

COUNTY OF EL DORADO
FACILITY USE AGREEMENT #277-O1511

THIS FACILITY USE AGREEMENT ("Agreement") is made by and between **COUNTY OF EL DORADO**, a political subdivision of the State of California, hereinafter called "County," and **TELECARE CORPORATION**, hereinafter called "Telecare."

RECITALS

WHEREAS, County has contracted with Telecare to operate the County's Psychiatric Health Facility (PHF); and

WHEREAS, in furtherance of these services, Telecare requires facilities to be used for management, operations, and administration of these services; and

WHEREAS, County owns certain property at 935-B Spring Street, the PHF Facility; and

WHEREAS, Telecare has requested, and County has consented, to Telecare's use of County property, solely in the furtherance of Psychiatric Health Facility services.

NOW, THEREFORE, in consideration of the mutual covenants hereinafter set forth and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

AGREEMENT

1. PREMISES

County hereby grants to Telecare and Telecare hereby accepts from the County, for and in consideration of the services provided, covenants and agreement hereinafter set forth, the use of the "Premises" described as follows:

A Defined Area of APN: 001-071-15 Known As
935-B Spring Street - The PHF Facility
Placerville, CA 95667

The Premises consists of approximately 7,424 square feet of space. See Exhibit A.

2. TERM

The term of this Agreement shall be concurrent with the term of the Psychiatric Health Facility Operations Agreement (PHF Operations Agreement), the term shall commence upon the first date that the PHF Operations Agreement commences. The Term will automatically renew at such time as the PHF Agreement renews, and will terminate automatically upon termination or expiration of the PHF Operations Agreement, which may be terminated for any reason upon one hundred eighty (180) days written notice.

3. AS-IS

Telecare acknowledges and agrees that, except as otherwise specifically provided herein, the County has not made, does not make, and specifically disclaims, to the extent allowed by law, any representations; warranties, including, but not limited to, promises; covenants; agreements; or guarantees of any kind or character, whether express or implied, oral or written, or past, present, or future, concerning the Premises. Notwithstanding the foregoing, Telecare shall not be liable for and County shall indemnify Telecare from and against any third party claims arising from or related to claims that the Premises is not compliant with applicable laws, including without limitation ADA laws.

4. USE OF PREMISES

The Premises shall not be rented to or used by persons or organizations other than Telecare, except where such use by the non-Telecare entity or person is in conjunction with and related to a Telecare activity or event as approved or scheduled by the El Dorado County Facility Manager. Any and all uses other than those specifically provided in this Agreement, including but not limited to advertising, fund raising, or showcasing, are prohibited, in light of the County's assumption of responsibility for maintenance of the Premises and payment of utility costs.

5. PROHIBITED USE

Telecare shall not commit or permit the commission of any acts on the Premises nor permit the use of the Premises in any way that will:

- (a) Increase the existing fire rates or cancel any fire, casualty, liability or other insurance policy insuring the building or its contents;
- (b) Violate or conflict with any law, statute, ordinance, governmental rule or regulation whether now in force or hereinafter enacted, governing the Premises;

- (c) Obstruct or interfere with the rights of other tenants or occupants of the building or injure them; and
- (d) Constitute commission of a waste on the Premises.

6. INSURANCE

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.

7. INDEMNIFICATION

Telecare shall indemnify, defend, and hold harmless County, its officers, agents, and employees, from and against any claims, actions, suits, costs, expenses (including reasonable attorney's fees) and other cost of defense incurred or liabilities, whether for damage to or loss of property, or injury to or death of person, which in any way arise from or are connected with the acts or omissions of Telecare or its officers, agents, patients, employees, contractors, subcontractors, or business invitees, or Telecare's use of the Premises to the extent such loss, damage, injury, or liability is not covered by the insurance required as provided for in paragraph 6 "INSURANCE" above, unless such damage, loss, injury or death shall be caused by the sole, or active negligence of County, or the willful misconduct of County. The duties of Telecare to indemnify and save County harmless include the duties to defend as set forth in California Civil Code Section 2778. The provisions of this section shall survive the termination of the Agreement for any event.

