

AGREEMENT FOR SERVICES 221-S1511

THIS AGREEMENT is made and entered into by and between the County of El Dorado, a political subdivision of the State of California (hereinafter referred to as "County") and Telecare Corporation, Inc., whose principal place of business is 1080 Marina Village Parkway, CA 94501 (hereinafter referred to as "Contractor"), whose Agent for Service of Process is Marshall Langfeld, 1080 Marina Village Parkway, Alameda, CA 94501;

RECITALS

WHEREAS, County requires the operation of a sixteen-bed, twenty-four hour a day, Psychiatric Health Facility (PHF) in order to meet the needs of persons 18 years and older exhibiting acute psychiatric symptoms, with the maximum allowable financial participation of federal benefit programs; and

WHEREAS, Contractor desires to be designated by County as a facility for seventy-two (72) hour treatment and evaluation pursuant to Welfare and Institutions Code (WIC) 5150 and Penal Code (PC) Section 4011.6, for fourteen (14) day intensive treatment pursuant to California Welfare and Institutions Code (WIC) Sections 5250, and 5260; and up to thirty (30) additional days of intensive treatment pursuant to WIC Section 5270.10; and

WHEREAS, County is authorized to designate facilities for seventy-two (72) hour treatment and evaluation pursuant to WIC Section 5150 and PC Section 4011.6 and for fourteen (14) day intensive treatment pursuant to WIC Sections 5150, 5250, 5260; and for up to thirty (30) additional days of intensive treatment pursuant to WIC 5270.10; and

WHEREAS, County issued a Request for Proposal No 14-918-072 to select a Contractor to operate its PHF and the Board of Supervisors awarded the bid to Contractor on August 26, 2014, in response to the Contractor's submitted proposal; and

WHEREAS, it is understood and agreed by and between the parties of this Agreement that they wish to enter into this contract in order to provide a full and complete statement of their respective responsibilities in connection with this venture during the term of this Agreement; and

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

WHEREAS, County has determined that the provision of these services by Contractor are in the public's best interest and that these services are more economically and feasibly performed by

outside independent Contractors. The County has determined that these are 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

Obligations:

A. Contractor Obligations:

1. *Psychiatric Health Facility License:*

Contractor shall meet all Psychiatric Health Facility licensing and certification requirements pursuant to California Welfare and Institutions Code, §4080 et seq. §§5150-5157 and §5600 et seq. and California Code of Regulations, Title 22, Division 5, Chapter 9 et seq.; and California Health and Safety Regulations, §1275. Contractor shall successfully obtain PHF licensure no later than January 31, 2015.

2. *Staffing Recruitment and Orientation:*

Contractor shall recruit and hire sufficient personnel to meet the staffing levels defined under Article III – Scope of Services, herein. Contractor shall ensure personnel receive a minimum of forty (40) hours of orientation prior to placement at the PHF, and a minimum of eighty (80) hours total orientation no later than February 28, 2015.

B. County Obligations:

1. County shall upgrade existing Security System by contracting for a replacement system.
2. County shall implement hardware safety enhancements (e.g. replacement or removal of doorknobs, rails, hinges, etc.) as recommended by Contractor and agreed-to by County, on an on-going basis.

C. Mutual Obligations of County and Contractor:

1. County and Contractor mutually agree to develop and implement an Electronic Medical Record (EMR) system with the ability to interface with HHSA's Avatar (or subsequent replacement) system that meets Federal standards of "meaningful use."
2. County and Contractor shall collaborate to ensure adequate Psychiatrist coverage during the first three (3) months of this Agreement, during which time Contractor shall locate and provide qualified Psychiatrist(s) to meet the needs of PHF operations.

ARTICLE II

Scope of Agreement:

A. Target Population:

The target population will include male and female Clients, who are 18 years and older, who are exhibiting acute psychiatric symptoms and have been placed on a Welfare and Institutions Code (WIC) §5150 designation or have been admitted on a voluntary basis. Priority target population includes those Clients who the County is mandated to serve under the Mental Health Plan contract between El Dorado County and the Federal and State agencies, including Medi-Cal beneficiaries, Medicare/Medi-Cal beneficiaries, and indigent/uninsured Clients.

B. Definition of Psychiatric Health Facility Program:

The PHF will be a 24-hour, 7-day a week community-based locked intensive inpatient psychiatric treatment program for individuals experiencing an acute mental health crisis. Onsite treatment services will be provided to Clients who are admitted either voluntarily or involuntarily (pursuant to WIC §5150). A robust treatment program that is inclusive of the Calendar of Treatment Activities as referenced herein below, and focused on preparation for a less restrictive level of care is at the core of the services to be provided pursuant to Title 22 California Code of Regulation, Article 3, §71201.

C. Program Philosophy:

The purpose of the Psychiatric Health Facility (PHF) is to provide a safe and therapeutic environment for Clients experiencing acute psychiatric symptoms. The goal is to provide intensive mental health psychiatric treatment services to assist in the stabilization of the Client's condition through a program designed to stabilize the current crisis and assist the Client's return to a less restrictive setting. Services shall include a well-developed Recovery oriented treatment program that provides a safe and secure environment to pursue Wellness and Recovery with appropriate professional staffing on a 24 hour, 7 day a week basis.

D. Laws and Regulations:

1. Contractor shall maintain compliance with all Federal, State and local requirements for the certification status as a Psychiatric Health Facility.
2. Contractor shall be responsible to comply with the requirements of the El Dorado County (EDC) Mental Health Plan (MHP), attached hereto as Exhibit A and incorporated by reference herein, and must complete and submit supporting documentation for all admissions regardless of payer source to the EDC MHP.

E. Safety: Contractor shall provide a safe and secure environment to provide for clinical and medical assessment, diagnostic formulation, crisis intervention, medication management, and clinical treatment for mental health Clients with acute psychiatric symptoms. Seclusion and/or restraints shall be used only as the last resort to prevent imminent safety risk to Clients, staff, and others.

F. Lanterman-Petris Short Act: Contractor shall adhere to the applicable requirements of the Lanterman-Petris Short Act as defined in Welfare and Institutions Code §5000 et seq. Contractor shall work effectively with the Office of the Public Guardian, and the HHSA Mental Health Adult Placement Team in weekly meetings, for Clients presenting to the PHF as gravely disabled who may require consideration for a temporary Lanterman-Petris Short Act (LPS) conservatorship, or for Clients who are already placed on LPS Conservatorship and might need placement to the next level of care.

G. Cultural Competency: Contractor shall develop and implement a Cultural Competency Plan in conjunction with County HHSA. The Plan will consist of a statement and assurances to employ a culturally diverse staff that includes bilingual and bicultural multidisciplinary staff who reflects the backgrounds of the Clients. Contractor shall ensure, as part of that Plan, that all staff receive on-going Cultural Competency training.

H. Referral of Clients to the Psychiatric Health Facility:

1. Persons authorized to initiate an involuntary psychiatric hold pursuant to §5150 of the Welfare and Institutions Code include County Health and Human Services Mental Health

Medical Director, Hospital Emergency Department Physicians, Contractor's qualified Licensed Mental Health Professionals, local law enforcement agencies, or County HHSA Mental Health staff or designees.

2. The Health and Human Services Agency (HHSA) Mental Health Division (MHD) shall provide Psychiatric Emergency Services (PES) staff to respond to requests for assessment of persons who potentially meet Welfare and Institutions Code §5150. If, following assessment, staff determines that the individual being assessed meets the WIC §5150 criteria, staff shall refer the individual to the Psychiatrist for possible admission to the PHF.

I. General:

1. *Facility:* Contractor shall operate the Psychiatric Health Facility (PHF) 24 hours per day, seven (7) days per week, located at 935-B Spring Street, Placerville, CA 95667, a County-owned building, pursuant to a separate Facility Use Agreement (FUA) #277-O1511 between County and Contractor, incorporated by reference as if fully set forth herein.
2. *Acceptance of Clients into the Psychiatric Health Facility:* Contractor shall receive Clients referred by County Health and Human Services Agency (HHSA) Mental Health Division for involuntary admission pursuant to Welfare and Institutions Code §5150, or immediately notify HHSA of any refusal to accept Client, pursuant to the section titled "Admission Criteria for the Psychiatric Health Facility" regarding exclusions, herein.
3. *Client Eligibility for Insurance:* Contractor shall cooperate fully with County Eligibility Staff regarding evaluations conducted on-site for Medi-Cal, and Social Security Disability benefits. Contractor understands that the County will have a Business Associate Agreement related to ongoing exchange of information and coordination of health and disability benefits. Contractor shall maintain evidence of initiation of the eligibility determination process for all potential Medi-Cal eligible Clients.
4. *Staffing:*
 - a. Contractor is responsible for all staffing and services at the PHF, except as specifically excluded in the section titled "Responsibilities of County."
 - b. The staffing pattern for the Psychiatric Health Facility (PHF) shall meet all State licensing and regulatory requirements including medical staff standards, nursing staff standards, social work, and rehabilitation staff requirements pursuant to California Code of Regulations (CCR) Title 22, Division 5, the California Welfare and Institutions Code, §4080 et seq, §§5150-5157 and §5600 et seq., California Code of Regulations, Title 22, Division 5, Chapter 9 et seq.; and California Health and Safety Regulations, §1275, as may be hereinafter amended.
 - c. Contractor shall maintain an appropriate level of supervision as required by applicable regulations and statutes.
 - d. All staff requiring state licensure or certification will be required to be licensed or certified in the State of California and be in good standing with the state licensing or certification board.
 - e. If the Client's evaluation reflects a need for specialty services that can only be provided by a licensed professional or other specialty provider, such persons shall be made available.

- f. Contractor shall ensure PHF staffing is based on the capacity to serve sixteen (16) Clients at any given time. Contractor shall operate throughout the term of this Agreement with the staff level shown in the table below:

Position	Shift	Total Shifts	Total FTE
Acute – LVN	A.M.	7.00	1.40
Acute – RN Supervisor	A.M.	7.00	1.40
Acute Director of Nursing	A.M.	5.00	1.00
Administrative Assistant / Human Resources	A.M.	5.00	1.00
Administrator	A.M.	5.00	1.00
Business Officer Manager	A.M.	5.00	1.00
Director of Social Services	A.M.	5.00	1.00
Medical Records Technician	A.M.	5.00	1.00
Peer	A.M.	7.00	1.40
Recovery Specialist I	A.M.	14.00	2.80
Regional Director – Operations	A.M.	1.00	0.20
Rehabilitation Therapist I	A.M.	5.00	1.00
Social Worker II	A.M.	11.00	2.20
Unit Clerk/Trans Coordinator	A.M.	7.00	1.40
Acute – LVN	P.M.	7.00	1.40
Acute – RN Supervisor	P.M.	7.00	1.40
Recovery Specialist	P.M.	14.00	2.80
Acute – RN Supervisor	NOC	7.00	1.40
Recovery Specialist I	NOC	21.00	4.20
Total Staffing	All	145.25	29.0

- g. If vacancies occur in any of the Contractor's staff that would reduce the Contractor's ability to perform any services under the Agreement, Contractor shall promptly notify County contract Administrator of such vacancies, as well as a Plan of Action to ensure sufficient staff coverage during the time vacancy is in effect.

J. Day-to-Day Operations:

1. *Admission Criteria for the Psychiatric Health Facility:*

- a. Clients who meet the following conditions will be served at the Psychiatric Health Facility:
 - i. Client poses a danger to self or others because of a mental disorder, pursuant to Welfare and Institutions Code §5150.
 - ii. Client is unable to provide reasonably adequate care for self, due to grave disability as a result of a mental disorder, pursuant to Welfare and Institution Code §5150.

- iii. Client is presenting symptoms likely to lead to seriously disordered behavior accompanied by impaired reality testing.
 - iv. Client is in need of planned psychiatric evaluation, special drug therapy, or special treatment that cannot be provided at a lower level of care requiring the presence of skilled, intensive staff intervention following failure of treatment effort available in outpatient or extended care settings with impaired social, familiar, educational and/or occupational functioning.
 - b. Clients with medical conditions that require precautionary isolation may be admitted and treated, based on the following requirements:
 - i. Upon recommendation of Physical Health Care Provider, Physician, Psychiatrist, and Clinical Administrator as to the facility's capacity to provide necessary interventions and precautions required for the care of the Client.
 - ii. Upon determination that the Client is able to maintain for his/her own personal hygiene.
 - iii. Upon determination that the Client is not incontinent of urine or stool.
 - iv. Upon determination that the Client has no open, draining wounds.
 - c. Otherwise qualified Clients demonstrating any of the following conditions may be excluded from the PHF:
 - i. Medical emergencies.
 - ii. Primary diagnosis of dementia, traumatic brain injury, eating disorder, or substance abuse.
 - iii. Medical-surgical complications that preclude participation in the therapeutic program.
 - iv. Any medical condition that exceeds the capacity of the PHF to provide appropriate medical care such as ongoing need for deep wound care, intravenous therapy, oxygen therapy, tube feeding, substance withdrawal and delirium tremens.
 - d. Should it be discovered that a Client meets any of the exclusion criteria during their stay, arrangements shall be made to transfer the Client as soon as possible. The Contractor retains the ultimate authority to make decisions concerning isolation precautions, and will consult with the County Health Officer and/or the Mental Health Medical Director of the program as needed.
- 2. *Services Provided to Clients:* Contractor shall ensure all required assessments are completed within the following timeframes to comply with California PHF licensing regulations:
 - a. Within eight (8) hours of admission to the PHF, the Contractor's Registered Nurses shall complete a Nursing Assessment, including history of illness, Client's legal status, and reason for admission as stated by the Client and/or others significantly involved. This should culminate in development of a nursing care plan for the Client by the nursing staff.
 - b. Within twenty-four (24) hours of admission to the PHF, a Psychiatrist or Nurse Practitioner/Physician Assistant under the supervision of Contractor's Psychiatrist shall complete a Psychiatric History, which includes a mental health status examination; onset of illness and circumstances leading to admission; attitudes and behavior; estimate of intellectual functioning, memory functioning, and

- orientation; substance abuse history and an inventory of the Client's assets in descriptive, not interpretive, fashion.
- c. Within twenty-four (24) hours of admission to the PHF, an Admission History and Physical will be completed in accordance with CCR Title 22. Contractor will ensure access to appropriate medical/specialty services as needed per licensing regulations. Clients whose treatment requires medical interventions beyond the level appropriate to PHF shall be transferred to the appropriate level of medical care required. If at any time during their stay at the PHF, it is determined the Client is medically unstable, Contractor shall arrange for transfer to a medical Emergency Department.
 - d. Within sixty (60) hours of admission to the PHF, a complete Psychosocial Assessment of the Client shall be completed by a licensed Social Worker, which includes reports of interviews with Client(s), family members and others.
 - e. Within seventy-two (72) hours of admission to the PHF, an initial Treatment Plan shall be developed by a multi-disciplinary team, following the initial treatment planning conference. The Treatment Plan will be a customized response to the Client's specific issues and treatment goals, and may be derived in large measure from the PHF Program Calendar of Treatment Activities.
 - f. On a daily basis, the Client shall receive face-to-face contact by a Psychiatrist or Nurse Practitioner/Physician Assistant under the supervision of Contractor's Psychiatrist with documentation of the intervention required. Psychiatric staff shall complete comprehensive psychiatric and medication evaluations, and ensure provision of daily medication as indicated.
3. *Calendar of Treatment Activities:* Each month, Contractor shall provide a weekly Calendar of Treatment Activities showing the days and times of each activity for the subsequent month, to the Contract Administrator for review and approval.
- a. The Calendar of Treatment Activities shall include group therapy, skills development, Client education activities, occupational therapy, recovery-focused treatment, family therapy, recreational and exercise programs. Treatment shall be tailored to the needs of each Client and shall be guided by Recovery principles.
 - b. Contractor shall ensure the scheduled activities shall be provided by mental health professionals who are specifically trained to provide those therapies.
 - c. Contractor shall integrate peer and family supports activities into programming. Peer and/or Family Support staff will be active in treatment provision, mentoring, support, and advocacy with Clients and families while at the PHF. They can also assist with facilitation of the Client's transition to the appropriate lower level of care.
 - d. The weekly Calendar of Treatment Activities shall be approved in writing by the Mental Health Director or his/her designee at the monthly meeting between Contractor and County Mental Health. Any changes to the Calendar of Treatment Activities must be approved in advance.
4. *Pharmaceutical Services:* Contractor is responsible for provision of pharmaceutical services through a third party contract. Contractor shall provide a minimum of a fourteen (14) day supply of discharge medication(s) and a prescription for a minimum of an additional fourteen (14) days, to those Clients who do not have any other source of medication available during the first days post discharge. With the exception of medication(s) already paid for, or already ordered, Clients moving to a

facility that provides medications, Clients with medications at home, and Clients with insurance that covers medications and who can go to a pharmacy to pick up their prescriptions will not be given discharge medications.

Contractor shall utilize cost containment strategies for the provision of stock and prescription medications to Clients by establishing a formulary utilized by the program and information regarding co-pays and/or generic substitutions. Formulary established by Contractor should be in alignment with formulary established by County.

5. *Discharge Planning:* Contractor shall begin Discharge Planning with each Client upon admission and shall document Discharge Planning in the initial Treatment Plan.
 - a. Contractor will define and update discharge criteria as part of the formal treatment planning process.
 - b. Contractor's designated Discharge Planner shall coordinate discharge planning with the Client's family, support system, and/or appropriate community resources, in collaboration with the County's Adult Outpatient Services Manager, or designee.
 - c. Contractor shall develop individualized After Care Plan in consultation with County Mental Health, which is centered on the least restrictive and most appropriate level of care for each Client. After Care appointments will be made prior to discharge. Community After Care resources may include but are not limited to:
 - i. Referrals to HHSA Mental Health Adult Outpatient Services and/or contracted Community Based Organizations.
 - ii. Referrals to community based treatment programs.
 - iii. Referral and linkage to Primary Care.
 - iv. Referral to intensive community treatment programs.
 - v. Referral to Mental Health Rehabilitation Centers for Clients needing an intensive level of care.
 - vi. Referrals to existing care providers.
 - vii. Referrals to Wellness Centers, family and peer run services and organizations.
 - d. Discharge Planning with HHSA Mental Health:
 - i. Contractor shall work collaboratively on Discharge Planning to ensure appropriate ongoing Outpatient Services (County Mental Health programs, community based organizations, etc.) are provided.
 - ii. Contractor shall work collaboratively with County HHSA employees and will function as a key service element in the continuum of care for Mental Health services in the County.
 - e. Client Satisfaction Survey
 - i. Contractor shall administer a "Client Satisfaction Survey" to each Client and to every family, if the Client's family has been involved in their Treatment Planning, at the time of discharge.
 - ii. The "Client Satisfaction Survey" format shall be reviewed and approved by the County.
 - iii. Contractor shall track the percentage of Clients reporting that their care was beneficial in resolving their mental health crisis, and report to County Mental Health on a monthly basis.

6. *Patients' Rights:* Contractor shall ensure compliance with Patients' Rights.
 - a. Contractor shall adopt and post in a conspicuous place a written policy on Patients' Rights in accordance with §70707 of Title 22 of the California Code of Regulations, and §5325.1 of the California Welfare and Institutions Code, and Title 42 Code of Federal Regulations §438.100.
 - b. Contractor shall allow access to County Clients by the Patients' Rights Advocate designated by the County, and shall work in accordance with the Patients' Rights Advocate. Contractor shall comply with Federal, State, and County Patients' Rights regulations, and cooperate with the Patients' Rights Advocate to provide advocacy and support services to Clients in the PHF.
7. *Certification Review Hearings:* Contractor shall facilitate Certification Review Hearings onsite and shall coordinate with the Hearing Officer provided by HHSA. Contractor Clinical Staff shall be available to testify in Certification Review Hearings as well as in court for Conservatorships filed by the staff.
8. *Other Supportive Services:* Contractor shall provide the following specialty services as required to operate the Psychiatric Health Facility in accordance with licensing and certification standards.
 - a. Contractor shall provide Professional Medical Services for required History and Physical examinations, medical clearance, and any medical/specialty services as appropriate per licensing requirements.
 - b. Contractor shall ensure availability of laboratory services, including the ability to obtain needed samples.
 - c. Contractor shall provide food services in accordance with CCR Title 9, §77077, and other applicable laws and regulations.
 - d. Laundry services shall be provided.
 - e. Transportation services shall be provided as necessary during the Client's stay at the PHF (e.g. to court, non-emergency medical appointments.)
 - f. Interpretation/Translation services shall be provided.

K. Collaborative Obligations to County:

1. *Collaboration with Local Partners:* Contractor shall collaborate effectively with other programs in the County, and the community such as local law enforcement, local Emergency Departments and Hospitals, Emergency Medical Services, and other agencies in accepting County Clients for admission for Psychiatric Health Facility services.
 - a. Contractor shall make appropriate referrals and linkages to County Alcohol and Drug Program for Clients with co-existing conditions who are in need of assistance with alcohol and drug abuse, and other addictive symptoms.
 - b. Contractor shall collaborate with community partners and resources, and will uphold agreed terms of Memorandum of Understanding (MOU) agreements developed by the County with the following entities:
 - i. All local law enforcement agencies to ensure mutual expectations regarding WIC §5150 assessments, as well as safe transfer of a Client into service and safety within the PHF.

- ii. Local law enforcement, District Attorney and HHSA regarding the reporting of known firearms in the possession of Clients admission on WIC §5150 holds.
 - iii. The local Emergency Departments, including Marshall Medical Center and Barton Healthcare System for transfer of care for Clients on WIC §5150's, and requirements for medical clearance.
 - iv. The County Emergency Medical Services Agency regarding ambulance transportation.
 - v. The Office of the Public Guardian to meet filing standards for LPS Conservatorships.
 - c. Contractor shall develop Agreements to include:
 - i. Transfer of non-El Dorado County residents to their County of residence.
 - ii. Transfer protocols of Veterans to Veteran Administration facilities and to other facilities contracted with commercial insurance carriers.
 - iii. Provision of ambulance services as negotiated with the assistance of HHSA.
 - iv. In-County post discharge transportation services that shall be provided within the County, or arranged for by the Contractor.
 - d. Transportation upon discharge will be coordinated with the Client's family and County.
2. *Monthly Meetings:* The Contractor and the County shall convene a monthly Administrative Meeting of key management staff to review services and operational issues.
 3. *Treatment Planning Meetings:* The County shall ensure Adult Outpatient Services Manager, or designee attend the Treatment Planning meetings.

L. Administrative Obligations to County:

1. *Access to Records:* Contractor shall grant access to duly authorized representatives from Federal, State, or County to Client records and shall disclose to duly authorized representatives all financial records necessary to review or audit contract services to evaluate the cost, quality, appropriateness, and timeliness of services.

The County or their designee shall have access to and right to examine, monitor, and audit all records, documents, conditions, and activities related to programs funded by this Agreement. For purposes of this section "access to" means that the Contractor shall at all times maintain a complete set of records and documents related to programs funded by this Agreement and shall make these records available to the Federal, State or County representative, or their respective designee in a central location.

2. *Medical Records:* Contractor must maintain Medical Records in accordance with current documentation standards.
 - a. Contractor shall implement and maintain an Electronic Medical Record (EMR) system with the ability to interface with HHSA's Avatar (or subsequent replacement) system that meets standards of "meaningful use."

- b. Contractor shall be responsible to enter all Client services information, admission data and billing information into the County approved data system and will be responsible for all audit exceptions pertaining to the delivery of services.
 - c. Contractor will be responsible for “release of information” requests for the PHF and shall adhere to applicable Federal and State regulations.
 - d. Contractor shall ensure that the medical record includes all Intake Information, Initial Assessments, History and Physical, Laboratory Work, Legal Authorizations for admissions, consultation reports, treatment plans, physician's orders, nursing assessment and progress notes, physician's progress notes, social service evaluation and progress notes, and other documents as required by Title 9 and Title 22 of the California Code of Regulations.
 - e. Contractor shall ensure compliance with documentation requirements, including a Physician Progress Note at least every twenty-four (24) hours, at least one Nursing Progress Note per shift, and a Registered Nurse Progress Note every day on all Clients admitted on WIC §5150 status.
 - f. Contractor shall ensure that Clients in seclusion and/or restraints shall have documented observation at least every fifteen (15) minutes.
 - g. Contractor shall ensure that all medications administered and any unusual responses to medications are documented in the Clients' charts and if appropriate, in the log of Unusual Occurrences.
3. *Utilization Review:* Contractor shall perform Utilization Review Audits and ensure compliance with billing requirements:
- a. Contractor shall submit a daily census including list of Client names to HHSA Utilization Review Department within twenty-four (24) hours of admission or the next business day in a format to be mutually agreed upon by both County and Contractor.
 - b. Contractor shall be responsible to ensure that documentation in the Client's medical record meets Medical Necessity Criteria for the Client days of services submitted to County for reimbursement by Federal intermediaries, third-party payers, and other responsible parties.
 - c. Contractor shall enter all mental health data and billing information into a County-approved data system and will be responsible for all audit exceptions pertaining to the delivery of services.
 - d. Contractor shall provide access to County for random Utilization Review audits in the County's sole discretion.
4. *Required Reports:* Contractor shall collect, provide and maintain data for reports pertaining to Performance Outcomes, Unusual Occurrences, and other Federal, State, and County-required information.
- a. Client Grievances: Contractor shall ensure appropriate handling of Client grievances. Contractor shall log all grievances and the disposition of all grievances received from a Client or a Client's family in accordance with the El Dorado County MHP policies and procedures. Contractor shall provide a summary of the grievance log entries concerning County Clients to the HHSA Mental Health Medical Director or designee at monthly intervals, by the fifteenth (15th) day of the following month, in a mutually agreed upon format. Contractor shall post signs, informing Clients of their right to file a grievance and appeal.

- b. Incident Reports: Contractor shall ensure appropriate handling and documentation of Incident Reports. Contractor shall notify County of all incidents and/or Unusual Occurrences reportable to State licensing bodies that affect County Clients within twenty-four (24) hours. The Contractor shall use the County Incident Report form for reporting.
- c. Reporting to Office of State Health Planning and Development (OSHDP): Contractor will be required to comply with the mandated reporting of Client information and admission/discharge data to the Office of State Health Planning and Development and meet the submission deadlines on June 30 and December 31 each calendar year.
- d. Reporting of Core Measures: Contractor shall maintain daily records with all the following data to be compiled into reports for submission to the County Contract Administrator on a quarterly basis, including the following core measures:
 - i. Admission screening for violence risk, substance use, psychological trauma history, and Client strengths completed.
 - ii. Hours of physical restraint utilized.
 - iii. Hours of seclusion utilized.
 - iv. Patients discharged on multiple anti-psychotic medications.
 - v. Patients who receive post discharge After Care Plan.
 - vi. Patients whose post discharge After Care Plan was transmitted to next level of care provider upon discharge.
 - vii. Other items as may be identified.
- e. Continuous Quality Improvement Reports: Contractor shall submit Continuous Quality Improvement (CQI) reports on a monthly basis to the County Mental Health Medical Director, Contract Administrator, and Utilization Review Manager. The reports shall include data and information requested by HHSA pertaining to:
 - i. Length of stay data.
 - ii. Average daily census.
 - iii. Recidivism rates and the percentage of Clients who do not return for another crisis within a year of admission.
 - iv. Frequency of critical incidents inclusive of assaults, elopements, and medication errors.
 - v. Client demographics.
- f. Report on Cultural Competency of Services provided, including:
 - i. The report shall reflect the Contractor's written Cultural Competency Plan.
 - ii. The report shall demonstrate that the Contractor employs staff in the PHF whose ethnic composition reflects that of El Dorado County.
 - iii. The report shall identify those have staff who speak all threshold languages required in the contract with the State for the provision of Medi-Cal services.
 - iv. The report shall include reference to the Contractor's contract for Interpreter Services for those clients for whom the staff are unable to communicate in the Client's primary language.
- g. Report Specifying Recovery Orientation of Services Delivered:
 - i. The report shall include Contractor's written plan, which specifies the utilization of Recovery Principles in the provision of services at the PHF.

- ii. The report shall demonstrate that the Contractor collaborates with the County to ensure that all Clients have access to Peer Support Services on a regular basis.
- iii. The report shall include documentation indicating that one hundred percent (100%) of the Clients discharged from the PHF were referred to an appropriate level of care.
- h. Report on Results of the Client Satisfaction Survey:
 - i. Contractor shall provide a numeric summary of the results of the Client Satisfaction Survey to the HHSA Mental Health Contract Administrator and Utilization Review Manager on a monthly basis.

M. County Obligations:

- 1. County shall provide a Patient's Rights Advocate.
- 2. County shall provide a Certification Review Hearing Officer.
- 3. County shall participate in meetings as defined herein, and as shall be determined necessary during the term of this Agreement.
- 4. County shall participate with Contractor in the development of operational Memoranda of Understanding as further defined herein.

ARTICLE III

Term: This Agreement shall be effective upon execution for an initial period through January 19, 2020. The Agreement may be renewed for an additional five-year period, unless County, at its sole discretion, determines that changed circumstances mandate that the contract should be substantially revised or should be put out for a new Request for Proposals. This Agreement shall not be extended beyond January 19, 2020 without preparation of a Request for Proposal.

ARTICLE IV

Compensation:

- A. Start Up Costs: One time Start Up Costs are estimated as follows. Actual costs may vary and be shifted across line items as appropriate:

Item	Amount
Staffing (recruitment, management, benefits, orientation, training, etc.)	\$144,476
Computer and Telecommunications one-time expense	\$76,810
Furniture, fixtures and equipment	\$30,715
Indirect Costs	\$40,320
Total Estimated Start Up Costs	\$292,321

Start Up Costs are payable upon final execution of this Agreement, are in addition to Operations Costs, and shall be in accordance with the "Total Estimated Start Up Costs" herein. Start Up Costs shall be supported by a detailed monthly staffing and expenditure report which includes line item expenditures and reflects the staff and number of hours worked/paid attributable to the Start Up activities for the month invoiced.

- B. Operations Costs: Operations Costs are payable effective the date Contractor assumes operation of the PHF, and shall be invoiced as outlined in the paragraph titled "Invoices/Payments" herein below.

County and Contractor mutually agree to review operations budget for the period July 1, 2015 through June 30, 2016, taking into consideration actuals costs experienced during the period January 2015 through June 30, 2015, and if necessary and mutually agreed upon, may adjust the base amount by an Amendment, in accordance with Article XIV, titled "Changes to Agreement."

Compensation for the period January 1, 2015 through June 30, 2016	
Psychiatric Health Facility Operations during the period January 1, 2015 through June 30, 2015 shall not exceed:	\$2,124,864
Psychiatric Health Facility Operations Base Compensation for the period July 1, 2015 through June 30, 2016	\$4,249,728
Base Compensation for period:	\$6,374,592

The Base Compensation for Psychiatric Health Facilities operations shall be adjusted on July 1 of each fiscal year following the first eighteen (18) months of this Agreement, by a three percent (3%) increase. For purposes of this Agreement, a fiscal year shall be defined as July 1 to June 30.

Sample Annual Base Compensation adjustment for fiscal year 2016-17 and subsequent fiscal years during the term of this Agreement:

Psychiatric Health Facility Operations Base Compensation July 1, 2015 – June 30, 2016		Annual Increase	Adjusted Base Amount
\$4,249,728	+	3%	\$4,377,220

C. Invoices / Payment:

1. Contractor shall invoice County for Start Up Costs as costs are incurred during the period upon execution of this Agreement through June 30, 2015.
2. In addition, for the period effective the date Contractor assumes operation of the PHF through January 31, 2015, County shall pay Contractor a prorated amount of \$11,424 per day.
3. Effective February 1, 2015 through June 30, 2015 County shall pay Contractor in five (5) monthly amounts of \$354,144 per month.
4. Thereafter, County shall pay Contractor for the Base Compensation on a monthly basis in increments of one-twelfth (1/12) of the total twelve (12) month Base Compensation as adjusted for each respective fiscal year or as subsequently amended.
5. Contractor shall submit an invoice to County within thirty (30) days of the end of the month in which services were provided.
6. County agrees to pay Contractor monthly in arrears and within forty-five (45) days following the County's receipt and approval of invoice.

INVOICE ADDRESS:	REMITTANCE ADDRESS:
County of El Dorado Health and Human Services Agency Attn: Finance Unit 3057 Briw Road, Suite B Placerville, CA 95667-5321	Telecare Corporation, Inc. 1080 Marina Village Parkway Alameda, CA 94501 Accounts Receivable

D. Patient Charges and Third Party Billing:

1. County shall cooperate with Contractor and make every reasonable effort to obtain the signatures of the Client, conservator/guardian, or persons legally responsible for the Client on all forms necessary to maximize the collection of revenue.
2. Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect share of cost, and co-payments.

E. Cost Report: Contractor shall submit an annual Cost Report to County on or before September 30 following the fiscal period in which the costs were incurred. A fiscal period shall be defined as July 1 through June 30 (Fiscal Year). Contractor shall prepare the Cost Report in accordance with all Federal, State, and County requirements, following Generally Accepted Accounting Principles, as well as with the State Department of Health Care Services Cost and Financial Reporting System Local Program Financial Support Instruction Manual, incorporated by reference as if fully set forth herein. 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. Contractor shall maintain source documentation of costs and allocations, and said documentation shall be available at any time to County upon reasonable notice.

