

**NAPA COUNTY AGREEMENT NO. 220164B  
PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT (the “Agreement”)** is made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_ 2021, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and, **CRESTWOOD BEHAVIORAL HEALTH, INC.**, whose mailing address is 520 Capitol Mall, Suite 800, Sacramento, CA 95814, hereinafter referred to as CONTRACTOR.” COUNTY and CONTRACTOR may be referred to below collectively as “Parties” and individually as “Party.”

**RECITALS**

**WHEREAS**, on or about May 1, 2014, COUNTY and CONTRACTOR entered into Napa County Agreement No. 170496B (previously agreement no. 8144), hereinafter referred to as the "Agreement" for CONTRACTOR to provide acute psychiatric inpatient services; and



**WHEREAS**, as of the effective date of this Agreement, the parties wish to terminate Agreement No. 170496B and replace it with this Agreement No. 220164B; and

**WHEREAS**, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide residential care and mental health services.

**TERMS**

**NOW, THEREFORE**, for good and valuable consideration, the adequacy and receipt of which are hereby acknowledged, COUNTY hereby engages the services of CONTRACTOR, and CONTRACTOR agrees to serve COUNTY in accordance with the Terms and Conditions and their own Exhibits, which together are attached hereto and incorporated by this reference as though set forth in full herein. The Section numbers of any portion of this Agreement may at times be referred to either as “Sections” or “Paragraphs” interchangeably.

IN WITNESS WHEREOF, this Agreement was executed by the Parties hereto as of the date first above written.

<b>NAPA COUNTY</b> , a political subdivision of the State of California	<b>CONTRACTOR</b>
By _____ <b>ALFREDO PEDROZA, Chair of the Board of Supervisors</b>  ATTEST: NEHA HOSKINS, Clerk of the Board  By: _____  DATE APPROVED BY THE BOARD: _____  Processed by: _____ Deputy	Signature  ELENA MASHKEVICH, Director of County Contracts  Signature  Maria Stefanou, Chief Financial Officer

Maximum Amount of this Agreement: \$875,000.00
Term Expires: June 30, 2022
Automatic renewal is modified.

APPROVED AS TO FORM BY NAPA COUNTY COUNSEL  
  
 By: Rachel L. Ross (e-signature) Date: 10/27/21

## **TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO.**

### **SECTION 1. Contract Administration**

For purposes of this Agreement, the following shall apply:

- 1.1 “Department” shall mean: Health and Human Services
- 1.2 “Director” shall mean the person elected or appointed to the chief management position of the Department.
- 1.3 “Contract Administrator” shall be: Contracts Analyst or such other person as designated by the Department Director. The address for COUNTY’s Contract Administrator shall be: 2751 Napa Valley Corporate Drive, Building B, 2<sup>nd</sup> Floor, Napa, CA 94559.
- 1.4 The Program Manager for COUNTY shall be: Sarah O’Malley, Deputy Director of HHSA/Mental Health Director
- 1.5 The Contract Contact Person for CONTRACTOR shall be: Elena Mashkevich, 520 Capital Mall, Suite 800, Sacramento, CA 95814
- 1.6 CONTRACTOR is a  sole proprietor  partnership  corporation  public agency  other (specify) .
- 1.7 The source of funding for this Agreement shall be: State Behavioral Health Realignment funds, Medi-Cal and HHSA General fund.
- 1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide by the applicable terms of the following COUNTY-entity agreements, and as they may amended from time to time: California Department of Health Care Services, Napa County Agreement No. 3315 (Performance) and State Managed Care Agreement with Department of Health Care Services—Napa County Agreement No. 8560

These agreements are on file with the Napa County Clerk of the Board of Supervisors and may be accessed at <https://www.countyofnapa.org/DocumentCenter/> under “Departments/Health and Human Services/Administration/Contracts and Administration Documents” (See also Section 2, Paragraphs 2.15(b)(2) and 2.35)

### **SECTION 2. General Terms and Conditions.**

Attached hereto and incorporated by this reference as Exhibit C is “SECTION 2. General Terms and Conditions – Version 12”, which shall be referred to herein as the “General Terms and Conditions” and which shall apply to this Agreement unless otherwise specifically limited or excluded by more specific provisions.

Due to changes in the laws, future versions of General Terms and Conditions shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR, effective within such time period as is designated in Paragraph 2.10 (Other Termination) plus 15 days or as mandated by local, state or federal laws or regulations, whichever date is sooner.

