



# **RESOLUTION No. 24-417**

## **OF THE BOARD OF SUPERVISORS OF THE COUNTY OF NEVADA**

### **RESOLUTION APPROVING EXECUTION OF A RENEWAL REVENUE AGREEMENT FOR SERVICES WITH THE COUNTY OF SIERRA FOR NEVADA COUNTY TO PROVIDE RESPITE INSIGHT CENTER SERVICES TO SIERRA COUNTY REFERRED CLIENTS FOR THE TERM OF JULY 1, 2024, THROUGH JUNE 30, 2025, IN THE MAXIMUM CONTRACT AMOUNT OF \$20,000**

WHEREAS, Nevada County Behavioral Health Department operates a Respite Care Center, called the Insight Respite Center, 24 hours per day, 7 days per week, where individuals can receive temporary housing and supportive counseling services; and

WHEREAS, the Respite Insight Center offers a safe and supportive environment for persons at risk of needing mental health crisis services in a less restrictive environment than a hospital or Crisis Stabilization Unit and these services help to minimize usage of inpatient hospitalization days and decrease clients' involvement with the justice system; and

WHEREAS, Sierra County desires to make the most appropriate and economical use of regional services in order to provide comprehensive mental health services to residents of Sierra County; and

WHEREAS, the Counties of Sierra and Nevada wish to enter into this mutually beneficial agreement whereby Nevada County Behavioral Health is agreeing to provide Respite Care Center Services, through its subcontractor, to Sierra County referred clients, and Sierra County shall reimburse Nevada County Behavioral Health, providing revenue to offset operational costs of the Center and strengthen and promote the mutual working relationship between Sierra and Nevada Counties.

NOW, THEREFORE, BE IT HEREBY RESOLVED by the Board of Supervisors of the County of Nevada, State of California, that the Agreement for Services by and between the County of Nevada and County of Sierra, pertaining to Nevada County Behavioral Health Department providing Respite Insight Center Services through its subcontractor, Turning Point Community Programs for Sierra County referred clients for a total contractual obligation not to exceed \$20,000 for the term of July 1, 2024, through June 30, 2025, be and hereby is approved in substantially the form attached hereto, and that the Chair of the Board of Supervisors be and is hereby authorized to execute the Agreement on behalf of the County of Nevada.

Funds to be deposited into revenue account: 1589-40110-493-8502/452000.

PASSED AND ADOPTED by the Board of Supervisors of the County of Nevada at a regular meeting of said Board, held on the 6th day of August 2024, by the following vote of said Board:

Ayes: Supervisors Heidi Hall, Edward C. Scofield, Lisa Swarthout, Susan Hoek, and Hardy Bullock.

Noes: None.

Absent: None.

Abstain: None.

Recuse: None.

ATTEST:

TINE MATHIASSEN

Chief Deputy Clerk of the Board of Supervisors

By: CSwan, Deputy COB

Hardy Bullock  
Hardy Bullock, Chair

**AGREEMENT FOR  
PROFESSIONAL  
SERVICES**

THIS AGREEMENT for Professional Services ("Agreement") is made as of the Agreement Date set forth below by and between the County of Sierra, a political subdivision of the State of California ("the COUNTY"), and

**County of Nevada, Department of Behavioral Health**  
(the CONTRACTOR)

In consideration of the services to be rendered, the sums to be paid, and each and every covenant and condition contained herein, the parties hereto agree as follows:

**OPERATIVE PROVISIONS**

**1. SERVICES.**

The CONTRACTOR shall provide those technical assistance services described in Attachment "A," Provision A-1. CONTRACTOR shall provide said services at the time, place and in the manner specified in Attachment "A," Provisions A-2 through A-3.

**2. TERM.**

Commencement Date: July 1, 2024

Termination Date: June 30, 2025

**3. PAYMENT.**

COUNTY shall pay CONTRACTOR for services rendered pursuant to this Agreement at the time and in the amount set forth in Attachment "B." The payment specified in Attachment "B" shall be the only payment made to CONTRACTOR for services rendered pursuant to this Agreement. CONTRACTOR shall submit all billings for said services to COUNTY in the manner specified in Attachment "B."

**4. FACILITIES, EQUIPMENT AND OTHER MATERIALS AND OBLIGATIONS OF COUNTY.**

CONTRACTOR shall, at its sole cost and expense, furnish all facilities, equipment, and other materials which may be required for furnishing services pursuant to this Agreement, except as provided in this paragraph. COUNTY shall furnish CONTRACTOR only those facilities, equipment, and other materials and shall perform those obligations listed in Attachment "A."

**5. ADDITIONAL PROVISIONS.**

Those additional provisions unique to this Agreement are set forth in Attachment "C."

**6. GENERAL PROVISIONS.**

The general provisions set forth in Attachment "D" are part of this Agreement. Any inconsistency between said general provisions and any other terms or conditions of this Agreement shall be controlled by the other terms or conditions insofar as the latter are inconsistent with the general provisions. The HIPAA Business Associates Agreement, Attachment F is incorporated by this reference.

**7. DESIGNATED REPRESENTATIVES.**

The Director of Behavioral Health or Designee is the designated representative of the COUNTY and will

administer this Agreement for the COUNTY. Phebe Bell, Director of Nevada County Behavioral Health, is the authorized representative for CONTRACTOR. Changes in designated representatives shall occur only by advance written notice to the other party.

**8. ATTACHMENTS.**

All attachments referred to herein are attached hereto and by this reference incorporated herein. Attachments include:

Attachment A - Services  
Attachment B - Payment  
Attachment C - Additional Provisions  
Attachment D - General Provisions  
Attachment E - Form of Invoice  
Attachment F - Business Associate Agreement  
Attachment G - Special Terms and Conditions

**9. AGREEMENT DATE.** The Agreement Date is July 1, 2024 as approved by the Sierra County Board of Supervisors.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day here first above written.

"COUNTY"

"CONTRACTOR"

COUNTY OF SIERRA

By   
PAUL ROEN  
Chair, Board of Supervisors

  
HARDY BULLOCK  
Chair, Board of Supervisors  
CONTRACTOR TAXPAYER I.D. NUMBER

Submitted Confidentially  
(Taxpayer I.D. or Social Security No.)

ATTEST:

APPROVED AS TO FORM:

  
HEATHER FOSTER  
Clerk of the Board

  
Kit Elliott (Aug 16, 2024 14:56 PDT)  
Katharine L. Elliott  
County Counsel

APPROVED AS TO FORM:

  
RHETTA VANDER PLOEG  
County Counsel



## ATTACHMENT A

### A.1 SCOPE OF SERVICES AND DUTIES.

The services to be provided by CONTRACTOR and the scope of CONTRACTOR's duties include the following:

Nevada County Behavioral Health, hereinafter referred to as CONTRACTOR, and Sierra County, hereinafter referred to as COUNTY, agree to enter into a specific contract for the provision of Respite Services at the Insight Respite Center (IRC).

#### **Background and Overview**

Nevada County Behavioral Health has contracted with Turning Point Community Programs, Inc., hereinafter referred to as Sub-Contractor, to provide Respite services as part of a crisis continuum of care at the Insight Respite Center (IRC). The four (4) bed Care Center operates 24 hours per day, seven (7) days per week (24/7). The IRC provides a relaxed and welcoming home-like environment for individuals with mental health challenges who are going through an escalation of mental health symptoms, in order to prevent crisis intervention or hospitalization. Participants focus on their personal strengths and strive to gain emotional stability, balance, and resilience within their lives as they work with peer counselors and their fellow peers in the program toward their recovery. The IRC honors all aspects of the whole self of all persons involved. The leadership of people with lived experience is essential to the success of the IRC. The IRC is staffed primarily by peer counselors and others with lived experience. This wellness-, resiliency-, and recovery-oriented setting is less restrictive than a Crisis Stabilization Unit (CSU) or a psychiatric inpatient facility. The IRC facilitates communication and coordination across all components of the crisis continuum of care, including the Crisis Response Team at the local Emergency Department, CSU, and other service agencies involving a client's support network.

#### **County Responsibilities**

COUNTY shall establish the process for placement of County clients in the IRC, which will include the County's policies related to the clinical appropriateness of individual clients for Respite Services, discharge planning, and other services necessary for clients to be successful following from the IRC. The COUNTY will develop their own policies and procedures unique to issues related to the County admissions, including transportation and the authorization of services.