Contractor shall submit an annual Cost Report to County, and County shall settle to the Contractor's actual costs of delivering the services during the term of this Agreement on or around the January following the Fiscal Year in which the costs were incurred. Settlement shall not exceed Contractor's actual direct and indirect costs, of which indirect costs may include operating income, nor shall costs exceed the Base Compensation for the Fiscal Year in which the costs were incurred.

ARTICLE V

Maximum Obligation: The maximum obligation for one time Start Up Costs and services provided during the term of this Agreement shall not exceed \$25,781,185.

ARTICLE VI

Contract Requirements:

- A. Assurances: In the event any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have full force and effect, and shall not be affected hereby.
1. *Compliance with Medi-Cal Mental Health Plan (MHP) and Performance Agreement Requirements:* Contractor shall comply with all applicable provisions of the County MHP contract, attached hereto as Exhibit A and incorporated by reference herein. All services, documentation, and reporting shall be provided in conformity with the requirements of all pertinent laws, regulations, and County requirements including, but not limited to, payment authorizations, utilization review, beneficiary brochure and provider lists, service planning, cooperation with the State Mental Health Plan's Quality Management (QM) Program, and cost reporting. Updates and amendments to the MHP contract shall be made available to Contractor upon request. In addition, Contractor acknowledges that this Agreement meets the requirements for the distribution of mental health services funding in a Performance

Contract as required in Chapter 2 of the Welfare & Institutions Code beginning with § 5650 and agrees to comply with the provisions in §5650 through 5667.

- B. Audits: From time to time, the County or State may inspect the facilities, systems, books, and records of the Contractor to monitor compliance with this Agreement. Identification of any exceptions or findings with regard to compliance with the terms and conditions of this Agreement shall be brought to the attention of the Contractor. Upon notification, the Contractor shall promptly submit a written plan of correction including a timeline for correction of said finding or exception. The County will review the proposed plan of correction and provide technical assistance to bring the vendor into compliance. Continued non-compliance beyond the targeted dates in the plan of correction may lead to termination of the Agreement in accordance with the Article titled "Default, Termination, and Cancellation." The fact that the County or State inspects, or fails to inspect, or has the right to inspect, the Contractor's facilities, systems and procedures does not relieve the Contractor of its responsibilities to comply with this Agreement. The County or State's failure to notify the Contractor or require the Contractor's remediation of any unsatisfactory practice does not constitute acceptance of such practices or a waiver of the County or State's enforcement rights under this Agreement.

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

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

Expenditures made by Contractor during the provision of services under this Agreement shall be in compliance and in conformity with the United States Office of Management and Budget ("OMB") Circular, A-122. Contractor is responsible for obtaining the most recent version of this Circular which is available online at <http://www.whitehouse.gov/omb/circulars/index.html>.

- C. Certification of Program Integrity: Contractor shall comply with all State and Federal statutory and regulatory requirements for certification of claims including Title 42, Code of Federal Regulations (CFR) Part 438.

1. For each Medi-Cal beneficiary for whom the County is submitting a claim for reimbursement, Contractor will assure the following conditions are met:
 - a. An assessment of the Medi-Cal beneficiary was conducted in compliance with the requirements established in the Mental Health Plan (MHP) contract between El Dorado County and DHCS, a copy of which is attached hereto as Exhibit A.
 - b. The Medi-Cal beneficiary was eligible to receive Medi-Cal services at the time the services were provided to the beneficiary.
 - c. The services included in the claim were actually provided to the beneficiary.
 - d. Medical necessity was established for the beneficiary as defined in statute for the service or services provided, for the timeframe in which the services were provided.
 - e. A client plan was developed and maintained for the beneficiary that met all client plan requirements established in the MHP contract between El Dorado County and DHCS.

- f. For each beneficiary with EPSDT supplemental specialty mental health services included in the claim, all requirements for MHP payment authorization in the MHP contract for day rehabilitation services were met, and any reviews for such service or services were conducted prior to the initial authorization and any re-authorization periods as established in the MHP contract between El Dorado County and DHCS.

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

2. Contractor certifies that it shall comply with all State and Federal requirements regarding false claims and whistleblower protection, including but not limited to California Government Code § 8547 et seq. and § 12653, and shall not prevent an employee from disclosing information, or retaliate against an employee in any manner because of acts by or on behalf of the employee in disclosing information in furtherance of a false claims action.
 3. In addition, Contractor certifies that the following processes are in place and all actions will be documented:
 - a. Contractor shall have written policies, procedures, and standards of conduct that articulate the organization's commitment to comply with all applicable Federal and State standards.
 - b. Contractor shall designate a Compliance Officer and a Compliance Committee who shall report to the HHSA Compliance Officer regarding compliance with Federal, State and local requirements and regulations.
 - c. Contractor shall provide effective training and education on compliance with the terms and conditions of this Agreement for the Compliance Officer and the organization's employees.
 - d. Contractor shall ensure enforcement of standards through well-publicized disciplinary guidelines.
 - e. Contractor shall establish provisions for internal monitoring and auditing.
 - f. Contractor shall establish and have available on request a system for prompt response to detected offenses, and for development of corrective action initiatives relating to the provision of mental health services.
- D. Confidentiality Requirements: Contractor agrees to comply with all terms and conditions as outlined in "Exhibit F - Confidentiality and Information Security Requirements" of the Agreements between the State of California Department of Health Care Services and the County of El Dorado, or subsequent document(s) as amended or replaced. "Exhibit F" is a component of the MHP Agreement between DHCS and County, attached hereto as Exhibit A and incorporated by reference herein.
- E. HIPAA Compliance: By signing this Agreement, Contractor agrees to comply with Exhibit B, Business Associate Agreement, attached hereto and incorporated by reference herein.
- F. Lobbying Restriction: The Contractor, by signing this Agreement, hereby certifies to the best of his or her knowledge and belief, that:
1. No federally appropriated funds have been paid or will be paid by or on behalf of the Contractor, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any federal contract, the making of any federal grant, the making of any federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract, grant, loan, or cooperative agreement.

2. If any funds other than federally appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any federal agency, a Member of Congress, an officer or employee of Congress or any employee of a Member of Congress in connection with this federal contract, grant, loan or cooperative agreement, the Contractor shall complete and submit Standard Form SF-LLL, OMB Number 0348-0046 "Disclosure of Lobbying Activities" in accordance with its instructions. A copy of Form SF-LLL can be downloaded and completed at <http://www.whitehouse.gov/omb/grants/sfillin.pdf>.

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

- G. Posting of Signs and Availability of Forms/Documents/Audio Media: Contractor shall ensure compliance with Exhibit C "Required Signs and Forms," attached hereto and incorporated by reference herein.
- H. Release of Information: Contractor shall ensure that County Health and Human Services Agency is included as a receiving party on all Release of Information forms used in the performance of services under this Agreement.

ARTICLE VII

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

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

With a copy to:

COUNTY OF EL DORADO
CHIEF ADMINISTRATIVE OFFICE
PROCUREMENT AND CONTRACTS DIVISION
360 FAIR LANE
PLACERVILLE, CA 95667
ATTN: TERRI DALY, PURCHASING AGENT

Or to such other location as the County directs.

Notices to Contractor shall be addressed as follows:

TELECARE CORPORATION, INC.
1080 MARINA VILLAGE PARKWAY
ALAMEDA, CA 94501
ATTN: MARSHALL LANGFELD

Or to such other location as the Contractor directs.

ARTICLE VIII

Administrator: The County Officer or employee with responsibility for administering this Agreement is Patricia Charles-Heathers, Ph.D., Assistant Director of Health Services, or successor.

ARTICLE IX

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 X

Audit by California State Auditor: Contractor acknowledges that contracts involving the expenditure of public funds in excess of \$10,000 are subject to examination and audit by the California State Auditor pursuant to Government Code § 8546.7. Contractor shall provide Federal, State, or County authorities with access to any books, documents, papers, and records of Contractor, which are directly pertinent to this specific Agreement for the purpose of audit, examination, excerpts, and transcriptions. In order to facilitate these potential examinations and audits, Contractor shall maintain all books, documents, papers, and records necessary to demonstrate performance under this Agreement for a period of at least three (3) years after final payment or for any longer period required by law.

ARTICLE XI

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 XII

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

ARTICLE XIII

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

ARTICLE XIV

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 XV

Conflict of Interest: The parties to this Agreement have read and are aware of the provisions of Government Code § 1090 et seq. and § 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 shall 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 XVI

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

ARTICLE XVII

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 XVIII

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 § 5.08.070.

ARTICLE XIX

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 above;
- 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 sub recipient 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 sub recipient covered transactions.
- G. Screening of Staff: For purposes of this Agreement "staff" shall mean any person employed on a part-time, full-time, extra-help, contracted, or volunteer basis who works at, for, or with the Contractor during the term of this Agreement:
 1. In accordance with Title 42, Code of Federal Regulations, Social Security Act, and Mental Health Letter No. 10-05, Contractor shall comply with the Federal Health and Human Services, Office of Inspector General's requirement that all staff be screened using the "List of Excluded Individuals/Entities" available at <http://oig.hhs.gov/exclusions/index.asp> and the "California Medi-Cal Suspended and Ineligible List" available at <http://files.medi-cal.ca.gov>. An "Ineligible Person" shall mean any individual or entity who (s) is currently excluded, suspended, debarred or otherwise ineligible to participate in the federal health care programs; or (b) has been convicted of a criminal offense related to the provision of health care items or services,

and has not been reinstated in the federal health care programs after a period of exclusion, suspension, debarment or ineligibility.

2. Screening of staff, as defined herein above, shall be done:
 - a. Before an offer of employment or contract for services is made; and
 - b. On no less than a monthly basis, in accordance with 42 CFR § 455.436.
 3. Contractor shall screen all current staff and subcontractors on a monthly basis and shall submit an original, certification signed by the individual authorized to sign contracts, to the Utilization Review staff attesting that all staff have been subjected to the aforementioned screening and that no individuals are identified as Ineligible Persons.
 4. Failure to submit this report monthly may result in withholding of payment for services until said report has been received.
 5. Identification of a staff person who is listed on either of the two above-noted websites shall be reported immediately to the Utilization Review staff, with a copy to the County Medi-Cal Certification Coordinator. Failure to terminate the staff person listed on either of the two above-noted websites may result in corrective action up to and including termination of this Agreement in accordance with the Article titled "Default, Termination, and Cancellation."
- H. All facility staff, who provide direct Client care or perform coding/billing functions, must meet the requirements of the EDC MHP Compliance Program and all State and Federal rules and regulations. This includes the screening for excluded persons and entities by accessing for querying the applicable licensing board(s), the National Practitioner data Bank (NPDB), Office of Inspector General's List of Excluded Individuals/Entities (LEIE), Excluded Parties List System (EPLS) and Medi-Cal Suspended and ineligible List prior to hire and annually thereafter. In addition, all licensed/registered/waivered staff must be credentialed in compliance with all applicable State and Federal regulations. All licensed staff shall have Department of Justice (DOJ), Federal Bureau of Investigation (FBI), and Sheriff fingerprinting (Livescan) executed.
- I. Contractor shall conduct monthly comparisons of all Contractor employees billing Medi-Cal to the following federal databases for positive name matches: Office of the Inspector General's (OIG) List of Excluded Individual/Entities (LEIE) (www.oig.hhs.gov) and General Services Administration (GSA) Excluded Parties List System (EPLS) (www.epls.gov/) or System for Award Management (SAM) Excluded Parties List System (EPLS) (www.sam.gov/portal/public/SAM). These monthly checks shall be compiled into a quarterly report and sent to the County Contract Administrator. Individuals listed in these databases as ineligible to participate in Medicaid or Medicare may not provide services to the County.

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

If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal and State Governments, County may immediately terminate this Agreement for cause or default.

ARTICLE XX

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.

ARTICLE XXI

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

ARTICLE XXII

Termination / Cancellation:

- A. Bankruptcy: This Agreement, at the option of the County, shall be terminable in the case of bankruptcy, voluntary or involuntary, or insolvency of Contractor.
- B. 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.
- C. Termination or Cancellation without Cause: Either party may terminate this Agreement in whole or in part upon one-hundred eighty (180) calendar days written notice to the other without cause, in accordance with the Article titled "Notice to Parties." If such prior termination is effected, County shall 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.
- D. Destruction of Premises: This Agreement may be terminated, at the County's sole discretion, if the PHF at 935-B Spring Street, or the building of which it is a part as described in Article II "Scope of Agreement," paragraph I "Facility," is destroyed or damaged so that it can no longer be used as a Psychiatric Health Facility.

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

ARTICLE XXIII

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, § 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 shall 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 that 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.

In the event of cancellation for fiscal considerations, payment will be made for services provided up to the date of cancellation.

ARTICLE XXIV

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

ARTICLE XXV

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

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

ARTICLE XXVI

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 therefore shall not be charged with responsibility of preventing risk to Contractor or its employees.

ARTICLE XXVII

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

- A. Full Worker's Compensation and Employer's Liability Insurance covering all employees of Contractor as required by law in the State of California.
- B. Commercial General Liability Insurance of not less than \$1,000,000.00 combined single limit per occurrence for bodily injury and property damage and a \$2,000,000.00 aggregate limit.
- C. Automobile Liability Insurance of not less than \$1,000,000.00 is required in the event motor vehicles are used by the Contractor in the performance of the Agreement.
- D. In the event Contractor is a licensed professional or professional consultant, and is performing professional services under this Agreement, professional liability is required with a limit of liability of not less than \$1,000,000.00 per occurrence.
- E. Contractor shall furnish a certificate of insurance satisfactory to the County of El Dorado Risk Manager as evidence that the insurance required above is being maintained.

- F. The insurance will be issued by an insurance company acceptable to Risk Management, or be provided through partial or total self-insurance likewise acceptable to Risk Management.
- G. Contractor agrees that the insurance required above shall be in effect at all times during the term of this Agreement. In the event said insurance coverage expires at any time or times during the term of this Agreement, Contractor agrees to provide at least thirty (30) days prior to said expiration date, a new certificate of insurance evidencing insurance coverage as provided for herein for not less than the remainder of term of the Agreement, or for a period of not less than one (1) year. New certificates of insurance are subject to the approval of Risk Management and Contractor agrees that no work or services shall be performed prior to the giving of such approval. In the event the Contractor fails to keep in effect at all times insurance coverage as herein provided, County may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.
- H. The certificate of insurance must include the following provisions stating that:
 - 1. The insurer will not cancel the insured's coverage without prior written notice to County, and;
 - 2. The County of El Dorado, its officers, officials, employees, and volunteers are included as additional insured on an additional insured endorsement, but only insofar as the operations under this Agreement are concerned. This provision shall apply to the general liability policy.
- I. The Contractor's insurance coverage shall be primary insurance as respects the County, its officers, officials, employees, and volunteers. Any insurance or self-insurance maintained by the County, its officers, officials, employees, or volunteers shall be in excess of the Contractor's insurance and shall not contribute with it.
- J. Any deductibles or self-insured retentions must be declared to and approved by the County, either: the insurer shall reduce or eliminate such deductibles or self-insured retentions as respects the County, its officers, officials, employees and volunteers; or the Contractor shall procure a bond guaranteeing payment of losses and related investigations, claim administration and defense expenses.
- K. Any failure to comply with the reporting provisions of the policies shall not affect coverage provided to the County, its officers, officials, employees, or volunteers.
- L. The insurance companies shall have no recourse against the County of El Dorado, its officers and employees or any of them for payment of any premiums or assessments under any policy issued by any insurance company.
- M. Contractor's obligations shall not be limited by the foregoing insurance requirements and shall survive expiration of this Agreement.
- N. In the event Contractor cannot provide an occurrence policy, Contractor shall provide insurance covering claims made as a result of performance of this Agreement for not less than three (3) years following completion of performance of this Agreement.

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

ARTICLE XXVIII

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 XXIX

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 XXX

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

ARTICLE XXXI

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

ARTICLE XXXII

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 XXXIII

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

ARTICLE XXXIV

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 XXXV

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 XXXVI

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

REQUESTING CONTRACT ADMINISTRATOR CONCURRENCE:

By: Patricia Charles-Heathers Dated: 10/29/2014
Patricia Charles-Heathers, Ph.D., Assistant Director of Health Services
Health and Human Services Agency

REQUESTING DEPARTMENT HEAD CONCURRENCE:

By: Don Ashton Dated: 10/29/2014
Don Ashton, M.P.A., Director
Health and Human Services Agency

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IN WITNESS WHEREOF, the parties hereto have executed this Agreement #221-S1511 on the dates indicated below.

- - COUNTY OF EL DORADO - -

Dated: _____

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

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

By: _____ Dated: _____
Deputy Clerk

- - CONTRACTOR - -

TELECARE CORPORATION, INC.

By: Faith Richie Dated: 10-28-14
Faith Richie, Senior Vice President for Development
"Contractor"

By: _____ Dated: _____
Marshall Langfeld, Senior Vice President and Chief Financial Officer
"Contractor"

kgf

STATE OF CALIFORNIA
STANDARD AGREEMENT
 STD 213_DHCS (Rev. 01/13)

REGISTRATION NUMBER

ef1308989

AGREEMENT NUMBER

12-89361

- This Agreement is entered into between the State Agency and the Contractor named below:

STATE AGENCY'S NAME	(Also known as DHCS, CDHS, DHS or the State)
Department of Health Care Services	
CONTRACTOR'S NAME	(Also referred to as Contractor)
El Dorado County Health and Human Services Agency	
- The term of this Agreement is: May 1, 2013
through June 30, 2018
- The maximum amount of this Agreement is: \$ 8,113,337,000
Eight billion, one hundred thirteen million, three hundred thirty-seven thousand dollars.
- The parties agree to comply with the terms and conditions of the following exhibits, which are by this reference made a part of this Agreement.

Exhibit A – Scope of Work	2 pages
Exhibit A Attachment I – Service, Administrative and Operational Requirements	56 pages
Exhibit A Attachment II – Definitions	2 pages
Exhibit B – Budget Detail and Payment Provisions	6 pages
Exhibit C * – General Terms and Conditions	GTC 610
Exhibit D (F) – Special Terms and Conditions (Attached hereto as part of this agreement)	
Notwithstanding Provisions 2, 3, 4, 6, 8, 12, 14, 22, 25, 29, and 30 which do not apply to this agreement.	26 pages
Exhibit E – Additional Provisions	11 pages
Exhibit F – Privacy and Information Security Provisions	28 pages

Items shown above with an Asterisk (*), are hereby incorporated by reference and made part of this agreement as if attached hereto.
 These documents can be viewed at <http://www.ols.dgs.ca.gov/StandardLanguage/default.htm>.

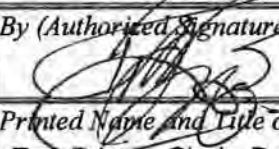
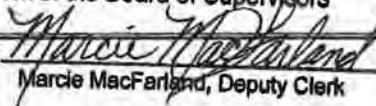
IN WITNESS WHEREOF, this Agreement has been executed by the parties hereto.

CONTRACTOR		California Department of General Services Use Only
CONTRACTOR'S NAME (If other than an individual, state whether a corporation, partnership, etc.)		
El Dorado County Health and Human Services Agency		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
	4/23/13	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Ron Briggs, Chair, Board of Supervisors		
ADDRESS		
3057 Briw Road, Suite A Placerville, CA 95667		
ATTEST: James S. Mitrish Clerk of the Board of Supervisors		
By  Marcie MacFarland, Deputy Clerk		
STATE OF CALIFORNIA		
AGENCY NAME		
Department of Health Care Services		
BY (Authorized Signature)	DATE SIGNED (Do not type)	
	9-16-13	
PRINTED NAME AND TITLE OF PERSON SIGNING		
Andrew Young, Chief, Contract Management Unit Program Support Branch		
ADDRESS		
1501 Capitol Avenue, Suite 71.5195, MS 1403, P.O. Box 997413, Sacramento, CA 95899-7413		
		<input checked="" type="checkbox"/> Exempt per: W&I Code § 14703

CCC-307

CERTIFICATION

I, the official named below, CERTIFY UNDER PENALTY OF PERJURY that I am duly authorized to legally bind the prospective Contractor to the clause(s) listed below. This certification is made under the laws of the State of California.

Contractor/Bidder Firm Name (Printed) County of El Dorado		Federal ID Number 94-6000511
By (Authorized Signature) 		ATTEST: James S. Mitrison Clerk of the Board of Supervisors
Printed Name and Title of Person Signing Ron Briggs, Chair, Board of Supervisors		By  Marcie MacFarland, Deputy Clerk
Date Executed 4/23/13	Executed in the County of El Dorado	

CONTRACTOR CERTIFICATION CLAUSES

1. **STATEMENT OF COMPLIANCE:** Contractor has, unless exempted, complied with the nondiscrimination program requirements. (Gov. Code §12990 (a-f) and CCR, Title 2, Section 8103) (Not applicable to public entities.)

2. **DRUG-FREE WORKPLACE REQUIREMENTS:** Contractor will comply with the requirements of the Drug-Free Workplace Act of 1990 and will provide a drug-free workplace by taking the following actions:

a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession or use of a controlled substance is prohibited and specifying actions to be taken against employees for violations.

b. Establish a Drug-Free Awareness Program to inform employees about:

- 1) the dangers of drug abuse in the workplace;
- 2) the person's or organization's policy of maintaining a drug-free workplace;
- 3) any available counseling, rehabilitation and employee assistance programs; and,
- 4) penalties that may be imposed upon employees for drug abuse violations.

c. Every employee who works on the proposed Agreement will:

- 1) receive a copy of the company's drug-free workplace policy statement; and,
- 2) agree to abide by the terms of the company's statement as a condition of employment on the Agreement.

Failure to comply with these requirements may result in suspension of payments under the Agreement or termination of the Agreement or both and Contractor may be ineligible for award of any future State agreements if the department determines that any of the following has occurred: the Contractor has made false certification, or violated the

certification by failing to carry out the requirements as noted above. (Gov. Code §8350 et seq.)

3. NATIONAL LABOR RELATIONS BOARD CERTIFICATION: Contractor certifies that no more than one (1) final unappealable finding of contempt of court by a Federal court has been issued against Contractor within the immediately preceding two-year period because of Contractor's failure to comply with an order of a Federal court, which orders Contractor to comply with an order of the National Labor Relations Board. (Pub. Contract Code §10296) (Not applicable to public entities.)

4. CONTRACTS FOR LEGAL SERVICES \$50,000 OR MORE- PRO BONO REQUIREMENT: Contractor hereby certifies that contractor will comply with the requirements of Section 6072 of the Business and Professions Code, effective January 1, 2003.

Contractor agrees to make a good faith effort to provide a minimum number of hours of pro bono legal services during each year of the contract equal to the lesser of 30 multiplied by the number of full time attorneys in the firm's offices in the State, with the number of hours prorated on an actual day basis for any contract period of less than a full year or 10% of its contract with the State.

Failure to make a good faith effort may be cause for non-renewal of a state contract for legal services, and may be taken into account when determining the award of future contracts with the State for legal services.

5. EXPATRIATE CORPORATIONS: Contractor hereby declares that it is not an expatriate corporation or subsidiary of an expatriate corporation within the meaning of Public Contract Code Section 10286 and 10286.1, and is eligible to contract with the State of California.

6. SWEATFREE CODE OF CONDUCT:

a. All Contractors contracting for the procurement or laundering of apparel, garments or corresponding accessories, or the procurement of equipment, materials, or supplies, other than procurement related to a public works contract, declare under penalty of perjury that no apparel, garments or corresponding accessories, equipment, materials, or supplies furnished to the state pursuant to the contract have been laundered or produced in whole or in part by sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor, or with the benefit of sweatshop labor, forced labor, convict labor, indentured labor under penal sanction, abusive forms of child labor or exploitation of children in sweatshop labor. The contractor further declares under penalty of perjury that they adhere to the Sweatfree Code of Conduct as set forth on the California Department of Industrial Relations website located at www.dir.ca.gov, and Public Contract Code Section 6108.

b. The contractor agrees to cooperate fully in providing reasonable access to the contractor's records, documents, agents or employees, or premises if reasonably required by authorized officials of the contracting agency, the Department of Industrial Relations,

or the Department of Justice to determine the contractor's compliance with the requirements under paragraph (a).

7. **DOMESTIC PARTNERS:** For contracts over \$100,000 executed or amended after January 1, 2007, the contractor certifies that contractor is in compliance with Public Contract Code section 10295.3.

DOING BUSINESS WITH THE STATE OF CALIFORNIA

The following laws apply to persons or entities doing business with the State of California.

1. **CONFLICT OF INTEREST:** Contractor needs to be aware of the following provisions regarding current or former state employees. If Contractor has any questions on the status of any person rendering services or involved with the Agreement, the awarding agency must be contacted immediately for clarification.

Current State Employees (Pub. Contract Code §10410):

- 1). No officer or employee shall engage in any employment, activity or enterprise from which the officer or employee receives compensation or has a financial interest and which is sponsored or funded by any state agency, unless the employment, activity or enterprise is required as a condition of regular state employment.
- 2). No officer or employee shall contract on his or her own behalf as an independent contractor with any state agency to provide goods or services.

Former State Employees (Pub. Contract Code §10411):

- 1). For the two-year period from the date he or she left state employment, no former state officer or employee may enter into a contract in which he or she engaged in any of the negotiations, transactions, planning, arrangements or any part of the decision-making process relevant to the contract while employed in any capacity by any state agency.
- 2). For the twelve-month period from the date he or she left state employment, no former state officer or employee may enter into a contract with any state agency if he or she was employed by that state agency in a policy-making position in the same general subject area as the proposed contract within the 12-month period prior to his or her leaving state service.

If Contractor violates any provisions of above paragraphs, such action by Contractor shall render this Agreement void. (Pub. Contract Code §10420)

Members of boards and commissions are exempt from this section if they do not receive payment other than payment of each meeting of the board or commission, payment for preparatory time and payment for per diem. (Pub. Contract Code §10430 (e))

2. LABOR CODE/WORKERS' COMPENSATION: Contractor needs to be aware of the provisions which require every employer to be insured against liability for Worker's Compensation or to undertake self-insurance in accordance with the provisions, and Contractor affirms to comply with such provisions before commencing the performance of the work of this Agreement. (Labor Code Section 3700)

3. AMERICANS WITH DISABILITIES ACT: Contractor assures the State that it complies with the Americans with Disabilities Act (ADA) of 1990, which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. (42 U.S.C. 12101 et seq.)

4. CONTRACTOR NAME CHANGE: An amendment is required to change the Contractor's name as listed on this Agreement. Upon receipt of legal documentation of the name change the State will process the amendment. Payment of invoices presented with a new name cannot be paid prior to approval of said amendment.

5. CORPORATE QUALIFICATIONS TO DO BUSINESS IN CALIFORNIA:

a. When agreements are to be performed in the state by corporations, the contracting agencies will be verifying that the contractor is currently qualified to do business in California in order to ensure that all obligations due to the state are fulfilled.

b. "Doing business" is defined in R&TC Section 23101 as actively engaging in any transaction for the purpose of financial or pecuniary gain or profit. Although there are some statutory exceptions to taxation, rarely will a corporate contractor performing within the state not be subject to the franchise tax.

c. Both domestic and foreign corporations (those incorporated outside of California) must be in good standing in order to be qualified to do business in California. Agencies will determine whether a corporation is in good standing by calling the Office of the Secretary of State.

6. RESOLUTION: A county, city, district, or other local public body must provide the State with a copy of a resolution, order, motion, or ordinance of the local governing body which by law has authority to enter into an agreement, authorizing execution of the agreement.

7. AIR OR WATER POLLUTION VIOLATION: Under the State laws, the Contractor shall not be: (1) in violation of any order or resolution not subject to review promulgated by the State Air Resources Board or an air pollution control district; (2) subject to cease and desist order not subject to review issued pursuant to Section 13301 of the Water Code for violation of waste discharge requirements or discharge prohibitions; or (3) finally determined to be in violation of provisions of federal law relating to air or water pollution.

8. PAYEE DATA RECORD FORM STD. 204: This form must be completed by all contractors that are not another state agency or other governmental entity.

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Exhibit A
Scope of Work

1. Service Overview

Contractor agrees to provide to the California Department of Health Care Services (DHCS) the services described herein.

The Contractor will provide or arrange for the provision of specialty mental health services to eligible Medi-Cal beneficiaries of El Dorado County within the scope of services defined in this contract.

2. Project Representatives

A. The project representatives during the term of this Agreement will be:

Department of Health Care Services	El Dorado County Health and Human Services Agency
Erika Cristo Telephone: (916) 650-0486 Fax: (916) 440-7620 Email: Erika.Cristo@dhcs.ca.gov	Daniel Nielson, Director Telephone: (530) 642-7275 Fax: (530) 295-2783 Email: daniel.nielson@edcgov.us

B. Direct all inquiries to:

Department of Health Care Services	El Dorado County Health and Human Services Agency
Mental Health Services Division/Program Policy Unit Attention: Dee Taylor 1500 Capitol Avenue, MS 2702 P.O. Box Number 997413 Sacramento, CA, 95899-7413 Telephone: (916) 552-9536 Fax: (916) 440-7620 Email: Dee.Taylor@dhcs.ca.gov	Attention: Daniel Nielson 3057 Briw Road, Suite A Placerville, CA, 95667 Telephone: (530) 642-7275 Fax: (530) 295-2783 Email: daniel.nielson@edcgov.us

The county officer or employee with responsibility for administering this Agreement is Patricia Charles-Heathers, Ph.D., Assistant Director, Health and Human Services Agency, or successor.

C. Either party may make changes to the information above by giving written notice to the other party. Said changes shall not require an amendment to this Agreement.

3. General Authority

This Contract is entered into in accordance with the Welfare and Institutions (Welf. & Inst.) Code § 14680 through §14726. Welf. & Inst. Code § 14712 directs the California Department of Health Care Services (Department) to implement and administer Managed

El Dorado County Health and Human Services Agency

Contract Number: 12-89361

Page 1 of 2

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El Dorado County Health and Human Services Agency

Contract Number: 12-89361

Page 2 of 2

Exhibit A

Scope of Work

Mental Health Care for Medi-Cal eligible residents of this state through contracts with mental health plans. The Department and El Dorado County Health and Human Services Agency agrees to operate the Mental Health Plan (MHP) for El Dorado County. No provision of this contract is intended to obviate or waive any requirements of applicable law or regulation, in particular, the provisions noted above. In the event a provision of this contract is open to varying interpretations, the contract provision shall be interpreted in a manner that is consistent with applicable law and regulation.

4. See the following pages for a detailed description of the services to be performed.

Exhibit A Attachment I

Service, Administrative and Operational Requirements

1. Provision of Services

- A. The Contractor shall provide, or arrange and pay for, all medically necessary covered Specialty Mental Health Services to beneficiaries, as defined for the purposes of this contract, of El Dorado County.
- B. The Contractor shall ensure that all medically necessary covered Specialty Mental Health Services are sufficient in amount, duration, or scope to reasonably be expected to achieve the purpose for which the services are furnished. The Contractor shall not arbitrarily deny or reduce the amount, duration, or scope of a medically necessary covered Specialty Mental Health Service solely because of diagnosis, type of illness, or condition of the beneficiary except as specifically provided in the medical necessity criteria applicable to the situation as provided in the California Code of Regulations (Cal. Code Regs.), title (tit.) 9, §§1820.205, 1830.205, and 1830.210.
- C. The Contractor shall make all medically necessary covered Specialty Mental Health Services available in accordance with Cal. Code Regs., tit. 9, §§ 1810.345 and 1810.405, and 42 Code of Federal Regulations (C.F.R.) § 438.210 and shall ensure:
 - 1) The availability of services to address beneficiaries' emergency psychiatric conditions 24 hours a day, 7 days a week.
 - 2) The availability of services to address beneficiaries' urgent conditions as defined in Cal. Code Regs., tit. 9, §1810.253, 24 hours a day, and 7 days a week.
 - 3) Timely access to routine services determined by the Contractor to be required to meet beneficiaries' needs.
- D. The Contractor shall provide second opinions in accordance with Cal. Code Regs., tit. 9, § 1810. 405(e).
- E. The Contractor shall provide out-of-plan services in accordance with Cal. Code Regs., tit. 9, §§1830.220 and 1810.365. The timeliness standards specified in Cal. Code Regs., tit. 9, 1810.405 apply to out-of-plan services, as well as in-plan services.
- F. The Contractor shall provide a beneficiary's choice of the person providing services to the extent feasible in accordance with Cal. Code Regs., tit. 9, §1830.225 and 42 C.F.R. § 438.6(m).
- G. In determining whether a service is covered under this contract based on the diagnosis of the beneficiary, the Contractor shall not exclude a beneficiary solely on the ground that the provider making the diagnosis has used the International

Exhibit A Attachment I
Service, Administrative and Operational Requirements

Classification of Diseases (ICD) diagnosis system rather than the system contained in the Diagnostic and Statistical Manual (DSM) of the American Psychiatric Association.

- H. For services provided pursuant to Section 3 of this Attachment, entitled "Emergency Psychiatric Condition Reimbursement", the Contractor shall consider the following ICD-9 diagnosis codes as included. For any other service, the Contractor may consider these codes as included or may require the provider to use DSM IV coding.

Table 1 - Included ICD-9 Diagnoses - All Places of Services except Hospital Inpatient

295.00 – 298.9	302.8 - 302.9	311 - 313.82
299.1 – 300.89	307.1	313.89 – 314.9
301.0 – 301.6	307.3	332.1 – 333.99*
301.8 – 301.9	307.5 - 307.89	787.6
302.1 – 302.6	308.0 - 309.9	

*Note: Treatment of diagnoses 332.1 - 333.99, Medication Induced Movement Disorders, is a covered service only when the Medication Induced Movement Disorder is related to one or more included diagnoses.