8. ALTERATIONS

Telecare shall not make or permit any other person to make any alterations or add any equipment to the Premises without the written consent of the El Dorado County Facility Manager. Should the County consent to the making of any alterations or additional fixtures to the Premises by Telecare, the alterations shall be made at the sole cost and expense of Telecare by a contractor or other person selected by Telecare and approved in writing by the El Dorado County Facility Manager before work commences. Any and all approved repairs or alterations shall be done in accordance with applicable building codes and Public Contracting requirements. Any and all alterations or permanent improvements made to the Premises shall become the property of the County immediately upon completion and shall remain on the Premises upon expiration or termination of this Agreement.

9. MAINTENANCE, REPAIRS, AND UTILITIES

The County shall be responsible for normal, routine, emergency, and on-going maintenance and repair of the entire Building, interior and exterior, including, interior and exterior walls and floors, windows, parking areas, sidewalks, retaining walls, ramps, plumbing, electrical, heating, and air conditioning, kitchen and other appliances, landscaped areas, the roof and structural supports of the building as the County, in its discretion, determines is necessary and for such other improvements as are determined by the County to be necessary, and for all utility

services. Telecare shall notify County of any and all necessary maintenance and/or repairs within two (2) business days of identification of same.

Notwithstanding the foregoing, Telecare shall reimburse County for costs to repair, replace, or rebuild any portion of the Premises damaged by Telecare's invitees, service workers, staff, or contractors, reasonable wear and tear excepted. Costs to repair, replace, or rebuild any portion of the Premises damaged by Telecare's patients shall be paid for by County Mental Health and not subject to Telecare reimbursement. County shall, with Telecare's input, determine necessary finish types, colors, and specifications. Telecare shall be responsible to repair and replace its personal property and any fixtures it installs in the Premises. Telecare shall be responsible for bio-hazardous waste disposal and trash receptacles. Telecare shall provide such housekeeping and custodial services as are reasonably necessary in connection with the use of the Facility. This includes, but is not limited to, the periodic cleaning and upkeep of kitchen appliances, equipment, and fixtures located in the Premises and used by Telecare. The Premises are to be kept free and clear of rubbish and litter.

County's obligation under this section to assume financial liability for utilities used by Telecare and any Telecare associations is based on the understanding that the nature, frequency and intensity of the use of the Facility will remain consistent with historical use of the Building. In the event that the nature, frequency or intensity of use of the Building by Telecare and Telecare associations is such that it results in significantly higher utilities cost than historically has been the case (adjusting for changes in the increased cost of utilities), then the County reserves the right to place limits on usage and/or receive compensation for the excess charges, provided that County shall notify Telecare in writing at least 30 days prior to its intent to limit usage intent to impose such charges, together with reasonable supporting documentation reflecting such significant changes.

10. INSPECTION BY COUNTY

The County or its agent, representative, or employees shall be authorized to enter the Premises used by Telecare at all reasonable times with reasonable prior written notification for the purpose of inspecting the Premises to determine whether Telecare is complying with the terms of this Agreement and for all purposes set forth in the PHF Operations Agreement.

11. TAXES AND ASSESSMENTS

Pursuant to the provisions of Revenue and Taxation Code Section 107.6, Telecare acknowledges that Telecare's interest in Premises which is created by the Agreement may be assessed a possessory interest tax. Telecare shall pay all applicable taxes, assessments, license fees, and other charges accrued in a timely manner.

12. DESTRUCTION OF PREMISES

Should said Premises, or the building of which they are a part, be destroyed or damaged such that they can no longer be used by Telecare as provided in this Agreement, by any cause, County may, in its sole discretion, terminate this Agreement and the PHF Operations Agreement if needed, provided that such termination shall not constitute a waiver by Telecare of any proceeds of insurance it may be entitled to from any insurance policies procured and maintained in connection with this Agreement.

13. CONDEMNATION OF PREMISES

Should all or any part of the Premises be taken by any public or quasi-public agency or entity under the power of eminent domain during the term of the Agreement:

(a) Either County or Telecare may terminate this Agreement by giving the other thirty (30) days' written notice of termination; provided, however, that Telecare cannot terminate this Agreement unless the portion of the Premises taken by eminent domain is so extensive as to render the remainder of the Premises useless for the purposes intended by this Agreement.

(b) Any and all damages and compensation awarded or paid because of the taking, except for amounts paid Telecare for moving expenses, or for damage to any personal property or trade fixtures owned by Telecare, shall belong to the County, and Telecare shall have no claim against the County or the entity exercising eminent domain power for the value of the unexpired term of this Agreement.