1. The COUNTY may authorize IRC services, when CONTRACTOR has verified that a bed is available, for an individual whom Sierra County is taking fiscal responsibility for. Only adults, 18 years and older and who are psychiatrically and physically appropriate, as deemed by the CONTRACTOR and IRC staff, will be accepted for an IRC placement. The COUNTY will establish an authorization form and ensure it is completed for every client acceptance request for the IRC. It is understood between the parties that CONTRACTOR maintains dedicated beds at the IRC, and may only accept COUNTY clients as capacity allows. Further, it is understood and agreed between the Parties that CONTRACTOR reserves the right to refuse admission of a COUNTY client at CONTRACTOR'S discretion.
2. The COUNTY shall arrange transportation from Sierra County to the CSU in Grass Valley, California as part of the assessment process for placement at the IRC. The CONTRACTOR may provide Taxi Vouchers for transportation of clients from the CSU to the IRC. Transportation following discharge from the IRC shall be arranged by the COUNTY, and any associated costs are the responsibility of the COUNTY.
3. The COUNTY shall ensure that all prescribed medications of the client will be carried and delivered by the client. Clients are to take medication on their own. Respite staff shall not observe medication adherence, unless the client voluntarily asks for staff to provide this type of observation.

4. The COUNTY shall provide an identified designee for Respite staff to provide updates, and to gain assistances with accessing necessary services for the client. Any discharges after hours will need a preliminary plan or established protocol of referrals set up ahead of time to ensure that follow up intake/linkage appointment times with Sierra County and any other necessary services are available.
5. The COUNTY shall begin discharge planning from the Insight Respite Center immediately upon client placement. The COUNTY shall provide any necessary medical, psychiatric, or other services to support such placements. All individuals referred to Respite Services, including those who are homeless, must have an identified placement (e.g., Drug and Alcohol residential program) or residence arranged upon discharge from the Insight Respite Center, which shall be the sole responsibility of the COUNTY to secure.

**Contractor Responsibilities**

1. Services rendered pursuant to this Contract shall be provided at the following location: 13192 Brunswick Rd. Grass Valley, California 95945.
2. Offer Insight Respite Center (ORC) Services/support up to fourteen (14) days. If individuals need additional time at the Center, the IRC team shall document, consider requests and may authorize additional days up to a maximum of twenty-eight (28) days per admission.
3. The CONTRACTOR and its Subcontractor will:
  - a. Maintain the confidentiality and security of all services and records in compliance with HIPAA and HITECH, to the extent required by law.
  - b. Deliver services in compliance with all applicable provisions described under the Welfare and Institutions Code.
  - c. Consider the client's psychiatric and physical health stability and whether the staffing and interventions available through the IRC will meet the psychiatric and behavioral health needs of any proposed Sierra County admissions. This includes whether the environment and support of the IRC specifically is adequate in managing potentially dangerous behavior. Because of the nature of the physical environment at the IRC, including many stairs, the client's physical limitations and medical needs may preclude the use of this service.
  - d. Follow the procedure of assessing all potential Respite clients first at the CSU where the Crisis Response Team (CRT) is co-located in Grass Valley, California next to the entrance of the Emergency Department of Sierra Nevada Memorial Hospital. Clients may or may not need CSU services, but all assessments will take place at that location. The CRT or CSU staff will assess the client's appropriateness for Respite Services during the initial assessment of the client for placement and continuing during any admission, if needed, at the CSU. Clients that do not require CSU services may be immediately referred to the IRC. When a referral is made to the IRC, the CONTRACTOR will identify if there is an opening and request IRC staff to travel to the CSU to provide a screening of the client for appropriateness of IRC services. The final decision of who enters the IRC program will remain with the designee of the CONTRACTOR, which is usually the Clinical Supervisor or the Program Manager.
  - e. In coordination with COUNTY, assist with discharge planning for the client immediately

- upon client's arrival to the IRC. The discharge plan, which includes a Wellness Recovery Action Plan (WRAP), provides a clear outline of both strategies for managing symptoms during the stay at IRC and afterward.
- f. Regularly coordinate with the COUNTY's designee for providing updates on progress and planning of follow-up services.
  - g. Comply with documentation standards established by Nevada County for the IRC.
  - h. Ensure that potential clients meet the following target population:
    - 1. Over the age of 18.
    - 2. Have a mental illness and as a result of the disorder the individual is at risk of needing a higher level of care (e.g., psychiatric hospitalization, residential program, etc.) or recently discharged from a higher level of care, or experiencing a first episode or re-emergence of a psychotic break;
    - 3. Assessed by the staff of the Sub-Contractor and approved by the CONTRACTOR's Program Manager or his/her designee;
    - 4. Medically stable;
    - 5. Not under the influence of alcohol and/or drugs;
    - 6. Able to maintain acceptable personal hygiene
    - 7. Be responsible for preparing meals and cleaning up after oneself;
    - 8. Understand and sign or initial necessary documentation;
    - 9. Willing to follow participant agreement upon entering the Center; and
    - 10. Have a place to return to when leaving the Center, which shall be identified by COUNTY at the time of placement.
  - i. Ensure that IRC provides a warm supportive home-loke environment for individuals who will receive active listening and empathy from peer counselors, which has been shown to be effective in reducing immediate feelings of crisis and promoting quicker resolution of crisis. Services shall be focused on helping individuals understand the factors that preceded the crisis so they can begin to understand triggers and develop appropriate coping skills.
  - j. Provide clinical support to the staff who are made up mostly of peers. Peers are defined as those persons with lived experience, as wither a person who has received psychiatric services in the past for mental illness or has lived with a family member with such experiences. The Program Director fi the IRC shall be onsite at the Center 40 hours per week. There shall also be a Peer Counselor or Lead Peer Counselor onsite 24 hours per day, 7 days per week, and a second Peer Counselor shall be onsite daily at various times form 8 am to 12 am.
  - k. Ensure that the guiding principles utilized by staff shall include Wellness and Recovery and Intentional Peer Support, with a focus on services being participant-driven, individualized and person-centered, empowering, holistic, strengths-based, respectful, and above all provide hope to the participants.
  - l. Encourage the use of a comprehensive trauma-informed approach with a crisis prevention WRAP plan. This plan will start with goal setting. The respite staff shall use the Strengths Assessment in order to help the client identify existing strengths and develop plans that use those strengths in order to achieve identified short-term goals. This plan will help clients to anticipate and manage situations that have historically precipitated crisis events. These plans often lead to the client feeling empowered and provide hope for improved ability to manage difficult situations in their lives. The plan shall include natural supports, such as family

members and friends, along with other identified support who will be invited to participate in the development of the plan and to play an active role in ongoing support of the individual. During their time at the Center, other natural community supports also shall be identified that meet the clients identified needs at that time, as well as any needs they may have following discharge from the program.

- m. Early Transition/Termination may occur with clients if their behavior does not align with house rules, they need a higher level of care, they display significant threatening behavior or verbalize threats to self or others, they decline to follow significant parts of their support plan at the Center, they achieve their desired goals and are ready to leave, or have stayed at the Center for the maximum time period (28 days), as determined by staff and the CONTRACTOR or the Sub-Contractor. Policies and procedures that clearly describe the criteria for transitioning/terminating a participant early from the program shall be clearly outlined and documented. CONTRACTOR shall document the reason(s) why any individual is transitioned/terminated early from the program and a summary provided to the County designee.
- n. Arrange and lead regular Insight Respite Center Steering Committee meetings which will include key staff from the COUNTY, CONTRACTOR, Spirit Peer Empowerment Center, SB 82 grant evaluator, other relevant agencies and stakeholders, consumers, advocates, and other interested parties. The Steering Committee will review outcomes and ways to improve the Respite Center process and services. Ensure that all persons working at the IRC receive comprehensive training related to understanding the array of services with the County Adult System of Care. Coordination of the Center's services will be integrated with the Crisis Response Team, CSU, Sierra Nevada Memorial Hospital, and the County programs related to crisis services and follow-up services. IRC staff and COUNTY staff shall collaborate to ensure that all Center participants, to the best extent possible, have a clinically supported transition back to their home.
- o. Perform services which are relevant to this contract but have not been included in this scope of the services. The Sub-Contractor has agreed to perform said services upon the written request of the CONTRACTOR. These additional services may include, but are not limited to, any of the following: Work requested by the CONTRACTOR in connection with any other matter or any item of work not specified herein; work resulting from substantial changes ordered by the CONTRSCTOR in the nature or extent of the project, and serving as an expert witness for the CONTRACTOR in any litigation or other proceedings involving the Center.