Table 2 - Included ICD-9 Diagnoses - Hospital Inpatient Place of Service

290.12 – 290.21	299.10 - 300.15	308.0 – 309.9
290.42 – 290.43	300.2 - 300.89	311 – 312.23
291.3	301.0 - 301.5	312.33 - 312.35
291.5 - 291.89	301.59 - 301.9	312.4 – 313.23
292.1 - 292.12	307.1	313.8 – 313.82
292.84 – 292.89	307.20 - 307.3	313.89 - 314.9
295.00 – 299.00	307.5 - 307.89	787.6

2. Availability and Accessibility of Service

Availability of Services

- A. Pursuant to 42 C.F.R. § 438.206(a) and (b), the Contractor shall ensure the availability and accessibility of adequate numbers and types of providers of medically necessary services. At a minimum, the Contractor shall meet the following requirements:

Exhibit A Attachment I

Service, Administrative and Operational Requirements

- 1) Maintain and monitor a network of appropriate providers that is supported by written agreements for subcontractors and that is sufficient to provide adequate access to all services covered under this contract. In establishing and monitoring the network, the Contractor must consider the following:
 - a) The anticipated number of Medi-Cal eligible clients.
 - b) The expected utilization of services, taking into account the characteristics and mental health needs of beneficiaries.
 - c) The expected number and types of providers in terms of training and experience needed to meet expected utilization.
 - d) The numbers of network providers who are not accepting new beneficiaries.
 - e) The geographic location of providers and their accessibility to beneficiaries, considering distance, travel time, means of transportation ordinarily used by Medi-Cal beneficiaries, and physical access for disabled beneficiaries.
 - f) To the extent required by Cal. Code Regs., tit. 9, §1830.220, for inpatient services, if the Contractor is unable to provide necessary medical services covered under the contract to a particular beneficiary, the Contractor must adequately and timely cover these services out of network for the beneficiary, for as long as the Contractor is unable to provide them.
 - g) Pursuant to 42 C.F.R. § 438.206(b)(5) and consistent with Cal. Code Regs., tit. 9, §1830.220, the Contractor shall require that out-of-network providers coordinate authorization and payment with the Contractor. As is consistent with Cal. Code Regs., tit. 9, §1810.365, the Contractor must ensure that the cost to the beneficiary for services provided out of network pursuant to an authorization is no greater than it would be if the services were furnished within the Contractor's network.
 - h) The Contractor shall demonstrate that its providers are credentialed as required by 42 C.F.R. § 438.214.

Access to Services

- B. **Timely Access.** In accordance with 42 C.F.R. § 438.206(c)(1), the Contractor shall comply with the requirements set forth in Cal. Code Cal. Code Regs., tit. 9, §1810.405, including the following:

Exhibit A Attachment I

Service, Administrative and Operational Requirements

- 1) Meet and require its providers to meet Department standards for timely access to care and services, taking into account the urgency of need for services.
- 2) Require subcontracted providers to have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which the provider offers services to non-Medi-Cal beneficiaries. If the provider only serves Medi-Cal beneficiaries, the Contractor shall require that hours of operation are comparable to the hours the provider makes available for Medi-Cal services that are not covered by the Contractor, or another Mental Health Plan.
- 3) Make services available to beneficiaries 24 hours a day, 7 days a week, when medically necessary.
- 4) Establish mechanisms to ensure that network providers comply with the timely access requirements;
- 5) Monitor network providers regularly to determine compliance with timely access requirements;
- 6) Take corrective action if there is a failure to comply with timely access requirements.

Adequate Capacity and Standards

- C. Documentation of adequate capacity and services. Pursuant to 42 C.F.R. § 438.207(b), the Contractor must, when requested by the Department, submit documentation to the Department, in a format specified by the Department, and after receiving reasonable advance notice of its obligation, to demonstrate that the Contractor:
 - 1) Offers an appropriate range of specialty mental health services that is adequate for the anticipated number of beneficiaries for the service area.
 - 2) Maintains a network of providers that is sufficient in number, mix, and geographic distribution to meet the needs of the anticipated number of beneficiaries in the service area.
- D. Consistent with 42 C.F.R. § 438.207(c)(2), whenever there is a change in the Contractor's operation that would cause a decrease of 25 percent or more in services or providers available to beneficiaries, the Contractor shall report this to the Department, including details regarding the change and plans to maintain adequate services and providers available to beneficiaries.

Coordination and Continuity of Care

Exhibit A Attachment I
Service, Administrative and Operational Requirements

- E. Coordination of health care services. The Contractor must implement procedures to:
- 1) Coordinate the services that the Contractor either furnishes or arranges to be furnished to the beneficiary with services that the beneficiary receives from any other Medi-Cal managed care plan or MHP in accordance with Cal. Code Regs., tit. 9 §1810.425.
 - 2) Ensure that, in the course of coordinating care, each beneficiary's privacy is protected in accordance with all federal and state privacy laws, including but not limited to 45 C.F.R. § 160 and § 164, to the extent that such provisions are applicable.
 - 3) Enter into a Memorandum of Understanding (MOU) with any Medi-Cal managed care plan serving the Contractor's beneficiaries in accordance with Cal. Code Regs., tit. 9, § 1810.370. The Contractor shall notify the Department in writing if the Contractor is unable to enter into an MOU or if an MOU is terminated, providing a description of the Contractor's good faith efforts to enter into or maintain the MOU. The MHP shall monitor the effectiveness of its MOU with Physical Health Care Plans.

Authorization of Services

- F. Pursuant to 42 C.F.R. § 438.210(b), the Contractor shall implement mechanisms to assure authorization decision standards are met. The Contractor shall:
- 1) Have in place, and follow, written policies and procedures for processing requests for initial and continuing authorizations of services.
 - 2) Have mechanisms in effect to ensure consistent application of review criteria for authorization decisions, and shall consult with the requesting provider when appropriate.
 - 3) Have any decision to deny a service authorization request or to authorize a service in an amount, duration, or scope that is less than requested be made by a health care professional who has appropriate clinical expertise in treating the beneficiary's condition or disease.
 - 4) Have decisions made within the timeframes outlined for service authorizations in 42 C.F.R. § 438.210(d), and notices of action related to such decisions provided within the timeframes set forth in 42 C.F.R. § 438.404(c).
 - 5) Provide that compensation to individuals or entities that conduct utilization management activities must not be structured so as to provide incentives for the individual or entity to deny, limit, or discontinue medically necessary services to any beneficiary.

Exhibit A Attachment I

Service, Administrative and Operational Requirements

- G. The Contractor shall act on an authorization request for treatment for urgent conditions within one hour of the request per Cal. Code Regs., tit. 9, § Cal. Code Regs., tit. 9, § 1810.405(c).
- H. Pursuant to 42 C.F.R. § 431.201, the Contractor shall define service authorization request in a manner that at least includes a beneficiary's request for the provision of a service.

3. Emergency Psychiatric Condition Reimbursement

- A. The Contractor shall pay for services for emergency psychiatric conditions received by a beneficiary from providers, whether or not the provider has a subcontract with the Contractor. Such services shall not be subject to prior authorization.
- B. "Post-stabilization care services" means covered services related to an emergency medical condition that are provided after a beneficiary is stabilized in order to maintain the stabilized condition.
- C. The Contractor shall comply with 42 C.F.R. § 438.114, regarding emergency, post stabilization services. For purposes of this section, emergency and post stabilization services includes acute psychiatric inpatient hospital professional services (as defined in Cal. Code Regs., tit. 9, § Section 1810.237.1) which are related to an emergency medical condition or post-stabilization care. The Contractor shall apply the definitions contained in 42 C.F.R. § 438.114. To the extent that there is a conflict between the definitions in 42 C.F.R. § 438.114, and the Contractor's obligations as described in this section, the federal regulation shall prevail.
 - 1) If an emergency room provider, hospital or fiscal agent of a provider or hospital does not notify the Contractor of the beneficiary's screening and treatment, the Contractor must allow a minimum of ten calendar days after the beneficiary presents for emergency services or acute psychiatric inpatient hospital professional services before refusing to cover emergency services or acute psychiatric inpatient hospital professional services for this reason.
 - 2) A beneficiary who has an emergency medical condition may not be held liable for payment of subsequent screening and treatment needed to diagnose the specific condition or stabilize the patient.
 - 3) The Contractor may not limit what constitutes an emergency medical condition on the basis of lists of diagnoses or symptoms.
 - 4) The attending emergency physician, or the provider actually treating the beneficiary, is responsible for determining when the beneficiary is

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sufficiently stabilized for transfer or discharge, and that determination is binding on the Contractor.

- D. The Contractor shall comply with 42 C.F.R. § 438.114(d)(ii,) and Cal. Code Regs., tit. 9, § Cal. Code Regs., tit. 9, §1820.225, regarding prior payment authorization for an emergency admission, whether voluntary or involuntary.
- E. The Contractor shall comply with Cal. Code Regs., tit. 9, § 1830.215, regarding payment authorizations.

4. Provider Selection and Certification

- A. The Contractor shall comply with Cal. Code Regs., tit. 9, § 1810.435, in the selection of providers and shall review its providers for continued compliance with standards at least once every three years.
- B. The Contractor shall comply with the provisions of 42 C.F.R. §§ 455.104, 455.105, 1002.203, 1002.3, which relate to the provision of information about provider business transactions and provider ownership and control, prior to entering into a contract and during certification or re-certification of the provider.
- C. "Satellite site" means a site owned, leased or operated by an organizational provider at which specialty mental health services are delivered to beneficiaries fewer than 20 hours per week, or, if located at a multiagency site at which specialty mental health services are delivered by no more than two employees or contractors of the provider.
- D. Pursuant to 42 C.F.R. § 438.12(a)(1), the Contractor may not discriminate in the selection, reimbursement, or indemnification of any provider who is acting within the scope of his or her license or certification under applicable state law, solely on the basis of that license or certification.
- E. Pursuant to 42 C.F.R. § 438.12(a)(2), in all contracts with providers the Contractor must comply with the requirements in 42 C.F.R. § 438.214.
- F. The Contractor shall give practitioners or groups of practitioners who apply to be MHP contract providers and with whom the MHP decides not to contract written notice of the reason for a decision not to contract;
- G. Contractor shall only use licensed, registered, or waived providers acting within their scope of practice for services which require a license, waiver, or registration, consistent with Welfare and Institutions Code Section 5751.2 and Cal. Code Regs., tit. 9, § 1840.314(d).
- H. Consistent with 42 C.F.R. § 438.214, the contractor shall have written policies and procedures for selection, retention, credentialing and recredentialing of providers; the provider selection policies and procedures must not discriminate against

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particular providers that serve high-risk populations or specialize in conditions that require costly treatment.

- I. The Contractor shall certify, or use another mental health plan's certification documents to certify, the organizational providers that subcontract with the Contractor to provide covered services in accordance with Cal. Code Regs., tit. 9, §1810.435, and the requirements specified prior to the date on which the provider begins to deliver services under the contract, and once every three years after that date. The on-site review required by Cal. Code Regs., tit. 9, § 1810.435(d), as a part of the certification process, shall be made of any site owned, leased, or operated by the provider and used to deliver covered services to beneficiaries, except that on-site review is not required for public school or satellite sites.
- J. The Contractor may allow an organizational provider to begin delivering covered services to beneficiaries at a site subject to on-site review prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The earliest date the provider may begin delivering covered services at a site subject to on-site review is the latest of these three (3) dates: 1) the date the provider's request for certification is received by the Department in accordance with the Contractor's certification procedures; 2) the date the site was operational; or 3) the date a required fire clearance was obtained. The Contractor shall complete any required on-site review of a provider's sites within six months of the date the provider begins delivering covered services to beneficiaries at the site.
- K. The Contractor may allow an organizational provider to continue delivering covered services to beneficiaries at a site subject to on-site review as part of the recertification process prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The Contractor shall complete any required on-site review of a provider's sites within six months of the date the recertification of the provider is due.
- L. The Contractor and/or the Department shall each verify through an on-site review that:
 - 1) The organizational provider possesses the necessary license to operate, if applicable, and any required certification.
 - 2) The space owned, leased or operated by the provider and used for services or staff meets local fire codes.
 - 3) The physical plant of any site owned, leased, or operated by the provider and used for services or staff is clean, sanitary, and in good repair.
 - 4) The organizational provider establishes and implements maintenance policies for any site owned, leased, or operated by the provider and used for services or staff to ensure the safety and well-being of beneficiaries and

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staff.

- 5) The organizational provider has a current administrative manual which includes: personnel policies and procedures, general operating procedures, service delivery policies, any required state or federal notices (DRA), and procedures for reporting unusual occurrences relating to health and safety issues.
- 6) The organizational provider maintains client records in a manner that meets the requirements of the Contractor, the requirements of Section 14 of this Attachment, and applicable state and federal standards.
- 7) The organizational provider has sufficient staff to allow the Contractor to claim federal financial participation (FFP) for the services that the organizational provider delivers to beneficiaries, as described in Cal. Code Regs., tit. 9, § 1840.344 through § 1840.358, as appropriate and applicable.
- 8) The organizational provider has written procedures for referring individuals to a psychiatrist when necessary, or to a physician, if a psychiatrist is not available.
- 9) The organizational provider's head of service, as defined Cal. Code Regs., tit. 9, § 622 through § 630, is a licensed mental health professional or other appropriate individual as described in these sections.
- 10) For organizational providers that provide or store medications, the provider stores and dispenses medications in compliance with all pertinent state and federal standards. In particular:
 - a) All drugs obtained by prescription are labeled in compliance with federal and state laws. Prescription labels are altered only by persons legally authorized to do so.
 - b) Drugs intended for external use only and food stuffs are stored separately from drugs intended for internal use.
 - c) All drugs are stored at proper temperatures: room temperature drugs at 59-86 degrees Fahrenheit and refrigerated drugs at 36-46 degrees Fahrenheit.
 - d) Drugs are stored in a locked area with access limited to those medical personnel authorized to prescribe, dispense or administer medication.
 - e) Drugs are not retained after the expiration date. Intramuscular multi-dose vials are dated and initialed when opened.

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- f) A drug log is maintained to ensure the provider disposes of expired, contaminated, deteriorated and abandoned drugs in a manner consistent with state and federal laws.
 - g) Policies and procedures are in place for dispensing, administering and storing medications.
- M. For organizational providers that provide day treatment intensive or day rehabilitation, the provider has a written description of the day treatment intensive and/or day rehabilitation program that complies with Section 8 of this exhibit.
- N. When an on-site review of an organizational provider would not otherwise be required and the provider offers day treatment intensive and/or day rehabilitation, the Contractor or the Department, as applicable, shall, at a minimum, review the provider's written program description for compliance with the requirements of Section 8 of this exhibit.
- O. On-site review is not required for hospital outpatient departments which are operating under the license of the hospital. Services provided by hospital outpatient departments may be provided either on the premises or off-site.
- P. On-site review is not required for primary care and psychological clinics, as defined in the Health and Safety (Health & Saf.) Code section 1204.1 and licensed under the Health and Saf. Code. Services provided by the clinics may be provided on the premises in accordance with the conditions of the clinic's license.
- Q. When on-site review of an organizational provider is required, the Contractor or the Department, as applicable, shall conduct an on-site review at least once every three years. Additional certification reviews of organizational providers may be conducted by the Contractor or Department, as applicable, at its discretion, if:
 - 1) The provider makes major staffing changes.
 - 2) The provider makes organizational and/or corporate structure changes (example: conversion to non-profit status).
 - 3) The provider adds day treatment or medication support services when medications are administered or dispensed from the provider site.
 - 4) There are significant changes in the physical plant of the provider site (some physical plant changes could require a new fire clearance).
 - 5) There is a change of ownership or location.
 - 6) There are complaints regarding the provider.

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- 7) There are unusual events, accidents, or injuries requiring medical treatment for clients, staff or members of the community.
- R. The Contractor shall monitor the performance of its subcontractors on an ongoing basis for compliance with the terms of this contract and shall subject the subcontractors' performance to periodic formal review, at a minimum in accordance with the recertification requirements. If the Contractor identifies deficiencies or areas for improvement, the Contractor and the subcontractor shall take corrective action.

5. Recovery from Other Sources or Providers

- A. The Contractor shall recover the value of covered services rendered to beneficiaries whenever the beneficiaries are covered for the same services, either fully or partially, under any other state or federal medical care program or under other contractual or legal entitlement including, but not limited to, a private group or indemnification program, but excluding instances of the tort liability of a third party or casualty liability insurance.
- B. The monies recovered are retained by the Contractor. However, Contractor's claims for FFP for services provided to beneficiaries under this contract shall be reduced by the amount recovered.
- C. The Contractor shall maintain accurate records of monies recovered from other sources.
- D. Nothing in this section supersedes the Contractor's obligation to follow federal requirements for claiming FFP for services provided to beneficiaries with other coverage under this contract.

6. Subrogation

In the event a beneficiary is injured by the act or omission of a third party, or has a potential or existing claim for a workers' compensation award, or a claim/recovery through uninsured motorist coverage, the right to pursue subrogation and the receipt of payments shall be as follows:

- A. Contractor may submit to the Department claims for Medi-Cal covered services rendered, but Contractor shall not make claims to or attempt to recoup the value of these services from the above-referenced entities.
- B. Contractor shall notify the Department within 10 days of discovery of all cases that could reasonably result in recovery by the beneficiary of funds from a third party, third party insurance carrier, workers' compensation award, and/or uninsured motorist coverage.

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- C. If the Contractor receives any requests by subpoena from attorneys, insurers, or beneficiaries for copies of bills, the Contractor shall provide the Department with a copy of any document released as a result of such request. Additionally, the Contractor shall provide the name, address and telephone number of the requesting party.
- D. The Contractor also agrees to assist the Department, upon request, to provide within thirty (30) days, payment information and copies of paid invoices/claims for covered services.
- E. The value of the covered services shall be calculated as the usual, customary and reasonable charge made to the general public for similar services or the amount to subcontracted providers or out-of-plan providers for similar services.
- F. The information provided to the Department shall include the following data:
 - 1) Beneficiary name;
 - 2) 14-digit Medi-Cal number;
 - 3) Social security number or Client Identification Number (CIN);
 - 4) Date of birth;
 - 5) Contractor name;
 - 6) Provider name (if different from Contractor);
 - 7) Dates of service;
 - 8) Diagnosis code and/or description of illness;
 - 9) Procedure code and/or description of services rendered;
 - 10) Amount billed by a Subcontractor or out-of-plan provider to the Contractor (if applicable);
 - 11) Amount paid by other health insurance to the Contractor or Subcontractor;
 - 12) Amount and date paid by the Contractor to subcontractor or out-of-plan provider (if applicable); and
 - 13) Date of denial and reasons (if applicable).

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- G. The Contractor shall also provide the Department with the name, address, and telephone number of the person responsible for receiving and complying with requests for mandatory and/or optional at-risk service information.
- H. Information sent to the Department, pursuant to this section, shall be sent to: State Department of Health Care Services, Third Party Liability Branch, 1500 Capitol Ave., Suite 320, Sacramento, CA 95814.

7. Beneficiary Brochure and Provider List

- A. The Contractor shall be responsible for the production and update of its booklet section(s) and provider list in accordance with 42 C.F.R. § 438.10 and Cal. Code Regs., tit. 9, §1810.360. The Contractor shall establish criteria to update its booklet and provider list.

Pursuant to 42 C.F.R. § 438.10, the Contractor shall:

- 1) Notify all beneficiaries of their right to change providers;
- 2) Notify all beneficiaries of their right to request and obtain the following information:
 - a) Names, locations, telephone numbers of, and non-English languages spoken by current contracted providers in the beneficiary's service area, including identification of providers that are not accepting new patients.
 - b) Any restrictions on the beneficiary's freedom of choice among network providers.
 - c) Beneficiary rights and protections, as specified in 42 CFR § 438.100.
 - d) The amount, duration, and scope of benefits available under this Contract in sufficient detail to ensure that beneficiaries understand the benefits to which they are entitled.
 - e) Procedures for obtaining benefits, including authorization requirements.
 - f) The extent to which, and how, beneficiaries may obtain benefits from out-of-network providers.
 - g) The extent to which, and how, after-hours and emergency coverage are provided, including:

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- i. What constitutes an emergency medical condition, emergency services, and post-stabilization services, with reference to the definitions in 42 C.F.R. § 438.114(a).
 - ii. The fact that prior authorization is not required for emergency services.
 - iii. The process and procedures for obtaining emergency services, including use of the 911-telephone system or its local equivalent.
 - iv. The locations of any emergency settings and other locations at which providers and hospitals furnish emergency services and post-stabilization services covered under the contract.
 - v. The fact that, subject to the provisions of 42 C.F.R. § 438.10(f)(6), the beneficiary has a right to use any hospital or other setting for emergency care.
 - vi. The post-stabilization care services rules set forth in 42 C.F.R. § 422.113(c).
- h) Cost sharing, if any.
- i) How and where to access any benefits that are available under the State Plan but are not covered under this Contract, including any cost sharing, and how any necessary transportation is provided. Pursuant to 42 C.F.R. § 438.102(a)(2), for a counseling or referral service that the Contractor does not cover because of moral or religious objections, the Contractor need not furnish information on how and where to obtain the service. Pursuant to 42 C.F.R. § 438.102(b)(1), the Contractor must provide information about the services it does not cover on moral or religious grounds.
- B. The Contractor shall ensure that the general program literature it uses to assist beneficiaries in accessing services including, but not limited to, the booklet required by Cal. Code Regs., tit. 9, § 1810.360, materials explaining the beneficiary problem resolution and fair hearing processes required by Cal. Code Regs., tit. 9, § 1850.205(c)(1), and mental health education materials used by the Contractor, are available in the threshold languages of the County in compliance with 42 C.F.R. § 438.10(c)(3).
- C. Pursuant to 42 C.F.R. § 438.10(c)(4) and (5) and Cal. Code Regs., tit. 9, § 1810.410, the Contractor must make oral interpretation and sign language services available free of charge to each beneficiary. This applies to all non-English languages and not just those identified as prevalent. The Contractor must notify

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beneficiaries that oral interpretation is available for any language and written information is available in prevalent languages and how to access those services.

- D. Pursuant to 42 C.F.R. § 438.10(g) and Cal. Code Regs., tit. 9, § 1850.205(c)(1), the booklet shall include grievance, appeal and fair hearing procedures and timeframes, as provided in 42 C.F.R. §§ 438.400 through 438.424, using a Department-developed or Department-approved description that must include the following:
- 1) For State Fair Hearing
 - a) The right to hearing;
 - b) The method for obtaining a hearing; and
 - c) The rules that govern representation at the hearing.
 - 2) The right to file grievances and appeals.
 - 3) The requirements and timeframes for filing a grievance or appeal
 - 4) The availability of assistance in the filing process.
 - 5) The toll-free numbers that the beneficiary can use to file a grievance or an appeal by phone.
 - 6) The fact that, when requested by the beneficiary:
 - a) Benefits will continue if the beneficiary files an appeal or a request for State Fair Hearing within the timeframes specified for filing.
 - 7) The appeal rights that the Department has chosen to make available to providers in Cal. Code Regs., tit. 9, § 1850.315, to challenge the Contractor's failure to cover a service.
 - 8) Advance Directives, as set forth in 42 C.F.R. § 438.6(i)(22).
 - 9) Additional information that is available upon request, includes the following:
 - a) Information on the structure and operation of the Contractor.
 - b) Physician incentive plans as set forth in 42 C.F.R. § 438.6(h).
- E. The Contractor shall provide beneficiaries with a copy of the booklet and provider list when the beneficiary first accesses services and thereafter upon request in accordance with Cal. Code Regs., tit. 9, § 1810.360.

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- F. The Contractor shall not make changes to any of the content in the statewide section of the booklet unless directed to do so, in writing, by the Department.
- G. The Contractor shall ensure any changes to the English version of the booklet are also included in the county's threshold languages and made available in alternate formats appropriate to the beneficiary population.
- H. The Contractor shall ensure written materials are produced in a format that is easily understood and available in alternative formats and in an appropriate manner that takes into consideration the special needs of those who, for example, are visually limited or have limited reading proficiency as required by 42 C.F.R. § 438.10(d)(1). Pursuant to 42 C.F.R. § 438.10(d)(2), the Contractor shall inform beneficiaries that information is available in alternate formats and how to access those formats.
- I. The Contractor shall ensure that the booklet above includes the current toll-free telephone number(s) that provides information in threshold languages and is available twenty-four hours a day, seven days a week.
- J. The Contractor shall ensure that provider directories:
 - 1) Include information on the category or categories of services available from each provider;
 - 2) Contain the names, locations, and telephone numbers of current contracted providers by category;
 - 3) Identify options for services in languages other than English and services that are designed to address cultural differences and;
 - 4) Provide a means by which a beneficiary can identify which providers are not accepting new beneficiaries.
- K. As required by 42 C.F.R. § 438.10(f)(4), when there is a change that the State defines as significant in the scope of specialty mental health services covered by the Contractor, the update, in the form of a booklet insert, shall be provided to beneficiaries at least 30 days prior to the change.
- L. Consistent with 42 C.F.R. § 438.10(f)(5), the Contractor must make a good faith effort to give written notice of termination of a contracted provider, within 15 days after receipt or issuance of the termination notice, to each beneficiary who was seen on a regular basis by the terminated provider.

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8. Requirements for Day Treatment Intensive and Day Rehabilitation

- A. The Contractor shall require providers to request payment authorization for day treatment intensive and day rehabilitation services:
 - 1) In advance of service delivery when day treatment intensive or day rehabilitation will be provided for more than five days per week.
 - 2) At least every three months for continuation of day treatment intensive.
 - 3) At least every six months for continuation of day rehabilitation.
 - 4) Contractor shall also require providers to request authorization for mental health services, as defined in Cal. Code Regs., tit. 9, § 1810.227, provided concurrently with day treatment intensive or day rehabilitation, excluding services to treat emergency and urgent conditions as defined in Cal. Code Regs., tit. 9, § 1810.216 and § 1810.253. These services shall be authorized with the same frequency as the concurrent day treatment intensive or day rehabilitation services.
- B. The Contractor shall not delegate the payment authorization function to providers. When the Contractor is the day treatment intensive or day rehabilitation provider, the Contractor shall assure that the payment authorization function does not include staff involved in the provision of day treatment intensive, day rehabilitation services, or mental health services provided concurrent to day treatment intensive or day rehabilitation services.
- C. The Contractor shall require that providers of day treatment intensive and day rehabilitation meet the requirements of Cal. Code Regs., tit. 9, §§ 1840.318, 1840.328, 1840.330, 1840.350 and 1840.352.
- D. The Contractor shall require that providers include, at a minimum, the following day treatment intensive and day rehabilitation service components:
 - 1) Community meetings. These meetings shall occur at least once a day to address issues pertaining to the continuity and effectiveness of the therapeutic milieu, and shall actively involve staff and beneficiaries. Relevant discussion items include, but are not limited to: the day's schedule, any current event, individual issues that beneficiaries or staff wish to discuss to elicit support of the group and conflict resolution. Community meetings shall:
 - a) For day treatment intensive, include a staff person whose scope of practice includes psychotherapy.
 - b) For day rehabilitation, include a staff person who is a physician, a licensed/waivered/registered psychologist, clinical social worker, or

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marriage and family therapist; and a registered nurse, psychiatric technician, licensed vocational nurse, or mental health rehabilitation specialist.

- 2) Therapeutic milieu. This component must include process groups and skill-building groups. Specific activities shall be performed by identified staff and take place during the scheduled hours of operation of the program. The goal of the therapeutic milieu is to teach, model, and reinforce constructive interactions by involving beneficiaries in the overall program. For example, beneficiaries are provided with opportunities to lead community meetings and to provide feedback to peers. The program includes behavior management interventions that focus on teaching self-management skills that children, youth, adults and older adults may use to control their own lives, to deal effectively with present and future problems, and to function well with minimal or no additional therapeutic intervention. Activities include, but are not limited to, staff feedback to beneficiaries on strategies for symptom reduction, increasing adaptive behaviors, and reducing subjective distress.
- 3) Process groups. These groups, facilitated by staff, shall assist each beneficiary to develop necessary skills to deal with his/her problems and issues. The group process shall utilize peer interaction and feedback in developing problem-solving strategies to resolve behavioral and emotional problems. Day rehabilitation may include psychotherapy instead of process groups, or in addition to process groups.
- 4) Skill-building groups. In these groups, staff shall help beneficiaries identify barriers related to their psychiatric and psychological experiences. Through the course of group interaction, beneficiaries identify skills that address symptoms and increase adaptive behaviors.
- 5) Adjunctive therapies. These are therapies in which both staff and beneficiaries participate. These therapies may utilize self-expression, such as art, recreation, dance, or music as the therapeutic intervention. Participants do not need to have any level of skill in the area of self-expression, but rather be able utilize the modality to develop or enhance skills directed toward achieving beneficiary plan goals. Adjunctive therapies assist the beneficiary in attaining or restoring skills which enhance community functioning including problem solving, organization of thoughts and materials, and verbalization of ideas and feelings. Adjunctive therapies provided as a component of day rehabilitation or day treatment intensive are used in conjunction with other mental health services in order to improve the outcome of those services consistent with the beneficiary's needs identified in the client plan.

E. Day treatment intensive shall additionally include:

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- 1) **Psychotherapy.** Psychotherapy means the use of psychological methods within a professional relationship to assist the beneficiary or beneficiaries to achieve a better psychosocial adaptation, to acquire a greater human realization of psychosocial potential and adaptation, to modify internal and external conditions that affect individual, groups, or communities in respect to behavior, emotions and thinking, in respect to their intrapersonal and interpersonal processes. Psychotherapy shall be provided by licensed, registered, or waived staff practicing within their scope of practice. Psychotherapy does not include physiological interventions, including medication intervention.
 - 2) **Mental Health Crisis Protocol.** The Contractor shall ensure that there is an established protocol for responding to beneficiaries experiencing a mental health crisis. The protocol shall assure the availability of appropriately trained and qualified staff and include agreed upon procedures for addressing crisis situations. The protocol may include referrals for crisis intervention, crisis stabilization, or other specialty mental health services necessary to address the beneficiary's urgent or emergency psychiatric condition (crisis services). If the protocol includes referrals, the day treatment intensive or day rehabilitation program staff shall have the capacity to handle the crisis until the beneficiary is linked to an outside crisis service.
 - 3) **Written Weekly Schedule.** The Contractor shall ensure that a weekly detailed schedule is available to beneficiaries and as appropriate to their families, caregivers or significant support persons and identifies when and where the service components of the program will be provided and by whom. The written weekly schedule will specify the program staff, their qualifications, and the scope of their services.
- F. **Staffing Requirements.** Staffing ratios shall be consistent with the requirements in Cal. Code Regs., tit. 9, § 1840.350, for day treatment intensive, and Cal. Code Regs., tit. 9, § 1840.352 for day rehabilitation. For day treatment intensive, staff shall include at least one staff person whose scope of practice includes psychotherapy.
- 1) Program staff may be required to spend time on day treatment intensive and day rehabilitation activities outside the hours of operation and therapeutic program (e.g., time for travel, documentation, and caregiver contacts).
 - 2) The Contractor shall require that at least one staff person be present and available to the group in the therapeutic milieu for all scheduled hours of operation.
 - 3) The Contractor shall require day treatment intensive and day rehabilitation programs to maintain documentation that enables

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Contractor and the Department to audit the program if it uses day treatment intensive or day rehabilitation staff who are also staff with other responsibilities (e.g., as staff of a group home, a school, or another mental health treatment program). The Contractor shall require that there is documentation of the scope of responsibilities for these staff and the specific times in which day treatment intensive or day rehabilitation activities are being performed exclusive of other activities.

- G. If a beneficiary is unavoidably absent and does not attend all of the scheduled hours of the day rehabilitation or day treatment intensive program, the Contractor shall ensure that the provider receives Medi-Cal reimbursement only if the beneficiary is present for at least 50 percent of scheduled hours of operation for that day. The Contractor shall require that a separate entry be entered in the beneficiary record documenting the reason for the unavoidable absence and the total time (number of hours and minutes) the beneficiary actually attended the program that day. In cases where absences are frequent, it is the responsibility of the Contractor to ensure that the provider re-evaluates the beneficiary's need for the day rehabilitation or day treatment intensive program and takes appropriate action.
- H. Documentation Standards. The Contractor shall ensure day treatment intensive and day rehabilitation documentation meets the documentation standards described in Section 11 of this exhibit. The documentation shall include the date(s) of service, signature of the person providing the service (or electronic equivalent), the person's type of professional degree, licensure or job title, date of signature and the total number of minutes/hours the beneficiary actually attended the program. For day treatment intensive these standards include daily progress notes on activities and a weekly clinical summary reviewed and signed by a physician, a licensed/waivered/registered psychologist, clinical social worker, or marriage and family therapist, or a registered nurse who is either staff to the day treatment intensive program or the person directing the services.
- I. The Contractor shall ensure that day treatment intensive and day rehabilitation have at least one contact per month with a family member, caregiver or other significant support person identified by an adult beneficiary, or one contact per month with the legally responsible adult for a beneficiary who is a minor. This contact may be face-to-face, or by an alternative method (e.g., e-mail, telephone, etc.). Adult beneficiaries may decline this service component. The contacts should focus on the role of the support person in supporting the beneficiary's community reintegration. The Contractor shall ensure that this contact occurs outside hours of operation and outside the therapeutic program for day treatment intensive and day rehabilitation.
- J. Written Program Description. The Contractor shall ensure there is a written program description for day treatment intensive and day rehabilitation. The written program description must describe the specific activities of each service and reflects each of the required components of the services as described in this

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section. The Contractor shall review the written program description for compliance with this section with prior to the date the provider begins delivering day treatment intensive or day rehabilitation.