### **SECTION 3. Specific Terms and Conditions.**

The following Specific Terms and Conditions provide additional terms and conditions or modify the General

Terms and Conditions of this Agreement. A Specific Term and Condition shall control if a conflict exists with a General Term and Condition.

3.1 The following Specific Terms and Conditions apply when CONTRACTOR's obligations under this Agreement involve the following as designated by an "X":

(a) Contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (General Terms and Conditions Paragraph 2.8(b) applies).

(b) Construction or pre-construction related services (General Terms and Conditions Paragraph 2.19(e) applies).

(c) Work on or the supplying of any software systems or equipment containing or suspected of containing clocks or embedded chips functioning as or dependent upon the use of clocks or calendars (General Terms and Conditions Paragraph 2.29 applies).

(d) Services covered by a Federal Health Care Program (General Terms and Conditions Paragraph 2.31 applies).

(e) Services covered by a State Medi-Cal Specialty Mental Health Program (General Terms and Conditions Paragraph 2.32 applies).

(f) Mental Health Activities (General Terms and Conditions Paragraph 2.33 applies).

(g) Services involving the receipt, use or disclosure of protected health information: A determination has been made by COUNTY's Privacy Officer that CONTRACTOR shall not provide services under this Agreement as a Business Associate to COUNTY. General Terms and Conditions Paragraph 2.34(b) does not apply to this Agreement.

(h) Services provided under COUNTY's Managed Care Provider Program, which shall be subject to all the terms and conditions set forth in the Napa County Mental Health Managed Care Provider Manual, herein incorporated by reference and on file with the Clerk of the Napa County Board of Supervisors.

(i) Services as a provider for which CONTRACTOR has submitted a "Provider Application," which CONTRACTOR warrants that the information contained in said application is accurate and understands that any inaccuracies may be grounds for termination of this Agreement by COUNTY. CONTRACTOR authorizes COUNTY to consult with third parties, including but not limited, to the National Practitioner Data Bank or other applicable licensing boards.

(j) Services involving the use or disclosure of personally identifiable information that are performed as a subcontractor under COUNTY's contract with another entity when that contract requires COUNTY to include its applicable terms in COUNTY's subcontracts. (General Terms and Conditions Paragraph 2.35 applies.)

(k) Services determined by the Department Director to be covered by Department's Code of Ethics. (General Terms and Conditions Paragraph 2.38 applies.) CONTRACTOR understands that, by entering into this Agreement, CONTRACTOR acknowledges that CONTRACTOR has received, read, and understands the Code of Ethics, and agrees to abide by the terms therein as applicable to CONTRACTOR's activities under this Agreement. Department shall provide CONTRACTOR with copies of Department's Code of Ethics prior to the execution of the Agreement. CONTRACTOR further understands that on an annual basis CONTRACTOR shall provide written certification to Department that CONTRACTOR has received, read, understands, and will abide by Department's Code of Ethics.

[X] (l) Services have been determined by the Department Director, or may be determined at a later date, that CONTRACTOR is a subrecipient or pass-through entity and is therefore required to meet all of the requirements found in 2 C.F.R. § 200.331. (General Terms and Conditions 2.40 applies.) COUNTY shall notify CONTRACTOR in accordance with General Terms and Conditions Paragraph 2.13 (Notices), of any change in designation as a subrecipient, and any subsequent increase to the amount of Federal funding CONTRACTOR shall receive under the terms of this Agreement. CONTRACTOR shall be bound thereby upon receipt of notice.

### 3.2 Source Funding.

(a) Change in Source Funding. Paragraph 1.7 may be unilaterally modified by COUNTY upon written notice to CONTRACTOR who shall be bound thereby immediately upon receipt. The Department Director is delegated the authority to modify Paragraph 1.7 and provide such written notice, but may exercise such authority only after consultation with, and concurrence of, the Napa County Counsel and the Napa County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Napa County Board of Supervisors to modify Paragraph 1.7.

(b) Amendment to Source Funding Agreement. If Paragraph 1.7 identifies a funding source agreement, then any amendment to the funding source agreement shall be automatically incorporated and made a part of this Agreement, effective in accordance with the amended funding source agreement. As a subcontractor of COUNTY, CONTRACTOR shall be bound by the applicable terms of the funding source agreement, and any amendments thereto.