**A.2. TIME SERVICES RENDERED.**

Work will begin immediately upon execution of this Agreement by the County. Thereafter, CONTRACTOR shall perform services in a diligent and timely manner.

**A.3. MANNER SERVICES ARE TO BE PERFORMED.**

As an independent contractor, CONTRACTOR shall be responsible for providing services and fulfilling obligations hereunder in a professional manner. COUNTY shall not control the manner of performance.

**A.4. FACILITIES FURNISHED BY COUNTY.**

None

**ATTACHMENT B**

**PAYMENT**

COUNTY shall pay CONTRACTOR as follows:

- B.1 BASE CONTRACT FEE.** COUNTY shall pay CONTRACTOR a contract fee not to exceed \$20,000 payable at the rate of \$80 per day, all inclusive of room and board, and counseling services. CONTRACTOR shall submit requests for payment (Invoice) on a monthly basis, invoicing for all work completed and delivered to the Director prior to the issuance of such Invoice. Invoice shall be substantially in the form of the invoice attached hereto as Attachment E. Payment shall be made within thirty (30) days after the Invoice is approved and accepted by the Auditor. In no event shall total compensation paid to CONTRACTOR under this Provision B.1 exceed \$20,000 without an amendment to this Agreement approved by the Sierra County Board of Supervisors.
- B.2 MILEAGE.** NA
- B.3 TRAVEL COSTS.** NA
- B.4 AUTHORIZATION REQUIRED.** Services performed by CONTRACTOR and not authorized in this Agreement shall not be paid for by COUNTY. Payment for additional services shall be made to CONTRACTOR by COUNTY if, and only if, this Agreement is amended in writing by both parties in advance of performing additional services.
- B.5 SPECIAL CIRCUMSTANCES.** None.
- B.6 MAXIMUM CONTRACT AMOUNT.** The maximum amount payable to CONTRACTOR under this Agreement shall not exceed the following:

B.1	Base Contract Fee	\$20,000
B.2	Mileage	0
B.3	Travel Costs	0
B.4	Authorization Required	0
B.5	Special Circumstances	0
MAXIMUM CONTRACT AMOUNT		\$20,000

Payments shall be remitted to:  
Nevada County Behavioral Health Department  
Attention: Fiscal Staff  
500 Crown Point Circle, Suite 120  
Grass Valley, CA 95945

## **ATTACHMENT C**

### **ADDITIONAL PROVISIONS**

#### **CULTURAL COMPETENCE:**

CONTRACTOR shall provide services pursuant to this Agreement in accordance with current State statutory, regulatory and policy provisions related to cultural and linguistic competence as defined in California State Department of Mental Health (DMH) Information Notice No: 10-02, "The 2010 - Cultural Competence Plan Requirements." COUNTY and CONTRACTOR'S compliance with cultural competence requirements is defined in Welfare and Institutions Code (WIC) Section 14684(a) (9) as "Each mental health plan shall provide for culturally competent and age-appropriate services, to the extent feasible. The mental health plan shall assess the cultural competency needs of the program. The mental health plan shall include, as part of the quality assurance program required by Section 14725, a process to accommodate the significant needs with reasonable timeliness." Performance outcome measures shall include a reliable method of measuring and reporting the extent to which services are culturally competent and age-appropriate."

#### **REPORTING:**

- a. CONTRACTOR agrees to provide COUNTY with reports that may be required by County, State or Federal agencies for compliance with this Agreement.
- b. CONTRACTOR shall submit quarterly progress reports and a final annual report to COUNTY which reflects progress made in implementing the services and achieving the outcomes set forth in Exhibit A, and to assure CONTRACTOR'S compliance with contract terms. Said annual report shall be submitted by August 31 for the preceding fiscal year.
- c. CONTRACTOR shall make annual client outcome information available to COUNTY within 60 days of fiscal year end. Outcome data will be based upon the full array of services provided and how those services advanced the functional improvement of the client. Functional improvement will be measured by the disposition of the client at discharge.

#### **FEDERAL AND STATE ACCOUNTING REQUIREMENTS:**

CONTRACTOR shall comply with all applicable County, State, and Federal laws, rules and regulations. CONTRACTOR shall be required to establish and maintain accounting systems and financial records that accurately account for and reflect all Federal funds received, including all matching funds from the State, COUNTY and any other local or private organizations. CONTRACTOR's records shall reflect the expenditure and accounting of said funds in accordance with all State laws and procedures for expending and accounting for all funds and receivables, as well as meet the financial management standards in 45 CFR Part 92 and in the Office of Management and Budget Super Circular "Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards."

#### **RIGHT TO MONITOR AND AUDIT:**

Authorized county, state and federal agencies shall have the right to monitor all work performed under this Agreement to assure that all-applicable State and Federal regulations are met. COUNTY, State and Federal Governments shall have the right to audit all work, records and procedures related to this Agreement to determine the extent to which the program is achieving its purposes and performance goals. COUNTY will have the right to review financial and programmatic reports and will notify CONTRACTOR of any potential Federal and/or State exception(s) discovered during such examination. COUNTY will follow-up and ensure that the CONTRACTOR takes timely and appropriate action on all deficiencies.



**CERTIFICATION OF PROGRAM INTEGRITY:**

- a. 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.
- b. CONTRACTOR shall ensure the following for each Medi-Cal beneficiary for whom the CONTRACTOR is submitting a claim for reimbursement:
  - i. An assessment of the Medi-Cal beneficiary was conducted in compliance with the requirements established in the Mental Health Plan (MHP) contract between Nevada County and the Department of Health Care Services (DHCS), a copy of which will be provided to COUNTY by CONTRACTOR under separate cover.
  - ii. The Medi-Cal beneficiary was eligible to receive Medi-Cal services at the time the services were provided to the beneficiary.
  - iii. The services included in the claim were actually provided to the beneficiary.
  - iv. 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.
  - v. A client plan was developed and maintained for the beneficiary that met all client plan requirements established in the MHP contract between Nevada County and the DHCS.
- c. 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 Sections 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.
- d. 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](http://www.oig.hhs.gov)) and General Services Administration (GSA) Excluded Parties List System (EPLS) ([www.epls.gov](http://www.epls.gov)) or System for Award Management (SAM) Excluded Parties List System (EPLS) ([www.sam.gov/portal/public/SAM](http://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.
- e. In addition, CONTRACTOR certifies that the following processes are in place:
  - i. Written policies, procedures and standards of conduct that articulate the organization's commitment to comply with all applicable Federal and State standards.
  - ii. The designation of a compliance officer and a compliance committee that is accountable to County Compliance Officer to report on adherence to the program senior management.
  - iii. Effective training and education for the compliance officer and the organization's employees.

- iv. Enforcement of standards through well-publicized disciplinary guidelines.
- v. Provisions for internal monitoring and auditing.
- vi. Provision for prompt response to detected offenses, and for development of corrective action initiatives relating to the provision of mental health services.

**STANDARD OF PERFORMANCE:**

CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged in the geographical area in which CONTRACTOR practices its profession. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a substantial first class and workmanlike manner and conform to the standards or quality normally observed by a person practicing in CONTRACTOR'S profession.

**LICENSES, PERMITS, ETC.:**

CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to provide services as set forth herein. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR will, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement, any licenses, permits, and approvals which are legally required at the time the services are performed.

