and negative - shall be sent to lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days. | \$45.00 per test |
| Instant Alcohol Swab. On-site instant alcohol swab to detect whether or not any alcohol is currently present in Client's system. This is a presumptive test and is not legally binding. | \$45.00 per test |
| Instant Oral Saliva Test. On-site test checks for the presence of Amphetamine, Methamphetamine, THC, Cocaine, Opiates and PCP. All test results - positive and negative - shall be sent to lab for confirmation at no additional cost. Test results shall be received from the lab within approximately five (5) days | \$45.00 per test or free if done in conjunction with ETG 80 Hour Urine Test. |
| Residential -Men's Residential Services Women's Residential Services | \$80.00 per day \$92.45 per day |

Section 4.04 Not-to-Exceed Amount

Compensation for services provided under this Agreement shall not exceed \$175,000 for the term of the Agreement.

Section 4.05 All billings to COUNTY shall be supported, at CONTRACTOR's facility, by source documentation including, but not limited to, ledgers, books, vouchers, journals, time sheets, payrolls, signed attendance rosters, appointment schedules, client data cards, client charts, schedules for allocating costs, invoices, bank statements, canceled checks, receipts, receiving records, and records of services provided. Contract Administrator may require CONTRACTOR to submit documentation in support of the monthly billing and reserves the right to determine the type and amount of such documentation. Patient demographic and identifying information, including social security numbers, may be required.

Section 4.06 CONTRACTOR may not invoice for, and will not be reimbursed for, services provided following the expiration and/or termination of this Agreement, unless COUNTY has notified CONTRACTOR in writing of its intent to extend the Agreement.

Section 4.07 For services provided herein, COUNTY agrees to pay CONTRACTOR monthly in arrears and within forty-five (45) days following the COUNTY's receipt and approval of itemized invoice(s) identifying services rendered.

Section 4.08 Cost Report

- (a) CONTRACTOR shall submit a Cost Report to the COUNTY on or before September 15th 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, less applicable revenues, not to exceed COUNTY's Total Maximum Obligations as set forth in Section 4.04. 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, less applicable revenues, 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 State General Fund 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 V. RECORD RETENTION

Section 5.01 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.

Section 5.02 Clinical Records

If this Agreement is terminated or partially terminated, all of the records relating to work terminated shall: a) be preserved and made available pursuant to Section 5.01 or b) at the sole option of the COUNTY, immediately become the property of the COUNTY and shall be delivered by CONTRACTOR to the COUNTY.

Section 5.03 Statistical Records

CONTRACTOR shall keep all statistical data and records pursuant to Section 2.02(d), Section 2.02(e) and Section 6.05 on forms and/or electronic storage media provided by the Administrator. These records shall be available for inspection as required by the Administrator.

Section 5.04 Subcontractor Records

Should COUNTY consent, in writing, to the subcontracting of services, CONTRACTOR shall include in all subcontracts entered into with third parties to facilitate the provision of Services hereunder, the following clause:

(Name of vendor or subcontractor) agrees to maintain and preserve, until five (5) years after termination of Contractor's agreement with the County of El Dorado, pertinent books, documents, papers and records of (name of vendor or subcontractor) related to this (purchase order or subcontract) and to permit the County to have access to, to examine and to review any of such pertinent records.

If any litigation, claim, negotiation, audit or other action involving the subcontractor's records has been started before the expiration of the five (5) year period, under this Agreement, said records shall be retained until completion of the action and resolution of all issues that arise from it, or until the end of the regular five (5) year period, whichever is later.

Article VI. SPECIAL TERMS AND CONDITIONS

Section 6.01 CONTRACTOR Policies and Procedures

- (a) CONTRACTOR shall develop and make available to the public a written copy of its admission policy and procedure and must ensure that said policy complies with all applicable State and Federal requirements concerning admission of clients into treatment.
- (b) CONTRACTOR shall establish written procedures informing clients of their rights, including the right to file a complaint alleging discrimination, violation of civil rights, or any type of inappropriate or offensive treatment by CONTRACTOR staff. CONTRACTOR shall provide a copy of its complaint procedures to all clients upon their admission to treatment. These procedures shall describe the specific steps clients are to follow when filing complaints and the action that CONTRACTOR will take to resolve client complaints.

Section 6.02 Communicable Diseases

- (a) CONTRACTOR shall provide tuberculosis (TB) services, directly or by referral to the El Dorado County Health and Human Services Agency – Public Health Division or another appropriate provider. These TB services shall consist of the following:
 - (i) Counseling with respect to tuberculosis.
 - (ii) Testing to determine whether the individual has been infected and to determine the appropriate form of treatment.
 - (iii) Provision for, or referral of, infected clients for medical examination and treatment.
- (b) 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.

- (c) 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.
- (d) 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.

Section 6.03 Interim Services

All persons who are not admitted into treatment within fourteen (14) days due to lack of room in the program, and who place their names on the waiting list for admission, shall be provided interim services. Interim services shall consist of tuberculosis (TB) counseling, voluntary testing, referral for medical evaluation, if appropriate, and voluntary and confidential HIV testing, pre- and post-test counseling. For pregnant women, interim services shall also include counseling on the effects of alcohol and drugs on the developing fetus; and referral to prenatal medical care services. Interim services may be provided directly or by referral to the El Dorado County Health and Human Services Agency or another appropriate provider. Provision of interim services shall be documented on the Drug Abuse Treatment Access Report (DATAR) and reported monthly to the State Department of Alcohol and Drug Programs.