3.3 Statement of Economic Interests. By authorizing its Chair to execute this Agreement on its behalf, COUNTY's Board of Supervisors hereby determines in writing on behalf of COUNTY that CONTRACTOR has been hired to perform a range of duties so limited in scope as to not be required to comply with the disclosure obligations set forth in Paragraph 2.23(b).

3.4 COUNTY delegates its authority to the Director of the Health and Human Services Agency to approve future amendments to Exhibits A and B, attached to this Agreement, provided that any such amendment does not materially alter the nature of the services to be provided or increase the maximum compensation available under this Agreement.

3.5 General Terms and Conditions 2.1(b)-Automatic Renewal is modified to read in full as follows:

The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, for a maximum of **four** additional fiscal years (the final renewal period concludes on **June 30, 2026**), under the same terms and conditions, unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Termination for Convenience) or 2.23 (a) (Covenant of No Undisclosed Conflict). The obligations of the Parties under Paragraphs 2.7 (Insurance) and 2.8 (Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes) and 2.21 (Access to Records/Retention).

## **SECTION 4. Incorporated Documents.**

The following documents are incorporated herein by this reference and attached hereto and labeled as the following Exhibit letters:

Exhibit A: Scope of Work

Exhibit B: Compensation--Budget Detail and Payment Provisions

Exhibit C: "Section 2, General Terms and Conditions, Version 12"

Addendum for Contracts Involving Federal Health Care Programs-Revision of March 22, 2021

**EXHIBIT A**  
**SCOPE OF WORK**

**From the effective date through June 30, 2022**  
**(and each subsequent automatic renewal thereof)**

**I. CONTRACT DESCRIPTION**

- A. Crestwood Behavioral Health Inc. (CONTRACTOR) shall provide high quality, efficient, effective, culturally competent, and timely acute psychiatric inpatient services within the program requirements and standards as set forth in this Agreement to patients referred by Napa County Health and Human Services Agency's (COUNTY) Mental Health Division over the age of eighteen (18) years who are eligible for COUNTY mental health services. COUNTY may place either male or female patients at CONTRACTOR's Solano County Psychiatric Health Facility (PHF).
- B. This Agreement requires the CONTRACTOR to provide psychiatric services during the stay of the patient at the CONTRACTOR's facility. This Agreement is for dedicated access to 2 acute inpatient psychiatric bed placements.
- C. All personnel, supplies, equipment, furniture, quarters and operating expenses of any kind required for the performance of this Contract shall be provided by CONTRACTOR in performance of contracted services.

**II. SERVICE REQUIREMENTS**

A. Service Eligibility Requirements

1. Admission Criteria

- a. Patients shall be authorized by COUNTY Emergency Response Team and other designated COUNTY Mental Health personnel.
- b. Patients authorized by the COUNTY may be transported directly to CONTRACTOR from a variety of sites. These sites include, but are not limited to: local hospitals and Emergency Rooms, Locked Sub-Acute County contracted facilities, Napa County Jail/Juvenile Hall (if over 18), and Napa County outpatient provider offices and/or clinics. In all cases, the COUNTY Authorizer will be the referring party who authorizes transport and treatment of patients by CONTRACTOR.
- c. All patients determined by the designated COUNTY mental health personnel to require inpatient psychiatric care at the CONTRACTOR's facility shall be accepted for admission by CONTRACTOR.
- d. CONTRACTOR reserves the right to refuse admission of a patient under California Code of Regulations, Title 22, Division 5, Section 77061 where a patient's physical health care is beyond what could otherwise be managed on an outpatient basis.