**RECORDS:**

- a. This provision is intended to provide the minimum obligations with respect to records. If provisions contained elsewhere in this Agreement, or at law, provide greater obligations with respect to records or information, those obligations control. For purposes of this provision "records" is defined to mean any and all writings, as further defined in California Evidence Code section 250, whether maintained in paper or electronic form, prepared by or received by CONTRACTOR, in relation to this Agreement.
- b. CONTRACTOR shall maintain, at all times, complete detailed records with regard to work performed under this Agreement in a form acceptable to COUNTY. CONTRACTOR agrees to provide documentation or reports, compile data, or make its internal practices and records available to COUNTY or personnel of authorized state or federal agencies, for purpose of determining compliance with this Agreement or other applicable legal obligations. County shall have the right to inspect or obtain copies of such records during usual business hours upon reasonable notice.
- c. Upon completion or termination of this Agreement, COUNTY may request CONTRACTOR deliver originals or copies of all records to COUNTY, which has been prepared by, for, or submitted to COUNTY in relation to this Agreement. COUNTY shall have full ownership and control of all such records, although CONTRACTOR shall be entitled to maintain copies of COUNTY'S records hereunder for internal purposes. If COUNTY does not request all records from CONTRACTOR, then CONTRACTOR shall maintain them for a minimum of four (4) years after completion or termination of the Agreement. If for some reason CONTRACTOR is unable to continue its maintenance obligations, CONTRACTOR shall give notice to COUNTY in sufficient time for COUNTY to take steps to ensure proper continued maintenance of records.
- d. CONTRACTOR shall be subject to the examination and audit of the California State Auditor for a period of three years after final payment under contract (Government Code, Section 8546.7). Should COUNTY or any outside governmental entity require or request a post-contract audit, record review, report, or similar activity that would require CONTRACTOR to expend staff time and/or resources to comply, CONTRACTOR shall be responsible for all such costs incurred as a result of this activity.

**PATIENTS' RIGHTS:**

Patients' Rights shall comply with Welfare and Institutions Code Division 5, Section 5325 et seq.; and California Code of Regulations, Title 9, Division 1, Chapter 3, Article 6, Section 590 et seq. COUNTY Patients' Rights Advocate shall have access to COUNTY clients by telephone or in person as deemed necessary by Advocate and client. COUNTY Patients' Rights Advocate shall also have access to COUNTY patients' charts during normal business hours to investigate and resolve complaints.

**INDEPENDENT CONTRACTOR:**

- a. In the performance of this Agreement, CONTRACTOR, its agents and employees are, at all times, acting and performing as an independent contractor, and this Agreement creates no relationship of employer and employee as between COUNTY and CONTRACTOR. CONTRACTOR agrees neither it nor its agents and employees have any rights, entitlement or claim against COUNTY for any type of employment benefits or workers' compensation or other programs afforded to COUNTY employees.
- b. CONTRACTOR shall be responsible for all applicable state and federal income, payroll and taxes and agrees to provide any workers' compensation coverage as required by California State laws.

**CONFLICT OF INTEREST:**

CONTRACTOR certifies that its employees and the officers of its governing body shall avoid any actual or potential conflicts of interest and that no officer or employee who performs any function or responsibilities in connection with this contract shall have any personal financial interest or benefit that either directly or indirectly arises from this contract. CONTRACTOR shall establish safeguards to prohibit its employees or its officers from using their position for the purpose that could result in private gain or that gives the appearance of being motivated for private gain for themselves or others, particularly those with whom they have family, business or other ties.

**CONFIDENTIALITY:**

- a. The Parties agree to maintain confidentiality of information and records as required by applicable federal, state and local laws, regulations and rules, including, but not limited to, Welfare and Institutions (W&I) Code Section 5328 et seq. and Section 14100.2; the Code of Federal Regulations (CFR), Title 42, Section 431.300 et seq.; the Health Insurance Portability and Accountability Act (HIPAA), including, but not limited to Section 1320 D et seq. of Title 42, United States Code and its implementing regulations (including but not limited to Title 45, CFR, Parts 142, 160, 162, and 164); and the Health Information Technology for Economic and Clinical Health Act of 2009 (the "HITECH Act"), and any current and future regulations promulgated under HIPAA or HITECH, and further agrees to hold the other harmless from any breach of confidentiality, as set forth in the hold harmless provisions contained herein. CONTRACTOR ensures that any subcontractors' agents receiving health information related to this Agreement agree to the same restrictions and conditions that apply to CONTRACTOR with respect to such information.

**NONDISCRIMINATION:**

During the performance of this Agreement, CONTRACTOR shall comply with all applicable federal, state and local laws, rules, regulations and ordinances, including the provisions of the Americans with Disabilities Act of 1990, and Fair Employment and Housing Act, and will not discriminate against employees, applicants or clients because of race, sex, sexual orientation, color, ancestry, religion or religious creed, national origin or ethnic group identification, mental disability, physical disability, medical condition (including cancer, HIV and AIDS), age (over 40), marital status, or use of Family and Medical Care Leave and/or Pregnancy Disability Leave in regard to any position for which the employee or applicant is qualified.

**ASSIGNMENT AND SUBCONTRACTING:**

Except as specifically provided herein, the rights, responsibilities, duties and services to be performed

under this Contract, are personal to the CONTRACTOR. COUNTY acknowledges that certain services under this Agreement shall be provided by CONTRACTOR'S Sub-Contractor, Turning Point Community Programs, Inc. and hereby agrees to the use of named Sub-Contractor in the performance of those services, as more fully set forth in Exhibit "A", Schedule of Services.

**ENTIRETY OF AGREEMENT:**

This Agreement contains the entire agreement of COUNTY and CONTRACTOR with respect to the subject matter hereof, and no other agreement, statement, or promise made by any party, or to any employee, officer, or agent of any party which is not contained in this Agreement shall be binding or valid.

**GOVERNING LAW AND VENUE:**

This contract shall be construed in accordance with the laws of the State of California and the parties hereto agree that venue shall be in Nevada County, California.

**COMPLIANCE WITH APPLICABLE LAWS:**

The CONTRACTOR shall comply with any and all federal, state and local laws, codes, ordinances, rules and regulations which relate to, concern or affect the Services to be provided by this Contract.

## ATTACHMENT D

### GENERAL PROVISIONS

**D.1 INDEPENDENT CONTRACTOR.** For all purposes arising out of this Agreement, CONTRACTOR shall be an independent contractor and CONTRACTOR and each and every employee, agent, servant, partner, and shareholder of CONTRACTOR (collectively referred to as "The Contractor") shall not be, for any purpose of this Agreement, an employee of COUNTY. Furthermore, this Agreement shall not under any circumstance be construed or considered to be a joint powers agreement as described in *Government Code* Section 6000, et seq., or otherwise. As an independent contractor, the following shall apply:

**D.1.1** CONTRACTOR shall determine the method, details and means of performing the services to be provided by CONTRACTOR as described in this Agreement.

**D.1.2** CONTRACTOR shall be responsible to COUNTY only for the requirements and results specified by this Agreement and, except as specifically provided in this Agreement, shall not be subject to COUNTY's control with respect to the physical actions or activities of CONTRACTOR in fulfillment of the requirements of this Agreement.

**D.1.3** CONTRACTOR shall be responsible for its own operating costs and expenses, property and income taxes, workers' compensation insurance and any other costs and expenses in connection with performance of services under this Agreement.

**D.1.4** CONTRACTOR is not, and shall not be, entitled to receive from or through COUNTY, and COUNTY shall not provide or be obligated to provide the CONTRACTOR with workers' compensation coverage, unemployment insurance coverage or any other type of employee or worker insurance or benefit coverage required or provided by any federal, state or local law or regulation for, or normally afforded to, any employee of COUNTY.

**D.1.5** The CONTRACTOR shall not be entitled to have COUNTY withhold or pay, and COUNTY shall not withhold or pay, on behalf of the CONTRACTOR any tax or money relating to the Social Security Old Age Pension Program, Social Security Disability Program or any other type of pension, annuity or disability program required or provided by any federal, state or local law or regulation for, or normally afforded to, an employee of COUNTY.

**D.1.6** The CONTRACTOR shall not be entitled to participate in, or receive any benefit from, or make any claim against any COUNTY fringe benefit program including, but not limited to, COUNTY's pension plan, medical and health care plan, dental plan, life insurance plan, or other type of benefit program, plan or coverage designated for, provided to, or offered to COUNTY's employees.

**D.1.7** COUNTY shall not withhold or pay on behalf of CONTRACTOR any federal, state or local tax including, but not limited to, any personal income tax owed by CONTRACTOR.

**D.1.8** The CONTRACTOR is, and at all times during the term of this Agreement shall represent and conduct itself as, an independent contractor and not as an employee of COUNTY.