Section 6.04 Participation in Training

CONTRACTOR shall attend relevant substance abuse training programs and/or conferences as requested by the COUNTY.

Section 6.05 Reporting to COUNTY

- (a) State Data Submission: CONTRACTOR shall submit to 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), California Outcomes Measurement Systems (CalOMS) Participant Records, California Outcomes Measurement Systems Provider Summary; and Drug and Alcohol Services Information System (DASIS) Uniform Facilities Data Set (UFDS).
- (b) County Data Submission: CONTRACTOR shall report to the COUNTY 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 the COUNTY, CONTRACTOR shall submit documents related to client services, administrative activities, or other program operation functions.
- (c) Cost Report (as defined in Section 4.08): Submit on or before September 15th each year, including the year in which this Agreement is terminated.

- (d) Board of Director's Minutes: CONTRACTOR shall provide Contract Administrator the minutes of all CONTRACTOR's 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 VII. PERFORMANCE REQUIREMENTS

Section 7.01 Code of Conduct

CONTRACTOR shall establish a written Code of Conduct for employees, volunteers, interns and the Board of Directors which shall include but not be limited to, standards related to the use of drugs and/or alcohol; staff relationships with clients; prohibition of sexual conduct with clients; and conflict of interest. Prior to providing any services pursuant to this Agreement, all employees, volunteers and interns shall agree, in writing, to maintain the standards set forth in the Code of Conduct. A copy of the Code of Conduct shall be provided to each client and shall be posted in writing in a prominent place in CONTRACTOR's facility (ies).

Section 7.02 Cultural Competence

- (a) To ensure equal access to quality care by diverse populations, every treatment provider receiving funds from this contract shall:
 - (i) Promote and support the attitudes, behaviors, knowledge, and skills necessary for staff to work respectfully and effectively with clients and each other in a culturally diverse work environment.
 - (ii) Have a comprehensive management strategy to address culturally and linguistically appropriate services, including strategic goals, plans, policies, procedures, and designated staff responsible for implementation.
 - (iii) Develop and implement a strategy to recruit, retain and promote qualified, diverse and culturally competent administrative, clinical, and support staff that are trained and qualified to address the needs of the racial and ethnic communities being served.
 - (iv) Require and arrange for ongoing education and training for administrative, clinical, and support staff in culturally and linguistically competent service delivery.
 - (v) Provide all clients with limited English proficiency access to bilingual staff or interpretation services.
 - (vi) Provide oral and written notices, including translated signage at key points of contact, to clients in their primary language informing them of their right to receive no-cost interpreter services.
 - (vii) Translate and make available signage and commonly-used written client educational material and other materials for members of the predominant language groups in the service area.

- (viii) Ensure that interpreters and bilingual staff can demonstrate bilingual proficiency and receive training that includes the skills and ethics of interpreting, and knowledge in both languages of the terms and concepts relevant to clinical or non-clinical encounters. Family or friends are not considered adequate substitutes because they usually lack these abilities.
 - (ix) Ensure that the clients' primary spoken language and self-identified race and ethnicity are included in the provider's management information system as well as any client records used by provider staff.
- (b) Implement the Limited English Proficiency (LEP) Policy Guidance for recipients of funds from the federal Health and Human Services Agency at <http://www.lep.gov>. Additional information and resources for serving persons with LEP can be accessed at <http://www.lep.gov/>.
- (i) CONTRACTOR shall, to the extent feasible, provide services pursuant to this Agreement in a culturally competent manner by recruiting, hiring and maintaining trained, experienced staff that are able to deliver services with sensitivity toward and respect for clients from diverse backgrounds. CONTRACTOR staff shall complete a minimum of one (1) cultural-sensitivity training per year.

Section 7.03 Employee Qualifications

CONTRACTOR shall only employ individuals as substance abuse counselors who meet all applicable State requirements pertaining to certification and/or licensure, and who are qualified and competent to perform the tasks assigned to them. Any individual providing intake, assessment of need for services, treatment or recovery planning, individual or group counseling to participants, patients or residents in an ADP licensed or certified program is required to be certified as defined in Title 9, CCR, Division 4, Chapter 8. CONTRACTOR shall regularly evaluate the performance of its entire treatment staff and implement immediate corrective action if any performance problems are identified. The COUNTY may request in writing that the CONTRACTOR investigate incidents of suspected poor performance by CONTRACTOR treatment staff, and the CONTRACTOR shall do so within the timeframes and under the terms contained in the COUNTY's written request. CONTRACTOR shall report findings of said investigation to Contract Administrator, along with plan for corrective action.

Section 7.04 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.

To ensure that services are available continuously throughout the term of this Agreement, CONTRACTOR shall plan for even expenditures of funds provided by this Agreement throughout the Term of the Agreement. To the maximum extent possible, CONTRACTOR shall deliver services each month that are commensurate with one-twelfth (1/12) of the total dollar amount available to pay for those services.