- e. Patients shall be the age of eighteen (18) years or older and eligible for COUNTY mental health services.
  - f. Exclusive of triage and assessments, 100% of admitted patients will meet the COUNTY Mental Health Division's definition of acutely mentally ill. This will be verified by documentation in the assessment and/or progress report. The operational definition of acutely mentally ill for inpatient level of care is defined by the presence of one of the following criteria:
    - Criteria A: Danger to self or others due to a mental disorder
    - Criteria B: Evidence of grave disability due to mental illness
2. Discharge Criteria & Planning
- a. Patients will be deemed appropriate for discharge when they no longer meet the criteria of the COUNTY'S definition of acutely mentally ill as defined above, or there is agreement between COUNTY authorized personnel and CONTRACTOR staff that patient is ready for discharge, consistent with community standards of practice and extant law. Determination and documentation of whether a patient continues to meet these criteria is the responsibility of CONTRACTOR. COUNTY shall be notified, at the very most, within twelve (12) hours of the determination that the patient no longer meets those criteria to facilitate timely transfer to a lower level of care.
  - b. CONTRACTOR's clinical staff shall have final determination on length of stay of each patient. This being the case, if a difference of opinion occurs, CONTRACTOR'S Medical Director and COUNTY'S Psychiatric Medical Director shall review case jointly at the time such a difference of opinion arises to promote collaborative care management and timely discharge.
  - c. COUNTY and CONTRACTOR will work collaboratively with regard to discharge planning and placement of patients served by CONTRACTOR.
  - d. CONTRACTOR will improve functioning of 90% of the patients admitted as indicated by absence of the precipitating symptoms which eventuated in the patient's hospitalization or significant diminution such that the individual is no longer at imminent risk of harm to self or others nor deemed gravely disabled due to a mental disorder. It is assumed that individuals admitted to CONTRACTOR'S facility shall be provided appropriate and timely medication (typically within 24-hours), except in the circumstance where this may be medically contraindicated. In such situations, clinical rationale for not administering medication should be documented thoroughly.
  - e. Consultation and arrangement for the timely discharge of all patients will take place with the CONTRACTOR and the COUNTY Hospital Liaison Team, authorized mental health staff, and/or the patient's outpatient provider.
  - f. Prior to discharge, COUNTY may request a copy of pertinent medical records for review or other purposes, with the understanding that it may not contain summary or discharge information, within 24-hours of such request. After a patient's discharge, CONTRACTOR shall provide COUNTY with a completed Treatment Authorization Request (TAR) as well as designated elements of patient's chart within 48-hours. Designated elements will include the following:
    - Discharge Summary
    - All Physician, nursing and social worker notes



- Medication orders
  - Documentation of ancillary medical care
  - Admission Assessment
  - Risk advisements and documentation of holds as applicable
- g. For continuity of care purposes, within 48-hours of the discharge CONTRACTOR shall provide COUNTY with the following information for patients needing medication follow up services:
- i. Discharge summary
  - ii. Discharge medications
  - iii. Admission note (and physical exam, if done)
  - iv. Medication administration record (MAR)

CONTRACTOR shall fax information needed for this purpose to a secure fax number COUNTY shall provide.

- h. If records are mailed, CONTRACTOR must use packaging materials as necessary to ensure charts/records are received by the COUNTY in good condition and remain sealed. They must also use a mail service that provides sender with a mailing receipt and delivery notification.
- i. CONTRACTOR must maintain all original facility charts/records.
- j. CONTRACTOR must implement a tracking procedure to document, at a minimum, which charts/records have been mailed or otherwise transmitted, to whom, and when.

## B. Service Standards

1. COUNTY and CONTRACTOR clinical staffs will fully communicate and cooperate with each other in the development of treatment planning, determining length of stay and readiness for discharge, and, to this end, may freely exchange patient information as a unitary treatment program without further patient releases, consistent with applicable laws and regulations.
2. COUNTY will provide ongoing referral sources and placement assistance with regard to patient discharge planning. In the event that placement is not available at the time the patient is to be discharged, CONTRACTOR shall not be penalized and may charge such additional day beyond discharge readiness at the full non-administrative rate listed in Exhibit B.
3. CONTRACTOR shall prescribe medications in accordance with the Medi-Cal drug formulary which includes the Specialty Mental Health carve outs; and, to the greatest extent possible, administer and prescribe medication that is both effective and cost efficient.
4. CONTRACTOR's discharging physician will provide patient with a ten-day supply of psychiatric medications upon discharge and prescription for 30-day supply of medications.
5. COUNTY Mental Health Managed Care Plan will set forth the program requirements to determine the appropriateness of placement based on clinical necessity criteria. CONTRACTOR will make every

reasonable effort to arrange its occupied bed days to permit COUNTY to place a patient at any time in accordance with agreed upon admissions criteria.