**D.1.9** CONTRACTOR shall not have the authority, express or implied, to act on behalf of, bind or obligate the COUNTY in any way without the written consent of the COUNTY.

**D.2 LICENSES, PERMITS, ETC.** CONTRACTOR represents and warrants to COUNTY that it has all licenses, permits, qualifications, and approvals of whatsoever nature which are legally required for CONTRACTOR to practice its profession. CONTRACTOR represents and warrants to COUNTY that CONTRACTOR shall, at its sole cost and expense, keep in effect or obtain at all times during the term of this Agreement any licenses, permits, and approvals which are legally required for CONTRACTOR to practice its profession at the time the services are performed.

**D.3 CHANGE IN STATUTES OR REGULATIONS.** If there is a change of statutes or regulations applicable to the subject matter of this Agreement, both parties agree to be governed by the new provisions, unless either party gives notice to terminate pursuant to the terms of this Agreement.

**D.4 TIME.** CONTRACTOR shall devote such time to the performance of services pursuant to this Agreement as may be reasonably necessary for the satisfactory performance of CONTRACTOR's obligations pursuant to this Agreement. Neither party shall be considered in default of this Agreement to the extent performance is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the party.

**D.5 INSURANCE.**

**D.5.1** Prior to rendering services provided by the terms and conditions of this Agreement, CONTRACTOR shall acquire and maintain during the term of this Agreement insurance coverage through and with an insurer acceptable to COUNTY, naming the COUNTY and COUNTY's officers, employees, agents and independent contractors as additional insured (hereinafter referred to as "the insurance"). The insurance shall contain the coverage indicated by the checked items below.

Yes **D.5.1.1** Comprehensive general liability insurance including comprehensive public liability insurance with minimum coverage of One Million Dollars (\$1,000,000) per occurrence and with not less than One Million Dollars (\$1,000,000) aggregate; CONTRACTOR shall insure both COUNTY and CONTRACTOR against any liability arising under or related to this Agreement.

Yes **D.5.1.2** During the term of this Agreement, CONTRACTOR shall maintain in full force and effect a policy of professional errors and omissions insurance with policy limits of not less than One Million Dollars (\$1,000,000) per incident and One Million Dollars (\$1,000,000) annual aggregate, with deductible or self-insured portion not to exceed Twenty-five Thousand Dollars (\$25,000).  
**(Waive For This Contract and Agreement)**

Yes **D.5.1.3** Comprehensive automobile liability insurance with minimum coverage of One Hundred Thousand Dollars (\$100,000) per occurrence and with not less than One Hundred Thousand Dollars (\$100,000) on reserve in the aggregate, with combined single limit including owned, non-owned and hired vehicles.

Yes **D.5.1.4** Workers' Compensation Insurance coverage for all CONTRACTOR employees and other persons for whom CONTRACTOR is responsible to provide such insurance coverage, as provided by Division 4 and 4.5 of the *Labor Code*.

**D.5.2** The limits of insurance herein shall not limit the liability of the CONTRACTOR hereunder.

**D.5.3** In respect to any insurance herein, if the aggregate limit available becomes less than that required above, other excess insurance shall be acquired and maintained immediately. For the purpose of any insurance term of this Agreement, "aggregate limit available" is defined as the total policy limits available for all claims made during the policy period.

**D.5.4** The insurance shall include an endorsement that no cancellation or material change adversely affecting any coverage provided by the insurance may be made until twenty (20) days after written notice is delivered to COUNTY.

**D.5.5** The insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY at its sole and absolute discretion. The amount of any deductible payable by the insured shall be subject to the prior approval of the COUNTY and the COUNTY, as a condition of its approval, may require such proof of the adequacy of CONTRACTOR's financial resources as it may see fit.

**D.5.6** Prior to CONTRACTOR rendering services provided by this Agreement, and immediately upon acquiring additional insurance, CONTRACTOR shall deliver a certificate of insurance describing the insurance coverages and endorsements to:



County of Sierra  
Auditor/Risk-Manager  
P.O. Drawer 425  
Downieville, CA 95936

**D.5.7** CONTRACTOR shall not render services under the terms and conditions of this Agreement unless each type of insurance coverage and endorsement is in effect and CONTRACTOR has delivered the certificate(s) of insurance to COUNTY as previously described. If CONTRACTOR shall fail to procure and maintain said insurance, COUNTY may, but shall not be required to, procure and maintain the same, and the premiums of such insurance shall be paid by CONTRACTOR to COUNTY upon demand. The policies of insurance provided herein which are to be provided by CONTRACTOR shall be for a period of not less than one year, it being understood and agreed that twenty (20) days prior to the expiration of any policy of insurance, CONTRACTOR will deliver to COUNTY a renewal or new policy to take the place of the policy expiring.

**D.5.8** COUNTY shall have the right to request such further coverages and/or endorsements on the insurance as COUNTY deems necessary, at CONTRACTOR's expense. The amounts, insurance policy forms, endorsements and insurer(s) issuing the insurance shall be satisfactory to COUNTY in its sole and absolute discretion.

**D.5.9** Any subcontractor(s), independent contractor(s) or any type of agent(s) performing or hired to perform any term or condition of this Agreement on behalf of CONTRACTOR, as may be allowed by this Agreement (hereinafter referred to as the "SECONDARY PARTIES"), shall comply with each term and condition of this Section D.5 entitled "INSURANCE". Furthermore, CONTRACTOR shall be responsible for the SECONDARY PARTIES' acts and satisfactory performance of the terms and conditions of this Agreement.

**D.6 HOLD HARMLESS AND INDEMNIFICATION.** To the fullest extent permitted by law, each Party (the "Indemnifying Party") hereby agrees to protect, defend, indemnify, and hold the other Party (the "Indemnified Party"), its officers, agents, employees, and volunteers, free and harmless from any and all losses, claims, liens, demands, and causes of action of every kind and character resulting from the Indemnifying Party's negligent act, willful misconduct, or error or omission, including, but not limited to, the amounts of judgments, penalties, interest, court costs, legal fees, and all other expenses incurred by the Indemnified Party arising in favor of any party, including claims, liens, debts, personal injuries, death, or damages to property (including employees or property of the Indemnified Party) and without limitation, all other claims or demands of every character occurring or in any way incident to, in connection with or arising directly or indirectly out of, the Contract. The Indemnifying Party agrees to investigate, handle, respond to, provide defense for, and defend any such claims, demand, or suit at the sole expense of the Indemnifying Party, using legal counsel approved in writing by Indemnified Party. Indemnifying Party also agrees to bear all other costs and expenses related thereto, even if the claim or claims alleged are groundless, false, or fraudulent. This provision is not intended to create any cause of action in favor of any third party against either Party or to enlarge in any way either Party's liability but is intended solely to provide for indemnification of the Indemnified Party from liability for damages, or injuries to third persons or property, arising from or in connection with Indemnifying Party's performance pursuant to this Contract. This obligation is independent of, and shall not in any way be limited by, the minimum insurance obligations contained in this Contract."

**D.7 CONTRACTOR NOT AGENT.** Except as COUNTY may specify in writing, CONTRACTOR shall have no authority, express or implied, to act on behalf of COUNTY in any capacity whatsoever as an agent. CONTRACTOR shall have no authority, express or implied, pursuant to this Agreement to bind COUNTY to any obligation whatsoever.

**D.8 ASSIGNMENT PROHIBITED.** CONTRACTOR may not assign any right or obligation pursuant to this Agreement. Any attempted or purported assignment of any right or obligation pursuant to this Agreement shall be void and of no legal effect.

**D.9 PERSONNEL.** CONTRACTOR shall assign only competent personnel to perform services pursuant to this Agreement. In the event that COUNTY, in its sole discretion at any time during the term of this Agreement, desires the removal of any person or persons assigned by CONTRACTOR to perform services pursuant to this Agreement,



CONTRACTOR shall remove any such person immediately upon receiving written notice from COUNTY of its desire for removal of such person or persons.

**D.10 STANDARD OF PERFORMANCE.** CONTRACTOR shall perform all services required pursuant to this Agreement in the manner and according to the standards observed by a competent practitioner of the profession in which CONTRACTOR is engaged. All products of whatsoever nature which CONTRACTOR delivers to COUNTY pursuant to this Agreement shall be prepared in a first class and workmanlike manner and shall conform to the standards of quality normally observed by a person practicing in CONTRACTOR's profession.