Section 7.05 Drug Free Workplace

- (a) CONTRACTOR shall comply with the requirements of the Drug-Free Work Place Act of 1990 (Government Code Section 8355 et seq.) and will provide a drug-free work place by taking the following actions:
- (i) Publish a statement notifying all employees that the unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited in the person's or organization's work place and specifying the actions that will be taken against employees for violations of the prohibitions as required by the Government Code, Section 8355(a).
 - (ii) Establish a drug-free awareness program as required by the Government Code, Section 8355(b) to inform all employees about the following:
 - 1) The dangers of drug abuse in the work place;
 - 2) The person's or organization's policy of maintaining a drug-free work place;
 - 3) Any available drug counseling, rehabilitation, and employee assistance programs; and
 - 4) The penalties that may be imposed upon employees for drug abuse violations.
 - (iii) Provide, as required by the Government Code, Section 8355(c), that every employee engaged in the performance of the contract:
 - 1) Be given a copy of the CONTRACTOR's drug-free policy statement; and
 - 2) As a condition of employment, agree to abide by the terms of the statement.
- (b) Failure to comply with requirements for a drug-free work place may result in suspension of payments under the Agreement or termination of the Agreement or both.

Section 7.06 No Unlawful Use or Unlawful Use Messages Regarding Drugs

CONTRACTOR agrees that information produced through these funds, and which pertains to drug- and alcohol-related programs, shall contain a clearly written statement that there shall be no unlawful use of drugs or alcohol associated with the program pursuant to Health and Safety Code Section 11999. By signing this Agreement, CONTRACTOR agrees that it will enforce these requirements.

Section 7.07 Laws and Rules

CONTRACTOR shall comply with, and accept as binding, all applicable governmental laws, regulations, policies, and standards as they exist now or may be hereafter amended or changed. These laws, regulations, policies, and standards shall include, but not be limited to, the following:

- (a) California State Department of Alcohol and Drug Programs Certification Standards (July 1999);
- (b) California State Department of Alcohol and Drug Programs Perinatal Services Network Guidelines (1997);
- (c) California Health and Safety Code, Divisions 10.5 and 10.6, and Section 11758.12(d);
- (d) California Code of Regulations, Title 22;
- (e) California Code of Regulations, Title 9, Division 4;

- (f) Code of Federal Regulations (CFR), Title 21, Title 41, Title 42 and Title 45;
- (g) California State Department of Health and Human Services Health Care Financial Administration Manual 15;
- (h) California Welfare and Institutions Code, Section 14100.2;
- (i) Part 92 of the Federal Grants Management Handbook, Subpart L(a)(2);
- (j) Title 31, Section 319, U.S.C.;
- (k) OMB Circular A-133;
- (l) Public Law 103-227, also known as the Pro-Children Act of 2001;
- (m) Public Law 106-310, which addresses nondiscrimination and institutional safeguards for religious providers, and which is implemented through Title 42, CFR, Part 54; and
- (n) Drug-Free Work Place Act of 1990 (Government Code Section 8350 et seq.)

Section 7.08 Nondiscrimination in Employment and Services

By signing this Agreement, CONTRACTOR certifies that under the laws of the United States and the State of California, incorporated into this Agreement by reference and made a part hereof as if set forth in full, CONTRACTOR will not unlawfully discriminate against any person.

- (a) Federal Law Requirements
 - (i) Titles VI of the Civil Rights Act of 1964, as amended, prohibiting discrimination based on race, color, or national origin in federally funded programs.
 - (ii) 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.
 - (iii) Age Discrimination Act of 1975 (45 CFR Part 90), as amended (42 UC Sections 6101 - 6107), which prohibits discrimination on the basis of age.
 - (iv) Age Discrimination in Employment Act (29 CFR Part 1625).
 - (v) Title I of the Americans with Disabilities Act (29 CFR Part 1630) prohibiting discrimination against the disabled in employment.
 - (vi) Title II of the Americans with Disabilities Act (28 CFR Part 35) prohibiting discrimination against the disabled by public entities.
 - (vii) Title III of the Americans with Disabilities Act (28 CFR Part 36) regarding access.
 - (viii) Section 504 of the Rehabilitation Act of 1973, as amended (29 USC Section 794), which prohibits discrimination on the basis of handicap.
 - (ix) 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.
 - (x) Executive Order 13166 (67 FR 41455) to improve access to federal services for those with limited English proficiency.
 - (xi) The Drug Abuse Office and Treatment Act of 1972, as amended, relating to nondiscrimination on the basis of drug abuse.
 - (xii) The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970 (P.L. 91-616), as amended, relating to nondiscrimination on the basis of alcohol abuse or alcoholism.

- (b) State Law Requirements
 - (i) 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.)
 - (ii) Title 2, Division 3, Article 9.5 of the Government Code, commencing with Section 11135.
 - (iii) Title 9, Division 4, Chapter 6 of the CCR, commencing with Section 10800.
- (c) CONTRACTOR agrees to post in conspicuous places, notices available to all employees and applicants for employment setting forth the provisions of the Equal Employment Opportunity Act in conformance with Federal Executive Order No. 11246; and Section 503 of the Rehabilitation Act of 1973 (as amended). CONTRACTOR agrees to comply with provisions of the Rehabilitation Act of 1973.
- (d) For the purpose of this Agreement, discrimination on the basis of race, color, creed, national origin, sex, age, or physical, sensory, cognitive, or mental disability includes, but is not limited to, the following: unlawfully denying an otherwise eligible individual any service or providing a benefit which is different, or is unlawfully provided in a different manner or at a different time, from that provided to others under this Agreement; unlawfully subjecting any otherwise eligible individual to segregation or separate treatment in any matter related to the receipt of any service; unlawfully restricting an otherwise eligible individual in any way in the enjoyment of any advantage or privilege enjoyed by others receiving any service or benefit; and/or unlawfully treating any individual differently from others in determining whether such individual satisfied any admission, enrollment, eligibility, membership, or other requirement or condition which individuals shall meet in order to be provided any service or benefit.
- (e) CONTRACTOR shall establish written procedures under which service participants are informed of their rights including their right to file a complaint alleging discrimination or a violation of their civil rights. Participants in programs funded hereunder shall be provided a copy of their rights that shall include the right of appeal and the right to be free from sexual harassment and sexual contact by members of the treatment, recovery, advisory, or consultant staff.
- (f) Noncompliance with the requirements of nondiscrimination in services shall constitute grounds for state to withhold payments under this Contract or terminate all, or any type, of funding provided hereunder.