6. CONTRACTOR shall ensure COUNTY access to the two (2) designated beds, if available, acute inpatient psychiatric beds at its facility, 24-hours a day, seven (7) days a week. These beds will include all services normally rendered by PHFs. These services include psychiatric treatment (including medications and labs), care and feeding, monitoring, discharge planning and after care planning.
7. CONTRACTOR shall make determination of admission for referred patients within 4 hours or less of referral by the Authorized COUNTY representative or Crisis Stabilization Services staff.
8. COUNTY shall have verified Medi-Cal (for Medi-Cal eligible patients) eligibility prior to referral and admission. CONTRACTOR will be responsible for completing financial/ forms upon patient arrival to CONTRACTOR.
9. CONTRACTOR will provide financial data with regard to Medicare coverage of patients identified as Medicare recipients. This requirement is to ensure that any patients with Medicare coverage for inpatient psychiatric care are referred to other providers who may seek reimbursement through Medicare. Upon identification of Medi-care coverage, CONTRACTOR will work actively to transfer patient to Medi-care eligible inpatient facility within 24-hours of the discovery of such eligibility.
10. CONTRACTOR and COUNTY will communicate daily with regard to bed availability to maintain 100% use of contracted beds, or for purposes of temporarily assigning a courtesy bed to another county if COUNTY cannot fill its two (2) beds.
11. CONTRACTOR shall notify COUNTY of any and all Unusual Occurrences (as defined by the State Department of Health Care Services, Psychiatric Health Facility Regulations, Title 22, Division 5, Section 77036), involving a COUNTY placement within 24-hours of the incident.
12. CONTRACTOR will provide COUNTY with all final documentation related to the Unusual Occurrence that is provided to the State Department of Mental Health within seven (7) business days of the occurrence. All Unusual Occurrences are reviewed by the COUNTY's Mental Health's Quality Improvement program and any recommendations will be forwarded both to the COUNTY Mental Health Director and the CONTRACTOR'S Administrator.
13. COUNTY is eligible to receive Medi-Cal reimbursement from the State of California, Department of Health Care Services for these bed days. CONTRACTOR will maintain Medi-Cal certification during the period of this contract with COUNTY.
14. Should COUNTY wish to sell a portion of its bed days, such arrangements will be permitted and will occur between COUNTY and another participating County or entity.

#### C. Bed Utilization Credit and Invoicing

1. CONTRACTOR shall assign a single staff to manage bed occupancy on behalf of COUNTY.

2. Any bed days not occupied by COUNTY shall be charged except as follows:  
When CONTRACTOR is able to use an available bed(s) (hereafter, 'courtesy beds') to treat another County's patient, express authorization by designated COUNTY staff should be obtained in advance. If prior authorization is not possible, authorization will be obtained by the beginning of the next business day.
  - a. CONTRACTOR shall invoice COUNTY for the total number of bed days for that calendar month, less the total number of COUNTY's allocated bed days used as courtesy bed days by other counties for that calendar month.
  - b. Conversely, COUNTY shall be responsible for any 'courtesy' bed days it authorizes CONTRACTOR to use for the treatment of its patients that are in excess of the total bed days agreed to herein. Authorization shall be in writing from the COUNTY's Mental Health Clinical Director or COUNTY's Psychiatric Medical Director, except in the circumstance that the additional bed days requested by COUNTY staff shall *not* exceed the monthly total bed days.
3. In the situation that more than one county has available beds they have authorized for use by other counties, CONTRACTOR shall fill courtesy beds in alternating order between each County to ensure distributed benefit and savings among all participating Counties.

### **III. ADDITIONAL PROVISIONS**

#### **A. Licensing Requirements**

1. CONTRACTOR shall comply with all necessary County or State licensing requirements and must maintain appropriate licenses and display same in a location that is reasonably conspicuous.
2. CONTRACTOR shall abide by the Bronzan-McCorquodale Act (WIC, Division 5, Part II, Section 5600 et seq.), CCR Title 9 and Title 22, the State Cost Reporting/Data Collection Manual (CR/DC) and State Department of Health Care Services Policy Letters. Any changes in status, licensure, or ability to perform activities within the contracted services must be reported to the COUNTY immediately.
3. CONTRACTOR shall maintain appropriate staffing levels to assure safety and program compliance as dictated by the State, Federal and local codes/regulations.
4. CONTRACTOR shall furnish COUNTY within thirty (30) days of execution of this Agreement:
  - a. A Program Schedule
  - b. Treatment Staff Roster (including license number or evidence of credentialing) on an annual basis or whenever staffing changes occur upon the execution of this agreement.

#### **B. Clinical Records**

1. CONTRACTOR shall maintain adequate patient records which must comply with all appropriate State and Federal requirements.