**D.11 POSSESSORY INTEREST.** The parties to this Agreement recognize that certain rights to property may create a "possessory interest", as those words are used in the *California Revenue and Taxation Code* (107). For all purposes of compliance by COUNTY with Section 107.6 of the *California Revenue and Taxation Code*, this recital shall be deemed full compliance by the COUNTY. All questions of initial determination of possessory interest and valuation of such interest, if any, shall be the responsibility of the County Assessor and the contracting parties hereto. A taxable possessory interest may be created by this, if created, and the party in whom such an interest is vested will be subject to the payment of property taxes levied on such an interest.

**D.12 TAXES.** CONTRACTOR hereby grants to the COUNTY the authority to deduct from any payments to CONTRACTOR any COUNTY imposed taxes, fines, penalties and related charges which are delinquent at the time such payments under this Agreement are due to CONTRACTOR.

**D.13 TERMINATION.** COUNTY shall have the right to terminate this Agreement at any time by giving notice in writing of such termination to CONTRACTOR. In the event COUNTY gives notice of termination, CONTRACTOR shall immediately cease rendering service upon receipt of such written notice and the following shall apply:

**D.13.1.1** CONTRACTOR shall deliver to COUNTY copies of all writings prepared by it pursuant to this Agreement. The term "writings" shall be construed to mean and include: handwriting, typewriting, printing, photostating, photographing, computer storage medium (tapes, disks, diskettes, etc.) and every other means of recording upon any tangible thing, and form of communication or representation, including letters, words, pictures, sounds, or symbols, or combinations thereof.

**D.13.1.2** COUNTY shall pay CONTRACTOR the reasonable value of services rendered by CONTRACTOR to the date of termination pursuant to this Agreement not to exceed the amount documented by CONTRACTOR and approved by COUNTY as work accomplished to date; provided, however, that in no event shall any payment hereunder exceed One Thousand Dollars (\$1,000). Further provided, however, COUNTY shall not in any manner be liable for lost profits which might have been made by CONTRACTOR had CONTRACTOR completed the services required by this Agreement. In this regard, CONTRACTOR shall furnish to COUNTY such financial information as in the judgment of the COUNTY is necessary to determine the reasonable value of the services rendered by CONTRACTOR. In the event of a dispute as to the reasonable value of the services rendered by CONTRACTOR, the decision of the COUNTY shall be final. The foregoing is cumulative and does not affect any right or remedy which COUNTY may have in law or equity.

**D.13.2** CONTRACTOR may terminate its services under this Agreement upon thirty (30) working days written notice to the COUNTY, without liability for damages, if CONTRACTOR is not compensated according to the provisions of the Agreement or upon any other material breach of the Agreement by COUNTY, provided that CONTRACTOR has first provided COUNTY with a written notice of any alleged breach, specifying the nature of the alleged breach and providing not less than ten (10) working days within which the COUNTY may cure the alleged breach.

**D.14 OWNERSHIP OF INFORMATION.** All professional and technical information developed under this Agreement and all work sheets, reports, and related data shall become and/or remain the property of COUNTY, and CONTRACTOR agrees to deliver reproducible copies of such documents to COUNTY on completion of the services hereunder. The COUNTY agrees to indemnify and hold CONTRACTOR harmless from any claim arising out of reuse of the information for other than this project.

**D.15 WAIVER.** A waiver by any party of any breach of any term, covenant or condition herein contained or a waiver of any right or remedy of such party available hereunder at law or in equity shall not be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition herein contained or of any continued or subsequent right to the same right or remedy. No party shall be deemed to have made any such waiver unless it is in writing and signed by the party so waiving.

**D.16 COMPLETENESS OF INSTRUMENT.** This Agreement, together with its specific references and attachments, constitutes all of the agreements, understandings, representations, conditions, warranties and covenants made by and between the parties hereto. Unless set forth herein, neither party shall be liable for any representations made, express or implied.

**D.17 SUPERSEDES PRIOR AGREEMENTS.** It is the intention of the parties hereto that this Agreement shall supersede any prior agreements, discussions, commitments, representations, or agreements, written or oral, between the parties hereto.

**D.18 MINOR AUDITOR REVISION.** In the event the Sierra County Auditor's office finds a mathematical discrepancy between the terms of the Agreement and actual invoices or payments, provided that such discrepancy does not exceed 1% of the Agreement amount, the Auditor's office may make the adjustment in any payment or payments without requiring an amendment to the Agreement to provide for such adjustment. Should the COUNTY or the CONTRACTOR disagree with such adjustment, they reserve the right to contest such adjustment and/or to request corrective amendment.

**D.19 CAPTIONS.** The captions of this Agreement are for convenience in reference only and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

**D.20 DEFINITIONS.** Unless otherwise provided in this Agreement, or unless the context otherwise requires, the following definitions and rules of construction shall apply herein.

**D.20.1 NUMBER AND GENDER.** In this Agreement, the neuter gender includes the feminine and masculine, the singular includes the plural, and the word "person" includes corporations, partnerships, firms or associations, wherever the context so requires.

**D.20.2 MANDATORY AND PERMISSIVE.** "Shall" and "will" and "agrees" are mandatory. "May" is permissive.

**D.21 TERM INCLUDES EXTENSIONS.** All references to the term of this Agreement or the Agreement Term shall include any extensions of such term.

**D.22 SUCCESSORS AND ASSIGNS.** All representations, covenants and warranties specifically set forth in this Agreement, by or on behalf of, or for the benefit of any or all of the parties hereto, shall be binding upon and inure to the benefit of such party, its successors and assigns.

**D.23 MODIFICATION.** No modification or waiver of any provisions of this Agreement or its attachments shall be effective unless such waiver or modification shall be in writing, signed by all parties, and then shall be effective only for the period and on the condition, and for the specific instance for which given.

**D.24 COUNTERPARTS.** This Agreement may be executed simultaneously and in several counterparts, each of which shall be deemed an original, but which together shall constitute one and the same instrument.

**D.25 OTHER DOCUMENTS.** The parties agree that they shall cooperate in good faith to accomplish the object of this Agreement and, to that end, agree to execute and deliver such other and further instruments and documents as may be necessary and convenient to the fulfillment of these purposes.

**D.26 PARTIAL INVALIDITY.** If any term, covenant, condition or provision of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provision and/or provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.

**D.27 VENUE.** It is agreed by the parties hereto that unless otherwise expressly waived by them, any action brought to enforce any of the provisions hereof or for declaratory relief hereunder shall be filed and remain in a court of competent jurisdiction in the County of Sierra, State of California.

**D.28 CONTROLLING LAW.** The validity, interpretation and performance of this Agreement shall be controlled by and construed under the laws of the State of California.

**D.29 CALIFORNIA TORT CLAIMS ACT.** Notwithstanding any term or condition of the Agreement, the provisions, and related provisions, of the California Tort Claims Act, Division 3.6 of the *Government Code*, are not waived by COUNTY and shall apply to any claim against COUNTY arising out of any acts or conduct under the terms and conditions of this Agreement.

**D.30 TIME IS OF THE ESSENCE.** Time is of the essence of this Agreement and each covenant and term herein.

**D.31 AUTHORITY.** All parties to this Agreement warrant and represent that they have the power and authority to enter into this Agreement in the names, titles and capacities herein stated and on behalf of any entities, persons, estates or firms represented or purported to be represented by such entity(s), person(s), estate(s) or firm(s) and that all formal requirements necessary or required by any state and/or federal law in order to enter into this Agreement are in full compliance. Further, by entering into this Agreement, neither party hereto shall have breached the terms or conditions of any other contract or agreement to which such party is obligated, which such breach would have a material effect hereon.

**D.32 CORPORATE AUTHORITY.** If CONTRACTOR is a corporation or public agency, each individual executing this Agreement on behalf of said corporation or public agency represents and warrants that he or she is duly authorized to execute and deliver this Agreement on behalf of said corporation, in accordance with a duly adopted resolution of the Board of Directors of said corporation or in accordance with the bylaws of said corporation or Board or Commission of said public agency, and that this Agreement is binding upon said corporation or public entity in accordance with its terms. If CONTRACTOR is a corporation, CONTRACTOR shall, within thirty (30) days after execution of this Agreement, deliver to COUNTY a certified copy of a resolution of the Board of Directors of said corporation authorizing or ratifying the execution of this Agreement.