Section 7.09 Smoking Prohibition Requirements

CONTRACTOR shall comply, and require that its Subcontractors comply, with Public Law 103-227, also known as the Pro-Children Act of 1994 (20 USC Section 6081, et seq.), and with California Labor Code Section 6404.5, the California Smoke-Free Workplace Law, which requires that smoking not be permitted in any portion of any indoor facility owned or leased or contracted for by an entity and used routinely or regularly for the provision of health, day care, early childhood development services, education, or library services to children under the age of

18 if the services are funded by federal programs either directly or through state or local governments, by federal grant, contract, loan, or loan guarantee. The law also applies to children's services that are provided in indoor facilities that are constructed, operated, or maintained with such federal funds. The law does not apply to children's services provided in private residences; portions of facilities used for inpatient drug or alcohol treatment; service providers whose sole source of applicable federal funds is Medicare or Medicaid; or facilities where Women, Infants, and Children (WIC) coupons are redeemed.

Section 7.10 Accessibility

CONTRACTOR agrees that COUNTY shall, on a cycle of at least every three years, assess, monitor, and document CONTRACTOR's compliance with Section 504 of the Rehabilitation Act of 1973 (as amended) and Americans with Disabilities Act of 1990 to ensure that recipients/beneficiaries and intended recipients/beneficiaries of services are provided services without regard to physical or mental disability. CONTRACTOR shall also monitor to ensure that beneficiaries and intended beneficiaries of service are provided services without regard to race, color, creed, national origin, sex, or age.

- (a) If the CONTRACTOR employs more than fifteen (15) staff members, CONTRACTOR must:
 - (i) Maintain an internal complaint resolution procedure that includes due process standards and provides for the prompt and equitable resolution of complaints alleging any action or omission that transgresses Federal or State accessibility laws or regulations.
 - (ii) Designate at least one employee as the person responsible for: (1) implementing an internal accessibility program to ensure persons with disabilities have access to the CONTRACTOR's facility, and (2) receiving and resolving complaints that allege violation of Federal or State accessibility laws or regulations.

Section 7.11 Mandated Reporter

CONTRACTOR acknowledges and agrees to comply with mandated reporter requirements pursuant to the provisions of Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the California Penal Code, also known as The Child Abuse and Neglect Reporting Act, and the provisions of Welfare and Institutions Code 15630 related to elder and dependent adults.

Section 7.12 Retaliation

Neither CONTRACTOR, nor CONTRACTOR's employees or agents shall intimidate, coerce, or take adverse action against any person for the purpose of interfering with rights secured by Federal or State laws, or because such person has filed a complaint, certified, assisted or otherwise participated in an investigation, proceeding, hearing, or any other activity undertaken to enforce rights secured by federal or State law.

Section 7.13 Licenses

CONTRACTOR, in its officers, agents, employees and subcontractors shall, throughout the term of this Agreement, maintain all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for the provision of services hereunder and required by the laws or

regulations of the United States, the State of California, COUNTY or other applicable governmental agencies. CONTRACTOR shall notify Contract Administrator immediately and in writing of its inability to obtain or maintain, irrespective of the pendency of the appeal, such permits, licenses, approvals, certificates, waivers and exemptions. Said inability shall be cause for termination of this Agreement.

Section 7.14 Child Support Compliance Act

CONTRACTOR acknowledges that it:

- (a) Recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with Section 5200) of Part 5 of Division 9 of the California Family Code; and,
- (b) To the best of its knowledge, is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

Section 7.15 Union Organizing

CONTRACTOR, by signing this Agreement, hereby acknowledges the applicability of California Government Code Sections 16645 through 16649 to this Agreement.

- (a) CONTRACTOR will not assist, promote, or deter union organizing by employees performing work on a State service contract, including a public works contract.
- (b) No State funds received under this Agreement will be used to assist, promote, or deter union organizing.
- (c) CONTRACTOR will not, for any business conducted under this Agreement, use any State property to hold meetings with employees or supervisors, if the purpose of such meetings is to assist, promote or deter union organizing unless the State property is equally available to the general public for holding meetings.
- (d) If the CONTRACTOR incurs costs, or makes expenditures to assist, promote, or deter union organizing, CONTRACTOR will maintain records sufficient to show that no reimbursement from State funds has been sought for these costs, and the CONTRACTOR shall provide those records to the Attorney General upon request.

Section 7.16 Literature

Any new literature, including educational and promotional materials, distributed by CONTRACTOR for purposes directly related to this Agreement shall indicate that CONTRACTOR's services are supported by COUNTY, State and/or federal funds, as appropriate.