- a. Records shall be kept on all patients admitted or accepted for treatment. All required records, either as original or as accurate reproductions of the contents of the originals shall be maintained in a confidential manner, legible, and readily accessible upon request of persons authorized by law to have access to such records.
  - b. The CONTRACTOR shall safeguard the information in the record against loss, defacement, tampering or use by unauthorized persons.
  - c. Patient health records or reproductions shall be safely preserved for a minimum of seven years following discharge of the patient.
  - d. If the CONTRACTOR ceases operation, the COUNTY shall be informed within 30 days prior to cessation, so that arrangements can be made for safe preservation of patient health records.
  - e. Patients records shall be filed in an easily accessible manner in the facility or in an approved health record storage facility off facility premises.
  - f. Patient records shall be completed within fourteen (14) days following the patient's discharge with the exception of a discharge summary which shall be completed and submitted to COUNTY within five (5) days following discharge and discharge information for individuals needing COUNTY follow up for medication needs which shall be submitted within 48-hours following discharge.
  - g. All information and records obtained in the course of providing either voluntary or involuntary services shall be confidential and may be disclosed only in accordance with Sections 5328 through 5330 of the Welfare and Institutions Code.
2. COUNTY shall have access within 24-hours to all appropriate COUNTY patient records requested, whether stored on site or off site, weekends and holidays excluded.
  3. CONTRACTOR shall provide COUNTY with required records for billing purposes, utilization review, and other purposes as may be required under terms of this Agreement in a timely manner.

#### C. Certification of Program Integrity

1. 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.
2. For each Medi-Cal beneficiary for whom COUNTY is submitting a claim for reimbursement:
  - a. CONTRACTOR will assure the services included in the claim were actually provided to the beneficiary.
  - b. CONTRACTOR will assure 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, except when COUNTY decides to place patient or to keep patient in PHF without medical necessity.

- c. CONTRACTOR will assure a client plan was developed and maintained for the beneficiary that met all standards established by the COUNTY Mental Health Plan (MHP).
3. CONTRACTOR certifies that the following processes are in place:
- a. Written policies, procedures and standards of conduct that articulates the CONTRACTOR's commitment to comply with all applicable Federal and State standards.
  - b. The designation of a compliance officer and a compliance committee that is accountable to senior management.
  - c. Effective training and education for the compliance officer and the organization's employees.
  - d. Enforcement of standards through well-publicized disciplinary guidelines.
  - e. Provisions for internal monitoring and auditing.
  - f. Provision for prompt response to detected offenses, and for development of corrective action initiatives relating to the provision of mental health services.
  - g. Confirmation that CONTRACTOR and all employees are not excluded from Medi-Cal and Medicaid participation.

#### D. Background Checks

CONTRACTOR shall comply with all provisions of Welfare & Institutions code 5405, in part, requiring Department of Justice and Federal Bureau of Investigations background checks on all employees, contractors, or volunteers who may have contact with patients or residents in the provision of service. CONTRACTOR will run monthly credentialing checks using specified web sites to ensure no CONTRACTOR employee/volunteer is or has become during the course of their employment, a federally excluded provider.