14. ASSIGNMENT

Telecare shall not encumber, assign, or otherwise transfer its rights or interests under this Agreement, without the express written consent of the County.

15. ACTS CONSTITUTING BREACHES BY TELECARE

Telecare shall be in material default and breach of this Agreement should:

(a) Any delinquent taxes, assessments, license fees, and other charges be unpaid when due and remain unpaid for thirty (30) days after written

notice to pay such charges or to surrender possession of the Premises has been given to Telecare by the County;

(b) Telecare defaults in the performance of or breaches any provision, covenant, or condition of this Agreement and such default or breach is not cured within thirty (30) days after written notice thereof is given by County to Telecare; or

(c) Telecare abandons the Premises prior to the expiration of the term of this Agreement.

16. COUNTY'S LIABILITY

In the event of a transfer of County's title or interest to the property during the term of this Agreement, Telecare agrees that the grantee of such a transfer will be substituted as County under this Agreement, provided that all deposits are transferred to the grantee. County shall be released from all future liability under this Agreement

17. NOTICES

Except as otherwise expressly provided by law, any and all notices or other communications required or permitted by this Agreement or by law to be served on or given to either party hereto by the other party hereto shall be in writing and shall be deemed duly served and given when personally delivered to the party, County or Telecare, to whom it is directed or any managing employee of such party or, in lieu of such personal service, when deposited in the United States mail, first-class postage prepaid, addressed to:

Telecare Telecare Corporation
 1080 Marina Village Parkway, Suite 100
 Alameda, CA 94501-1078
 Attention: Marshall Langfeld
 Telephone: (520) 337-7950

County County of El Dorado
 Chief Administrative Office, Facilities Division
 300 Fair Lane Court, Suite 2
 Placerville, CA 95667
 Attention: Russell Fackrell
 Telephone: (530) 621-7596

Either party, County or Telecare, may change its address for purposes of this paragraph by giving written notice of the change to the other party in the manner provided in this paragraph.

18. BINDING ON HEIRS AND SUCCESSORS

This Agreement shall be binding on and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the parties hereto.

19. TIME OF ESSENCE

Time is expressly declared to be the essence of this Agreement.

20. WAIVER

The waiver of any breach of any of the provisions of this Agreement by Telecare or County shall not constitute a continuing waiver or a waiver of any subsequent breach by County or Telecare, as applicable, either of the same or of another provision of this Agreement.

21. SOLE AND ONLY AGREEMENT

This instrument constitutes the sole and only Facility Use Agreement between County and Telecare respecting Telecare's use of the Premises and sets forth the obligations of County and Telecare to each other as of its date. Except for any rights applicable at law, any agreements or representations respecting Telecare's right to use the Premises not expressly set forth in this instrument are null and void.

22. SEVERABILITY

If any provision, clause or part of the Agreement, or the application thereof under certain circumstances, is held invalid, the remainder of this Agreement or the application of such provisions, clauses, or parts under other circumstances shall not be affected thereby.

23. CALIFORNIA FORUM AND LAW

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

24. ATTORNEYS' FEES

Should any litigation or arbitration be commenced between County and Telecare concerning the Premises, this Agreement, or the rights and duties of either County or Telecare in relation thereto, the prevailing party in such litigation or arbitration shall be entitled, in addition to such other relief as may be granted, to a reasonable sum as and for its attorneys' fees in the litigation which shall be determined by the court in such litigation or in a separate action brought for that purpose.

25. AGREEMENT ADMINISTRATION

The County officer or employee with responsibility for administering this Agreement is Russ Fackrell, Facility Manager, or successor.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first below written.

TELECARE CORPORATION

10-28-14
Dated: _____

Faith Richie
Faith Richie, Senior Vice President for
Development, Telecare Corporation

10-28-14
Dated: _____

Marshall Langfeld
Marshall Langfeld, Senior Vice President and
Chief Financial Officer, Telecare Corporation

COUNTY OF EL DORADO

11-4-14
Dated: _____

Norma Santiago
Norma Santiago, Chair
Board of Supervisors

ATTEST:

James Mitrison, Clerk of the Board of Supervisors

By: [Signature]
Deputy Clerk

Dated: 11-4-14