Section 7.17 Limitation on Use of Funds for Promotion of Legalization of Controlled Substances

None of the funds made available through this Agreement may be used for any activity that promotes the legalization of any drug or other substance included in Schedule I of Section 202 of the Controlled Substances Act (21 USC 812).

Section 7.18 Restriction on Distribution of Sterile Needles

No funds made available through this Agreement shall be used to carry out any program of distributing sterile needles or syringes for the hypodermic injection of any illegal drug.

Article VIII. CONFIDENTIALITY

Section 8.01 CONTRACTOR agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of all confidential information that it creates, receives, maintains or transmits.

Section 8.02 CONTRACTOR will provide the COUNTY with information concerning such safeguards upon request. CONTRACTOR shall comply with all applicable State and Federal statutes and regulations regarding confidentiality, including, but not limited to, the confidentiality and security of information requirements in the following:

- (a) Title 42 USC Section 290 dd-2
- (b) Title 42, CFR Part 2
- (c) Title 42, CFR Part 96, Sec. 96.132(e)
- (d) Title 42, USC 1320d through 1320d-8
- (e) Title 45, CFR Parts 160, 162, and 164 - the Health Insurance
- (f) Portability and Accountability Act of 1996 (HIPAA) Privacy and Security Rules
- (g) Welfare and Institutions Code (hereinafter referred to W&IC), Section 14100.2, which is specific to Medi-Cal
- (h) HSC Sections 11812 and 11845.5
- (i) HSC Sections 123110 through 123149.5 - Patient Access to Health Records
- (j) Title 22, California Code of Regulations (hereinafter referred to as Title 22), Section 51009, which is specific to Medi-Cal
- (k) Civil Code Sections 56 through 56.37 - Confidentiality of Medical Information Act
- (l) Civil Code Section 1798.80 through 1798.82 - Customer Records (breach of security)
- (m) Civil Code Section 1798.85 - Confidentiality of Social Security Numbers

Section 8.03 CONTRACTOR shall ensure that no list of persons receiving services under this Agreement is published, disclosed, or used for any purpose except for the direct administration of this program or other uses authorized by law that are not in conflict with requirements for confidentiality contained in Title 42, Code of Federal Regulations, Part 2; Welfare and Institutions Code, Section 14100.2; Health and Safety Code, Section 11977; and Title 22, California Code of Regulations, Section 51009.

Section 8.04 Prior to providing any services pursuant to this Agreement, all employees, subcontractors, and volunteer staff or interns of CONTRACTOR shall agree, in writing, with CONTRACTOR to maintain the confidentiality of any and all information and records that may be obtained in the course of providing such services.

Article IX. INSPECTIONS AND AUDITS

Section 9.01 Audits

Because the compensation paid to CONTRACTOR pursuant to this Agreement is comprised of funding as outlined in Section 4.01, CONTRACTOR shall comply with the following requirements:

- (a) This Agreement and any subcontracts shall be subject to the examination and audit by the California Bureau of State Audits for a period of three years from the date that final payment is made pursuant to the Agreement (Government Code, Section 10527).
- (b) CONTRACTOR agrees that the State, the Comptroller General of the United States, and any authorized representatives have the right to review, obtain, and copy all records pertaining to the performance of this Agreement. CONTRACTOR agrees to provide the State with any and all relevant information requested.
- (c) All expenditures of State and Federal funds, if any, furnished to the CONTRACTOR pursuant to this Agreement are subject to audit by the COUNTY and State. Such audits shall consider and build upon external independent audits performed pursuant to audit requirements of the Office of Management and Budget (OMB) Circular A-133 (Revised June 27, 2003). Objectives of such audits may include, but not be limited to, the following:
 - (i) To determine whether units of service claimed/reported are properly documented by service records and accurately accumulated for claiming/reporting;
 - (ii) To validate data reported by the CONTRACTOR for prospective contract negotiations;
 - (iii) To provide technical assistance in addressing current year activities and providing recommendations on internal controls, accounting procedures, financial records, and compliance with laws and regulations;
 - (iv) To determine the cost of services, net of related patient and participant fees, third-party payments, and other related revenues and funds;
 - (v) To determine that expenditures are made in accordance with applicable State and federal laws and regulations and contract requirements; and/or,
 - (vi) To determine the facts in relation to analysis of data, complaints, or allegations, which may be indicative of fraud, abuse, willful misrepresentation, or failure to achieve the Agreement objectives.
- (d) CONTRACTOR shall comply with all terms and conditions of this Agreement and all pertinent State and Federal statutes and regulations. CONTRACTOR shall permit the Contract Administrator, State, Department of Health Care Services (DHCS), United States Department of Health and Human Services (DHHS), Comptroller General of the United States, or other authorized State or Federal agencies and representatives, to inspect or otherwise evaluate the quality, appropriateness, and timeliness of services performed under this Contract. CONTRACTOR shall allow the State, DHCS, DHHS, the Comptroller General of the United States, and other authorized State or Federal agencies and representatives to review and copy any and all books and records maintained by the CONTRACTOR related to these services at any time during normal business hours. Unannounced visits may be made at the discretion of the State.

Employees who might reasonably have information related to such records may be interviewed.

- (e) The refusal of the CONTRACTOR to permit access to and inspection of electronic or print books and records, physical facilities, and interviews with employees, as described in this part constitutes an express and immediate material breach of this Agreement and will be sufficient basis to terminate the Agreement for cause or default.