**EXHIBIT B**  
**COMPENSATION**

**BUDGET DETAIL AND PAYMENT PROVISIONS**

**From the effective date through June 30, 2022  
(and each subsequent automatic renewal thereof)**

**I. MAXIMUM PAYMENT TO CONTRACTOR**

- A. COUNTY shall reimburse CONTRACTOR on a monthly basis in the amount of \$998.00 per bed per day, filled or unfilled for two (2) beds with the exception of beds filled by individuals who do not qualify for Medi-Cal, hereafter referred to as “indigent” clients. The per day per bed fee for these “indigent” clients shall be \$1,098.00 for the additional costs CONTRACTOR incurs for ancillary medication, labs, and other medical supplies. At the sole discretion of COUNTY, CONTRACTOR will not be reimbursed for those units of service that were provided without COUNTY authorization.
1. For fiscal years with a Leap Year, an additional bed day shall be added for each COUNTY bed at the current rate per day and the contract maximum shall be adjusted accordingly.
- B. Additional charges for authorized One to One Services: If COUNTY’s client requires enhanced one to one supervision after the initial 72 hours in CONTRACTOR’s facility; CONTRACTOR will request authorization from COUNTY to approve this level at a rate of \$28.00 per hour.
- C. Adjustment to Day Rates. In consideration of CONTRACTOR’s fulfillment of the promised work, COUNTY shall pay CONTRACTOR for expenditures made in accordance with Exhibit B. With the approval of the Director of COUNTY's Health and Human Services Agency or designee, CONTRACTOR may modify the daily rates provided the total contract maximum remains unchanged. Such changes shall not be effective unless and until written notice of the date and nature of the change and the consent by CONTRACTOR and the foregoing COUNTY’s Health and Human Services Agency representative has been given in writing to the Napa County Auditor Controller and to the Clerk of the Board of Supervisors. No such changes in the rates shall add a new type of services to those services set forth in Exhibit B of the Agreement.
- D. As noted in Exhibit A, Section II (SERVICE REQUIREMENTS), Section B, 2 (Service Standards), COUNTY shall not penalize CONTRACTOR if placement is not available at the time of patient discharge. CONTRACTOR may charge COUNTY for additional day(s) beyond discharge readiness at the full non-administrative rate.
- E. By the tenth (10<sup>th</sup>) of each month, CONTRACTOR shall provide COUNTY an approved and correct census statement and supporting documentation identifying: beneficiary, service provider, type of service and requisite service code, date/s of service, time of day and length of time of services.

F. If, for any reason, CONTRACTOR is unable to perform the duties as outlined in this Agreement, CONTRACTOR shall refund COUNTY for all services not rendered within thirty (30) days from the date services ceased.

## **II. COMPENSATION FOR SERVICES**

A. It is understood that the validity of invoices, in terms of their compliance with state regulations, is subject to the review of the State of California and the COUNTY, and that COUNTY will be making payments on said invoices in advance of said review and approval by the State, and in advance of other reimbursement by the State to COUNTY for sums expended there under. In the event any invoice is disapproved by the State, CONTRACTOR shall take all actions necessary to obtain such approval. In the event that COUNTY is not reimbursed by the State for any amount it has paid to CONTRACTOR hereunder, CONTRACTOR shall reimburse COUNTY in the amount of such overpayment within thirty (30) days or, at the sole discretion of COUNTY's Mental Health Director, COUNTY may withhold such amounts from any payments due under this Agreement or any successor Agreement.

B. It is understood that any records of revenues or expenditures under this contract may be subject to compliance with applicable regulations, including but not limited to Federal, State and County regulations, and may be audited by the appropriate agency. In the event of an audit disallowance of any invoiced costs, which is subject to compliance with regulations, COUNTY shall not be liable for any lost revenue resulting there from.

C. COUNTY will bill the services performed by CONTRACTOR and provided by CONTRACTOR to various private or governmental third party payors. COUNTY is the only party who may bill and seek reimbursement for the services performed by CONTRACTOR to COUNTY. CONTRACTOR is prohibited from seeking any reimbursement, including but not limited to various private or governmental third party payors (e.g., Medicare, Medi-Cal, TRICARE, Champus) or other individuals, for any of the services performed by CONTRACTOR. CONTRACTOR will cooperate with COUNTY to facilitate HHSA obtaining the maximum legal reimbursement for the services provided. CONTRACTOR is responsible for ensuring adherence to this provision.

D. The daily rate CONTRACTOR will charge COUNTY for individuals who do not have Medi-Cal at the time of admission to CONTRACTOR's facility but may qualify for Medi-Cal retrospectively will be \$998 per day per bed. In the event these individuals do not qualify for Medi-Cal or have Kaiser Medi-Cal CONTRACTOR shall invoice and COUNTY shall pay an additional \$100 per bed day for ancillary medication, labs, and other medical supplies for each day the individuals resides in CONTRACTOR's facility.

E. All invoices submitted to COUNTY shall meet compliance with the Health Insurance Portability and Accountability Act (HIPAA) and shall specifically contain ICD codes for all diagnoses from the most current version in use.