- K. Additional higher or more specific standards. The Contractor shall retain the authority to set additional higher or more specific standards than those set forth in this contract, provided the Contractor's standards are consistent with applicable state and federal laws and regulations and do not prevent the delivery of medically necessary day treatment intensive and day rehabilitation.
- L. Continuous Hours of Operation. The Contractor shall ensure that the provider applies the following when claiming for day treatment intensive and day rehabilitation services:
- 1) A half day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available four hours or less per day. Services must be available a minimum of three hours each day the program is open.
 - 2) A full-day shall be billed for each day in which the beneficiary receives face-to-face services in a program with services available more than four hours per day.
 - 3) Although the beneficiary must receive face to face services on any full-day or half-day claimed, all service activities during that day are not required to be face-to-face with the beneficiary.
 - 4) The requirement for continuous hours or operation does not preclude short breaks (for example, a school recess period) between activities. A lunch or dinner may also be appropriate depending on the program's schedule. The Contractor shall not conduct these breaks toward the total hours of operation of the day program for purposes of determining minimum hours of service.

9. Therapeutic Behavioral Services

Therapeutic Behavioral Services (TBS) are supplemental specialty mental health services covered under the Early and Periodic Screening, Diagnosis and Treatment (EPSDT) benefit as defined in Cal. Code Regs., tit. 9, § 1810.215. TBS are intensive, one-to-one services designed to help beneficiaries and their parents/caregivers manage specific behaviors using short-term measurable goals based on the beneficiary's needs. TBS are available to beneficiaries in accordance with the Department of Mental Health Information Notice 08-38, the TBS Coordination of Care Best Practices Manual, version 2 (October 2010), and the TBS Documentation Manual, version 2 (October 2009).

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10. Procedures for Serving Child Beneficiaries Placed Out-of-County

- A. In accordance with Cal. Code Regs., tit. 9, § 1830.220, the Contractor in the child's county of origin shall provide or arrange for medically necessary specialty mental health services for children in a foster care aid code residing outside their counties of origin.
- B. The Contractor shall use the standard forms issued by the Department, or the electronic equivalent of those forms generated from the Contractor's Electronic Health Record System, when a child in a foster care aid code is placed outside of his/her county of origin. The standard forms are:
 - 1) Client Assessment,
 - 2) Client Plan,
 - 3) Service Authorization Request,
 - 4) Client Assessment Update,
 - 5) Progress Notes – Day Treatment Intensive Services,
 - 6) Progress Notes – Day Rehabilitation Services,
 - 7) Organizational Provider Agreement (Standard Contract).
- C. The Contractor may request an exemption from using the standard documents if the Contractor is subject to an externally placed requirement, such as a federal integrity agreement, that prevents the use of the standardized forms. The Contractor shall request this exemption from the Department in writing.
- D. The Contractor shall ensure that the MHP in the child's adoptive parents' county of residence provides medically necessary specialty mental health services to a child in an Adoption Assistance Program (AAP) aid code residing outside his or her county of origin in the same way as the MHP would provide services to an in-county child for whom the MHP is listed as the county of responsibility on the Medi-Cal Eligibility Data System (MEDS).
- E. The MHP in the child's legal guardians' county of residence shall provide medically necessary specialty mental health services to a child in a Kin-GAP aid code residing outside his or her county of origin in the same way that it would provide services to any other child for whom the MHP is listed as the county of responsibility in MEDS.
- F. The Contractor shall comply with timelines specified in Cal. Code Regs., tit. 9, § 1830.220(b)(4)(A)(1-3), when processing or submitting authorization requests for

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children in a foster care, AAP, or Kinship Guardian Assistance Payment (Kin-GAP) aid code living outside his or her county of origin.

- G. The Contractor shall submit changes to its procedures for serving beneficiaries placed outside their counties of origin pursuant to Welf. & Inst. Code § 14716 when those changes affect 25 percent or more of the Contractor's beneficiaries placed out of county. The Contractor's submission shall also include significant changes in the description of the Contractor's procedures for providing out-of-plan services in accordance with Cal. Code Regs., tit. 9, § 1830.220, when a beneficiary requires services or is placed in a county not covered by the Contractor's normal procedures.

11. Documentation Standards

The Contractor shall set standards and implement processes that will support understanding of, and compliance with, documentation standards set forth in this section and any standards set by the Contractor. The Contractor may monitor performance so that the documentation of care provided will satisfy the requirements set forth below. The documentation standards for beneficiary care are minimum standards to support claims for the delivery of specialty mental health services. All standards shall be addressed in the beneficiary record; however, there is no requirement that the records have a specific document or section addressing these topics.

A. Assessment

- 1) The Contractor shall ensure that the following areas are included, as appropriate, as part of a comprehensive beneficiary record when an assessment has been performed. For children or certain other beneficiaries unable to provide a history, this information may be obtained from the parents/care-givers, etc.
 - a) Presenting Problem. The beneficiary's chief complaint, history of the presenting problem(s), including current level of functioning, relevant family history and current family information;
 - b) Relevant conditions and psychosocial factors affecting the beneficiary's physical health and mental health; including, as applicable, living situation, daily activities, social support, cultural and linguistic factors and history of trauma or exposure to trauma;
 - c) Mental Health History. Previous treatment, including providers, therapeutic modality (e.g., medications, psychosocial treatments) and response, and inpatient admissions. If possible, include information from other sources of clinical data, such as previous mental health records, and relevant psychological testing or consultation reports;

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- d) Medical History. Relevant physical health conditions reported by the beneficiary or a significant support person. Include name and address of current source of medical treatment. For children and adolescents, the history must include prenatal and perinatal events and relevant/significant developmental history. If possible, include other medical information from medical records or relevant consultation reports;
 - e) Medications. Information about medications the beneficiary has received, or is receiving, to treat mental health and medical conditions, including duration of medical treatment. The assessment shall include documentation of the absence or presence of allergies or adverse reactions to medications, and documentation of an informed consent for medications;
 - f) Substance Exposure/Substance Use. Past and present use of tobacco, alcohol, caffeine, CAM (complementary and alternative medications) and over-the-counter, and illicit drugs;
 - g) Client Strengths. Documentation of the beneficiary's strengths in achieving client plan goals related to the beneficiary's mental health needs and functional impairments as a result of the mental health diagnosis;
 - h) Risks. Situations that present a risk to the beneficiary and/or others, including past or current trauma;
 - i) A mental status examination;
 - j) A complete five-axis diagnosis from the most current DSM, or a diagnosis from the most current ICD-code shall be documented, consistent with the presenting problems, history, mental status examination and/or other clinical data; and,
 - k) Additional clarifying formulation information, as needed.
- 2) Timeliness/Frequency Standard for Assessment. The Contractor shall establish written standards for timeliness and frequency for the elements identified in item A of this section.

B. Client Plans

- 1) The Contractor shall ensure that Client Plans:
 - a) Have specific observable and/or specific quantifiable goals/treatment objectives related to the beneficiary's mental health needs and functional impairments as a result of the mental health diagnosis;

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- b) Identify the proposed type(s) of intervention/modality including a detailed description of the intervention to be provided;
- c) Have a proposed frequency and duration of intervention(s);
- d) Have interventions that focus and address the identified functional impairments as a result of the mental disorder (from Cal. Code Regs., tit. 9, § 1830.205(b)); have interventions that are consistent with the client plan goal;
- e) Be consistent with the qualifying diagnoses;
- f) Be signed (or electronic equivalent) by:
 - i. The person providing the service(s), or,
 - ii. A person representing a team or program providing services, or
 - iii. A person representing the Contractor providing services; or
 - iv. By one of the following as a co-signer, if the client plan is used to establish that services are provided under the direction of an approved category of staff, and if the signing staff is not of the approved category:
 - a) A physician,
 - b) A licensed/waivered psychologist,
 - c) A licensed/registered/waivered social worker,
 - d) A licensed/registered/waivered marriage and family therapist, or
 - e) A registered nurse, including but not limited to nurse practitioners, and clinical nurse specialists.
- g) Include documentation of the beneficiary's participation in and agreement with the client plan, as described in Cal. Code Regs., tit. 9, § 1810.440(c)(2)(A)(B).
 - i. Examples of acceptable documentation include, but are not limited to, reference to the beneficiary's participation and agreement in the body of the plan, beneficiary signature on the

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- plan, or a description of the beneficiary's participation and agreement in the client record;
- ii. The beneficiary's signature or the signature of the beneficiary's legal representative is required on the client plan when:
 - a) The beneficiary is expected to be in long term treatment as determined by the MHP and,
 - b) The client plan provides that the beneficiary will be receiving more than one type of specialty mental health service;
 - iii. When the beneficiary's signature or the signature of the beneficiary's legal representative is required on the client plan and the beneficiary refuses or is unavailable for signature, the client plan shall include a written explanation of the refusal or unavailability.
- 2) There shall be documentation in the client plan that a copy of the client plan was offered to the beneficiary.
 - 3) The client plan shall be updated at least annually, or when there are significant changes in the beneficiary's condition.

A. Progress Notes

- 1) The Contractor shall ensure that progress notes describe how services provided reduced impairment, restored functioning, or prevented significant deterioration in an important area of life functioning outlined in the client plan. Items that shall be contained in the client record related to the beneficiary's progress in treatment include:
 - a) Timely documentation of relevant aspects of beneficiary care, including documentation of medical necessity;
 - b) Documentation of beneficiary encounters, including relevant clinical decisions, when decisions are made, alternative approaches for future interventions;
 - c) Interventions applied, beneficiary's response to the interventions and the location of the interventions;
 - d) The date the services were provided;

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- e) Documentation of referrals to community resources and other agencies, when appropriate;
 - f) Documentation of follow-up care, or as appropriate, a discharge summary; and
 - g) The amount of time taken to provide services; and
 - h) The signature of the person providing the service (or electronic equivalent); the person's type of professional degree, licensure, or job title.
- 2) Timeliness/Frequency of Progress Notes. Progress notes shall be documented at the frequency by type of service indicated below:
- a) Every Service Contact:
 - i. Mental Health Services;
 - ii. Medication Support Services;
 - iii. Crisis Intervention;
 - iv. Targeted Case Management;
 - b) Daily:
 - i. Crisis Residential;
 - ii. Crisis Stabilization (1x/23hr);
 - iii. Day Treatment Intensive; and
 - c) Weekly:
 - i. Day Treatment Intensive: a clinical summary reviewed and signed by a physician, a licensed/waivered psychologist, clinical social worker, or marriage and family therapist; or a registered nurse who is either staff to the day treatment intensive program or the person directing the service;
 - ii. Day Rehabilitation;
 - iii. Adult Residential.

B. Other

- 1) All entries to the beneficiary record shall be legible.

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- 2) All entries in the beneficiary record shall include:
 - a) The date of service;
 - b) The signature of the person providing the service (or electronic equivalent); the person's type of professional degree, licensure or job title; and the relevant identification number, if applicable.
 - c) The date the documentation was entered in the beneficiary record.
- 3) The Contractor shall have a written definition of what constitutes a long term care beneficiary.
- 4) Contractor shall require providers to obtain and retain a written medication consent form signed by the beneficiary agreeing to the administration of psychiatric medication. This documentation shall include, but not be limited to, the reasons for taking such medications; reasonable alternative treatments available, if any; the type, range of frequency and amount, method (oral or injection), and duration of taking the medication; probable side effects; possible additional side effects which may occur to beneficiaries taking such medication beyond three (3) months; and that the consent, once given, may be withdrawn at any time by the beneficiary.

12. Cultural Competence Plan

The Contractor shall comply with the provisions of the Contractor's Cultural Competence Plan submitted in accordance with Cal. Code Regs., tit. 9, § 1810.410, and approved by the Department. The Contractor shall update the Cultural Competence Plan and submit these updates to the Department for review and approval annually.

13. Implementation Plan

The Contractor shall comply with the provisions of the Contractor's Implementation Plan pursuant to Cal. Code Regs., tit. 9, § 1810.310 as approved by the Department, including the administration of beneficiary problem resolution processes as required by Cal. Code Regs., tit. 9, § 1850.205 through § 1850.208. The Contractor shall obtain written approval by the Department prior to making any changes to the Implementation Plan as approved by the Department. The Contractor may implement the changes after thirty (30) calendar days if the Department does not respond in writing within thirty calendar (30) days as provided in Cal. Code Regs., tit. 9, § 1810.310.

14. Additional Provisions

A. Books and Records

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This provision is a supplement to provision number seven (Audit and Record Retention) in Exhibit D(F) which is attached hereto as part of this agreement.

The Contractor shall maintain such books and records as are necessary to disclose how the Contractor discharged its obligations under this contract. These books and records shall identify the quantity of covered services provided under this contract, the quality of those services, the manner and amount of payment made for those services, the beneficiaries who received covered services, the manner in which the Contractor administered the provision of specialty mental health services and the cost thereof.

Such books and records shall include, but are not limited to, all physical records originated or prepared pursuant to performance under this contract including: working papers, reports submitted to the Department, financial records, all medical and treatment records, medical charts and prescription files, and other documentation pertaining to services rendered to beneficiaries. These books and records shall be maintained for a minimum of three years after the final payment is made and all pending matters closed, or, in the event the Contractor has been notified that the Department, HHS, or the Comptroller General of the United States, or their duly authorized representatives, have commenced an audit or investigation of the contract, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later.

The Contractor agrees to include in any subcontract for a sum in excess of \$10,000 which utilizes state funds, a provision that states: "The contracting parties shall be subject to the examination and audit of the Department or Auditor General for a period of three years after final payment under contract (Government Code § 8546.7)." The Contractor shall also be subject to the examination and audit of the Department and the State Auditor General for a period of three years after final payment under contract (Government Code § 8546.7).

B. Transfer of Care

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

C. Department Policy Letters

The Contractor shall comply with all policy letters issued by the Department. The Contractor shall also comply with Department of Mental Health (DMH) Letters and Information Notices issued to all Mental Health Plans as defined in Cal. Code

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Regs., tit. 9, § 1810.226 as such DMH Letters and Information Notices remain in effect unless amended, repealed, or readopted by the Department. DMH letters and Information Notices shall provide specific details of procedures established for performance of contract terms when procedures not covered in this agreement are determined to be necessary for performance under this agreement, but are not intended to change the basis and general terms of the contract.

15. Beneficiary Problem Resolution Processes

A. General Provisions

The Contractor shall represent the Contractor's position in fair hearings, as defined in Cal. Code Regs., tit. 9, § 1810.216.6, dealing with beneficiaries' appeals of denials, modifications, deferrals or terminations of covered services. The Contractor shall carry out the final decisions of the fair hearing process with respect to issues within the scope of the Contractor's responsibilities under this contract. Nothing in this section is intended to prevent the Contractor from pursuing any options available for appealing a fair hearing decision.

- 1) Pursuant to 42 C.F.R. § 438.228 and Cal. Code Regs., tit. 9, § 1850.205, the Contractor shall develop problem resolution processes that enable beneficiary to request and receive review of a problem or concern he or she has about any issue related to the Contractor's performance of its duties, including the delivery of specialty mental health services.
- 2) The Contractor's beneficiary problem resolution processes shall include:
 - a) A grievance process;
 - b) An appeal process; and,
 - c) An expedited appeal process.
- 3) For the grievance, appeal, and expedited appeal processes, described in 42 C.F.R. 438 Subpart F and Cal. Code Regs., tit. 9, §§ 1850.206, 1850.207 and 1850.208 respectively, the Contractor shall comply with all of the following requirements:
 - a) Assure that each beneficiary has adequate information about the Contractor's problem resolution processes by taking at least the following actions:
 - i. Including information describing the grievance, appeal, and expedited appeal processes in the Contractor's beneficiary booklet and providing the beneficiary booklet to beneficiaries as described in Section 7 of this contract.

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- ii. Posting notices explaining grievance, appeal, and expedited appeal process procedures in locations at all Contractor provider sites. Notices shall be sufficient to ensure that the information is readily available to both beneficiaries and provider staff. The posted notice shall also explain the availability of fair hearings after the exhaustion of an appeal or expedited appeal process, including information that a fair hearing may be requested whether or not the beneficiary has received a notice of action pursuant to Cal. Code Regs., tit. 9, § 1850.210. For the purposes of this Section, a Contractor provider site means any office or facility owned or operated by the Contractor or a provider contracting with the Contractor at which beneficiaries may obtain specialty mental health services.
 - iii. Pursuant to Cal. Code Regs., tit. 9, § 1850.205(c)(1)(C), making available forms that may be used to file grievances, appeals, and expedited appeals and self-addressed envelopes that beneficiaries can access at all Contractor provider sites without having to make a verbal or written request to anyone.
 - iv. Pursuant to 42 C.F.R. § 438.406(a)(1), giving beneficiaries any reasonable assistance in completing the forms and other procedural steps not limited to providing interpreter services and toll-free numbers with TTY/TDD and interpreter capability.
- b) Pursuant to 42 C.F.R. § 438.406(a)(2), the Contractor shall acknowledge receipt of each grievance appeal, and request for expedited appeal to the beneficiary in writing.
 - c) Consistent with 42 C.F.R. § 438.402(b)(1)(ii), a beneficiary may authorize another person to act on the beneficiary's behalf. The beneficiary may select a provider as his or her representative in the appeal or expedited appeal process, if the provider consents.
 - d) A beneficiary's legal representative may use the grievance, appeal, or expedited appeal processes on the beneficiary's behalf.
 - e) At the beneficiary's request, the Contractor shall identify staff or another individual, such as a legal guardian, to be responsible for assisting a beneficiary with these processes, including providing assistance in writing the grievance, appeal, or expedited appeal. If the individual identified by the Contractor is the person providing specialty mental health services to the beneficiary requesting assistance, the Contractor shall identify another individual to assist that beneficiary.

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- f) A beneficiary shall not be subject to discrimination or any other penalty for filing a grievance, appeal, or expedited appeal.
 - g) Procedures for these beneficiary problem resolution processes shall maintain the confidentiality of each beneficiary's information.
 - h) A procedure shall be included by which issues identified as a result of the grievance, appeal or expedited appeal processes are transmitted to the Contractor's Quality Improvement Committee, the Contractor's administration or another appropriate body within the Contractor's operations. These issues shall be considered in the Contractor's Quality Improvement Program, as required by Cal. Code Regs., tit. 9, § 1810.440(a)(5).
 - i) Individuals involved in any previous review or decision-making on the issue(s) presented in a problem resolution process shall not participate in making the decision on the grievance, appeal, or expedited appeal pursuant to 42 C.F.R. § 438.406(a)(3)(i).
 - j) The individual making the decision on the grievance, appeal, or expedited appeal shall have the appropriate clinical expertise, as determined by the Contractor, required to treat the beneficiary's condition, if the grievance concerns the denial of a request for an expedited appeal or if the grievance, appeal, or expedited appeal addresses any clinical issue, including a lack of medical necessity pursuant to Title per 42, C.F.R. § 438.406(a)(3)(ii).
- 4) Pursuant to record keeping and review requirements in 42 C.F.R. § 438.416, and to facilitate monitoring consistent with Cal. Code Regs., tit. 9, §§1810.440(a)(5), 1850.205, 1850.206, 1850.207, and 1850.208, the Contractor shall:
- a) Maintain a grievance and appeal log and record grievances, appeals, and expedited appeals in the log within one working day of the date of receipt of the grievance or appeal. The log entry shall include, but not be limited to, the name of the beneficiary, the date of receipt of the grievance, appeal, or expedited appeal, and the nature of the problem;
 - b) Record in the grievance and appeal log or another central location determined by the Contractor, the final dispositions of grievances, appeals, and expedited appeals, including the date the decision is sent to the beneficiary. If there has not been final disposition of the grievance, appeal, or expedited appeal, the reason(s) shall be included in the log;

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- c) Provide a staff person or other individual with responsibility to provide information requested by the beneficiary or the beneficiary's representative regarding the status of the beneficiary's grievance, appeal, or expedited appeal;
 - d) Acknowledge the receipt of each grievance, appeal, and expedited appeal to the beneficiary in writing;
 - e) Identify in its grievance, appeal, and expedited appeal documentation, the roles and responsibilities of the Contractor, the provider, and the beneficiary;
 - f) Notify the beneficiary, in writing, of the final disposition of the problem resolution process including the reasons for the disposition; and
 - g) Notify, in writing, any provider identified by the beneficiary or involved in the grievance, appeal, or expedited appeal of the final disposition of the beneficiary's grievance, appeal, or expedited appeal.
- 5) No provision of a Contractor's beneficiary problem resolution processes shall be construed to replace or conflict with the duties of county patients' rights advocates as described in Welfare and Institutions Code Section 5520.

B. Grievance Process

Consistent with 42 C.F.R. §§ 438.400, 438.402, 438.406 and Cal. Code Regs., tit. 9, § 1850.206, the grievance process shall, at a minimum:

- 1) Allow beneficiaries to present their grievance orally, or in writing;
- 2) Provide for a decision on the grievance and notify the affected parties within 60 calendar days of receipt of the grievance. This timeframe may be extended by up to 14 calendar days if the beneficiary requests an extension, or if the Contractor determines that there is a need for additional information and that the delay is in the beneficiary's interest. If the Contractor extends the timeframe, the Contractor shall, for any extension not requested by the beneficiary, notify the beneficiary of the extension and the reasons for the extension in writing. The written notice of the extension is not a Notice of Action as defined in Cal. Code Regs., tit. 9, § 1810.230.5; and
- 3) Provide for notification of the beneficiary or the appropriate representative in writing of the grievance decision and documentation of the notification or efforts to notify the beneficiary, if he or she could not be contacted.

C. Appeal Process

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- 1) Consistent 42 C.F.R. § 438.408 and Cal. Code Regs., tit. 9, §§ 1850.205 and 1850.207, the appeal process shall, at a minimum:
 - a) Allow a beneficiary to file an appeal orally or in writing pursuant to 42 C.F.R. § 438.402(b)(3)(ii);
 - b) Pursuant to 42 C.F.R. § 438.402(b)(3)(ii), require a beneficiary who makes an oral appeal, that is not an expedited appeal, to subsequently submit the appeal in writing. The date the Contractor receives the oral appeal shall be considered the filing date for the purpose of applying the appeal timeframes;
 - c) Pursuant to 42 C.F.R. § 438.408(b) and (c), provide for a decision on the appeal and notify the affected parties within 45 calendar days of receipt of the appeal. This timeframe may be extended by up to 14 calendar days, if the beneficiary requests an extension or the Contractor determines that there is a need for additional information and that the delay is in the beneficiary's interest. If the Contractor extends the timeframes, the Contractor shall, for any extension not requested by the beneficiary, notify the beneficiary of the extension and the reasons for the extension in writing. The written notice of the extension is not a Notice of Action as defined in Cal. Code Regs., tit. 9, §1810.230.5;
 - d) Consistent with 42 C.F.R. § 438.408(f), inform the beneficiary of his or her right to request a fair hearing after the appeal process of the Contractor has been exhausted;
 - e) Allow the beneficiary to have a reasonable opportunity to present evidence and arguments of fact or law, in person and/or in writing, in accordance with the beneficiary's election;
 - f) Allow the beneficiary and/or his or her representative to examine the beneficiary's case file, including medical records, and any other documents or records considered before and during the appeal process, provided that there is no disclosure of the protected health information of any individual other than the beneficiary; and
 - g) Allow the beneficiary and/or his or her representative, or the legal representative of a deceased beneficiary's estate, to be included as parties to the appeal.
- 2) Pursuant to 42 C.F.R. § 438.408(e), the Contractor shall notify the beneficiary, and/or his or her representative, of the resolution of the appeal in writing. The notice shall contain:
 - a) The results of the appeal resolution process;

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- b) The date that the appeal decision was made;
- c) If the appeal is not resolved wholly in favor of the beneficiary, the notice shall also contain:
 - i. Information regarding the beneficiary's right to a fair hearing and the procedure for filing for a fair hearing, if the beneficiary has not already requested a fair hearing on the issue involved in the appeal; and
 - ii. Information on the beneficiary's right to continue to receive benefits while the fair hearing is pending and how to request the continuation of benefits.
- 3) If the decision of the appeal resolution process reverses a decision to deny, limit or delay services, the Contractor shall promptly provide or arrange and pay for the services at issue in the appeal.

D. Expedited Appeal Process

"Expedited Appeal" means an appeal, as defined in Cal. Code Regs., tit. 9, §§ 1810.203.5 and 1810.216.2, to be used when the mental health plan determines or the beneficiary and/or the beneficiary's provider certifies that following the timeframe for an appeal as established in Cal. Code Regs., tit. 9, § 1850.207, would seriously jeopardize the beneficiary's life, health, or ability to attain, maintain, or regain maximum function. In addition to meeting the requirements of 42 C.F.R. § 438.410(a), and Cal. Code Regs., tit. 9, §§ 1850.205, 1850.207(a), (d), (e), (f), (g), and (i), and 1850.208, the expedited appeal process shall, at a minimum:

- 1) Be used when the Contractor determines or the beneficiary and/or the beneficiary's provider certifies that taking the time for a standard appeal resolution could seriously jeopardize the beneficiary's life, health or ability to attain, maintain, or regain maximum function.
- 2) Pursuant to 42 C.F.R. § 438.402(b)(3), allow the beneficiary to file the request for an expedited appeal orally without requiring that the request be followed by a written appeal.
- 3) Pursuant to 42 C.F.R. § 438.410(b), ensure that punitive action is not taken against a beneficiary or a provider because they request an expedited appeal or support a beneficiary's request for an expedited appeal.
- 4) Pursuant to 42 C.F.R. § 438.408(b)(3), resolve an expedited appeal and notify the affected parties in writing, no later than three working days after

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the Contractor receives the appeal. Pursuant to 42 C.F.R. § 438.408(c) this timeframe may be extended by up to 14 calendar days if the beneficiary requests an extension, or the Contractor determines that there is need for additional information and that the delay is in the beneficiary's interest. If the Contractor extends the timeframes, the Contractor shall, for any extension not requested by the beneficiary, notify the beneficiary of the extension and the reasons for the extension in writing. The written notice of the extension is not a Notice of Action as defined in Cal. Code Regs., tit. 9, § 1810.230.5.

- 5) Pursuant to 42 C.F.R. § 438.408(d)(2), provide a beneficiary with a written notice of the expedited appeal disposition and make reasonable efforts to provide oral notice to the beneficiary and/or his or her representative. The written notice shall meet the requirements of Section 1850.207(h).
- 6) Pursuant to 42 C.F.R. § 438.410(c), if the Contractor denies a request for expedited appeal resolution:
 - a) Transfer the expedited appeal request to the timeframe for appeal resolution as required by Cal. Code Regs., tit. 9, § 1850.207(c).
 - b) Make reasonable efforts to give the beneficiary and his or her representative prompt oral notice of the denial of the request for an expedited appeal and provide written notice within two calendar days of the date of the denial. The written notice of the denial of the request for an expedited appeal is not a Notice of Action as defined in Cal. Code Regs., tit. 9, § 1810.230.5.

E. Beneficiary Problem Resolution Processes Established by Providers

Nothing in the Cal. Code Regs., tit. 9, §§ 1850.205, 1850.206, 1850.207, 1850.208 and 1850.209 precludes a provider other than the Contractor from establishing beneficiary problem resolution processes for beneficiaries receiving services from that provider. When such processes exist, beneficiaries shall not be required by the Contractor to use or exhaust the provider's processes prior to using the Contractor's beneficiary problem resolution process, unless the following conditions have been met:

- 1) The Contractor delegates the responsibility for the beneficiary problem resolution process to the provider in writing, specifically outlining the provider's responsibility under the delegation;
- 2) The provider's beneficiary problem resolution process fully complies with this Section of the contract, the relevant provisions of 42 C.F.R. Subpart F, Cal. Code Regs., tit. 9, § 1850.205 and § 1850.209, and depending on processes delegated, Cal. Code Regs., tit. 9, §§ 1850.206, 1850.207, and/or 1850.208; and

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- 3) No beneficiary is prevented from accessing the grievance, appeal or expedited appeal processes solely on the grounds that the grievance, appeal or expedited appeal was incorrectly filed with either the Contractor or the provider.

F. Fair Hearing

"Fair Hearing" means the State hearing provided to beneficiaries pursuant to Title 22, CCR, Sections 50951 and 50953 and Cal. Code Regs., tit. 9, § 1810.216.6. Fair hearings must comply with 42 C.F.R. §§ 431.220(a)(5), 438.408(f), 438.414, and 438.10(g)(1).

- 1) If a beneficiary requests a State Fair Hearing, the Department (not the Contractor) shall grant the request. The right to a State Fair Hearing, how to obtain a hearing, and representation rules at a hearing must be explained to the beneficiary and provider by Contractor in its notice of decision or notice of action. Beneficiaries and providers shall also be informed of the following:
 - a) A beneficiary may request a State Fair Hearing.
 - b) The provider may request a State Fair Hearing only if the Department permits the provider to act as the beneficiary's authorized representative.
 - c) The Department must permit the beneficiary to request a State Fair Hearing within a reasonable time period specified by the Department, not in excess of 90 days, from whichever of the following dates applies:
 - i. From the date indicated on the Contractor's notice of action, if the Department does not require exhaustion of the Contractor-level appeal procedures and the beneficiary appeals directly to the Department for a fair hearing.
 - ii. From the date indicated on the Contractor's notice of resolution, if the Department requires exhaustion of Contractor-level appeals.
- 2) The Department must reach its decisions within the specified timeframes:
 - a) Standard resolution: within 90 days of the date the beneficiary filed the appeal with the Contractor, if the beneficiary filed initially with the Contractor (excluding the days the beneficiary took to subsequently file for a State Fair Hearing), or the date the beneficiary filed for direct access to a State Fair Hearing.

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- b) Expedited resolution (if the appeal was heard first through the Contractor appeal process): within 3 working days from agency receipt of a hearing request for a denial of a service that:
 - i. Meets the criteria for an expedited appeal process but was not resolved using the Contractor's expedited appeal timeframes, or
 - ii. Was resolved wholly or partially adversely to the beneficiary using the Contractor's expedited appeal timeframes.
- 3) Pursuant to 42 C.F.R. § 438.408(f)(2), the parties to the State Fair Hearing include the Contractor as well as the beneficiary and his or her representative or the representative of a deceased beneficiary's estate.

G. Expedited Fair Hearing

"Expedited Fair Hearing" means a fair hearing, as described in 42 C.F.R. § 438.410(a), and Cal. Code Regs., tit. 9, §§ 1810.216.4 and 1810.216.6, to be used when the Contractor determines, or the beneficiary and/or the beneficiary's provider certifies, that the following the timeframe for a fair hearing as established in 42 C.F.R. § 431.244(f)(1) would seriously jeopardize the beneficiary's life, health, or ability to attain, maintain, or regain maximum function.

H. Continuation of Services Pending Fair Hearing Decision

- 1) A beneficiary receiving specialty mental health services shall have a right to file for continuation of specialty mental health services pending the outcome of a fair hearing pursuant to Cal. Code Regs., tit. 22., § 51014.2, and Cal. Code Regs., tit. 9, § 1850.215.
- 2) The Contractor shall continue to provide specialty mental health services pending the outcome of a fair hearing in accordance with Cal. Code Regs., tit. 22, § 51014.2. If the Contractor allows providers to deliver specialty mental health services for a set number of visits or a set duration of time without prior authorization, the Contractor shall continue to provide specialty mental health services pending the outcome of a fair hearing when the Contractor denies a payment authorization request from a provider requesting continuation of services beyond the number or duration permitted without prior authorization and the beneficiary files a timely request for fair hearing.
- 3) Before requesting a state fair hearing, the beneficiary must exhaust the Contractor's problem resolution processes as described in Cal. Code Regs., tit. 9, § 1850.205.

I. Provision of Notice of Action

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- 1) Consistent with 42 C.F.R. § 438.400(b) and Cal. Code Regs., tit. 9, § 1810.200 "Action," in the case of an MHP, means:
 - a) A denial, modification, reduction or termination of a provider's request for MHP payment authorization of a specialty mental health service covered by the MHP.
 - b) A determination by the MHP or its providers that the medical necessity criteria in Cal. Code Regs., tit. 9, §§ 1830.205(b)(1), (b)(2), (b)(3)(C), or 1830.210(a) have not been met and the beneficiary is not entitled to any specialty mental health services from the MHP.
 - c) A failure by the MHP to provide a specialty mental health service covered by the MHP within the timeframe for delivery of the service established by the MHP; or
 - d) A failure by the MHP to act within the timeframes for resolution of grievances, appeals, or the expedited appeals.
- 2) Pursuant to 42 C.F.R. § 438.404(a), the Notice of Action (NOA) shall be in writing and shall meet the language and format requirements of 42 C.F.R. § 438.10(c) and (d) to ensure ease of understanding. The Notice of Action shall contain the items specified in 42 C.F.R. § 438.404 (b) and Cal. Code Regs., tit. 9, § 1850.210.
- 3) The Contractor shall provide a beneficiary with an NOA when the Contractor denies or modifies a Contractor payment authorization request from a provider for a specialty mental health service to the beneficiary.
- 4) When the denial or modification involves a request from a provider for continued Contractor payment authorization of a specialty mental health service or when the Contractor reduces or terminates a previously approved Contractor payment authorization, notice shall be provided in accordance with Cal. Code. Regs., tit. 22, § 51014.1.
- 5) A NOA is not required when a denial is a non-binding verbal description to a provider of the specialty mental health services that may be approved by the Contractor.
- 6) A NOA is not required when the Contractor modifies the duration of any approved specialty mental health services as long as the Contractor provides an opportunity for the provider to request Contractor payment authorization of additional specialty mental health services before the end of the approved duration of services.
- 7) Except as provided in subsection 6 below, a NOA is not required when the denial or modification is a denial or modification of a request for Contractor

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payment authorization for a specialty mental health service that has already been provided to the beneficiary.