Section 9.02 Control Requirements

- (a) Performance of this Agreement is subject to all applicable Federal and State laws, regulations and standards. In accepting the allocation outlined in Section 4.01, CONTRACTOR shall: (1) establish written procedures consistent with the following requirements; (2) monitor for compliance with the written procedures; and (3) be held accountable for audit exceptions taken by the State against the COUNTY and CONTRACTOR for any failure to comply with these requirements:
 - (i) HSC, Division 10.5, commencing with Section 11760;
 - (ii) Title 9, California Code of Regulations, (CCR) (herein referred to as Title 9), Division 4, commencing with Section 9000;
 - (iii) Government Code Section 16367.8;
 - (iv) 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;
 - (v) Title 42, United States Code (USC), Sections 300x-21 through 300x-31, 300x-34, 300x-57, and 330x-65 and 66, if applicable;
 - (vi) The Single Audit Act Amendments of 1966 (Title 31, USC Sections 7501-7507) and the Office and Management and Budget (OMB) Circular A-133 revised June 27, 2003, if applicable;
 - (vii) Title 45, Code of Federal Regulations (CFR), Sections 96.30 through 96.33 and Sections 96.120 through 96.137, if applicable;
 - (viii) Title 42, CFR, Sections 8.1 through 8.34, if applicable;
 - (ix) Title 21, CFR, Sections 1301.01 through 1301.93, Department of Justice, Controlled Substances, if applicable; and
 - (x) State Administrative Manual (SAM), Chapter 7200 (General Outline of Procedures).
- (b) CONTRACTOR shall be familiar with the above laws, regulations, and guidance.
- (c) The provisions of Section 9.02 are not intended to abrogate any provisions of law or regulation, or any standards existing or enacted during the term of this Agreement.
- (d) This Agreement is subject to any additional restrictions, limitations or conditions enacted by the federal or State government that affect the provisions, terms, or funding of this Agreement in any manner.

- (e) Contract Administrator, any authorized representative of COUNTY, any authorized representative of the State of California, the Secretary of the United States Department of Health and Human Services, the Comptroller General of the United States, or any of their authorized representatives, shall have access to any books, documents, and records, including but not limited to, medical and client records, of CONTRACTOR which such persons deem pertinent to this Agreement, for the purpose of conducting an audit, evaluation, or examination, or making transcripts during the periods of retention set forth in this Agreement. Such persons may at all reasonable times inspect or otherwise evaluate the services provided pursuant to this Agreement, and the premises in which they are provided or administered.
- (f) CONTRACTOR shall actively participate and cooperate with any persons specified in 0 in any evaluation or monitoring of services provided pursuant to this Agreement, and shall provide the above-mentioned persons adequate office space to conduct such evaluation or monitoring.
- (g) CONTRACTOR shall obtain an annual financial statement audit in accordance with Government Auditing Standards. If CONTRACTOR's total Federal expenditures, excluding Federal Medi-Cal/Medicaid, are \$300,000 or more, CONTRACTOR must obtain an audit in accordance with OMB Circular A-133.
- (h) CONTRACTOR shall maintain client records, books, documents, records and other evidence, accounting procedures and practices sufficient to reflect properly all direct and indirect costs of whatever nature claimed to have been incurred in the performance of this Agreement, including any matching costs and expenses, all of which will be deemed to constitute "records" for purposes of this section. Such records shall clearly reflect the cost and scope of the services provided to each client.
- (i) CONTRACTOR's facility, office (or such parts thereof as may be engaged in the performance of this Agreement) and its records shall be subject at all reasonable times to inspection and audit reproduction by COUNTY.
- (j) Within fourteen (14) days after final audit is approved by CONTRACTOR's Board of Directors, CONTRACTOR shall forward to Contract Administrator a copy of any audit report. Such audit shall include, but not be limited to, management, financial, programmatic or any other type of audit of CONTRACTOR's operations, whether or not the cost of such operation or audit is reimbursed in whole or in part through this Agreement.
- (k) Following any audit report, in the event of non-compliance with applicable laws and regulations governing funds provided through this Agreement or serious deficiencies in CONTRACTOR's internal control structure, COUNTY may terminate this Agreement as provided for in Section 15.01 or direct CONTRACTOR to immediately implement appropriate corrective action. A plan of corrective action shall be submitted to Administrator in writing within fifteen (15) days after receiving notice from COUNTY.

- (l) CONTRACTOR will have two (2) months to implement a corrective action plan and to submit to COUNTY a written report of corrective action taken. Failure to implement said corrective action plan shall be cause for termination of this Agreement.
- (m) COUNTY shall respond to all audits of CONTRACTOR with reconciliation to COUNTY records. If COUNTY concurs with State findings, final payment of CONTRACTOR's assessed disallowances shall be subject to provisions of Section 4.08 of this Agreement.
- (n) All CONTRACTOR's funding records related to this Agreement shall be subject to audit by COUNTY at any time during the term of this Agreement, and for a period that extends through any required records retention period, should it be requested by COUNTY's Auditor-Controller. In the event that CONTRACTOR has more than one funding agreement with COUNTY, CONTRACTOR shall maintain an individual schedule of expenses for each COUNTY agreement, such that can be reconciled to an audit of any individual agreement. If CONTRACTOR receives in excess of \$500,000 in total funding from COUNTY in any one fiscal year, CONTRACTOR must have an independent/individual audit of each COUNTY agreement.
- (o) CONTRACTOR shall include in any contract with an audit firm a clause to permit access by the State to the working papers of the external independent auditor, and require that copies of the working papers shall be made available for the State at its request.