**D.33 CONFLICT OF INTEREST.**

**D.33.1 LEGAL COMPLIANCE.** CONTRACTOR agrees at all times in performance of this Agreement to comply with the law of the State of California regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the *California Government Code*, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100, including regulations promulgated by the California Fair Political Practices Commission.

**D.33.2 ADVISEMENT.** CONTRACTOR agrees that if any facts come to its attention which raises any questions as to the applicability of this law, it will immediately inform the COUNTY designated representative and provide all information needed for resolution of the question.

**D.33.3 ADMONITION.** Without limitation of the covenants in subparagraphs D.34.1 and D.34.2, CONTRACTOR is admonished hereby as follows:

The statutes, regulations and laws referenced in this provision D.34 include, but are not limited to, a prohibition against any public officer, including CONTRACTOR for this purpose, from making any decision on behalf of COUNTY in which such officer has a direct or indirect financial interest. A violation occurs if the public officer influences or participates in any COUNTY decision which has the potential to confer any pecuniary benefit on CONTRACTOR or any business firm in which CONTRACTOR has an interest of any type, with certain narrow exceptions.

**D.34 NONDISCRIMINATION.** During the performance of this Agreement, CONTRACTOR shall not unlawfully discriminate against any employee of the CONTRACTOR or of the COUNTY or applicant for employment or for services or any member of the public because of race, religion, color, national origin, ancestry, physical handicap, medical condition, marital status, age or sex. CONTRACTOR shall ensure that in the provision

of services under this Agreement, its employees and applicants for employment and any member of the public are free from such discrimination. CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (*Government Code* Section 12900 et seq.). The applicable regulations of the Fair Employment Housing Commission implementing *Government Code* Section 12900, set forth in Chapter 5, Division 4 of Title 2 of the California *Administrative Code* are incorporated into this Agreement by reference and made a part hereof as if set forth in full. CONTRACTOR shall also abide by the Federal Civil Rights Act of 1964 and all amendments thereto, and all administrative rules and regulation issued pursuant to said Act. CONTRACTOR shall give written notice of its obligations under this clause to any labor agreement. CONTRACTOR shall include the non-discrimination and compliance provision of this paragraph in all subcontracts to perform work under this Agreement.

**D.35 JOINT AND SEVERAL LIABILITY.** If any party consists of more than one person or entity, the liability of each person or entity signing this Agreement shall be joint and several.

**D.36 TAXPAYER I.D. NUMBER.** The COUNTY shall not disburse any payments to CONTRACTOR pursuant to this Agreement until CONTRACTOR supplies the latter's Taxpayer I.D. Number or Social Security Number (as required on the line under CONTRACTOR's signature on page 2 of this Agreement).

**D.37 NOTICES.** All notices and demands of any kind which either party may require or desire to serve on the other in connection with this Agreement must be served in writing either by personal service or by registered or certified mail, return receipt requested, and shall be deposited in the United States Mail, with postage thereon fully prepaid, and addressed to the party so to be served as follows:

If to "COUNTY":  
Director  
Sierra County Department of Behavioral Health  
PO Box 265  
Loyalton, California, 96118

With a copy to:  
County Counsel  
County of Sierra  
Post Office Drawer D  
Downieville, CA 95936

If to "CONTRACTOR":  
Phebe Bell, Director  
Nevada County Behavioral Health  
500 Crown Point Circle, Suite.120  
Grass Valley, CA 95945  
(530) 470-2784

Confidential- On File  
(Taxpayers I.D. or Social Security No.)

Sierra County Department of Behavioral Health  
P.O. Box 1019  
Loyalton, CA 96118

Re: \_\_\_\_\_

STATEMENT OF ACCOUNT FOR

\_\_\_\_\_  
BALANCE FORWARD \$

\_\_\_\_\_  
TOTAL CURRENT CHARGES:

Total \$ \_\_\_\_\_

## SIERRA COUNTY

### Business Associates Agreement

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This Agreement is entered into this 1st day of July, 2024, by and between the County of Sierra doing business by and through the Sierra County Department of Behavioral Health (collectively referred to herein as the "County" and Nevada County Behavioral Health (referred to herein as the "Business Associate")

#### Recitals

**WHEREAS**, County has heretofore or contemporaneously with the execution of this Agreement entered into an Agreement for Professional Services (the "Professional Services Agreement") whereby Business Associate provides certain services to County and its clients and citizens which involves the access and use of certain information pertaining to individuals which information is required to be kept confidential and protected under the provisions of the Health Insurance Portability and Accountability Act of 1996, Public Law 104-101 (referred to herein as "HIPAA") and the regulations adopted pursuant to the Act; and

**WHEREAS**, pursuant to the Professional Services Agreement County will make available and/or transfer to Business Associate, and/or Business Associate will generate or otherwise access confidential, personally identifiable health information in conjunction with services delivered on behalf of the County; and

**WHEREAS**, such information may be used or disclosed only in accordance with HIPAA and the applicable regulations [including without limitation, 45 CFR §§ 164.502(e); 164.504(e)] issued pursuant to the Health Insurance Portability and Accountability Act [42 USC §§ 1320 – 1320d-8] and the terms of this Agreement, or more stringent provisions of the law of the State of California and in accordance with The Sierra County Health and Human Services Information Security Policies Manual.

**NOW THEREFORE**, In consideration of the obligations, benefits and compensation provided to Business Associate under the provisions of the Professional Services Agreement and in order to ensure that said Agreement remains valid and complies with HIPAA, the parties agree as follows:

1. As used herein and with reference to the obligations under HIPAA, Protected Health Information ("PHI") shall mean individually identifiable health information including, without limitation, all information, data, documentation, and materials of any nature or form, including without limitation, demographic, medical and financial information, that 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; and that identifies the individual or with respect to which there is a reasonable basis to believe the information can be used to identify the individual. PHI shall include but not be limited to individually identifiable information received from or on behalf of the County as more fully defined in 45 CFR § 164.501, and any amendments thereto.
2. County shall provide to Business Associate a copy of the current Notice of Privacy Practices and any relevant information on changes to or agreed upon restrictions relating to legal permissions for the use or disclosure of PHI and a copy of Sierra County Health and Human Services Information Security Policies Manual.
3. Business Associate agrees that it shall not receive, create, use or disclose PHI except as follows:
  - a. (1) solely for meeting its obligations as set forth in the Professional Services Agreement and any other agreements between the Parties evidencing their business relationship or
  - (2) as required by applicable law, rule or regulation, or by accrediting or credentialing organization to whom Covered Entity is required to disclose such information or as otherwise permitted under this Agreement, the Arrangement Agreement (if consistent



with this Agreement and the HIPAA Privacy Rule), or the HIPAA Privacy Rule, and (3) as would be permitted by the HIPAA Privacy Rule if such use or disclosure were made by Covered Entity;

- b. If necessary for the proper management and administration of Business Associate or to carry out legal responsibilities of Business Associate, PHI may only be disclosed to another person/entity for such purposes if:
    - Disclosure is required by law; or
    - Where Business Associate obtains reasonable assurances from the person to whom disclosure is made that the PHI released will be held confidentially, and only may be used or further disclosed as required by law or for the purpose for which it was disclosed to the person, and the person notifies Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached; and
    - Person agrees to notify Business Associate of any breaches of confidentiality;
  - c. To permit Business Associate to provide data aggregation services relating to the health care operations of the County.
4. Business Associate and County agree that neither of them will request, use or release more than the minimum amount of PHI necessary to accomplish the purpose of the use, disclosure or request.
5. Business Associate will establish and maintain appropriate safeguards to prevent any unauthorized use or disclosure of PHI.
6. Business Associate agrees that it shall immediately report to County any unauthorized uses/disclosures of which it becomes aware, and shall take all reasonable steps to mitigate the potentially harmful effects of such breach.
7. Business Associate hereby indemnifies County and agrees to hold County harmless from and against any and all losses, expense, damage or injury that County may sustain as a result of, or arising out of, Business Associate's, or its agent's or subAgreementor's, unauthorized use or disclosure of PHI.
8. Business Associate shall be covered by comprehensive general liability insurance.
9. Business Associate shall ensure that all of its subcontractors and agents are bound by the same restrictions and obligations contained herein whenever PHI is made accessible to such subcontractors or agents, and shall give prior notice to County of any subcontractors or agents who are to be given access to PHI.
10. Business Associate shall make all PHI and related information in its possession available as follows:
  - a. To the individual or his/her personal representative or to the County, to the extent necessary to permit County to fulfill any obligation to allow access for inspection and copying in accordance with the provisions of 45 CFR § 164.524 and any subsequent amendments to the regulations;
  - b. To the individual or his/her personal representative or to the County, to the extent necessary to permit County to fulfill any obligation to account for disclosures of PHI in accordance with 45 CFR § 164.528 and any subsequent amendments to the regulations.
11. Business Associate shall make PHI available to County to fulfill County's obligation to amend PHI and related information in accordance with 45 CFR §164.526, and shall, as directed by County, incorporate any amendments or related statements into the information held by Business Associate and any subcontractors or agents.