- 8) A NOA is required when the Contractor denies or modifies a payment authorization request from a provider for a specialty mental health service that has already been provided to the beneficiary when the denial or modification is a result of post-service, prepayment determination by the Contractor that the service was not medically necessary or otherwise was not a service covered by the Contractor.
- 9) The Contractor shall deny the Contractor payment authorization request and provide the beneficiary with a NOA when the Contractor does not have sufficient information to approve or modify, or deny on the merits, a Contractor payment authorization request from a provider within the timeframes required by Cal. Code Regs., tit. 9, §§ 1820.220 or 1830.215.
- 10) The Contractor shall provide the beneficiary with a NOA if the Contractor fails to notify the affected parties of a grievance decision within 60 calendar days, of an appeal decision within 45 days, or of an expedited appeal decision within three working days. If the timeframe for a grievance, appeal or expedited appeal decision is extended pursuant to Cal. Code Regs., tit. 9, §§ 1850.206, 1850.207 or 1850.208 and the Contractor failed to notify the affected parties of its decision within the extension period, the Contractor shall provide the beneficiary with a NOA.
- 11) The Contractor shall provide a beneficiary with a NOA if the Contractor fails to provide a specialty mental health service covered by the Contractor within the timeframe for delivery of the service established by the Contractor.
- 12) The Contractor shall comply with the requirements of 42 C.F.R. § 438.404(b), and Cal. Code Regs., tit. 9, § 1850.210, regarding the content of NOAs and with the following timeframes for mailing of NOAs:
 - a) The written NOA issued pursuant to (1) or (6) above shall be deposited with the United States Postal Service in time for pick-up no later than the third working day after the action. A Notice of Action issued pursuant to (2) above shall be provided in accordance with the applicable timelines set forth in Cal. Code Regs., tit. 22, § 51014.1.
 - b) The written NOA issued pursuant to (7) or (8) above shall be deposited with the United States Postal Service in time for pick-up on the date that the applicable timeframe expires.
 - c) The written NOA issued pursuant to subsection (9) above shall be deposited with the United States Postal Service in time for pick up on the date that the timeframe for delivery of the service established by the Contractor expires.

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- 13) When a NOA would not be required as described in (3)-(5) above, the Contractor shall provide a beneficiary with an NOA when the Contractor or its providers determine that the medical necessity criteria in Cal. Code Regs., tit. 9, §§1830.205(b)(1),(b)(2),(b)(3)(C), or 1830.210(a) have not been met and that the beneficiary is not entitled to any specialty mental health services from the Contractor. A NOA is not required when a provider, including the Contractor acting as a provider, determines that a beneficiary does not qualify for a specific service covered by the Contractor, including but not limited to: crisis intervention, crisis stabilization, crisis residential treatment services, psychiatric inpatient hospital services, or any specialty mental health service to treat a beneficiary's urgent condition, provided that the determination does not apply to any other specialty mental health service covered by the Contractor. The NOA shall, at the election of the Contractor, be hand-delivered to the beneficiary on the date of the action or mailed to the beneficiary in accordance with Cal. Code Regs., tit. 9, § 1850.210(f)(1), and shall specify the information contained in Cal. Code Regs., tit. 9, § 1850.212(b).
- 14) For the purpose of this Section, each reference to a Medi-Cal managed care plan in Cal. Code Regs., tit. 22, § 51014.1, shall mean the Contractor.
- 15) For the purposes of this Section, "medical service", as used in Cal. Code Regs., tit. 22, § 51014.1, shall mean specialty mental health services that are subject to prior authorization by a Contractor pursuant to Cal. Code Regs., tit. 9, §§ 1820.100 and 1830.100.
- 16) The Contractor shall retain copies of all Notices of Action issued to beneficiaries under this Section in a centralized file accessible to the Department.

J. Contents of a NOA

- 1) The NOA issued pursuant to Section I of this contract and 42 C.F.R. § 438.404(b) and Cal. Code Regs., tit. 9, §§1850.210(a)-(e) and 1850.212, shall contain the following information:
 - a) The action taken by the Contractor;
 - b) The reason for the action taken;
 - c) Citations to the regulations or Contractor payment authorization procedures supporting the action;
 - d) The beneficiary's right to file an appeal or expedited appeal with the Contractor;

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- e) The circumstances under which an expedited resolution is available, and how to request it; and,
 - f) Information about the beneficiary's right to request a fair hearing or an expedited fair hearing, including:
 - i. The method by which a hearing may be obtained;
 - ii. A statement that the beneficiary may be either self-represented, or represented by an authorized third party such as legal counsel, a relative, friend or any other person;
 - iii. An explanation of the circumstances under which a specialty mental health service will be continued if a fair hearing is requested; and,
 - iv. The time limits for requesting a fair hearing or an expedited fair hearing.
- 2) A NOA issued pursuant to Cal. Code Regs., tit. 9, §§ 1850.210(g) and 1850.212(b), relating to denials for lack of medical necessity, shall specify the following:
- a) The reason that the medical necessity criteria were not met, including a citation to the applicable regulation;
 - b) The beneficiary's options for obtaining care from sources other than the Contractor, if applicable;
 - c) The beneficiary's right to request a second opinion on the determination;
 - d) The beneficiary's right to file an appeal or expedited appeal with the Contractor; and,
 - e) The beneficiary's right to request a fair hearing or an expedited fair hearing, including:
 - i. The method by which a hearing may be obtained;
 - ii. The time period in which the request for a fair hearing or expedited fair hearing must be filed; and,
 - iii. That the beneficiary may be either self-represented, or represented by an authorized third party such as legal counsel, a relative, friend or any other person;

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- K. Consistent with 42 C.F.R. § 438.404(c), the Contractor shall give notice at least 10 days before the effective date of action when the action is a termination, suspension, or reduction of previously authorized Medi-Cal-covered services, except:
- 1) The period of advanced notice is shortened to 5 days if probable beneficiary fraud has been verified;
 - 2) The action shall be effective on the date of the Notice under the following circumstances:
 - a) The death of a beneficiary;
 - b) Receipt of a signed written beneficiary statement requesting service termination or giving information requiring termination or reduction of services (provided the beneficiary understands that this will be the result of supplying that information);
 - c) The beneficiary's admission to an institution where he or she is ineligible for further services;
 - d) The beneficiary's whereabouts are unknown and mail directed to him or her has no forwarding address;
 - e) Notice that the beneficiary has been accepted for Medicaid services by another local jurisdiction;
 - f) A change in the beneficiary's physician's prescription for the level of medical care; or
 - g) Endangerment of the safety or health of individuals in the facility; improvement in the resident's health sufficient to allow a more immediate transfer or discharge; urgent medical needs that require a resident's immediate transfer or discharge; or notice that a resident has not resided in the nursing facility for 30 days (but only in adverse actions based on NF transfers).
 - 3) If payment is denied, the Contractor shall give notice to the beneficiary on the date of the action.
- L. Pursuant to Cal. Code Regs., tit. 9, § 1810.375(a), the Contractor is required to submit to the Department a report that summarizes beneficiary grievances, appeals and expedited appeals filed from July 1 of the previous year through June 30 of that year by October 1 of each year. The report shall include the total number of grievances, appeals and expedited appeals by type, by subject areas established by the Department, and by disposition.

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16. Subcontracts

- A. This provision is a supplement to provision number five (Subcontract Requirements) in Exhibit D(F) which is attached hereto as part of this agreement. As allowed by provision five in Exhibit D(F), the Department hereby, and until further notice, waives its right to prior approval of subcontracts and approval of existing subcontracts.
- B. No subcontract terminates the legal responsibility of the Contractor to the Department to assure that all activities under this contract are carried out.
- C. All subcontracts shall be in writing.
- D. All inpatient subcontracts shall require that subcontractors maintain necessary licensing and certification.
- E. Each subcontract shall contain:
 - 1) Full disclosure of the method and amount of compensation or other consideration to be received by the subcontractor from the Contractor.
 - 2) Specification of the services to be provided.
 - 3) Specification that the subcontract shall be governed by, and construed in accordance with, all laws and regulations, and all contractual obligations of the Contractor under this contract.
 - 4) Specification of the term of the subcontract including the beginning and ending dates, as well as methods for amendment, termination and, if applicable, extension of the subcontract. The subcontract must be subject to full or partial termination if the subcontractor's performance is inadequate.
 - 5) The nondiscrimination and compliance provisions of this contract as described in Exhibit E, Section 3.
 - 6) Subcontractor's agreement to submit reports as required by the Contractor.
 - 7) The subcontractor's agreement to make all of its books and records pertaining to the goods and services furnished under the terms of the subcontract available for inspection, examination or copying by the Department, HHS, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized representatives. The subcontract shall also state that inspection shall occur at all reasonable times, at the subcontractor's place of business, or at such other mutually agreeable location in California, in a form maintained in accordance with the general standards applicable to such book or record

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keeping, for a term of at least five years from the close of the state fiscal year in which the subcontract was in effect.

- 8) Subcontractor's agreement that assignment or delegation of the subcontract shall be void unless prior written approval is obtained from the Contractor.
- 9) Subcontractor's agreement to hold harmless both the State and beneficiaries in the event the Contractor cannot or does not pay for services performed by the subcontractor pursuant to the subcontract.
- 10) The subcontractor's agreement to comply with the Contractor's policies and procedures on advance directives and the Contractor's obligations for Physician Incentive Plans, if applicable based on the services provided under the subcontract.
- 11) A requirement that the Contractor monitors the subcontractor and the subcontractor's obligation to provide a corrective action plan if deficiencies are identified.

17. Delegation

Unless specifically prohibited by this contract or by federal or state law, Contractor may delegate duties and obligations of Contractor under this contract to subcontracting entities if Contractor determines that the subcontracting entities selected are able to perform the delegated duties in an adequate manner in compliance with the requirements of this contract. In addition, Contractor may accept the certification of a provider by another Mental Health Plan, or by the Department, in order to meet the Contractor's obligations under Section 4. However, regardless of any such delegation to a subcontracting entity or acceptance of a certification by another MHP, Contractor shall remain ultimately responsible for adequate performance of all duties and obligations under this contract.

18. Program Integrity Requirements

- A. The Contractor shall comply with the provisions of 42 C.F.R. §§ 438.604, 438.606 and 438.608, regarding the certification of accurate data submitted by the Contractor to the State and which require the Contractor to have administrative or management arrangements or procedures designed to guard against fraud and abuse.
- B. The Contractor shall comply with the provisions of 42 C.F.R. § 438.610, which relate to prohibited affiliations with individuals or affiliates of individuals debarred, suspended, or otherwise excluded from participating in procurement activities under the Federal Acquisition Regulation or from participating in non-procurement activities under regulations issued under Executive Order No. 12549 or under the guidelines implementing Executive Order No. 12549.

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- C. Pursuant to 42 C.F.R. § 438.214(d), the Contractor shall not employ or contract with providers or other individuals and entities excluded from participation in federal health care programs (as defined in section 1128B(f) of the Social Security Act) under either Section 1128, 1128A, or 1156 of the Social Security Act. FFP is not available for amounts expended for providers excluded by Medicare, Medicaid, or the State Children's Health Insurance Program, except for emergency services.
- D. The Contractor shall periodically check the Office of the Inspector General's List of Excluded Individuals/Entities and the Medi-Cal Suspended and Ineligible Provider List (S & I List) to prevent employment of, or payments to, any individuals or entities on those lists, and per DMH Letter Number 10-05, this must be satisfied prior to Medi-Cal certification of any individual or organizational provider. If the provider is listed on either the Office of the Inspector General's List of Excluded Individuals/Entities or the Medi-Cal S & I List, the Contractor shall not certify or pay any provider with Medi-Cal funds, and any such inappropriate payments or overpayments may be subject to recovery and/or be the basis for other sanctions by the appropriate authority.
- E. Report. Pursuant to 42 C.F.R. § 455.1(a)(1), the Contractor must report fraud and abuse information to the Department.
 - 1) If the Contractor identifies an issue or receives notification of a complaint concerning an incident of possible potential fraud or abuse, the Contractor shall conduct an internal investigation to determine the validity of the issue/complaint, regarding potential fraud and/or abuse, and develop and implement corrective action, if needed. The majority of potential fraud or abuse issues are expected to be resolved at the Contractor level.
 - 2) If the Contractor's internal investigation concludes that fraud or abuse has occurred or is suspected, the issue is egregious, or beyond the scope of the Contractor's ability to pursue, the Contractor shall report the issue to the Department for review and disposition.
 - 3) The Department is to be notified if the Contractor discontinues a provider contract or disciplines a provider due to a fraud or abuse issue.
- F. Service Verification. To assist the Department in meeting its obligation under 42 C.F.R. § 455.1(a)(2), the Contractor shall have a way to verify whether services were actually furnished to beneficiaries.

19. Disclosures

- A. Disclosure of 5% or More Ownership Interest:
 - 1) Pursuant to 42 C.F.R. § 455.104, Medicaid managed care entities must disclose certain information related to persons who have an ownership or control interest in the managed care entity, as defined in 42 C.F.R. §

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455.101. The parties hereby acknowledge that because the Contractor is a political subdivision of the State of California, there are no persons who meet such definition and therefore there is no information to disclose.

- a) In the event that, in the future, any person obtains an interest of 5% or more of any mortgage, deed of trust, note or other obligation secured by Contractor, and that interest equals at least 5% of Contractor's property or assets, then the Contractor will make the disclosures set forth in i and subsection 2(a).
 - i. The Contractor will disclose the name, address, date of birth, and Social Security Number of any managing employee, as that term is defined in 42 C.F.R. § 455.101. For purposes of this disclosure, Contractor may use the business address for any member of its Board of Supervisors.
 - ii. The Contractor shall provide any such disclosure upon execution of this contract, upon its extension or renewal, and within 35 days after any change in Contractor ownership or upon request of the Department.
- 2) The Contractor shall ensure that its subcontractors/network providers submit the disclosures below to the Contractor regarding the network providers' (disclosing entities') ownership and control. The Contractor's network providers must be required to submit updated disclosures to the Contractor upon submitting the provider application, before entering into or renewing the network providers' contracts, and within 35 days after any change in the subcontractor/network provider's ownership or upon request of the Department.
 - a) Disclosures to be Provided:
 - i. The name and address of any person (individual or corporation) with an ownership or control interest in the network provider. The address for corporate entities shall include, as applicable, a primary business address, every business location, and a P.O. Box address;
 - ii. Date of birth and Social Security Number (in the case of an individual);
 - iii. Other tax identification number (in the case of a corporation with an ownership or control interest in the managed care entity or in any subcontractor in which the managed care entity has a 5 percent or more interest);

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- iv. Whether the person (individual or corporation) with an ownership or control interest in the Contractor's network provider is related to another person with ownership or control interest in the same or any other network provider of the Contractor as a spouse, parent, child, or sibling; or whether the person (individual or corporation) with an ownership or control interest in any subcontractor in which the managed care entity has a 5 percent or more interest is related to another person with ownership or control interest in the managed care entity as a spouse, parent, child, or sibling;
 - v. The name of any other disclosing entity in which the Contractor or subcontracting network provider has an ownership or control interest; and
 - vi. The name, address, date of birth, and Social Security Number of any managing employee of the managed care entity.
 - 3) All disclosures must be provided to the Medicaid agency.
- B. Disclosures Related to Business Transactions – Contractor must submit disclosures and updated disclosures to the Department or HHS including information regarding certain business transactions within 35 days, upon request.
 - 1) The following information must be disclosed:
 - a) The ownership of any subcontractor with whom the Contractor has had business transactions totaling more than \$25,000 during the 12-month period ending on the date of the request; and,
 - b) Any significant business transactions between the Contractor and any wholly owned supplier, or between the Contractor and any subcontractor, during the 5-year period ending on the date of the request.
 - 2) Contractor must obligate Network Providers to submit the same disclosures regarding network providers' as noted under subsection 1(a) and (b) within 35 days upon request.
- C. Disclosures Related to Persons Convicted of Crimes – Contractor shall submit the following disclosures to the Department regarding the Contractor's management:
 - 1) The identity of any person who is a managing employee of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a)(1), (2).)

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- 2) The identity of any person who is an agent of the Contractor who has been convicted of a crime related to federal health care programs. (42 C.F.R. § 455.106(a)(1), (2).) For this purpose, the word "agent" has the meaning described in 42 C.F.R. § 455.101.
- 3) The Contractor shall supply the disclosures before entering into the contract and at any time upon the Department's request.
- 4) Network providers should submit the same disclosures to the Contractor regarding the network providers' owners, persons with controlling interest, agents, and managing employees' criminal convictions. Network providers shall supply the disclosures before entering into the contract and at any time upon the Department's request.

20. Medi-Cal Eligibility Data System (MEDS) and MEDS Monthly Extract File (MMEF) Access

The Contractor shall enter into a Medi-Cal Privacy and Security Agreement (PSA) with the Department prior to obtaining access to MEDS and the MEDS monthly extract file (MMEF). The Contractor agrees to comply with the provisions as specified in the PSA. The County Mental Health Director or his or her authorized designee shall certify annually that Contractor is in compliance with the PSA agreement. Failure to comply with the terms of the agreement will result in the termination of access to MEDS and MMEF.

21. Additional Requirements

- A. Advance Directives. The Contractor shall maintain written policies and procedures on advance directives in compliance with the requirements of 42 C.F.R. §§ 422.128 and 438.6(i)(1), (3) and (4). Any written materials prepared by the Contractor for beneficiaries shall be updated to reflect changes in state laws governing advance directives as soon as possible, but no later than 90 days after the effective date of the change. For purposes of this contract, advance directives means a written instruction, such as a living will or durable power of attorney for health care, recognized under State law, relating to the provision of health care when the individual is incapacitated as defined in 42 C.F.R. § 489.100.
- B. Physician Incentive Plans. The Contractor shall obtain approval from the Department prior to implementing a Physician Incentive Plan. A Physician Incentive Plan is any compensation arrangement to pay a physician or physician group that may directly or indirectly have the effect of reducing or limiting the services provided to any beneficiary. For purposes of this definition, the words shall have the meanings set forth in 42 C.F.R. § 422.208(a). The Department shall approve the Contractor's request only if the proposed Physician Incentive Plan complies with all applicable federal and state regulations.
 - 1) Pursuant to 42 C.F.R. § 438.6(h), the Contractor shall comply with the requirements set forth in 42 CFR §§ 422.208 and 422.210.

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- 2) The Contractor may operate a Physician Incentive Plan only if no specific payment can be made directly or indirectly under a Physician Incentive Plan to a physician or physician group as an inducement to reduce or limit medically necessary services furnished to an individual.
 - 3) When seeking approval from the Department for its Physician Incentive Plan, the Contractor will disclose the following:
 - a) Whether services not furnished by physician/group are covered by incentive plan. No further disclosure required if the Physician Incentive Plan does not cover services not furnished by physician/group;
 - b) The type of incentive arrangement, e.g. withhold, bonus, capitation;
 - c) The percentage of funds withheld or bonus provided (if applicable);
 - d) The size of the panel, and, if patients are pooled, the approved method used for pooling; and,
 - e) If the physician/group is at substantial financial risk, proof that the physician/group has adequate stop loss coverage, including amount and type of stop-loss.
 - 4) If a physician or physician group is put at substantial financial risk for services not provided by the physician/group, the Contractor shall ensure adequate stop-loss protection to individual physicians and conduct annual beneficiary surveys.
 - 5) The Contractor shall provide information on its Physician Incentive Plan to any Medicaid beneficiary upon request (this includes the right to adequate and timely information on a Physician Incentive Plan).
 - 6) If required to conduct beneficiary survey, survey results shall be disclosed to the Department and, upon request, to beneficiaries, per the Social Security Act (SSA) 1903(m)(2)(A)(x); 42 C.F.R. §§ 422.208; 422.210; 438.6(h); and SSA 1876(i)(8)(A)(ii)(II).
- C. Sharing of Information with Beneficiaries. The Contractor shall not prohibit nor otherwise restrict, a licensed, waived, or registered professional, as defined in Cal. Code Regs., tit. 9, §§ 1810.223 and 1810.254, who is acting within the lawful scope of practice (pursuant to 42 C.F.R. § 438.102(a)(1)), from advising or advocating on behalf of a beneficiary for whom the provider is providing mental health services for any of the following:

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- 1) The beneficiary's health status, medical care, or treatment options, including any alternative treatment that may be self-administered;
 - 2) Information on the beneficiary needs in order to decide among all relevant treatment options;
 - 3) The risks, benefits, and consequences of treatment not receiving treatment ; and
 - 4) The beneficiary's right to participate in decisions regarding his or her health care, including the right to refuse treatment, and to express preferences about future treatment decisions.
- D. Limitation on Services for Moral or Religious Grounds. Pursuant to 42 C.F.R. § 438.102(a)(2), the Contractor shall not be required to provide, reimburse for, or provide coverage of, a counseling or referral service if the Contractor objects to the service on moral or religious grounds.
- E. If the Contractor elects not to provide, reimburse for, or provide coverage of, a counseling or referral service because of an objection on moral or religious grounds, it must furnish information about the services it does not cover as follows:
- a) To the Department:
 - a) Prior to executing this contract;
 - b) Whenever it adopts the policy during the term of the contract;
 - b) Consistent with the provisions of 42 C.F.R. § 438.10:
 - a) To potential beneficiaries before and during enrollment; and
 - b) To beneficiaries within 90 days after adopting the policy with respect to any particular service.
- F. Beneficiary Liability for Payment. Pursuant to Cal. Code Regs., tit. 9, § 1810.365, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not submit a claim to, or demand or otherwise collect reimbursement from, the beneficiary or persons acting on behalf of the beneficiary for any specialty mental health or related administrative services provided under this contract, except to collect other health insurance coverage, share of cost, and co-payments. Consistent with 42 C.F.R. § 438.106, the Contractor or an affiliate, vendor, contractor, or sub-subcontractor of the Contractor shall not hold beneficiaries liable for debts in the event that the Contractor becomes insolvent, for costs of covered services for which the State does not pay the Contractor, for costs of covered services for which the State or the Contractor does not pay the

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Contractor's providers, for costs of covered services provided under a contract, referral or other arrangement rather than from the Contractor, or for payment of subsequent screening and treatment needed to diagnose the specific condition of or stabilize a beneficiary with an emergency psychiatric condition.

- G. Health Information System. Pursuant to 42 C.F.R. § 438.242 and consistent with Cal. Code Regs., tit. 9, § 1810.376, the Contractor shall maintain a health information system that collects, analyzes, integrates, and reports data. The system shall provide information on areas including, but not limited to, utilization, grievances, and appeals.
- 1) The Contractor's health information system shall, at a minimum:
 - a) Collect data on beneficiary and provider characteristics as specified by the Department, and on services furnished to beneficiaries as specified by the Department;
 - b) Ensure that data received from providers is accurate and complete by:
 - i. Verifying the accuracy and timeliness of reported data;
 - ii. Screening the data for completeness, logic, and consistency; and
 - iii. Collecting service information in standardized formats to the extent feasible and appropriate.
 - c) Make all collected data available to the Department and, upon request, to CMS.
 - 2) Consistent with Cal. Code Regs., tit. 9, § 1810.376(c), the Contractor's health information system is not required to collect and analyze all elements in electronic formats.
- H. Cost Sharing. Pursuant to 42 C.F.R. § 438.108, any cost sharing imposed on Medicaid beneficiaries shall be in accordance with 42 C.F.R. §§ 447.50 through 447.60.

22. Quality Management (QM) Program

- A. The Contractor's Quality Management (QM) Program shall improve Contractor's established outcomes through structural and operational processes and activities that are consistent with current standards of practice.
- B. The Contractor shall have a written description of the QM Program which clearly defines the QM Program's structure and elements, assigns responsibility to

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appropriate individuals, and adopts or establishes quantitative measures to assess performance and to identify and prioritize area(s) for improvement. The QM Program shall be evaluated annually and updated as necessary per Cal. Code Regs., tit. 9, § 1810.440(a)(6) and 42 C.F.R. § 438.240(e).

- C. The QM Program shall conduct performance monitoring activities throughout the Contractor's operations. These activities shall include, but not be limited to, beneficiary and system outcomes, utilization management, utilization review, provider appeals, credentialing and monitoring, and resolution of beneficiary grievances.
- D. The Contractor shall ensure continuity and coordination of care with physical health care providers. The Contractor shall coordinate with other human services agencies used by its beneficiaries. The Contractor shall assess the effectiveness of any MOU with a physical health care plan.
- E. The Contractor shall have mechanisms to detect both underutilization of services and overutilization of services, as required by 42 C.F.R. § 438.240(b)(3).
- F. The Contractor shall implement mechanisms to assess beneficiary/family satisfaction. The Contractor shall assess beneficiary/family satisfaction by:
 - 1) Surveying beneficiary/family satisfaction with the Contractor's services at least annually;
 - 2) Evaluating beneficiary grievances, appeals and fair hearings at least annually; and
 - 3) Evaluating requests to change persons providing services at least annually.
 - 4) The Contractor shall inform providers of the results of beneficiary/family satisfaction activities.
- G. The Contractor shall implement mechanisms to monitor the safety and effectiveness of medication practices. The monitoring mechanism shall be under the supervision of a person licensed to prescribe or dispense prescription drugs. Monitoring shall occur at least annually.
- H. The Contractor shall implement mechanisms to address meaningful clinical issues affecting beneficiaries system-wide.
- I. The Contractor shall implement mechanisms to monitor appropriate and timely intervention of occurrences that raise quality of care concerns. The Contractor shall take appropriate follow-up action when such an occurrence is identified. The results of the intervention shall be evaluated by the Contractor at least annually.

Exhibit A Attachment I
Service, Administrative and Operational Requirements

- J. The Contractor shall have a QM Work Plan covering the current contract cycle with documented annual evaluations and documented revisions as needed. The QM Work Plan shall include:
- 1) Evidence of the monitoring activities including, but not limited to, review of beneficiary grievances, appeals, expedited appeals, fair hearings, expedited fair hearings, provider appeals, and clinical records review as required by Cal. Code Regs., tit. 9, § 1810.440(a)(5) and 42 C.F.R. § 438.416;
 - 2) Evidence that QM activities, including performance improvement projects, have contributed to meaningful improvement in clinical care and beneficiary service;
 - 3) A description of completed and in-process QM activities, including performance improvement projects. The description shall include:
 - a) Monitoring efforts for previously identified issues, including tracking issues over time;
 - b) Objectives, scope, and planned QM activities for each year; and,
 - c) Targeted areas of improvement or change in service delivery or program design.
 - 4) A description of mechanisms the Contractor has implemented to assess the accessibility of services within its service delivery area. This shall include goals for responsiveness for the Contractor's 24-hour toll-free telephone number, timeliness for scheduling of routine appointments, timeliness of services for urgent conditions, and access to after-hours care; and
 - 5) Evidence of compliance with the requirements for cultural competence and linguistic competence specified in Cal. Code Regs., tit. 9, § 1810.410.

23. Quality Improvement (QI) Program

- A. The Contractor's QI program shall monitor the Contractor's service delivery system with the aim of improving the processes of providing care and better meeting the needs of its beneficiaries.
- B. The Contractor shall establish a QI Committee to review the quality of specialty mental health services provided to beneficiaries. The QI Committee shall recommend policy decisions; review and evaluate the results of QI activities, including performance improvement projects; institute needed QI actions; ensure follow-up of QI processes; and document QI Committee meeting minutes regarding decisions and actions taken.

Exhibit A Attachment I
Service, Administrative and Operational Requirements

- C. The QI Program shall be accountable to the Contractor's Director as described in Cal. Code Regs., tit. 9, § 1810.440(a)(1).
- D. Operation of the QI program shall include substantial involvement by a licensed mental health staff person, as described in Cal. Code. Regs., tit. 9, § 1810.440(a)(4).
- E. The QI Program shall include active participation by the Contractor's practitioners and providers, as well as beneficiaries and family members, in the planning, design and execution of the QI Program, as described in Cal. Code. Regs., tit. 9, § 1810.440(a)(2)(A-C).
- F. The Contractor shall maintain a minimum of two active Performance Improvement Projects (PIPs) that meet the criteria in 42 C.F.R. § 438.240(b)(1) and (d). Performance improvement projects shall focus on a clinical area, as well as one non-clinical area.
- G. QI activities shall include:
 - 1) Collecting and analyzing data to measure against the goals, or prioritized areas of improvement that have been identified;
 - 2) Identifying opportunities for improvement and deciding which opportunities to pursue;
 - 3) Identifying relevant committees internal or external to the Contractor to ensure appropriate exchange of information with the QI Committee;
 - 4) Obtaining input from providers, beneficiaries and family members in identifying barriers to delivery of clinical care and administrative services;
 - 5) Designing and implementing interventions for improving performance;
 - 6) Measuring effectiveness of the interventions;
 - 7) Incorporating successful interventions into the Contractor's operations as appropriate; and
 - 8) Reviewing beneficiary grievances, appeals, expedited appeals, fair hearings, expedited fair hearings, provider appeals, and clinical records review as required by Cal. Code Regs., tit. 9, § 1810.440(a)(5).

24. Utilization Management (UM) Program

- A. The Utilization Management Program shall be responsible for assuring that beneficiaries have appropriate access to specialty mental health services as required in Cal. Code Regs., tit. 9, § 1810.440(b)(1)-(3).

Exhibit A Attachment I
Service, Administrative and Operational Requirements

- B. The Utilization Management (UM) Program shall evaluate medical necessity, appropriateness and efficiency of services provided to Medi-Cal beneficiaries prospectively or retrospectively.
- C. The Contractor shall implement mechanisms to assess the capacity of service delivery for its beneficiaries. This includes monitoring the number, type, and geographic distribution of mental health services within the Contractor's delivery system.
- D. The Contractor shall implement mechanisms to assess the accessibility of services within its service delivery area. This shall include the assessment of responsiveness of the Contractor's 24 hour toll-free telephone number, timeliness of scheduling routine appointments, timeliness of services for urgent conditions, and access to after-hours care.

25. Practice Guidelines

The Contractor shall comply with 42 C.F.R. § 438.236(b) and Cal. Code Regs., tit. 9, § 1810.326 which requires the adoption of practice guidelines.

- A. Such guideline shall meet the following requirements:
 - 1) They are based on valid and reliable clinical evidence or a consensus of health care professionals in the applicable field;
 - 2) They consider the needs of the beneficiaries;
 - 3) They are adopted in consultation with contracting health care professionals; and
 - 4) They are reviewed and updated periodically as appropriate.
- B. Contractor shall disseminate the guidelines to all affected providers and, upon request, to beneficiaries and potential beneficiaries.
- C. Contractor shall take steps to assure that decisions for utilization management, beneficiary education, coverage of services, and any other areas to which the guidelines apply shall be consistent with the guidelines.

Exhibit A Attachment II
Definitions

The definitions contained in Cal. Code Regs., tit. 9, § 1810.100 et. seq. shall apply in this contract.

- A. "Beneficiary" means a Medi-Cal recipient who is currently receiving services from the Contractor.
- B. "Contractor" means El Dorado County Health and Human Services Agency.
- C. "Covered Specialty Mental Health Services" means mental health services, medication support services, day treatment intensive, day rehabilitation, crisis intervention, crisis stabilization, adult residential treatment services, crisis residential services, psychiatric health facility services, and targeted case management as described in California's Medicaid State Plan and as defined in Cal. Code Regs., tit. 9, § 1810.247, to the extent described in Cal. Code Regs., tit. 9, § 1810.345. Covered Specialty Mental Health Services also include psychiatric inpatient hospital services as defined in Cal. Code Regs., tit. 9, § 1810.238, and Early and Periodic Screening, Diagnosis and Treatment (EPSDT) Supplemental Specialty Mental Health Services as defined in Cal. Code Regs., tit. 9, § 1810.215. Psychiatric nursing facility services are not included.
- D. "Department" means the California Department of Health Care Services (DHCS).
- E. "Director" means the Director of DHCS.
- F. "HHS" means the United States Department of Health and Human Service
- G. "PIHP" means Prepaid Inpatient Health Plan as described in 42 C.F.R. § 438.2. A PIHP is an entity that:
 - 1) Provides medical services to beneficiaries under contract with the Department of Health Care Services, and on the basis of prepaid capitation payments, or other payment arrangement that does not use state plan rates;
 - 2) Provides, arranges for, or otherwise has responsibility for the provision of any inpatient hospital or institutional services for its beneficiaries; and
 - 3) Does not have a comprehensive risk contract.
- H. "Subcontract" means an agreement entered into by the Contractor with any of the following:
 - 1) A provider of specialty mental health services who agrees to furnish covered services to beneficiaries.