Section 9.03 Site Inspection

The COUNTY and State, through any authorized representatives, has the right at all reasonable times to inspect or otherwise evaluate the work performed or being performed hereunder including subcontract supported activities and the premises in which it is being performed. If any inspection or evaluation is made of the premises of the CONTRACTOR, the CONTRACTOR shall provide all reasonable facilities and assistance for the safety and convenience of the authorized representatives in the performance of their duties. All inspections and evaluations shall be performed in such a manner as will not unduly delay the work.

Article X. **CHANGES TO AGREEMENT**

This Agreement may be amended by mutual consent of the parties hereto. Said amendments shall become effective only when in writing and fully executed by duly authorized officers of the parties hereto.

Article XI. **CONTRACTOR TO COUNTY**

It is understood that the services provided under this Agreement shall be prepared in and with cooperation from COUNTY and its staff. It is further agreed that in all matters pertaining to this Agreement, CONTRACTOR shall act as Contractor only to COUNTY and shall not act as Contractor to any other individual or entity affected by this Agreement nor provide information in any manner to any party outside of this Agreement that would conflict with CONTRACTOR's responsibilities to COUNTY during term hereof.

Article XII. ASSIGNMENT AND DELEGATION

CONTRACTOR is engaged by COUNTY for its unique qualifications and skills as well as those of its personnel. CONTRACTOR shall not subcontract, delegate or assign services to be provided, in whole or in part, to any other person or entity without prior written consent of COUNTY. 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 XIII. INDEPENDENT CONTRACTOR/LIABILITY

CONTRACTOR is, and shall be at all times, deemed independent and shall be wholly responsible for the manner in which it performs services required by terms of this Agreement. CONTRACTOR exclusively assumes responsibility for acts of its employees, associates, and subcontractors, if any are authorized herein, as they relate to services to be provided under this Agreement during the course and scope of their employment.

CONTRACTOR shall be responsible for performing the work under this Agreement in a safe, professional, skillful and workmanlike manner and shall be liable for its own negligence and negligent acts of its employees. COUNTY shall have no right of control over the manner in which work is to be done and shall, therefore, not be charged with responsibility of preventing risk to CONTRACTOR or its employees.

Article XIV. FISCAL CONSIDERATIONS

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

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

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

Article XV. DEFAULT, TERMINATION, AND CANCELLATION

Section 15.01 Default

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

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

Section 15.02 Bankruptcy

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

Section 15.03 Ceasing Performance

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

Section 15.04 Termination or Cancellation without Cause

COUNTY may terminate this Agreement in whole or in part upon seven (7) calendar days written notice by COUNTY without cause. If such prior termination is effected, COUNTY will pay for satisfactory services rendered prior to the effective dates as set forth in the Notice of Termination provided to CONTRACTOR, and for such other services, which COUNTY may agree to in writing as necessary for contract resolution. In no event, however, shall COUNTY be obligated to pay more than the total amount of the contract. Upon receipt of a Notice of Termination, CONTRACTOR shall promptly discontinue all services affected, as of the effective date of termination set forth in such Notice of Termination, unless the notice directs otherwise.

Article XVI. NOTICE TO PARTIES

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

COUNTY OF EL DORADO
HEALTH AND HUMAN SERVICES AGENCY
3057 BRIW ROAD, SUITE A
PLACERVILLE, CA 95667
ATTN: DANIEL NIELSON, M.P.A., DIRECTOR

or to such other location as the COUNTY directs.

Notices to CONTRACTOR shall be addressed as follows:

PROGRESS HOUSE, INC.
2844 COLOMA STREET
PLACERVILLE, CA 95667
ATTN: JUDI STRAUSS, EXECUTIVE DIRECTOR

or to such other location as the CONTRACTOR directs.

Article XVII. HIPAA COMPLIANCE

By signing this Agreement, CONTRACTOR agrees to comply with Exhibit B, Business Associate Agreement, attached hereto and incorporated by reference herein.

Article XVIII. 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 attorneys fees and costs incurred, brought for, or on account of, injuries to or death of any person, including but not limited to workers, COUNTY employees, and the public, or damage to property, or any economic or consequential losses, which are claimed to or in any way arise out of or are connected with the CONTRACTOR's services, operations, or performance hereunder, regardless of the existence or degree of fault or negligence on the part of the COUNTY, the CONTRACTOR, subcontractor(s) and employee(s) of any of these, except for the sole, or active negligence of the COUNTY, its officers and employees, or as expressly prescribed by statute. This duty of CONTRACTOR to indemnify and save COUNTY harmless includes the duties to defend set forth in California Civil Code Section 2778.

Article XIX. DEBARMENT

Debarment and Suspension Certification: By signing this agreement, the CONTRACTOR agrees to comply with applicable Federal suspension and debarment regulations and CONTRACTOR further certifies to the best of its knowledge and belief that it and its principals or affiliates or any sub-contractor utilized under the agreement:

- 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 the above Paragraph B;
 - D. Have not within a three (3)-year period preceding this 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 or subrecipient covered transaction with any person(s) who are proposed for debarment under Federal regulations or are 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 or subrecipient covered transactions.

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 and State Governments, COUNTY may immediately terminate this Agreement for cause or default.