12. Business Associate agrees to make its internal practices, books and records relating to the use or disclosure of information received from or on behalf of County available to the U.S. Secretary of Health and Human Services, or the Secretary's designee, for purposes of determining compliance with the privacy regulations, and any amendments thereto.

13. Upon termination of this Agreement, Business Associate agrees, at the option of County, to return or destroy all PHI created or received from or on behalf of County. Business Associate agrees that it will not retain any copies of PHI except as required by law. If PHI is destroyed, Business Associate agrees to provide County with appropriate documentation/certification evidencing such destruction. If return or destruction of all PHI, and all copies of PHI, is not feasible, Business Associate agrees to extend the protections of this Agreement to such information for as long as it is maintained. Termination of this Agreement shall not affect any of its provisions that, by wording or nature, are intended to remain effective and to continue in operation.

14. The PHI and any related information created or received from or on behalf of County is and shall remain the property of the County. Business Associate agrees that it acquires no title in or rights to the information, including any de-identified information.

15. Notwithstanding anything in this Agreement to the contrary, County shall have the right to immediately terminate the Professional Services Agreement or any other agreement between the parties if County determines that Business Associate has violated any material term of this Agreement. If County reasonably believes that Business Associate will violate a material term of this Agreement and, where practicable, County gives written notice to Business Associate of such belief within a reasonable time after forming such belief, and Business Associate fails to provide adequate written assurances to County that it will not breach the cited term of this Agreement within a reasonable period of time given the specific circumstances, but in any event, before the threatened breach is to occur, then County shall have the right to immediately terminate the Professional Services Agreement or any other agreement between the parties. In the event of termination as described in this Paragraph, County shall have the right to contract for replacement service through another entity or provider, with Business Associate responsible for paying any difference in cost.

16. Notwithstanding any rights or remedies under this Agreement or provided by law, County retains all rights to seek injunctive relief to prevent or stop the unauthorized use or disclosure of PHI by Business Associate, any of its subcontractors or agents, or any third party who has received PHI from Business Associate.

17. This Agreement shall be binding on the parties and their successor, but neither party may assign the Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld.

18. The obligations to safeguard the confidentiality and security of PHI imposed herein shall survive the termination of this Agreement.

19. Any ambiguities in this Agreement shall be resolved in favor of an interpretation that promotes compliance with HIPAA and regulations promulgated thereunder. The parties agree that any modifications to those laws shall modify the obligations of the parties hereunder without the need for formal amendment of the Agreement. Any other amendments to this Agreement shall not be effective without the written agreement of both parties.

20. Any notice to the other party pursuant to this Agreement shall be deemed provided if sent by first class United States mail, postage prepaid, as follows:


To County: County of Sierra  
Department of Health and Human Services  
P.O. Box 265  
Loyalton, CA 96118

To Contractor: Phebe Bell, Director  
Nevada County Behavioral Health  
500 Crown Point Circle, Suite 120  
Grass Valley, CA 95945  
(530) 470-2784

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the day here first  
above written.

"COUNTY"

COUNTY OF SIERRA

By   
PAUL ROEN  
Chair, Board of Supervisors

"CONTRACTOR"

  
HARDY BULLOCK  
Chair, Board of Supervisors

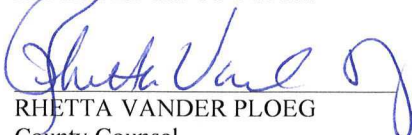
ATTEST:

  
HEATHER FOSTER  
Clerk of the Board

APPROVED AS TO FORM:

  
Kit Elliott (Aug 16, 2024 14:56 PDT)  
Katharine L. Elliott  
County Counsel

APPROVED AS TO FORM:

  
RHETTA VANDER PLOEG  
County Counsel

## Special Terms and Conditions

### 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 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 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 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.

#### **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 Human Resources (CalHR), for nonrepresented state employees as stipulated in DHCS' Travel Reimbursement Information Exhibit. If the CalHR 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 CalHR 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.

## 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.



### **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.

### **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.2. View this publication at the following Internet address: <https://www.dgs.ca.gov/OLS/Resources/Page-Content/Office-ofLegal-Services-Resources-List-Folder/State-Contracting>

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.

#### **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.

#### **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 1896.77)

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 threeyear period, whichever is later.

e. 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.

f. The Contractor shall, if applicable, comply with the Single Audit Act and the audit requirements set forth in 2 C.F.R. § 200.501 (2014).

#### **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.

#### **Termination**

##### **a. For Cause**

The State may terminate this Agreement, in whole or in part, 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. If this Agreement is terminated, in whole or in part, the State may

require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials, related to the terminated portion of the Contract, including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The State shall pay contract price for completed deliverables delivered and accepted and items the State requires the Contractor to transfer as described in this paragraph above.

**b. For Convenience**

The State retains the option to terminate this Agreement, in whole or in part, without cause, at the State's convenience, without penalty, provided that written notice has been delivered to the Contractor at least ninety (90) calendar days prior to such termination date. In the event of termination, in whole or in part, under this paragraph, the State may require the Contractor to transfer title, or in the case of licensed software, license, and deliver to the State any completed deliverables, partially completed deliverables, and any other materials related to the terminated portion of the contract including but not limited to, computer programs, data files, user and operations manuals, system and program documentation, training programs related to the operation and maintenance of the system, and all information necessary for the reimbursement of any outstanding Medicaid claims. The Contractor will be entitled to compensation upon submission of an invoice and proper proof of claim for the services and products satisfactorily rendered, subject to all payment provisions of the Agreement. Payment is limited to expenses necessarily incurred pursuant to this Agreement up to the date of termination.

**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/perform, 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 thirdparty's Intellectual Property in existence prior to the effective date of this Agreement. If such a license upon the 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 noninfringing 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.

#### **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 by law.

- a. Government contractors agree to comply with all applicable standards, orders, or requirements issued under section 306 of the Clean Air Act (42 USC 7606) section 508 of the Clean Water Act (33 U.S.C. 1368), Executive Order 11738, and Environmental Protection Agency regulations.
- 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 Clean Water Act (33 U.S.C. 1251 et seq.), as amended.

**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.

**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.

### 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 2 C.F.R. §§ 200.64, 200.70, and 200.90) and expends \$750,000 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 2 C.F.R. 200.501 entitled "Audit Requirements". 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 a 2 C.F.R. 200.501 audit, the Contractor must also submit a certification indicating the Contractor has not expended \$750,000 or more in federal funds for the year covered by the audit report.

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".

#### **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 2 CFR 180, 2 CFR 376

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) violation of Federal or State antitrust statutes; or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, tax evasion, receiving stolen property, making false claims, obstruction of justice, or the commission of any other offense indicating a lack of business integrity or business honesty that seriously affects its business honesty;

(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) Have not, within a three-year period preceding this application/proposal/agreement, engaged in any of the violations listed under 2 CFR Part 180, Subpart C as supplemented by 2 CFR Part 376.

(6) 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.

(7) 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 2 CFR Part 180 as supplemented by 2 CFR Part 376.

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.

#### **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.

#### **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.

#### **Public Communications**

"Electronic and printed documents developed and produced, for public communications shall follow the following requirements to comply with Section 508 of the Rehabilitation Act and the American with Disabilities Act:

A. Ensure visual-impaired, hearing-impaired and other special needs audiences are provided material information in formats that provide the most assistance in making informed choices."