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Exhibit A Attachment II

Definitions

- 2) Any other organization or person who agrees to perform any administrative function or service for the Contractor specifically related to securing or fulfilling the Contractor's obligations to the Department under the terms of this contract.

Exhibit B

Budget Detail and Payment Provisions

1. Payment Provisions

This program may be funded using one or more of the following funding sources: funds distributed to the counties from the Mental Health Subaccount, the Mental Health Equity Subaccount, and the Vehicle License Collection Account of the Local Revenue Fund, funds from the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011, funds from the Mental Health Services Fund, and any other funds from which the Controller makes distributions to the counties in compliance with applicable statute and regulations including Welf. & Inst. Code §§ 5891, 5892 and 14705(a)(2). These funding sources may be used by the Contractor to pay for services and then certify as public expenditures in order to be reimbursed federal funds.

2. Budget Contingency Clause

This provision is a supplement to provision number nine (Federal Contract Funds) in Exhibit D(F) which is attached hereto as part of this agreement.

A. Federal Budget

If federal funding for FFP reimbursement in relation to this contract is eliminated or substantially reduced by Congress, the Department and the Contractor each shall have the option either to cancel this contract or to propose a contract amendment to address changes to the program required as a result of the elimination or reduction of federal funding.

B. Delayed Federal Funding

Contractor and Department agree to consult with each other on interim measures for program operation that may be required to maintain adequate services to beneficiaries in the event that there is likely to be a delay in the availability of federal funding.

3. Federal Financial Participation

Nothing in this contract shall limit the Contractor's ability to submit claims for appropriate FFP reimbursement based on actual, total fund expenditures for any covered services or quality assurance, utilization review, Medi-Cal Administrative Activities and/or administrative costs. In accordance the Welf. & Inst. Code § 14705(c), the Contractor shall ensure compliance with all requirements necessary for Medi-Cal reimbursement for these services and activities. Claims for FFP reimbursement shall be submitted by the Contractor to the Department for adjudication throughout the fiscal year. Pursuant to the Welf. & Inst. Code § 14705(d), the Contractor shall certify to the state that it has incurred public expenditures prior to requesting the reimbursement of federal funds.

Exhibit B
Budget Detail and Payment Provisions

4. Cost Reporting

- A. The Contractor shall submit a fiscal year-end cost report no later than December 31 following the close of each fiscal year unless that date is extended by the Department, in accordance with the Welf. & Inst. Code § 14705(c), and/or guidelines established by the Department. Data submitted shall be full and complete and the cost report shall be certified by the Contractor's Mental Health Director and one of the following: (1) the Contractor's chief financial officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to, the Contractor's chief financial officer, or (3) the Contractor's auditor-controller, or equivalent. The cost report shall include both Contractor's costs and the cost of its subcontractors, if any. The cost report shall be completed in accordance with instructions contained in the Department's Cost and Financial Reporting System Instruction Manual which can be accessed through the Department's Information Technology Web Services (ITWS) for the applicable year, as well as any instructions that are incorporated by reference thereto; however, to the extent that the Contractor disagrees with such instructions, it may raise that disagreement in writing with the Department at the time the cost report is filed, and shall have the right to appeal such disagreement pursuant to procedures developed under the Welf. & Inst. Code § 14171.
- B. In accordance with Welf. & Inst. Code § 5655, the Department shall provide technical assistance and consultation to the Contractor regarding the preparation and submission of timely cost reports. If the Contractor does not submit the cost report by the reporting deadline, including any extension period granted by the Department, the Department, in accordance with Welf. & Inst. Code § 14712(e), may withhold payments of additional funds until the cost report that is due has been submitted.
- C. Upon receipt of an amended cost report, which includes reconciled units of service, and a certification statement that has been signed by the Contractor's Mental Health Director and one of the following: 1) the Contractor's Chief Financial Officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to the Contractor's Chief Financial Officer, or (3) the county's auditor controller, or equivalent, the Department shall preliminarily settle the cost report. After completing its preliminary settlement, the Department shall so notify the Contractor if additional FFP is due to the Contractor. The Department shall submit a claim to the federal government for the related FFP within 30 days contingent upon sufficient budget authority. If funds are due to the State, the Department shall invoice the Contractor and the Contractor shall return the overpayment to the Department.

5. Audits and Recovery of Overpayments

- A. Pursuant to Welf. & Inst. Code § 14707, in the case of federal audit exceptions, the Department will follow federal audit appeal processes unless the Department, in

Exhibit B

Budget Detail and Payment Provisions

consultation with the California Mental Health Director's Association, determines that those appeals are not cost beneficial.

- 1) Whenever there is a final federal audit exception against the State resulting from a claim for federal funds for an expenditure by individual counties that is not federally allowable, the department may offset federal reimbursement and request the Controller's office to offset the distribution of funds to the Contractor from the Mental Health Subaccount, the Mental Health Equity Subaccount and the Vehicle License Collection Account of the Local Revenue Fund; funds from the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011; and any other mental health realignment funds from which the Controller makes distributions to the counties by the amount of the exception. The Department shall provide evidence to the Controller that the county had been notified of the amount of the audit exception no less than 30 days before the offset is to occur.
 - 2) The Department will involve the Contractor in developing responses to any draft federal audit reports that directly impact the county.
- B. Pursuant to Welf. & Inst. Code § 14718(b)(2), the Department may offset the amount of any federal disallowance, audit exception, or overpayment against subsequent claims from the Contractor.
- 1) The Department may offset the amount of any state disallowance, audit exception, or overpayment for fiscal years through and including 2010-11 against subsequent claims from the Contractor.
 - 2) Offsets may be done at any time, after the department has invoiced or otherwise notified the Contractor about the audit exception, disallowance, or overpayment. The Department shall determine the amount that may be withheld from each payment to the mental health plan.
 - 3) The maximum withheld amount shall be 25 percent of each payment as long as the Department is able to comply with the federal requirements for repayment of FFP pursuant 42 United States Code (U.S.C.) §1396b(d)(2)). The Department may increase the maximum amount when necessary for compliance with federal laws and regulations.
- C. Pursuant to the Welf. & Inst. Code § 14170 , cost reports submitted to the Department are subject to audit in the manner and form prescribed by the Department. The year-end cost report shall include both Contractor's costs and the costs of its subcontractors, if any. Contractor and its subcontractors shall be subject to audits and/or reviews, including client record reviews, by the Department. In accordance with the Welf. & Inst. Code § 14170 , any audit of Contractor's cost report shall occur within three years of the date of receipt by the Department of the final cost report with signed certification by the Contractor's Mental Health Director and one of the following: (1) the Contractor's Chief

Exhibit B

Budget Detail and Payment Provisions

Financial Officer (or equivalent), (2) an individual who has delegated authority to sign for, and reports directly to the Contractor's Chief Financial Officer, or (3) the county auditor controller, or equivalent. Both signatures are required before the cost report shall be considered final. For purposes of this section, the cost report shall be considered audited once the Department has informed the Contractor of its intent to disallow costs on the cost report, or once the Department has informed the Contractor of its intent to close the audit without disallowances.

- D. If the adjustments result in the Department owing FFP to the Contractor, the Department shall submit a claim to the federal government for the related FFP within 30 days contingent upon sufficient budget authority.

6. Claims Adjudication Process

- A. In accordance with the Welf. & Inst. Code §14705(c), claims for federal funds in reimbursement for services shall comply with eligibility and service requirements under applicable federal and state law.
- B. The Contractor shall certify each claim submitted to the Department in accordance with Cal. Code Regs., tit. 9, § 1840.112 and 42 C.F.R. § 433.51, at the time the claims are submitted to the Department. The Contractor's Chief Financial Officer or his or her equivalent, or an individual with authority delegated by the county auditor-controller, shall sign the certification, declaring, under penalty of perjury, that the Contractor has incurred an expenditure to cover the services included in the claims to satisfy the requirements for FFP. The Contractor's Mental Health Director or an individual with authority delegated by the Mental Health Director shall sign the certification, declaring, under penalty of perjury that, to the best of his or her knowledge and belief, the claim is in all respects true, correct, and in accordance with the law and meets the requirements of Cal. Code Regs., tit. 9, § 1840.112(b). The Contractor shall have mechanisms that support the Mental Health Director's certification, including the certification that the services for which claims were submitted were actually provided to the beneficiary. If the Department requires additional information from the Contractor that will be used to establish Department payments to the Contractor, the Contractor shall certify that the additional information provided is in accordance with 42 C.F.R. § 438.604.
- C. Claims not meeting federal and/or state requirements shall be returned to Contractor as not approved for payment, along with a reason for denial. Claims meeting all Health Insurance Portability and Accountability Act (HIPAA) transaction requirements and any other applicable federal or state privacy laws or regulations and certified by the Contractor in accordance with Cal. Code Regs., tit. 9, § 1840.112, shall be processed for adjudication.
- D. Good cause justification for late claim submission is governed by applicable federal and state laws and regulations and is subject to approval by the Department.

Exhibit B

Budget Detail and Payment Provisions

- E. In the event that the Department or the Contractor determines that changes requiring a change in the Contractor's or Department's obligation must be made relating to either the Department's or the Contractor's claims submission and adjudication systems due to federal or state law changes or business requirements, both the Department and the Contractor agree to provide notice to the other party as soon as practicable prior to implementation. This notice shall include information and comments regarding the anticipated requirements and impacts of the projected changes. The Department and the Contractor agree to meet and discuss the design, development, and costs of the anticipated changes prior to implementation.
- F. The Contractor shall comply with Cal. Code Regs., tit. 9, § 1840.304, when submitting claims for FFP for services billed by individual or group providers. The Contractor shall submit service codes from the Health Care Procedure Coding System (HPCS) published in the most current Mental Health Medi-Cal billing manual.

7. Payment Data Certification

Contractor shall certify the data it provides to the Department to be used in determining payment of FFP to the Contractor, in accordance with 42 C.F.R. §§ 438.604 and 438.606.

8. System Changes

In the event changes in federal or state law or regulations, including court decisions and interpretations, necessitate a change in either the fiscal or program obligations or operations of the Contractor or the Department, or a change in obligation for the cost of providing covered services the Department and the Contractor agree to negotiate, pursuant to the Welf. & Inst. Code § 14714(c) regarding (a) changes required to remain in compliance with the new law or changes in existing obligations, (b) projected programmatic and fiscal impacts, (c) necessary contract amendments. To the extent that contract amendments are necessary, the parties agree to act to ensure appropriate amendments are made to accommodate any changes required by law or regulation.

9. Administrative Reimbursement

- A. The Contractor may submit claims for reimbursement of Medical Administrative Activities (MAA) pursuant to Welf. & Inst. Code § 14132.47. The Contractor shall not submit claims for MAA unless it has submitted a claiming plan to the Department which was approved by the Department and is effective during the quarter in which the costs being claimed were incurred. In addition, the Contractor shall not submit claims for reimbursements of MAA that are not consistent with the Contractor's approved MAA claiming plan. The Contractor shall not use the relative value methodology to report its MAA costs on the year-end cost report. Rather, the Contractor shall calculate and report MAA units on the cost report by multiplying the amount of time (minutes, hours, etc.) spent on MAA activities by the

El Dorado County Health and Human Services Agency

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Exhibit B

Budget Detail and Payment Provisions

salary plus benefits of the staff performing the activity and then allocating indirect administrative and other appropriately allocated costs.

- B. Pursuant to the Welf. & Inst. Code § 14711(c), administrative costs shall be claimed separately in a manner consistent with federal Medicaid requirements and the approved Medicaid state plans and waivers and shall be limited to 15 percent of the total actual cost of direct client services. The cost of performing quality assurance and utilization review activities shall be reimbursed separately and shall not be included in administrative costs.

10. Notification of Request for Contract Amendment

In addition to the provisions in Exhibit E, Additional Provisions, both parties agree to notify the other party whenever an amendment to this contract is to be requested so that informal discussion and consultation can occur prior to a formal amendment process.

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EXHIBIT C

GENERAL TERMS AND CONDITIONS

1. APPROVAL: This Agreement is of no force or effect until signed by both parties and approved by the Department of General Services, if required. Contractor may not commence performance until such approval has been obtained.
2. AMENDMENT: No amendment or variation of the terms of this Agreement shall be valid unless made in writing, signed by the parties and approved as required. No oral understanding or Agreement not incorporated in the Agreement is binding on any of the parties.
3. ASSIGNMENT: This Agreement is not assignable by the Contractor, either in whole or in part, without the consent of the State in the form of a formal written amendment.
4. AUDIT: Contractor agrees that the awarding department, the Department of General Services, the Bureau of State Audits, or their designated representative shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this Agreement. Contractor agrees to maintain such records for possible audit for a minimum of three (3) years after final payment, unless a longer period of records retention is stipulated. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (Gov. Code §8546.7, Pub. Contract Code §10115 et seq., CCR Title 2, Section 1896).
5. INDEMNIFICATION: Contractor agrees to indemnify, defend and save harmless the State, its officers, agents and employees from any and all claims and losses accruing or resulting to any and all contractors, subcontractors, suppliers, laborers, and any other person, firm or corporation furnishing or supplying work services, materials, or supplies in connection with the performance of this Agreement, and from any and all claims and losses accruing or resulting to any person, firm or corporation who may be injured or damaged by Contractor in the performance of this Agreement.
6. DISPUTES: Contractor shall continue with the responsibilities under this Agreement during any dispute.
7. TERMINATION FOR CAUSE: The State may terminate this Agreement and be relieved of any payments should the Contractor fail to perform the requirements of this Agreement at the time and in the manner herein provided. In the event of such termination the State may proceed with the work in any manner deemed proper by the State. All costs to the State shall be deducted from any sum due the Contractor under this Agreement and the balance, if any, shall be paid to the Contractor upon demand.

8. INDEPENDENT CONTRACTOR: Contractor, and the agents and employees of Contractor, in the performance of this Agreement, shall act in an independent capacity and not as officers or employees or agents of the State.

9. RECYCLING CERTIFICATION: The Contractor shall certify in writing under penalty of perjury, the minimum, if not exact, percentage of post consumer material as defined in the Public Contract Code Section 12200, in products, materials, goods, or supplies offered or sold to the State regardless of whether the product meets the requirements of Public Contract Code Section 12209. With respect to printer or duplication cartridges that comply with the requirements of Section 12156(e), the certification required by this subdivision shall specify that the cartridges so comply (Pub. Contract Code §12205).

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

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

11. CERTIFICATION CLAUSES: The CONTRACTOR CERTIFICATION CLAUSES contained in the document CCC 307 are hereby incorporated by reference and made a part of this Agreement by this reference as if attached hereto.

12. TIMELINESS: Time is of the essence in this Agreement.

13. COMPENSATION: The consideration to be paid Contractor, as provided herein, shall be in compensation for all of Contractor's expenses incurred in the performance hereof, including travel, per diem, and taxes, unless otherwise expressly so provided.

14. GOVERNING LAW: This contract is governed by and shall be interpreted in accordance with the laws of the State of California.

15. ANTITRUST CLAIMS: The Contractor by signing this agreement hereby certifies that if these services or goods are obtained by means of a competitive bid, the Contractor shall comply with the requirements of the Government Codes Sections set out below.

a. The Government Code Chapter on Antitrust claims contains the following definitions:

1) "Public purchase" means a purchase by means of competitive bids of goods, services, or materials by the State or any of its political subdivisions or public agencies on whose behalf the Attorney General may bring an action pursuant to subdivision (c) of Section 16750 of the Business and Professions Code.

2) "Public purchasing body" means the State or the subdivision or agency making a public purchase. Government Code Section 4550.

b. In submitting a bid to a public purchasing body, the bidder offers and agrees that if the bid is accepted, it will assign to the purchasing body all rights, title, and interest in and to all causes of action it may have under Section 4 of the Clayton Act (15 U.S.C. Sec. 15) or under the Cartwright Act (Chapter 2 (commencing with Section 16700) of Part 2 of Division 7 of the Business and Professions Code), arising from purchases of goods, materials, or services by the bidder for sale to the purchasing body pursuant to the bid. Such assignment shall be made and become effective at the time the purchasing body tenders final payment to the bidder. Government Code Section 4552.

c. If an awarding body or public purchasing body receives, either through judgment or settlement, a monetary recovery for a cause of action assigned under this chapter, the assignor shall be entitled to receive reimbursement for actual legal costs incurred and may, upon demand, recover from the public body any portion of the recovery, including treble damages, attributable to overcharges that were paid by the assignor but were not paid by the public body as part of the bid price, less the expenses incurred in obtaining that portion of the recovery. Government Code Section 4553.

d. Upon demand in writing by the assignor, the assignee shall, within one year from such demand, reassign the cause of action assigned under this part if the assignor has been or may have been injured by the violation of law for which the cause of action arose and (a) the assignee has not been injured thereby, or (b) the assignee declines to file a court action for the cause of action. See Government Code Section 4554.

16. CHILD SUPPORT COMPLIANCE ACT: For any Agreement in excess of \$100,000, the contractor acknowledges in accordance with Public Contract Code 7110, that:

a. The contractor recognizes the importance of child and family support obligations and shall fully comply with all applicable state and federal laws relating to child and family support enforcement, including, but not limited to, disclosure of information and compliance with earnings assignment orders, as provided in Chapter 8 (commencing with section 5200) of Part 5 of Division 9 of the Family Code; and

b. The contractor, to the best of its knowledge is fully complying with the earnings assignment orders of all employees and is providing the names of all new employees to the New Hire Registry maintained by the California Employment Development Department.

17. UNENFORCEABLE PROVISION: In the event that any provision of this Agreement is unenforceable or held to be unenforceable, then the parties agree that all other provisions of this Agreement have force and effect and shall not be affected thereby.

18. PRIORITY HIRING CONSIDERATIONS: If this Contract includes services in excess of \$200,000, the Contractor shall give priority consideration in filling vacancies in positions funded by the Contract to qualified recipients of aid under Welfare and Institutions Code Section 11200 in accordance with Pub. Contract Code §10353.

19. SMALL BUSINESS PARTICIPATION AND DVBE PARTICIPATION REPORTING REQUIREMENTS:

a. If for this Contract Contractor made a commitment to achieve small business participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) report to the awarding department the actual percentage of small business participation that was achieved. (Govt. Code § 14841.)

b. If for this Contract Contractor made a commitment to achieve disabled veteran business enterprise (DVBE) participation, then Contractor must within 60 days of receiving final payment under this Contract (or within such other time period as may be specified elsewhere in this Contract) certify in a report to the awarding department: (1) the total amount the prime Contractor received under the Contract; (2) the name and address of the DVBE(s) that participated in the performance of the Contract; (3) the amount each DVBE received from the prime Contractor; (4) that all payments under the Contract have been made to the DVBE; and (5) the actual percentage of DVBE participation that was achieved. A person or entity that knowingly provides false information shall be subject to a civil penalty for each violation. (Mil. & Vets. Code § 999.5(d); Govt. Code § 14841.)

20. LOSS LEADER:

If this contract involves the furnishing of equipment, materials, or supplies then the following statement is incorporated: It is unlawful for any person engaged in business within this state to sell or use any article or product as a "loss leader" as defined in Section 17030 of the Business and Professions Code. (PCC 10344(e).)

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Special Terms and Conditions*(For federally funded service contracts or agreements and grant agreements)*

The use of headings or titles throughout this exhibit is for convenience only and shall not be used to interpret or to govern the meaning of any specific term or condition.

The terms "contract", "Contractor" and "Subcontractor" shall also mean, "agreement", "grant", "grant agreement", "Grantee" and "Subgrantee" respectively.

The terms "California Department of Health Care Services", "California Department of Health Services", "Department of Health Care Services", "Department of Health Services", "CDHCS", "DHCS", "CDHS", and "DHS" shall all have the same meaning and refer to the California State agency that is a party to this Agreement.

This exhibit contains provisions that require strict adherence to various contracting laws and policies. Some provisions herein are conditional and only apply if specified conditions exist (i.e., agreement total exceeds a certain amount; agreement is federally funded, etc.). The provisions herein apply to this Agreement unless the provisions are removed by reference on the face of this Agreement, the provisions are superseded by an alternate provision appearing elsewhere in this Agreement, or the applicable conditions do not exist.

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1. Federal Equal Opportunity Requirements

(Applicable to all federally funded agreements entered into by the Department of Health Care Services)

- a. The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. The Contractor will take affirmative action to ensure that qualified applicants are employed, and that employees are treated during employment, without regard to their race, color, religion, sex, national origin, physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and career development opportunities and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the Federal Government or DHCS, setting forth the provisions of the Equal Opportunity clause, Section 503 of the Rehabilitation Act of 1973 and the affirmative action clause required by the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212). Such notices shall state the Contractor's obligation under the law to take affirmative action to employ and advance in employment qualified applicants without discrimination based on their race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era and the rights of applicants and employees.
- b. The Contractor will, in all solicitations or advancements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, national origin physical or mental handicap, disability, age or status as a disabled veteran or veteran of the Vietnam era.
- c. The Contractor will send to each labor union or representative of workers with which it has a collective bargaining agreement or other contract or understanding a notice, to be provided by the Federal Government or the State, advising the labor union or workers' representative of the Contractor's commitments under the provisions herein and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- d. The Contractor will comply with all provisions of and furnish all information and reports required by Section 503 of the Rehabilitation Act of 1973, as amended, the Vietnam Era Veterans' Readjustment Assistance Act of 1974 (38 U.S.C. 4212) and of the Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and of the rules, regulations, and relevant orders of the Secretary of Labor.
- e. The Contractor will furnish all information and reports required by Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," and the Rehabilitation Act of 1973, and by the rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to its books, records, and accounts by the State and its designated representatives and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.
- f. In the event of the Contractor's noncompliance with the requirements of the provisions herein or with any federal rules, regulations, or orders which are referenced herein, this Agreement may be cancelled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further federal and state contracts in accordance with procedures authorized in Federal Executive Order No. 11246 as amended and such other sanctions may be imposed and remedies invoked as provided in Federal Executive Order No. 11246 as amended, including by Executive Order 11375, 'Amending Executive Order 11246 Relating to Equal Employment Opportunity,' and as supplemented by regulation at 41 CFR part 60, "Office of the Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.

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

2. Travel and Per Diem Reimbursement

(Applicable if travel and/or per diem expenses are reimbursed with agreement funds.)

Reimbursement for travel and per diem expenses from DHCS under this Agreement shall, unless otherwise specified in this Agreement, be at the rates currently in effect, as established by the California Department of Personnel Administration (DPA), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the DPA rates change during the term of the Agreement, the new rates shall apply upon their effective date and no amendment to this Agreement shall be necessary. Exceptions to DPA rates may be approved by DHCS upon the submission of a statement by the Contractor indicating that such rates are not available to the Contractor. No travel outside the State of California shall be reimbursed without prior authorization from DHCS. Verbal authorization should be confirmed in writing. Written authorization may be in a form including fax or email confirmation.

3. Procurement Rules

(Applicable to agreements in which equipment/property, commodities and/or supplies are furnished by DHCS or expenses for said items are reimbursed by DHCS with state or federal funds provided under the Agreement.)

a. Equipment/Property definitions

Wherever the term equipment and/or property is used, the following definitions shall apply:

- (1) **Major equipment/property:** A tangible or intangible item having a base unit cost of **\$5,000 or more** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement. Software and videos are examples of intangible items that meet this definition.
 - (2) **Minor equipment/property:** A tangible item having a base unit cost of **less than \$5,000** with a life expectancy of one (1) year or more and is either furnished by DHCS or the cost is reimbursed through this Agreement.
- b. **Government and public entities** (including state colleges/universities and auxiliary organizations), whether acting as a contractor and/or subcontractor, may secure all commodities, supplies, equipment and services related to such purchases that are required in performance of this Agreement. Said procurements are subject to Paragraphs d through h of Provision 3. Paragraph c of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are nonprofit organizations or commercial businesses.
- c. **Nonprofit organizations and commercial businesses**, whether acting as a contractor and/or subcontractor, may secure commodities, supplies, equipment/property and services related to such purchases for performance under this Agreement.

- (1) Equipment/property purchases shall not exceed \$50,000 annually.

To secure equipment/property above the annual maximum limit of \$50,000, the Contractor shall

make arrangements through the appropriate DHCS Program Contract Manager, to have all remaining equipment/property purchased through DHCS' Purchasing Unit. The cost of equipment/property purchased by or through DHCS shall be deducted from the funds available in this Agreement. Contractor shall submit to the DHCS Program Contract Manager a list of equipment/property specifications for those items that the State must procure. DHCS may pay the vendor directly for such arranged equipment/property purchases and title to the equipment/property will remain with DHCS. The equipment/property will be delivered to the Contractor's address, as stated on the face of the Agreement, unless the Contractor notifies the DHCS Program Contract Manager, in writing, of an alternate delivery address.

- (2) All equipment/property purchases are subject to Paragraphs d through h of Provision 3. Paragraph b of Provision 3 shall also apply, if equipment/property purchases are delegated to subcontractors that are either a government or public entity.
- (3) Nonprofit organizations and commercial businesses shall use a procurement system that meets the following standards:
 - (a) Maintain a code or standard of conduct that shall govern the performance of its officers, employees, or agents engaged in awarding procurement contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a procurement, or bid contract in which, to his or her knowledge, he or she has a financial interest.
 - (b) Procurements shall be conducted in a manner that provides, to the maximum extent practical, open, and free competition.
 - (c) Procurements shall be conducted in a manner that provides for all of the following:
 - [1] Avoid purchasing unnecessary or duplicate items.
 - [2] Equipment/property solicitations shall be based upon a clear and accurate description of the technical requirements of the goods to be procured.
 - [3] Take positive steps to utilize small and veteran owned businesses.
- d. Unless waived or otherwise stipulated in writing by DHCS, prior written authorization from the appropriate DHCS Program Contract Manager will be required before the Contractor will be reimbursed for any purchase of \$5,000 or more for commodities, supplies, equipment/property, and services related to such purchases. The Contractor must provide in its request for authorization all particulars necessary, as specified by DHCS, for evaluating the necessity or desirability of incurring such costs. The term "purchase" excludes the purchase of services from a subcontractor and public utility services at rates established for uniform applicability to the general public.
- e. In special circumstances, determined by DHCS (e.g., when DHCS has a need to monitor certain purchases, etc.), DHCS may require prior written authorization and/or the submission of paid vendor receipts for any purchase, regardless of dollar amount. DHCS reserves the right to either deny claims for reimbursement or to request repayment for any Contractor and/or subcontractor purchase that DHCS determines to be unnecessary in carrying out performance under this Agreement.
- f. The Contractor and/or subcontractor must maintain a copy or narrative description of the procurement system, guidelines, rules, or regulations that will be used to make purchases under this Agreement. The State reserves the right to request a copy of these documents and to inspect the purchasing practices of the Contractor and/or subcontractor at any time.
- g. For all purchases, the Contractor and/or subcontractor must maintain copies of all paid vendor invoices, documents, bids and other information used in vendor selection, for inspection or audit. Justifications supporting the absence of bidding (i.e., sole source purchases) shall also be maintained on file by the Contractor and/or subcontractor for inspection or audit.
- h. DHCS may, with cause (e.g., with reasonable suspicion of unnecessary purchases or use of inappropriate purchase practices, etc.), withhold, cancel, modify, or retract the delegated purchase authority granted under Paragraphs b and/or c of Provision 3 by giving the Contractor no less than 30 calendar days written notice.

4. Equipment/Property Ownership / Inventory / Disposition

(Applicable to agreements in which equipment/property is furnished by DHCS and/or when said items are purchased or reimbursed by DHCS with state or federal funds provided under the Agreement.)

- a. Wherever the term equipment and/or property is used in Provision 4, the definitions in Paragraph a of Provision 3 shall apply.

Unless otherwise stipulated in this Agreement, all equipment and/or property that is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement shall be considered state equipment and the property of DHCS.

- (1) **Reporting of Equipment/Property Receipt** - DHCS requires the reporting, tagging and annual inventorying of all equipment and/or property that is furnished by DHCS or purchased/reimbursed with funds provided through this Agreement.

Upon receipt of equipment and/or property, the Contractor shall report the receipt to the DHCS Program Contract Manager. To report the receipt of said items and to receive property tags, Contractor shall use a form or format designated by DHCS' Asset Management Unit. If the appropriate form (i.e., Contractor Equipment Purchased with DHCS Funds) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager.

- (2) **Annual Equipment/Property Inventory** - If the Contractor enters into an agreement with a term of more than twelve months, the Contractor shall submit an annual inventory of state equipment and/or property to the DHCS Program Contract Manager using a form or format designated by DHCS' Asset Management Unit. If an inventory report form (i.e., Inventory/Disposition of DHCS-Funded Equipment) does not accompany this Agreement, Contractor shall request a copy from the DHCS Program Contract Manager. Contractor shall:

- (a) Include in the inventory report, equipment and/or property in the Contractor's possession and/or in the possession of a subcontractor (including independent consultants).
 - (b) Submit the inventory report to DHCS according to the instructions appearing on the inventory form or issued by the DHCS Program Contract Manager.
 - (c) Contact the DHCS Program Contract Manager to learn how to remove, trade-in, sell, transfer or survey off, from the inventory report, expired equipment and/or property that is no longer wanted, usable or has passed its life expectancy. Instructions will be supplied by either the DHCS Program Contract Manager or DHCS' Asset Management Unit.
- b. Title to state equipment and/or property shall not be affected by its incorporation or attachment to any property not owned by the State.
- c. Unless otherwise stipulated, DHCS shall be under no obligation to pay the cost of restoration, or rehabilitation of the Contractor's and/or Subcontractor's facility which may be affected by the removal of any state equipment and/or property.
- d. The Contractor and/or Subcontractor shall maintain and administer a sound business program for ensuring the proper use, maintenance, repair, protection, insurance and preservation of state equipment and/or property.
- (1) In administering this provision, DHCS may require the Contractor and/or Subcontractor to repair or replace, to DHCS' satisfaction, any damaged, lost or stolen state equipment and/or property. In the event of state equipment and/or miscellaneous property theft, Contractor and/or Subcontractor shall immediately file a theft report with the appropriate police agency or the California Highway Patrol and Contractor shall promptly submit one copy of the theft report to the DHCS Program Contract Manager.
- e. Unless otherwise stipulated by the Program funding this Agreement, equipment and/or property purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall only be used for performance of this Agreement or another DHCS agreement.

- f. Within sixty (60) calendar days prior to the termination or end of this Agreement, the Contractor shall provide a final inventory report of equipment and/or property to the DHCS Program Contract Manager and shall, at that time, query DHCS as to the requirements, including the manner and method, of returning state equipment and/or property to DHCS. Final disposition of equipment and/or property shall be at DHCS expense and according to DHCS instructions. Equipment and/or property disposition instructions shall be issued by DHCS immediately after receipt of the final inventory report. At the termination or conclusion of this Agreement, DHCS may at its discretion, authorize the continued use of state equipment and/or property for performance of work under a different DHCS agreement.

g. **Motor Vehicles**

(Applicable only if motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under this Agreement.)

- (1) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, within thirty (30) calendar days prior to the termination or end of this Agreement, the Contractor and/or Subcontractor shall return such vehicles to DHCS and shall deliver all necessary documents of title or registration to enable the proper transfer of a marketable title to DHCS.
- (2) If motor vehicles are purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the State of California shall be the legal owner of said motor vehicles and the Contractor shall be the registered owner. The Contractor and/or a subcontractor may only use said vehicles for performance and under the terms of this Agreement.
- (3) The Contractor and/or Subcontractor agree that all operators of motor vehicles, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, shall hold a valid State of California driver's license. In the event that ten or more passengers are to be transported in any one vehicle, the operator shall also hold a State of California Class B driver's license.
- (4) If any motor vehicle is purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, the Contractor and/or Subcontractor, as applicable, shall provide, maintain, and certify that, at a minimum, the following type and amount of automobile liability insurance is in effect during the term of this Agreement or any extension period during which any vehicle remains in the Contractor's and/or Subcontractor's possession:

Automobile Liability Insurance

- (a) The Contractor, by signing this Agreement, hereby certifies that it possesses or will obtain automobile liability insurance in the amount of \$1,000,000 per occurrence for bodily injury and property damage combined. Said insurance must be obtained and made effective upon the delivery date of any motor vehicle, purchased/reimbursed with agreement funds or furnished by DHCS under the terms of this Agreement, to the Contractor and/or Subcontractor.
- (b) The Contractor and/or Subcontractor shall, as soon as practical, furnish a copy of the certificate of insurance to the DHCS Program Contract Manager. The certificate of insurance shall identify the DHCS contract or agreement number for which the insurance applies.
- (c) The Contractor and/or Subcontractor agree that bodily injury and property damage liability insurance, as required herein, shall remain in effect at all times during the term of this Agreement or until such time as the motor vehicle is returned to DHCS.
- (d) The Contractor and/or Subcontractor agree to provide, at least thirty (30) days prior to the expiration date of said insurance coverage, a copy of a new certificate of insurance evidencing continued coverage, as indicated herein, for not less than the remainder of the term of this Agreement, the term of any extension or continuation thereof, or for a period of not less than one (1) year.
- (e) The Contractor and/or Subcontractor, if not a self-insured government and/or public entity, must provide evidence, that any required certificates of insurance contain the following provisions:

- [1] The insurer will not cancel the insured's coverage without giving thirty (30) calendar days prior written notice to the State (California Department of Health Care Services).
 - [2] The State of California, its officers, agents, employees, and servants are included as additional insureds, but only with respect to work performed for the State under this Agreement and any extension or continuation of this Agreement.
 - [3] The insurance carrier shall notify the California Department of Health Care Services (DHCS), in writing, of the Contractor's failure to pay premiums; its cancellation of such policies; or any other substantial change, including, but not limited to, the status, coverage, or scope of the required insurance. Such notices shall contain a reference to each agreement number for which the insurance was obtained.
- (f) The Contractor and/or Subcontractor is hereby advised that copies of certificates of insurance may be subject to review and approval by the Department of General Services (DGS), Office of Risk and Insurance Management. The Contractor shall be notified by DHCS, in writing, if this provision is applicable to this Agreement. If DGS approval of the certificate of insurance is required, the Contractor agrees that no work or services shall be performed prior to obtaining said approval.
 - (g) In the event the Contractor and/or Subcontractor fails to keep insurance coverage, as required herein, in effect at all times during vehicle possession, DHCS may, in addition to any other remedies it may have, terminate this Agreement upon the occurrence of such event.