Article XX. INSURANCE

Section 20.01 CONTRACTOR shall provide proof of a policy of insurance satisfactory to the County of El Dorado Risk Manager and documentation evidencing that CONTRACTOR maintains insurance that meets the following requirements:

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

Section 20.02 In the event CONTRACTOR is a licensed professional, and is performing professional services under this Agreement, professional liability (for example, malpractice insurance) is required with a limit of liability of not less than \$1,000,000 per occurrence.

Section 20.03 CONTRACTOR shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

Section 20.04 The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.

Section 20.05 CONTRACTOR agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or

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

Section 20.06 The certificate of insurance must include the following provisions listed under Section 20.06(a) and (b) (including an endorsement page for the "additional insured" language pursuant to Section 20.06(b)), stating that:

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

Section 20.07 The CONTRACTOR's insurance coverage shall be primary insurance as respects the COUNTY, its officers, officials, employees and volunteers. Any insurance or self-insurance maintained by the COUNTY, its officers, officials, employees or volunteers shall be excess of the CONTRACTOR's insurance and shall not contribute with it.

Section 20.08 Any deductibles or self-insured retentions must be declared to and approved by the COUNTY, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the COUNTY, its officers, officials, employees, and volunteers; or the CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.

Section 20.09 Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the COUNTY, its officers, officials, employees or volunteers.

Section 20.10 The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.

Section 20.11 CONTRACTOR's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.

Section 20.12 In the event CONTRACTOR cannot provide an occurrence policy, CONTRACTOR shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

Section 20.13 Certificate of insurance shall meet such additional standards as may be determined by the contracting County Department either independently or in consultation with Risk Management, as essential for the protection of the COUNTY.

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

All independent Contractors providing services to the COUNTY must file a State of California Form 590, certifying their California residency or, in the case of a corporation, certifying that they have a permanent place of business in California. The Contractor will be required to submit a Form 590 prior to execution of an Agreement or COUNTY shall withhold seven (7) percent of each payment made to the Contractor during term of the Agreement. This requirement applies to any agreement/contract exceeding \$1,500.00.

Article XXV. TAXPAYER IDENTIFICATION NUMBER (FORM W-9)

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

Article XXVI. COUNTY BUSINESS LICENSE

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

Article XXVII. ADMINISTRATOR

The County Officer or employee with responsibility for administering this Agreement is Shirley White, Alcohol and Drug Program Manager, or successor.

Article XXVIII. 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 XXIX. 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.

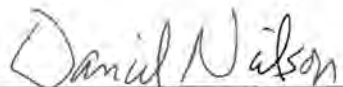
Article XXX. VENUE

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 XXXI. ENTIRE AGREEMENT

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

REQUESTING DEPARTMENT HEAD CONCURRENCE:



Daniel Nielson, M.P.A., Director
Health and Human Services Agency



Gregory Sly, Chief Probation Officer
Probation Department

Dated: 3-21-2012
//

Dated: 3-26-12

//

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

--COUNTY OF EL DORADO--

By: _____
John R. Knight, Chair
Board of Supervisors

Dated: _____

Attest:
Suzanne Allen de Sanchez
Clerk of the Board of Supervisors

Deputy

Date

-- CONTRACTOR --

PROGRESS HOUSE, INC.

By:  _____
Judi Strauss, Executive Director
CONTRACTOR

Dated: 3-28-12



Exhibit A

AB 109 Services Program

Treatment Authorization Form

El Dorado County Health and Human Services Agency
Alcohol and Drug Programs Division

Authorized Provider: (check one)

| | | |
|--|---|---|
| <input type="checkbox"/> PROGRESS HOUSE Administration Office P.O. Box 1666 2844 Coloma Road Placerville, Ca 95667 Phone: 626-9240 Fax: 626-8992 | <input type="checkbox"/> Outpatient Services <input type="checkbox"/> Transitional Living <input type="checkbox"/> Garden Valley Women's <input type="checkbox"/> Camino Women's <input type="checkbox"/> Nevada City Men's <input type="checkbox"/> Coloma Men's <input type="checkbox"/> Yolo | <input type="checkbox"/> TAHOE TURNING POINT P.O. Box 17509 2494 Lake Tahoe Blvd., Ste B5 South Lake Tahoe, CA 96151 Phone: 541-4594 Fax: 542-1200 |
|--|---|---|

Participant Name: _____ **Court Number:** _____
has been ordered to participate in treatment for substance abuse/dependence pursuant under AB 109 Services Program. He/She has been directed to contact the Provider indicated above to schedule an intake appointment, before _____ p.m. on _____

Level of Treatment Authorized: _____

Dates Authorized: _____

Treatment Plan is due: _____

You will be contacted when Progress Reports are due. If the participant does not contact you please complete the bottom portion of the form and fax back to the AB 109 Treatment Coordinator. Thank you for your services.

AB 109 Treatment Coordinator
Placerville: (530) 621-6207/Fax: (530) 295-2596
SLT: (530) 573-7959/Fax: (530)

Date

| |
|---|
| <input type="checkbox"/> The client failed to contact the Provider as directed. |
| <input type="checkbox"/> The client contacted the Provider, but failed to show for intake on _____. |
| <input type="checkbox"/> Comments: _____ |
| _____ |
| Signed _____ Date _____ |

Exhibit B to Agreement 484-S1210 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:

- i. **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.