5. Subcontract Requirements

(Applicable to agreements under which services are to be performed by subcontractors including independent consultants.)

- a. Prior written authorization will be required before the Contractor enters into or is reimbursed for any subcontract for services costing \$5,000 or more. Except as indicated in Paragraph a(3) herein, when securing subcontracts for services exceeding \$5,000, the Contractor shall obtain at least three bids or justify a sole source award.
 - (1) The Contractor must provide in its request for authorization, all information necessary for evaluating the necessity or desirability of incurring such cost.
 - (2) DHCS may identify the information needed to fulfill this requirement.
 - (3) Subcontracts performed by the following entities or for the service types listed below are exempt from the bidding and sole source justification requirements:
 - (a) A local governmental entity or the federal government,
 - (b) A State college or State university from any State,
 - (c) A Joint Powers Authority,
 - (d) An auxiliary organization of a California State University or a California community college,
 - (e) A foundation organized to support the Board of Governors of the California Community Colleges,
 - (f) An auxiliary organization of the Student Aid Commission established under Education Code § 69522,
 - (g) Firms or individuals proposed for use and approved by DHCS' funding Program via acceptance of an application or proposal for funding or pre/post contract award negotiations,
 - (h) Entities and/or service types identified as exempt from advertising and competitive bidding in State Contracting Manual Chapter 5 Section 5.80 Subsection B.3. View this publication at the following Internet address: <http://www.dgs.ca.gov/ols/Resources/StateContractManual.aspx>.
- b. DHCS reserves the right to approve or disapprove the selection of subcontractors and with advance written notice, require the substitution of subcontractors and require the Contractor to terminate subcontracts entered into in support of this Agreement.

- (1) Upon receipt of a written notice from DHCS requiring the substitution and/or termination of a subcontract, the Contractor shall take steps to ensure the completion of any work in progress and select a replacement, if applicable, within 30 calendar days, unless a longer period is agreed to by DHCS.
- c. Actual subcontracts (i.e., written agreement between the Contractor and a subcontractor) of \$5,000 or more are subject to the prior review and written approval of DHCS. DHCS may, at its discretion, elect to waive this right. All such waivers shall be confirmed in writing by DHCS.
 - d. Contractor shall maintain a copy of each subcontract entered into in support of this Agreement and shall, upon request by DHCS, make copies available for approval, inspection, or audit.
 - e. DHCS assumes no responsibility for the payment of subcontractors used in the performance of this Agreement. Contractor accepts sole responsibility for the payment of subcontractors used in the performance of this Agreement.
 - f. The Contractor is responsible for all performance requirements under this Agreement even though performance may be carried out through a subcontract.
 - g. The Contractor shall ensure that all subcontracts for services include provision(s) requiring compliance with applicable terms and conditions specified in this Agreement.
 - h. The Contractor agrees to include the following clause, relevant to record retention, in all subcontracts for services:

"(Subcontractor Name) agrees to maintain and preserve, until three years after termination of (Agreement Number) and final payment from DHCS to the Contractor, to permit DHCS or any duly authorized representative, to have access to, examine or audit any pertinent books, documents, papers and records related to this subcontract and to allow interviews of any employees who might reasonably have information related to such records."
 - i. Unless otherwise stipulated in writing by DHCS, the Contractor shall be the subcontractor's sole point of contact for all matters related to performance and payment under this Agreement.
 - j. Contractor shall, as applicable, advise all subcontractors of their obligations pursuant to the following numbered provisions of this Exhibit: 1, 2, 3, 4, 5, 6, 7, 8, 10, 11, 12, 13, 14, 17, 19, 20, 24, 32 and/or other numbered provisions herein that are deemed applicable.

6. Income Restrictions

Unless otherwise stipulated in this Agreement, the Contractor agrees that any refunds, rebates, credits, or other amounts (including any interest thereon) accruing to or received by the Contractor under this Agreement shall be paid by the Contractor to DHCS, to the extent that they are properly allocable to costs for which the Contractor has been reimbursed by DHCS under this Agreement.

7. Audit and Record Retention

(Applicable to agreements in excess of \$10,000.)

- a. The Contractor and/or Subcontractor shall maintain books, records, documents, and other evidence, accounting procedures and practices, sufficient to properly reflect 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. The foregoing constitutes "records" for the purpose of this provision.
- b. The Contractor's and/or subcontractor's facility or office or such part thereof as may be engaged in the performance of this Agreement and his/her records shall be subject at all reasonable times to inspection, audit, and reproduction.
- c. Contractor agrees that DHCS, the Department of General Services, the Bureau of State Audits, or their designated representatives including the Comptroller General of the United States shall have the right to review and to copy any records and supporting documentation pertaining to the performance of this

Agreement. Contractor agrees to allow the auditor(s) access to such records during normal business hours and to allow interviews of any employees who might reasonably have information related to such records. Further, the Contractor agrees to include a similar right of the State to audit records and interview staff in any subcontract related to performance of this Agreement. (GC 8546.7, CCR Title 2, Section 1896).

- d. The Contractor and/or Subcontractor shall preserve and make available his/her records (1) for a period of three years from the date of final payment under this Agreement, and (2) for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (1) or (2) below.
 - (1) If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of three years from the date of any resulting final settlement.
 - (2) If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the three-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular three-year period, whichever is later.
- e. The Contractor and/or Subcontractor shall comply with the above requirements and be aware of the penalties for violations of fraud and for obstruction of investigation as set forth in Public Contract Code § 10115.10, if applicable.
- f. The Contractor and/or Subcontractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, the Contractor and/or Subcontractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.
- g. The Contractor shall, if applicable, comply with the Single Audit Act and the audit reporting requirements set forth in OMB Circular A-133.

8. Site Inspection

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

9. Federal Contract Funds

(Applicable only to that portion of an agreement funded in part or whole with federal funds.)

- a. It is mutually understood between the parties that this Agreement may have been written before ascertaining the availability of congressional appropriation of funds, for the mutual benefit of both parties, in order to avoid program and fiscal delays which would occur if the Agreement were executed after that determination was made.
- b. This agreement is valid and enforceable only if sufficient funds are made available to the State by the United States Government for the fiscal years covered by the term of this Agreement. In addition, this Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or any statute enacted by the Congress which may affect the provisions, terms or funding of this Agreement in any manner.

- c. It is mutually agreed that if the Congress does not appropriate sufficient funds for the program, this Agreement shall be amended to reflect any reduction in funds.
- d. DHCS has the option to invalidate or cancel the Agreement with 30-days advance written notice or to amend the Agreement to reflect any reduction in funds.

10. Intellectual Property Rights

a. Ownership

- (1) Except where DHCS has agreed in a signed writing to accept a license, DHCS shall be and remain, without additional compensation, the sole owner of any and all rights, title and interest in all Intellectual Property, from the moment of creation, whether or not jointly conceived, that are made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) For the purposes of this Agreement, Intellectual Property means recognized protectable rights and interest such as: patents, (whether or not issued) copyrights, trademarks, service marks, applications for any of the foregoing, inventions, trade secrets, trade dress, logos, insignia, color combinations, slogans, moral rights, right of publicity, author's rights, contract and licensing rights, works, mask works, industrial design rights, rights of priority, know how, design flows, methodologies, devices, business processes, developments, innovations, good will and all other legal rights protecting intangible proprietary information as may exist now and/or here after come into existence, and all renewals and extensions, regardless of whether those rights arise under the laws of the United States, or any other state, country or jurisdiction.
 - (a) For the purposes of the definition of Intellectual Property, "works" means all literary works, writings and printed matter including the medium by which they are recorded or reproduced, photographs, art work, pictorial and graphic representations and works of a similar nature, film, motion pictures, digital images, animation cells, and other audiovisual works including positives and negatives thereof, sound recordings, tapes, educational materials, interactive videos and any other materials or products created, produced, conceptualized and fixed in a tangible medium of expression. It includes preliminary and final products and any materials and information developed for the purposes of producing those final products. Works does not include articles submitted to peer review or reference journals or independent research projects.
- (3) In the performance of this Agreement, Contractor will exercise and utilize certain of its Intellectual Property in existence prior to the effective date of this Agreement. In addition, under this Agreement, Contractor may access and utilize certain of DHCS' Intellectual Property in existence prior to the effective date of this Agreement. Except as otherwise set forth herein, Contractor shall not use any of DHCS' Intellectual Property now existing or hereafter existing for any purposes without the prior written permission of DHCS. **Except as otherwise set forth herein, neither the Contractor nor DHCS shall give any ownership interest in or rights to its Intellectual Property to the other Party.** If during the term of this Agreement, Contractor accesses any third-party Intellectual Property that is licensed to DHCS, Contractor agrees to abide by all license and confidentiality restrictions applicable to DHCS in the third-party's license agreement.
- (4) Contractor agrees to cooperate with DHCS in establishing or maintaining DHCS' exclusive rights in the Intellectual Property, and in assuring DHCS' sole rights against third parties with respect to the Intellectual Property. If the Contractor enters into any agreements or subcontracts with other parties in order to perform this Agreement, Contractor shall require the terms of the Agreement(s) to include all Intellectual Property provisions. Such terms must include, but are not limited to, the subcontractor assigning and agreeing to assign to DHCS all rights, title and interest in Intellectual Property made, conceived, derived from, or reduced to practice by the subcontractor, Contractor or DHCS and which result directly or indirectly from this Agreement or any subcontract.
- (5) Contractor further agrees to assist and cooperate with DHCS in all reasonable respects, and execute all documents and, subject to reasonable availability, give testimony and take all further acts reasonably necessary to acquire, transfer, maintain, and enforce DHCS' Intellectual Property rights and interests.

b. Retained Rights / License Rights

- (1) Except for Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, Contractor shall retain title to all of its Intellectual Property to the extent such Intellectual Property is in existence prior to the effective date of this Agreement. Contractor hereby grants to DHCS, without additional compensation, a permanent, non-exclusive, royalty free, paid-up, worldwide, irrevocable, perpetual, non-terminable license to use, reproduce, manufacture, sell, offer to sell, import, export, modify, publicly and privately display/performance, distribute, and dispose Contractor's Intellectual Property with the right to sublicense through multiple layers, for any purpose whatsoever, to the extent it is incorporated in the Intellectual Property resulting from this Agreement, unless Contractor assigns all rights, title and interest in the Intellectual Property as set forth herein.
- (2) Nothing in this provision shall restrict, limit, or otherwise prevent Contractor from using any ideas, concepts, know-how, methodology or techniques related to its performance under this Agreement, provided that Contractor's use does not infringe the patent, copyright, trademark rights, license or other Intellectual Property rights of DHCS or third party, or result in a breach or default of any provisions of this Exhibit or result in a breach of any provisions of law relating to confidentiality.

c. Copyright

- (1) Contractor agrees that for purposes of copyright law, all works [as defined in Paragraph a, subparagraph (2)(a) of this provision] of authorship made by or on behalf of Contractor in connection with Contractor's performance of this Agreement shall be deemed "works made for hire". Contractor further agrees that the work of each person utilized by Contractor in connection with the performance of this Agreement will be a "work made for hire," whether that person is an employee of Contractor or that person has entered into an agreement with Contractor to perform the work. Contractor shall enter into a written agreement with any such person that: (i) all work performed for Contractor shall be deemed a "work made for hire" under the Copyright Act and (ii) that person shall assign all right, title, and interest to DHCS to any work product made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement.
- (2) All materials, including, but not limited to, visual works or text, reproduced or distributed pursuant to this Agreement that include Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement, shall include DHCS' notice of copyright, which shall read in 3mm or larger typeface: "© [Enter Current Year e.g., 2010, etc.], California Department of Health Care Services. This material may not be reproduced or disseminated without prior written permission from the California Department of Health Care Services." This notice should be placed prominently on the materials and set apart from other matter on the page where it appears. Audio productions shall contain a similar audio notice of copyright.

d. Patent Rights

With respect to inventions made by Contractor in the performance of this Agreement, which did not result from research and development specifically included in the Agreement's scope of work, Contractor hereby grants to DHCS a license as described under Section b of this provision for devices or material incorporating, or made through the use of such inventions. If such inventions result from research and development work specifically included within the Agreement's scope of work, then Contractor agrees to assign to DHCS, without additional compensation, all its right, title and interest in and to such inventions and to assist DHCS in securing United States and foreign patents with respect thereto.

e. Third-Party Intellectual Property

Except as provided herein, Contractor agrees that its performance of this Agreement shall not be dependent upon or include any Intellectual Property of Contractor or third party without first: (i) obtaining DHCS' prior written approval; and (ii) granting to or obtaining for DHCS, without additional compensation, a license, as described in Section b of this provision, for any of Contractor's or third-party's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon these terms is unattainable, and DHCS determines that the Intellectual Property should be included in or is required

for Contractor's performance of this Agreement, Contractor shall obtain a license under terms acceptable to DHCS.

f. Warranties

(1) Contractor represents and warrants that:

- (a) It is free to enter into and fully perform this Agreement.
- (b) It has secured and will secure all rights and licenses necessary for its performance of this Agreement.
- (c) Neither Contractor's performance of this Agreement, nor the exercise by either Party of the rights granted in this Agreement, nor any use, reproduction, manufacture, sale, offer to sell, import, export, modification, public and private display/performance, distribution, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by Contractor or DHCS and which result directly or indirectly from this Agreement will infringe upon or violate any Intellectual Property right, non-disclosure obligation, or other proprietary right or interest of any third-party or entity now existing under the laws of, or hereafter existing or issued by, any state, the United States, or any foreign country. There is currently no actual or threatened claim by any such third party based on an alleged violation of any such right by Contractor.
- (d) Neither Contractor's performance nor any part of its performance will violate the right of privacy of, or constitute a libel or slander against any person or entity.
- (e) It has secured and will secure all rights and licenses necessary for Intellectual Property including, but not limited to, consents, waivers or releases from all authors of music or performances used, and talent (radio, television and motion picture talent), owners of any interest in and to real estate, sites, locations, property or props that may be used or shown.
- (f) It has not granted and shall not grant to any person or entity any right that would or might derogate, encumber, or interfere with any of the rights granted to DHCS in this Agreement.
- (g) It has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.
- (h) It has no knowledge of any outstanding claims, licenses or other charges, liens, or encumbrances of any kind or nature whatsoever that could affect in any way Contractor's performance of this Agreement.

(2) DHCS MAKES NO WARRANTY THAT THE INTELLECTUAL PROPERTY RESULTING FROM THIS AGREEMENT DOES NOT INFRINGE UPON ANY PATENT, TRADEMARK, COPYRIGHT OR THE LIKE, NOW EXISTING OR SUBSEQUENTLY ISSUED.

g. Intellectual Property Indemnity

- (1) Contractor shall indemnify, defend and hold harmless DHCS and its licensees and assignees, and its officers, directors, employees, agents, representatives, successors, and users of its products, ("Indemnitees") from and against all claims, actions, damages, losses, liabilities (or actions or proceedings with respect to any thereof), whether or not rightful, arising from any and all actions or claims by any third party or expenses related thereto (including, but not limited to, all legal expenses, court costs, and attorney's fees incurred in investigating, preparing, serving as a witness in, or defending against, any such claim, action, or proceeding, commenced or threatened) to which any of the Indemnitees may be subject, whether or not Contractor is a party to any pending or threatened litigation, which arise out of or are related to (i) the incorrectness or breach of any of the representations, warranties, covenants or agreements of Contractor pertaining to Intellectual Property; or (ii) any Intellectual Property infringement, or any other type of actual or alleged infringement claim, arising out of DHCS' use, reproduction, manufacture, sale, offer to sell, distribution, import, export, modification, public and private performance/display, license, and disposition of the Intellectual Property made, conceived, derived from, or reduced to practice by

Contractor or DHCS and which result directly or indirectly from this Agreement. This indemnity obligation shall apply irrespective of whether the infringement claim is based on a patent, trademark or copyright registration that issued after the effective date of this Agreement. DHCS reserves the right to participate in and/or control, at Contractor's expense, any such infringement action brought against DHCS.

- (2) Should any Intellectual Property licensed by the Contractor to DHCS under this Agreement become the subject of an Intellectual Property infringement claim, Contractor will exercise its authority reasonably and in good faith to preserve DHCS' right to use the licensed Intellectual Property in accordance with this Agreement at no expense to DHCS. DHCS shall have the right to monitor and appear through its own counsel (at Contractor's expense) in any such claim or action. In the defense or settlement of the claim, Contractor may obtain the right for DHCS to continue using the licensed Intellectual Property; or, replace or modify the licensed Intellectual Property so that the replaced or modified Intellectual Property becomes non-infringing provided that such replacement or modification is functionally equivalent to the original licensed Intellectual Property. If such remedies are not reasonably available, DHCS shall be entitled to a refund of all monies paid under this Agreement, without restriction or limitation of any other rights and remedies available at law or in equity.
- (3) Contractor agrees that damages alone would be inadequate to compensate DHCS for breach of any term of this Intellectual Property Exhibit by Contractor. Contractor acknowledges DHCS would suffer irreparable harm in the event of such breach and agrees DHCS shall be entitled to obtain equitable relief, including without limitation an injunction, from a court of competent jurisdiction, without restriction or limitation of any other rights and remedies available at law or in equity.

h. Federal Funding

In any agreement funded in whole or in part by the federal government, DHCS may acquire and maintain the Intellectual Property rights, title, and ownership, which results directly or indirectly from the Agreement; except as provided in 37 Code of Federal Regulations part 401.14; however, the federal government shall have a non-exclusive, nontransferable, irrevocable, paid-up license throughout the world to use, duplicate, or dispose of such Intellectual Property throughout the world in any manner for governmental purposes and to have and permit others to do so.

i. Survival

The provisions set forth herein shall survive any termination or expiration of this Agreement or any project schedule.

11. Air or Water Pollution Requirements

Any federally funded agreement and/or subcontract in excess of \$100,000 must comply with the following provisions unless said agreement is exempt under 40 CFR 15.5.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act [42 U.S.C. 1857(h)], section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations (40 CFR part 15).
- b. Institutions of higher education, hospitals, nonprofit organizations and commercial businesses agree to comply with all applicable standards, orders, or requirements issued under the Clean Air Act (42 U.S.C. 7401 et seq.), as amended, and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended.

12. Prior Approval of Training Seminars, Workshops or Conferences

Contractor shall obtain prior DHCS approval of the location, costs, dates, agenda, instructors, instructional materials, and attendees at any reimbursable training seminar, workshop, or conference conducted pursuant to this Agreement and of any reimbursable publicity or educational materials to be made available for distribution. The Contractor shall acknowledge the support of the State whenever publicizing the work under this Agreement in any media. This provision does not apply to necessary staff meetings or training sessions held for the staff of the Contractor or Subcontractor to conduct routine business matters.

13. Confidentiality of Information

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

14. Documents, Publications and Written Reports

(Applicable to agreements over \$5,000 under which publications, written reports and documents are developed or produced. Government Code Section 7550.)

Any document, publication or written report (excluding progress reports, financial reports and normal contractual communications) prepared as a requirement of this Agreement shall contain, in a separate section preceding the main body of the document, the number and dollar amounts of all contracts or agreements and subcontracts relating to the preparation of such document or report, if the total cost for work by nonemployees of the State exceeds \$5,000.

15. Dispute Resolution Process

- a. A Contractor grievance exists whenever there is a dispute arising from DHCS' action in the administration of an agreement. If there is a dispute or grievance between the Contractor and DHCS, the Contractor must seek resolution using the procedure outlined below.
 - (1) The Contractor should first informally discuss the problem with the DHCS Program Contract Manager. If the problem cannot be resolved informally, the Contractor shall direct its grievance together with any evidence, in writing, to the program Branch Chief. The grievance shall state the issues in dispute, the legal authority or other basis for the Contractor's position and the remedy sought. The Branch Chief shall render a decision within ten (10) working days after receipt of the written grievance from the Contractor. The Branch Chief shall respond in writing to the Contractor indicating the decision and reasons therefore. If the Contractor disagrees with the Branch Chief's decision, the Contractor may appeal to the second level.
 - (2) When appealing to the second level, the Contractor must prepare an appeal indicating the reasons for disagreement with Branch Chief's decision. The Contractor shall include with the appeal a copy of the Contractor's original statement of dispute along with any supporting evidence and a copy of the Branch Chief's decision. The appeal shall be addressed to the Deputy Director of the division in which the branch is organized within ten (10) working days from receipt of the Branch Chief's

decision. The Deputy Director of the division in which the branch is organized or his/her designee shall meet with the Contractor to review the issues raised. A written decision signed by the Deputy Director of the division in which the branch is organized or his/her designee shall be directed to the Contractor within twenty (20) working days of receipt of the Contractor's second level appeal.

- b. If the Contractor wishes to appeal the decision of the Deputy Director of the division in which the branch is organized or his/her designee, the Contractor shall follow the procedures set forth in Health and Safety Code Section 100171.
- c. Unless otherwise stipulated in writing by DHCS, all dispute, grievance and/or appeal correspondence shall be directed to the DHCS Program Contract Manager.
- d. There are organizational differences within DHCS' funding programs and the management levels identified in this dispute resolution provision may not apply in every contractual situation. When a grievance is received and organizational differences exist, the Contractor shall be notified in writing by the DHCS Program Contract Manager of the level, name, and/or title of the appropriate management official that is responsible for issuing a decision at a given level.

16. Financial and Compliance Audit Requirements

- a. The definitions used in this provision are contained in Section 38040 of the Health and Safety Code, which by this reference is made a part hereof.
- b. Direct service contract means a contract or agreement for services contained in local assistance or subvention programs or both (see Health and Safety [H&S] Code Section 38020). Direct service contracts shall not include contracts, agreements, grants, or subventions to other governmental agencies or units of government nor contracts or agreements with regional centers or area agencies on aging (H&S Code Section 38030).
- c. The Contractor, as indicated below, agrees to obtain one of the following audits:
 - (1) **If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives \$25,000 or more from any State agency under a direct service contract or agreement;** the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit. Said audit shall be conducted according to Generally Accepted Auditing Standards. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (2) **If the Contractor is a nonprofit organization (as defined in H&S Code Section 38040) and receives less than \$25,000 per year from any State agency under a direct service contract or agreement;** the Contractor agrees to obtain a biennial single, organization wide financial and compliance audit, unless there is evidence of fraud or other violation of state law in connection with this Agreement. This audit does not fulfill the audit requirements of Paragraph c(3) below. The audit shall be completed by the 15th day of the fifth month following the end of the Contractor's fiscal year, **and/or**
 - (3) **If the Contractor is a State or Local Government entity or Nonprofit organization (as defined by the Federal Office of Management and Budget [OMB] Circular A-133) and expends \$500,000 or more in Federal awards,** the Contractor agrees to obtain an annual single, organization wide, financial and compliance audit according to the requirements specified in OMB Circular A-133 entitled "Audits of States, Local Governments, and Non-Profit Organizations". An audit conducted pursuant to this provision will fulfill the audit requirements outlined in Paragraphs c(1) and c(2) above. The audit shall be completed by the end of the ninth month following the end of the audit period. The requirements of this provision apply if:
 - (a) The Contractor is a recipient expending Federal awards received directly from Federal awarding agencies, or
 - (b) The Contractor is a subrecipient expending Federal awards received from a pass-through entity such as the State, County or community based organization.

- (4) If the Contractor submits to DHCS a report of an audit other than an OMB A-133 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$500,000 or more in federal funds for the year covered by the audit report.
- d. Two copies of the audit report shall be delivered to the DHCS program funding this Agreement. The audit report must identify the Contractor's legal name and the number assigned to this Agreement. The audit report shall be due within 30 days after the completion of the audit. Upon receipt of said audit report, the DHCS Program Contract Manager shall forward the audit report to DHCS' Audits and Investigations Unit if the audit report was submitted under Section 16.c(3), unless the audit report is from a City, County, or Special District within the State of California whereby the report will be retained by the funding program.
 - e. The cost of the audits described herein may be included in the funding for this Agreement up to the proportionate amount this Agreement represents of the Contractor's total revenue. The DHCS program funding this Agreement must provide advance written approval of the specific amount allowed for said audit expenses.
 - f. The State or its authorized designee, including the Bureau of State Audits, is responsible for conducting agreement performance audits which are not financial and compliance audits. Performance audits are defined by Generally Accepted Government Auditing Standards.
 - g. Nothing in this Agreement limits the State's responsibility or authority to enforce State law or regulations, procedures, or reporting requirements arising thereto.
 - h. Nothing in this provision limits the authority of the State to make audits of this Agreement, provided however, that if independent audits arranged for by the Contractor meet Generally Accepted Governmental Auditing Standards, the State shall rely on those audits and any additional audit work and shall build upon the work already done.
 - i. The State may, at its option, direct its own auditors to perform either of the audits described above. The Contractor will be given advance written notification, if the State chooses to exercise its option to perform said audits.
 - j. The Contractor shall include a clause in any agreement the Contractor enters into with the audit firm doing the single organization wide audit to provide access by the State or Federal Government to the working papers of the independent auditor who prepares the single organization wide audit for the Contractor.
 - k. Federal or state auditors shall have "expanded scope auditing" authority to conduct specific program audits during the same period in which a single organization wide audit is being performed, but the audit report has not been issued. The federal or state auditors shall review and have access to the current audit work being conducted and will not apply any testing or review procedures which have not been satisfied by previous audit work that has been completed.

The term "expanded scope auditing" is applied and defined in the U.S. General Accounting Office (GAO) issued Standards for *Audit of Government Organizations, Programs, Activities and Functions*, better known as the "yellow book".

17. Human Subjects Use Requirements

(Applicable only to federally funded agreements/grants in which performance, directly or through a subcontract/subaward, includes any tests or examination of materials derived from the human body.)

By signing this Agreement, Contractor agrees that if any performance under this Agreement or any subcontract or subagreement includes any tests or examination of materials derived from the human body for the purpose of providing information, diagnosis, prevention, treatment or assessment of disease, impairment, or health of a human being, all locations at which such examinations are performed shall meet the requirements of 42 U.S.C. Section 263a (CLIA) and the regulations thereunder.

18. Novation Requirements

If the Contractor proposes any novation agreement, DHCS shall act upon the proposal within 60 days after receipt of the written proposal. DHCS may review and consider the proposal, consult and negotiate with the Contractor, and accept or reject all or part of the proposal. Acceptance or rejection of the proposal may be made orally within the 60-day period and confirmed in writing within five days of said decision. Upon written acceptance of the proposal, DHCS will initiate an amendment to this Agreement to formally implement the approved proposal.

19. Debarment and Suspension Certification

(Applicable to all agreements funded in part or whole with federal funds.)

- a. By signing this Agreement, the Contractor/Grantee agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.
- b. By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:
 - (1) Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;
 - (2) Have not within a 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;
 - (3) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph b(2) herein; and
 - (4) Have not within a three-year period preceding this application/proposal/agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
 - (5) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
 - (6) Will include a clause entitled, "Debarment and Suspension Certification" that essentially sets forth the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
- c. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the DHCS Program Contract Manager.
- d. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
- e. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the DHCS may terminate this Agreement for cause or default.

20. Smoke-Free Workplace Certification

(Applicable to federally funded agreements/grants and subcontracts/subawards, that provide health, day care, early childhood development services, education or library services to children under 18 directly or through local governments.)

- a. Public Law 103-227, also known as the Pro-Children Act of 1994 (Act), 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 WIC coupons are redeemed.
- b. Failure to comply with the provisions of the law may result in the imposition of a civil monetary penalty of up to \$1,000 for each violation and/or the imposition of an administrative compliance order on the responsible party.
- c. By signing this Agreement, Contractor or Grantee certifies that it will comply with the requirements of the Act and will not allow smoking within any portion of any indoor facility used for the provision of services for children as defined by the Act. The prohibitions herein are effective December 26, 1994.
- d. Contractor or Grantee further agrees that it will insert this certification into any subawards (subcontracts or subgrants) entered into that provide for children's services as described in the Act.

21. Covenant Against Contingent Fees

(Applicable only to federally funded agreements.)

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

22. Payment Withholds

(Applicable only if a final report is required by this Agreement. Not applicable to government entities.)

Unless waived or otherwise stipulated in this Agreement, DHCS may, at its discretion, withhold 10 percent (10%) of the face amount of the Agreement, 50 percent (50%) of the final invoice, or \$3,000 whichever is greater, until DHCS receives a final report that meets the terms, conditions and/or scope of work requirements of this Agreement.

23. Performance Evaluation

(Not applicable to grant agreements.)

DHCS may, at its discretion, evaluate the performance of the Contractor at the conclusion of this Agreement. If performance is evaluated, the evaluation shall not be a public record and shall remain on file with DHCS. Negative performance evaluations may be considered by DHCS prior to making future contract awards.

24. Officials Not to Benefit

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

25. Four-Digit Date Compliance

(Applicable to agreements in which Information Technology (IT) services are provided to DHCS or if IT equipment is procured.)

Contractor warrants that it will provide only Four-Digit Date Compliant (as defined below) Deliverables and/or services to the State. "Four Digit Date compliant" Deliverables and services can accurately process, calculate, compare, and sequence date data, including without limitation date data arising out of or relating to leap years and changes in centuries. This warranty and representation is subject to the warranty terms and conditions of this Contract and does not limit the generality of warranty obligations set forth elsewhere herein.

26. Prohibited Use of State Funds for Software

(Applicable to agreements in which computer software is used in performance of the work.)

Contractor certifies that it has appropriate systems and controls in place to ensure that state funds will not be used in the performance of this Agreement for the acquisition, operation or maintenance of computer software in violation of copyright laws.

27. Use of Small, Minority Owned and Women's Businesses

(Applicable to that portion of an agreement that is federally funded and entered into with institutions of higher education, hospitals, nonprofit organizations or commercial businesses.)

Positive efforts shall be made to use small businesses, minority-owned firms and women's business enterprises, whenever possible (i.e., procurement of goods and/or services). Contractors shall take all of the following steps to further this goal.

- (1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.
- (2) Make information on forthcoming purchasing and contracting opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.
- (3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.
- (4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.
- (5) Use the services and assistance, as appropriate, of such organizations as the Federal Small Business Administration and the U.S. Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

28. Alien Ineligibility Certification

(Applicable to sole proprietors entering federally funded agreements.)

By signing this Agreement, the Contractor certifies that he/she is not an alien that is ineligible for state and local benefits, as defined in Subtitle B of the Personal Responsibility and Work Opportunity Act. (8 U.S.C. 1601, et seq.)

29. Union Organizing

(Applicable only to grant agreements.)

Grantee, by signing this Agreement, hereby acknowledges the applicability of Government Code Sections 16645 through 16649 to this Agreement. Furthermore, Grantee, by signing this Agreement, hereby certifies that:

- a. No state funds disbursed by this grant will be used to assist, promote or deter union organizing.
- b. Grantee shall account for state funds disbursed for a specific expenditure by this grant, to show those funds were allocated to that expenditure.
- c. Grantee shall, where state funds are not designated as described in b herein, allocate, on a pro-rata basis, all disbursements that support the grant program.
- d. If Grantee makes expenditures to assist, promote or deter union organizing, Grantee will maintain records sufficient to show that no state funds were used for those expenditures, and that Grantee shall provide those records to the Attorney General upon request.

30. Contract Uniformity (Fringe Benefit Allowability)

(Applicable only to nonprofit organizations.)

Pursuant to the provisions of Article 7 (commencing with Section 100525) of Chapter 3 of Part 1 of Division 101 of the Health and Safety Code, DHCS sets forth the following policies, procedures, and guidelines regarding the reimbursement of fringe benefits.

- a. As used herein fringe benefits shall mean an employment benefit given by one's employer to an employee in addition to one's regular or normal wages or salary.
- b. As used herein, fringe benefits do not include:
 - (1) Compensation for personal services paid currently or accrued by the Contractor for services of employees rendered during the term of this Agreement, which is identified as regular or normal salaries and wages, annual leave, vacation, sick leave, holidays, jury duty and/or military leave/training.
 - (2) Director's and executive committee member's fees.
 - (3) Incentive awards and/or bonus incentive pay.
 - (4) Allowances for off-site pay.
 - (5) Location allowances.
 - (6) Hardship pay.
 - (7) Cost-of-living differentials
- c. Specific allowable fringe benefits include:
 - (1) Fringe benefits in the form of employer contributions for the employer's portion of payroll taxes (i.e., FICA, SUI, SDI), employee health plans (i.e., health, dental and vision), unemployment insurance, worker's compensation insurance, and the employer's share of pension/retirement plans, provided they are granted in accordance with established written organization policies and meet all legal and Internal Revenue Service requirements.
- d. To be an allowable fringe benefit, the cost must meet the following criteria:
 - (1) Be necessary and reasonable for the performance of the Agreement.
 - (2) Be determined in accordance with generally accepted accounting principles.
 - (3) Be consistent with policies that apply uniformly to all activities of the Contractor.
- e. Contractor agrees that all fringe benefits shall be at actual cost.

f. Earned/Accrued Compensation

- (1) Compensation for vacation, sick leave and holidays is limited to that amount earned/accrued within the agreement term. Unused vacation, sick leave and holidays earned from periods prior to the agreement term cannot be claimed as allowable costs. See Provision f (3)(a) for an example.
- (2) For multiple year agreements, vacation and sick leave compensation, which is earned/accrued but not paid, due to employee(s) not taking time off may be carried over and claimed within the overall term of the multiple years of the Agreement. Holidays cannot be carried over from one agreement year to the next. See Provision f (3)(b) for an example.
- (3) For single year agreements, vacation, sick leave and holiday compensation that is earned/accrued but not paid, due to employee(s) not taking time off within the term of the Agreement, cannot be claimed as an allowable cost. See Provision f (3)(c) for an example.

(a) Example No. 1:

If an employee, John Doe, earns/accrues three weeks of vacation and twelve days of sick leave each year, then that is the maximum amount that may be claimed during a one year agreement. If John Doe has five weeks of vacation and eighteen days of sick leave at the beginning of an agreement, the Contractor during a one-year budget period may only claim up to three weeks of vacation and twelve days of sick leave as actually used by the employee. Amounts earned/accrued in periods prior to the beginning of the Agreement are not an allowable cost.

(b) Example No. 2:

If during a three-year (multiple year) agreement, John Doe does not use his three weeks of vacation in year one, or his three weeks in year two, but he does actually use nine weeks in year three; the Contractor would be allowed to claim all nine weeks paid for in year three. The total compensation over the three-year period cannot exceed 156 weeks (3 x 52 weeks).

(c) Example No. 3:

If during a single year agreement, John Doe works fifty weeks and used one week of vacation and one week of sick leave and all fifty-two weeks have been billed to DHCS, the remaining unused two weeks of vacation and seven days of sick leave may not be claimed as an allowable cost.

31. Suspension or Stop Work Notification

- a. DHCS may, at any time, issue a notice to suspend performance or stop work under this Agreement. The initial notification may be a verbal or written directive issued by the funding Program's Contract Manager. Upon receipt of said notice, the Contractor is to suspend and/or stop all, or any part, of the work called for by this Agreement.
- b. Written confirmation of the suspension or stop work notification with directions as to what work (if not all) is to be suspended and how to proceed will be provided within 30 working days of the verbal notification. The suspension or stop work notification shall remain in effect until further written notice is received from DHCS. The resumption of work (in whole or part) will be at DHCS' discretion and upon receipt of written confirmation.
 - (1) Upon receipt of a suspension or stop work notification, the Contractor shall immediately comply with its terms and take all reasonable steps to minimize or halt the incurrence of costs allocable to the performance covered by the notification during the period of work suspension or stoppage.
 - (2) Within 90 days of the issuance of a suspension or stop work notification, DHCS shall either:
 - (a) Cancel, extend, or modify the suspension or stop work notification; or
 - (b) Terminate the Agreement as provided for in the Cancellation / Termination clause of the Agreement.

- c. If a suspension or stop work notification issued under this clause is canceled or the period of suspension or any extension thereof is modified or expires, the Contractor may resume work only upon written concurrence of funding Program's Contract Manager.
- d. If the suspension or stop work notification is cancelled and the Agreement resumes, changes to the services, deliverables, performance dates, and/or contract terms resulting from the suspension or stop work notification shall require an amendment to the Agreement.
- e. If a suspension or stop work notification is not canceled and the Agreement is cancelled or terminated pursuant to the provision entitled Cancellation / Termination, DHCS shall allow reasonable costs resulting from the suspension or stop work notification in arriving at the settlement costs.
- f. DHCS shall not be liable to the Contractor for loss of profits because of any suspension or stop work notification issued under this clause.

32. Lobbying Restrictions and Disclosure Certification

(Applicable to federally funded agreements in excess of \$100,000 per Section 1352 of the 31, U.S.C.)

a. Certification and Disclosure Requirements

- (1) Each person (or recipient) who requests or receives a contract or agreement, subcontract, grant, or subgrant, which is subject to Section 1352 of the 31, U.S.C., and which exceeds \$100,000 at any tier, shall file a certification (in the form set forth in Attachment 1, consisting of one page, entitled "Certification Regarding Lobbying") that the recipient has not made, and will not make, any payment prohibited by Paragraph b of this provision.
- (2) Each recipient shall file a disclosure (in the form set forth in Attachment 2, entitled "Standard Form-LLL 'disclosure of Lobbying Activities'") if such recipient has made or has agreed to make any payment using nonappropriated funds (to include profits from any covered federal action) in connection with a contract, or grant or any extension or amendment of that contract, or grant, which would be prohibited under Paragraph b of this provision if paid for with appropriated funds.
- (3) Each recipient shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affect the accuracy of the information contained in any disclosure form previously filed by such person under Paragraph a(2) herein. An event that materially affects the accuracy of the information reported includes:
 - (a) A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered federal action;
 - (b) A change in the person(s) or individuals(s) influencing or attempting to influence a covered federal action; or
 - (c) A change in the officer(s), employee(s), or member(s) contacted for the purpose of influencing or attempting to influence a covered federal action.
- (4) Each person (or recipient) who requests or receives from a person referred to in Paragraph a(1) of this provision a contract or agreement, subcontract, grant or subgrant exceeding \$100,000 at any tier under a contract or agreement, or grant shall file a certification, and a disclosure form, if required, to the next tier above.
- (5) All disclosure forms (but not certifications) shall be forwarded from tier to tier until received by the person referred to in Paragraph a(1) of this provision. That person shall forward all disclosure forms to DHCS Program Contract Manager.

b. Prohibition

Section 1352 of Title 31, U.S.C., provides in part that no appropriated funds may be expended by the recipient of a federal contract or agreement, grant, loan, or cooperative agreement to pay any person for

influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered federal actions: the awarding of any federal contract or agreement, the making of any federal grant, the making of any federal loan, entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any federal contract or agreement, grant, loan, or cooperative agreement.

**Attachment 1
State of California
Department of Health Care Services**

CERTIFICATION REGARDING LOBBYING

The undersigned certifies, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the making, awarding or entering into of this Federal contract, Federal grant, or cooperative agreement, and the extension, continuation, renewal, amendment, or modification of this Federal contract, grant, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency of the United States Government, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying Activities" in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontractors, subgrants, and contracts under grants and cooperative agreements) of \$100,000 or more, and that all subrecipients shall certify and disclose accordingly.

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

Name of Contractor

Printed Name of Person Signing for Contractor

Contract / Grant Number

Signature of Person Signing for Contractor

Date

Title

After execution by or on behalf of Contractor, please return to:

California Department of Health Care Services

DHCS reserves the right to notify the contractor in writing of an alternate submission address.

Department of Health Care Services - Special Terms and Conditions

Exhibit D(F)

Attachment 2

CERTIFICATION REGARDING LOBBYING

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

Approved by OMB
0348-0046

1. Type of Federal Action: <input type="checkbox"/> a. contract <input type="checkbox"/> b. grant <input type="checkbox"/> c. cooperative agreement <input type="checkbox"/> d. loan <input type="checkbox"/> e. loan guarantee <input type="checkbox"/> f. loan insurance	2. Status of Federal Action: <input type="checkbox"/> a. bid/offer/application <input type="checkbox"/> b. initial award <input type="checkbox"/> c. post-award	3. Report Type: <input type="checkbox"/> a. initial filing <input type="checkbox"/> b. material change For Material Change Only: Year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: <input type="checkbox"/> Prime <input type="checkbox"/> Subawardee Tier ____, if known: Congressional District, if known:	5. If Reporting Entity in No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District, if known:	
6. Federal Department/Agency	7. Federal Program Name/Description: CDFA Number, if applicable: _____	
8. Federal Action Number, if known:	9. Award Amount, if known: \$	
10.a. Name and Address of Lobbying Registrant <i>(If individual, last name, first name, MI):</i>	b. Individuals Performing Services (including address if different from 10a.) <i>(Last name, First name, MI):</i>	
11. Information requested through this form is authorized by title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be available for public inspection. Any person that fails to file the required disclosure shall be subject to a not more than \$100,000 for each such failure.		
Federal Use Only		Signature: _____ Print Name: _____ Title: _____ Telephone No.: _____ Date: _____
		Authorized for Local Reproduction Standard Form-LLL (Rev. 7-97)

INSTRUCTIONS FOR COMPLETION OF SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001".
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended, no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

Exhibit E
Additional Provisions

1. Amendment Process

Should either party, during the term of this Agreement, desire a change or amendment to the terms of this Agreement, such changes or amendments shall be proposed in writing to the other party, who will respond in writing as to whether the proposed changes/amendments are accepted or rejected. If accepted and after negotiations are concluded, the agreed upon changes shall be made through the State's official agreement amendment process. No amendment will be considered binding on either party until it is formally approved by the both parties and the Department of General Services (DGS), if DGS approval is required.

2. Cancellation/Termination

A. General Provisions

- 1) As required by Welf. & Inst. Code § 14712, if the Contractor decides not to contract with the Department, does not renew its contract, or is unable to meet the standards set by the Department, the Contractor agrees to inform the Department of this decision in writing.
- 2) If the Contractor is unwilling to contract for the delivery of specialty mental health services or if the Department or Contractor determines that the Contractor is unable to adequately provide specialty mental health services or that the Contractor does not meet the standards the Department deems necessary for a mental health plan, the Department shall ensure that specialty mental health services are provided to Medi-Cal beneficiaries.
- 3) The Department may contract with qualifying individual counties, counties acting jointly, or other qualified entities approved by the Department for the delivery of specialty mental health services in any county that is unable or unwilling to contract with the Department. The Contractor may not subsequently contract to provide specialty mental health services unless the Department elects to contract with the Contractor.
- 4) If the Contractor does not contract with the Department to provide specialty mental health services, the Department will work with the Department of Finance and the Controller to obtain funds from the Contractor in accordance with Government (Govt.) Code 30027.10.

B. Contract Renewal

- 1) Pursuant to Welf. & Inst. Code § 14714(b), this contract may be renewed if the Contractor continues to meet the statutory and regulatory requirements governing this contract, as well as the terms and conditions of this contract. Failure to meet these requirements shall be cause for nonrenewal of the contract. The Department may base the decision to renew on timely

Exhibit E
Additional Provisions

completion of a mutually agreed-upon plan of correction of any deficiencies, submissions of required information in a timely manner, and/or other conditions of the contract.

- 2) In the event the contract is not renewed based on the reasons specified in (1), the Department will notify the Department of Finance, the fiscal and policy committees of the Legislature, and the Controller of the amounts to be sequestered from the Mental Health Subaccount, the Mental Health Equity Account, and the Vehicle License Fee Collection Account of the Local Revenue Fund and the Mental Health Account and the Behavioral Health Subaccount of the Local Revenue Fund 2011, and the Controller will sequester those funds in the Behavioral Health Subaccount pursuant to Govt. Code § 30027.10. Upon this sequestration, the Department will use the funds in accordance with Govt. Code § 30027.10

C. Contract Amendment Negotiations

Should either party during the life of this contract desire a change in this contract, such change shall be proposed in writing to the other party. The other party shall acknowledge receipt of the proposal in writing within 10 days and shall have 60 days (or such different period as the parties mutually may set) after receipt of such proposal to review and consider the proposal, to consult and negotiate with the proposing party, and to accept or reject the proposal. Acceptance or rejection may be made orally within the 60-day period, and shall be confirmed in writing within five days thereafter. The party proposing any such change shall have the right to withdraw the proposal at any time prior to acceptance or rejection by the other party. Any such proposal shall set forth a detailed explanation of the reason and basis for the proposed change, a complete statement of costs and benefits of the proposed change and the text of the desired amendment to this contract that would provide for the change. If the proposal is accepted, this contract shall be amended to provide for the change mutually agreed to by the parties on the condition that the amendment is approved by the Department of General Services, if necessary.

D. Contract Termination

The Department or the Contractor may terminate this contract in accordance with Cal. Code Regs., tit. 9, § 1810.323.

- 1) DHCS reserves the right to cancel or terminate this Agreement immediately for cause.
- 2) The term "for cause" shall mean that the Contractor fails to meet the terms, conditions, and/or responsibilities of this Agreement.

Exhibit E
Additional Provisions

- 3) Agreement termination or cancellation shall be effective as of the date indicated in DHCS' notification to the Contractor. The notice shall identify any final performance, invoicing or payment requirements.
- 4) Upon receipt of a notice of termination or cancellation, the Contractor shall take immediate steps to stop performance and to cancel, or if cancellation is not possible reduce, subsequent agreement costs.
- 5) In the event of early termination or cancellation, the Contractor shall be entitled to payment for all allowable costs authorized under this Agreement and incurred up to the date of termination or cancellation, including authorized non-cancelable obligations, provided such expenses do not exceed the stated maximum amounts payable.
- 6) Pursuant to the Welf. & Inst. Code § 14714(d), the Department will immediately terminate a contract when the director finds that there is an immediate threat to the health and safety of Medi-Cal beneficiaries. Termination of the contract for other reasons will be subject to reasonable notice to the Contractor of the Department's intent to terminate, as well as notification to affected beneficiaries.

E. Termination of Obligations

- 1) All obligations to provide covered services under this contract shall automatically terminate on the effective date of any termination of this contract. The Contractor shall be responsible for providing covered services to beneficiaries until the termination or expiration of the contract and shall remain liable for the processing and payment of invoices and statements for covered services provided to beneficiaries prior to such expiration or termination.
- 2) When Contractor terminates a subcontract with a provider, Contractor shall make a good faith effort to provide notice of this termination, within 15 days, to the persons that Contractor, based on available information, determines have recently been receiving services from that provider.

F. Contract Disputes

Should a dispute arise between the Contractor and the Department relating to performance under this contract, other than disputes governed by a dispute resolution process in Chapter 11 of Division 1, Cal. Code Regs., tit. 9, or the processes governing the audit appeals process in Chapter 9 of Division 1, Cal. Code Regs., tit. 9 the Contractor shall follow the Dispute Resolution Process outlined in provision number 15 of Exhibit D(F) which is attached hereto as part of this agreement.

Exhibit E
Additional Provisions

3. Fulfillment of Obligation

No covenant, condition, duty, obligation, or undertaking continued or made a part of this contract shall be waived except by written agreement of the parties hereto, and forbearance or indulgence in any other form or manner by either party in any regard whatsoever will not constitute a waiver of the covenant, condition, duty, obligation, or undertaking to be kept, performed or discharged by the party to which the same may apply. Until performance or satisfaction of all covenants, conditions, duties, obligations, and undertakings is complete, the other party shall have the right to invoke any remedy available under this contract, or under law, notwithstanding such forbearance or indulgence.

4. Additional Provisions

A. Inspection Rights

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

B. Notices

Unless otherwise specified in this contract, all notices to be given under this contract shall be in writing and shall be deemed to have been given when mailed, to the Department or the Contractor at the following addresses, unless the contract explicitly requires notice to another individual or organizational unit:

Department of Health Care Services
Mental Health Services Division
1500 Capitol Avenue, MS 2702
P.O. Box 997413
Sacramento, CA 95899-7413

El Dorado County Health and Human
Services Agency
3057 Briw Road, Suite A
Placerville, CA 95667

C. Nondiscrimination

Exhibit E
Additional Provisions

- 1) Consistent with the requirements of applicable federal law such as 42 C.F.R. §§ 438.6(d)(3) and (4) or state law, the Contractor shall not engage in any unlawful discriminatory practices in the admission of beneficiaries, assignments of accommodations, treatment, evaluation, employment of personnel, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual preference or mental or physical handicap. The Contractor will not discriminate against beneficiaries on the basis of health status or need for health care services, pursuant to 42 C.F.R. § 438.6(d)(3).
- 2) The Contractor shall comply with the provisions of Section 504 of the Rehabilitation Act of 1973, as amended, pertaining to the prohibition of discrimination against qualified handicapped persons in all federally assisted programs or activities, as detailed in regulations signed by the Secretary of Health and Human Services, effective June 2, 1977, and found in the Federal Register, Volume 42, No. 86, dated May 4, 1977.
- 3) The Contractor shall include the nondiscrimination and compliance provisions of this contract in all subcontracts to perform work under this contract.
- 4) Notwithstanding other provisions of this section, the Contractor may require a determination of medical necessity pursuant to Cal. Code Regs., tit. 9, §§ 1820.205, 1830.205 and/or 1830.210, prior to providing covered services to a beneficiary.

D. Patients' Rights

- 1) The parties to this contract shall comply with applicable laws and regulations relating to patients' rights, including but not limited to Welfare and Institutions Code 5325, Cal. Code Regs., tit. 9, §§ 860 through 868, and 42 C.F.R. § 438.100. The Contractor shall ensure that its subcontractors comply with these provisions.
- 2) Pursuant to 42 C.F.R. § 438.100, the Contractor shall have written policies regarding the beneficiary rights specified in this section and ensure that its staff and subcontract providers take those rights into account when providing services, including the right to:
 - a) Receive information in accordance with 42 C.F.R. § 438.10.
 - b) Be treated with respect and with due consideration for his or her dignity and privacy.
 - c) Receive information on available treatment options and alternatives, presented in a manner appropriate to the beneficiary's condition and ability to understand.

Exhibit E
Additional Provisions

- d) Participate in decisions regarding his or her health care, including the right to refuse treatment.
- e) Be free from any form of restraint or seclusion used as a means of coercion, discipline, convenience, or retaliation.
- f) Request and receive a copy of his or her medical records, and to request that they be amended or corrected, as specified in 45 C.F.R. §§ 164.524 and 164.526.
- g) To be furnished services in accordance with 42 C.F.R. §§ 438.206 through 438.210.
- h) To freely exercise his or her rights, and the exercise of those rights will not adversely affect the way the Contractor and its providers or the Department treat the beneficiary.

E. Relationship of the Parties

The Department and the Contractor are, and shall at all times be deemed to be, independent agencies. Each party to this contract shall be wholly responsible for the manner in which it performs the obligations and services required of it by the terms of this contract. Nothing herein contained shall be construed as creating the relationship of employer and employee, or principal and agent, between the parties or any of their agents or employees. Each party assumes exclusively the responsibility for the acts of its employees or agents as they relate to the services to be provided during the course and scope of their employment. The Department and its agents and employees shall not be entitled to any rights or privileges of the Contractor's employees and shall not be considered in any manner to be Contractor employees. The Contractor and its agents and employees, shall not be entitled to any rights or privileges of state employees and shall not be considered in any manner to be state employees.

F. Waiver of Default

Waiver of any default shall not be deemed to be a waiver of any subsequent default. Waiver of breach of any provision of this agreement shall not be deemed to be a waiver of any other or subsequent breach, and shall not be construed to be a modification of the terms of this contract.

5. Duties of the State

In discharging its obligations under this contract, and in addition to the obligations set forth in other parts of this contract, the Department shall perform the following duties:

A. Payment for Services

Exhibit E
Additional Provisions

The Department shall make the appropriate payments set forth in Exhibit B and take all available steps to secure and pay FFP to the Contractor, once the Department receives FFP, for claims submitted by the Contractor. The Department shall notify Contractor and allow Contractor an opportunity to comment to the Department when questions are posed by CMS, or when there is a federal deferral, withholding, or disallowance with respect to claims made by the Contractor.

B. Reviews

The Department shall conduct reviews of access to and quality of care in Contractor's county at least once every three years and issue reports to the Contractor detailing findings, recommendations, and corrective action, as appropriate, pursuant to Cal. Code Regs., tit. 9, §§ 1810.380 and 1810.385. The Department shall also arrange for an annual external quality review of the Contractor as required by 42 C.F.R. § 438.204(d) and Cal. Code Regs., tit. 9, § 1810.380(a)(7).

C. Monitoring for Compliance

The Department shall monitor the Contractor's operations for compliance with the provisions of this contract, and applicable federal and state law and regulations. Such monitoring activities shall include, but not be limited to, inspection and auditing of Contractor facilities, management systems and procedures, and books and records, as the Department deems appropriate, at any time during the Contractor's or facility's normal business hours. When monitoring activities identify areas of non-compliance, the Department shall issue reports to the Contractor detailing findings, recommendations, and corrective action. Failure to comply with required corrective action could lead to civil penalties, as appropriate, pursuant to Cal. Code Regs., tit. 9, §§ 1810.380 and 1810.385.

D. The Department shall review and either approve, disapprove, or request additional information for each Implementation Plan as defined in Cal. Code Regs., tit. 9, §§ 1810.221 and 1810.310 . Notices of Approval, Notices of Disapproval and requests for additional information shall be forwarded to the Contractor within 60 days of the receipt of the Implementation Plan. A Contractor shall submit proposed changes to its approved Implementation Plan in writing to the Department for review. A Contractor shall submit proposed changes in the policies, processes or procedures that would modify the Contractor's current Implementation Plan prior to implementing the proposed changes.(See Cal. Code Regs., tit. 9, § 1810.310 (b)-(c)).

E. The Department shall act promptly to review the Contractor's Cultural Competence Plan submitted pursuant to Cal. Code Regs., tit. 9, § 1810.410. The Department shall provide a Notice of Approval or a Notice of Disapproval, including the reasons for the disapproval, to the Contractor within 60 calendar days after receipt of the

Exhibit E
Additional Provisions

plan from the Contractor. If the Department fails to provide a Notice of Approval or Disapproval, the Contractor may implement the plan 60 calendar days from its submission to the Department.

F. Certification of Organizational Provider Sites Owned or Operated by the Contractor

- 1) The Department shall certify the organizational provider sites that are owned, leased or operated by the Contractor, in accordance with Cal. Code Regs., tit. 9, § 1810.435, and the requirements specified in Exhibit B, Section 4 of this contract. This certification shall be performed prior to the date on which the Contractor begins to deliver services under this contract at these sites and once every three years after that date, unless the Department determines an earlier date is necessary. The on-site review required by Cal. Code Regs., tit. 9, § 1810.435(e), shall be conducted of any site owned, leased, or operated by the Contractor and used for to deliver covered services to beneficiaries, except that on-site review is not required for public school or satellite sites.
- 2) The Department may allow the Contractor to begin delivering covered services to beneficiaries at a site subject to on-site review by the Department prior to the date of the on-site review, provided the site is operational and has any required fire clearances. The earliest date the Contractor may begin delivering covered services at a site subject to on site review by the Department is the date the Contractor requested certification of the site in accordance with procedures established by the Department, the date the site was operational, or the date a required fire clearance was obtained, whichever date is latest.
- 3) The Department may allow the Contractor to continue delivering covered services to beneficiaries at a site subject to on-site review by the Department as part of the recertification process prior to the date of the on-site review, provided the site is operational and has all required fire clearances.
- 4) Nothing in this section precludes the Department from establishing procedures for issuance of separate provider identification numbers for each of the organizational provider sites operated by the Contractor to facilitate the claiming of FFP by the Contractor and the Department's tracking of that information.

G. Distribution of Informing Materials

The Department shall provide annual notice to all beneficiaries in accordance with 42 C.F.R. § 438.10(f)(2), and Cal. Code Regs., tit. 9, § 1810.360(c).

H. Sanctions

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The Department shall conduct oversight and impose sanctions on the Contactor for violations of the terms of this contract, and applicable federal and state law and regulations, in accordance with Welf. & Inst. Code § 14712(e) and Cal. Code Regs., tit. 9, §§ 1810.380 and 1810.385.

I. Notification

The Department shall notify beneficiaries of their Medi-Cal specialty mental health benefits and options available upon termination or expiration of this contract.

J. Performance Measurement

The Department shall measure the Contractor's performance based on Medi-Cal approved claims and other data available to the Department using standard measures established by the Department in consultation with stakeholders.

6. State and Federal Law Governing this Contract

- A. Contractor agrees to comply with all applicable federal and state law, including the applicable sections of the state plan and waiver, particularly the statutes and regulations incorporated by reference below, in its provision of services as the Mental Health Plan. The Department will notify Contractor of any changes to these statutes and regulations. Contractor agrees to comply with any changes to these statutes and regulations that may occur during the contract period and any new applicable statutes or regulations, but either the Department or Contractor may request consultation and discussion of new or changed statutes or regulations, including whether contract amendments may be necessary.
- B. Pursuant to Welf. & Inst. Code § 14704, a regulation or order concerning Medi-Cal specialty mental health services adopted by the State Department of Mental Health pursuant to Division 5 (commencing with Section 5000), as in effect preceding the effective date of this section, shall remain in effect and shall be fully enforceable, unless and until the readoption, amendment, or repeal of the regulation or order by DHCS, or until it expires by its own terms.
- C. Specifically, the following federal law applies to this contract:
 - 1) Title 42 United States Code, to the extent that these requirements are applicable
 - 2) 42 C.F.R. to the extent that these requirements are applicable;
 - 3) 42 C.F.R. § 438 – Managed Care, limited to those provisions that apply to Prepaid Inpatient Health Plans (PIHP);
 - 4) 45 C.F.R. §§ 160 and 164 to the extent that these requirements are applicable;

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- 5) Title VI of the Civil Rights Act of 1964;
- 6) Title IX of the Education Amendments of 1972;
- 7) Age Discrimination Act of 1975;
- 8) Rehabilitation Act of 1973;
- 9) Titles II and III of the Americans with Disabilities Act;
- 10) Deficit Reduction Act of 2005;
- 11) Balanced Budget Act of 1997.
- 12) The Contractor shall comply with the provisions of the Copeland Anti-Kickback Act, which requires that all contracts and subcontracts in excess of \$2000 for construction or repair awarded by the Contractor and its subcontractors shall include a provision for compliance with the Copeland Anti-Kickback Act.
- 13) The Contractor shall comply with the provisions of the Davis-Bacon Act, as amended, which provides that, when required by Federal Medicaid program legislation, all construction contracts awarded by the Contractor and its subcontractors of more than \$2,000 shall include a provision for compliance with the Davis-Bacon Act as supplemented by Department of Labor regulations.
- 14) The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act, as applicable, which requires that all subcontracts awarded by the Contractor in excess of \$2,000 for construction and in excess of \$2,500 for other subcontracts that involve the employment of mechanics or laborers shall include a provision for compliance with the Contract Work Hours and Safety Standards Act.

D. State Law:

- 1) Division 5, Welf. & Inst. Code, to the extent that these requirements are applicable to the services and functions set forth in this contract
- 2) Welf. & Inst. Code §§ 5779-5782
- 3) Welf. & Inst. Code §§ 14680-14685.1
- 4) Welf. & Inst. Code §§ 14700-14726

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- 5) Chapter 7, Division 9, Welf. & Inst. Code, to the extent that these requirements are applicable to the services and functions set forth in this contract
- 6) Cal. Code Regs., tit. 9, § 1810.100 et. seq. – Medi-Cal Specialty Mental Health Services
- 7) Cal. Code Regs., tit. 22, §§ 50951 and 50953
- 8) Cal. Code Regs., tit. 22, §§ 51014.1 and 51014.2

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EXHIBIT F

Privacy and Information Security Provisions

Exhibit F is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit F consists of: (1) Protected Health Information (PHI) as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI); and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code § 1798.3. Personal Information may include data provided to the Department by the Social Security Administration.

Exhibit F consists of the following parts:

- A. Part I, HIPAA Business Associate Addendum, which provides for the privacy and security of PHI.
- B. Part II, which provides for the privacy and security of PI in accordance with specified provisions of the IEA and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit F, Part II, further provides for the privacy and security of PI as defined under Civil Code §§ 1798.3(a) and 1798.29. These terms of the California Information Practices Act (CIPA) are included here because they do not apply to counties directly, and the statute requires the Department to contractually extend these CIPA terms to contractors if they use the Department's PI to accomplish a function for the Department.
- C. Part III, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit F in its entirety.

EXHIBIT F

Privacy and Information Security Provisions

Part I: HIPAA Business Associate Addendum

1. Recitals

- A. A business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. § 17921 et seq., and their implementing privacy and security regulations at 45 C.F.R. Parts 160 and 164 ("the HIPAA regulations") between Department and Contractor arises only to the extent that Contractor performs functions or activities on behalf of the Department pursuant to this Agreement that are described in the definition of "business associate" in 45 C.F.R. § 160.103, including but not limited to utilization review, quality assurance, or benefit management.
- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information ("PHI"), including protected health information in electronic media ("ePHI"), under federal law, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit F, Part I of this Agreement. This information is hereafter referred to as "Department PHI".
- C. To the extent Contractor performs the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit F, Part I of this Agreement, Contractor is the Business Associate of the Department acting on the Department's behalf and provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department and creates, receives, maintains, transmits, uses or discloses PHI and ePHI in the provision of such services or in the performance of such functions or activities. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- D. The purpose of this Part I is to protect the privacy and security of the PHI and ePHI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 C.F.R. Parts 160 and 164 and the HITECH Act.
- E. The terms used in this Part I, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

EXHIBIT F

Privacy and Information Security Provisions

2. Definitions

- A. Breach shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- B. Business Associate shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- C. Covered Entity shall have the meaning given to such term under HIPAA, the HITECH Act, and the HIPAA regulations.
- D. Department PHI shall mean Protected Health Information or Electronic Protected Health Information, as defined below, accessed by Contractor in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services on behalf of the Department as specified in Section 1.A. of Exhibit F, Part I of this Agreement. The terms PHI as used in this document shall mean Department PHI.
- E. Electronic Health Records shall have the meaning given to such term in the HITECH Act, including, but not limited to, 42 U.S.C. § 17921 and implementing regulations.
- F. Electronic Protected Health Information (ePHI) means individually identifiable health information transmitted by electronic media or maintained in electronic media, including but not limited to electronic media as set forth under 45 C.F.R. § 160.103.
- G. Individually Identifiable Health Information means health information, including demographic information collected from an individual, that is created or received by a health care provider, health plan, employer or health care clearinghouse, and relates to the past, present or future physical or mental health or condition of an individual, the provision of health care to an individual, or the past, present, or future payment for the provision of health care to an individual, that identifies the individual or where there is a reasonable basis to believe the information can be used to identify the individual, as set forth under 45 C.F.R. § 160.103.
- H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 C.F.R. Parts 160 and 164, Subparts A and E.
- I. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 C.F.R. § 160.103 and as defined under HIPAA.

EXHIBIT F

Privacy and Information Security Provisions

- J. Required by law, as set forth under 45 C.F.R. § 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit F, Part I of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- M. Security Rule shall mean the HIPAA regulations that are found at 45 C.F.R. Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. § 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

3. Terms of Agreement

- A. **Permitted Uses and Disclosures of Department PHI by Contractor.** Except as otherwise indicated in this Exhibit F, Part I, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit F, Part I of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 C.F.R. § 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.
- B. **Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit F, Part I, Contractor may:

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Privacy and Information Security Provisions

- 1) **Use and disclose for management and administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
- 2) **Provision of Data Aggregation Services.** Use Department PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Contractor, as the Business Associate, on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department.

C. Prohibited Uses and Disclosures

- 1) Contractor shall not disclose Department PHI about an individual to a health plan for payment or health care operations purposes if the Department PHI pertains solely to a health care item or service for which the health care provider involved has been paid out of pocket in full and the individual requests such restriction, in accordance with 42 U.S.C. §§ 17935(a) and 45 C.F.R. § 164.522(a).
- 2) Contractor shall not directly or indirectly receive remuneration in exchange for Department PHI, except with the prior written consent of the Department and as permitted by 42 U.S.C. § 17935(d)(2).

D. Responsibilities of Contractor

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law.
- 2) **Compliance with the HIPAA Security Rule.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 C.F.R. §§ 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the standards,

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Privacy and Information Security Provisions

implementation specifications and other requirements of 45 C.F.R. § 164, subpart C, in compliance with 45 C.F.R. § 164.316. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, and which incorporates the requirements of section 3, Security, below. Contractor will provide the Department with its current and updated policies upon request.

- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
 - a) Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
 - b) Achieving and maintaining compliance with the HIPAA Security Rule (45 C.F.R. Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement; and
 - c) Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 4) **Security Officer.** Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this section and for communicating on security matters with the Department.
- 5) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit F, Part I.
- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit F, Part I of which it becomes aware.
- 7) **Contractor's Agents and Subcontractors.**
 - a) To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor

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Privacy and Information Security Provisions

with respect to such Department PHI under this Exhibit F, and that require compliance with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI. Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit F, Part I into each subcontract or subaward to such agents, subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.

- b) In accordance with 45 C.F.R. § 164.504(e)(1)(ii), upon Contractor's knowledge of a material breach or violation by its subcontractor of the agreement between Contractor and the subcontractor, Contractor shall:
 - i. Provide an opportunity for the subcontractor to cure the breach or end the violation and terminate the agreement if the subcontractor does not cure the breach or end the violation within the time specified by the Department; or
 - ii. Immediately terminate the agreement if the subcontractor has breached a material term of the agreement and cure is not possible.

8) Availability of Information to the Department and Individuals to Provide Access and Information:

- a) To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 C.F.R. § 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.