**III. USE OF FUNDS AND PAYMENT LIMITATION**

- A. CONTRACTOR shall use the funds provided by COUNTY exclusively for the purposes of performing the services described in Exhibit A.
- B. COUNTY shall reimburse CONTRACTOR monthly after submittal of a Napa County vendor claim invoice and supporting documentation identifying: beneficiary, service provider, type of service and requisite service code, date of service, time of day and length of time of services.
- C. If for any reason CONTRACTOR is unable to perform the duties as outlined in this Agreement, CONTRACTOR shall refund COUNTY for all services not rendered within thirty (30) days from the date services ceased.
- D. CONTRACTOR shall be liable for State audit exceptions due to inadequate documentation as per medical necessity documentation requirements and not actual medical necessity and shall reimburse COUNTY for any recoupments ordered by the State within sixty (60) days of the date of the State's or COUNTY'S notice of recoupment order. If CONTRACTOR fails to reimburse the COUNTY within the time period, the COUNTY may offset the unpaid amount against any sums due from COUNTY to CONTRACTOR pursuant to this Agreement or any other agreement or obligation.
- E. COUNTY shall be liable for State audit exceptions should the patient not meet medical necessity criteria for placement.

**IV. METHOD AND PLACE OF SUBMITTING INVOICES AND MAKING PAYMENTS**

- A. All invoices and payments shall be made in writing and may be given by personal delivery or mail. Invoices and payments sent by mail should be addressed as follows:

<b>COUNTY</b>	<b>CONTRACTOR</b>
Napa County Health & Human Services Agency Mental Health Division Attn: Utilization Review Coordinator 2751 Napa Valley Corporate Drive, Building A Napa, California 94559	Crestwood Behavioral Health, Inc. PO Box 980966 West Sacramento, California 95798 209-955-2364 msmith@cbhi.net

And when addressed as shown above, shall be deemed given upon deposit in the United States mail, postage prepaid. In all other instances, invoices and payments shall be deemed given at the time of actual delivery.

- B. All Invoices shall be submitted within 60 days of service date or will not be paid.



**V. FINANCIAL STATEMENTS AND AUDITS**

- A. CONTRACTOR shall submit an annual cost report due by August 31st following the end of the fiscal year. The June payment for the current fiscal year may be withheld until the cost report is received by the COUNTY.
- B. CONTRACTOR agrees to furnish annual audited financial statements for the previous fiscal year to the COUNTY by June 30th of each calendar year.
- C. CONTRACTOR agrees to furnish all records and documents within a reasonable time, in the event that the COUNTY, State or Federal Government conducts an audit.

## EXHIBIT C

### SECTION 2. GENERAL TERMS AND CONDITIONS --VERSION 12

#### 2.1 **Term of the Agreement.**

(a) Term. The term of this Agreement shall commence on the date first written on page 1 and shall expire on the expiration date set forth on page 1 unless terminated earlier in accordance with Paragraphs 2.9 (Termination for Cause), 2.10 (Other Termination) or 2.23(a) (Covenant of No Undisclosed Conflict).

(b) Automatic Renewal. The term of this Agreement shall be automatically renewed for an additional year at the end of each fiscal year, under the same terms and conditions, unless either party gives the other party written notice of intention not to renew no less than thirty (30) days prior to the expiration of the then current term. For purposes of this Agreement, "fiscal year" shall mean the period commencing on July 1 and ending on June 30. COUNTY authorizes the Department Director to determine whether this Agreement shall not be renewed and to provide the written notice of the intention to not renew on behalf of COUNTY.

(c) Obligations Extending Beyond Term. The obligations of the parties under Paragraphs 2.7 (Insurance) and 2.8 (Hold Harmless/Defense/Indemnification) shall continue in full force and effect after the expiration date or early termination in relation to acts or omissions occurring prior to such dates during the term of the Agreement, and the obligations of CONTRACTOR to COUNTY shall also continue after the expiration date or early termination in relation to the obligations prescribed by Paragraphs 2.15 (Confidentiality), 2.20 (Taxes), 2.21 (Access to Records/Retention), 2.31 (Compliance with Federal Health Care Program Requirements), 2.32 (Compliance with State Medi-Cal Specialty Mental Health Services Requirements), and 2.33 (Compliance with Mental Health Activities Requirements). To the extent the paragraphs referenced in this Paragraph 2.1 may be modified by Specific Terms and Conditions contained in SECTION 3 of this Agreement, the modifications shall also continue after the expiration date or early termination.

2.2 **Scope of Services.** CONTRACTOR shall provide COUNTY those services set forth in Exhibit "A."

#### 2.3 **Compensation.**

(a) Compensation/Maximum. In consideration of CONTRACTOR's fulfillment of the promised work, COUNTY shall pay CONTRACTOR at the rates and/or in the amount(s) set forth in Exhibit "B". The maximum payment for the initial term of this Agreement, and the successive maximum payments for each subsequent automatically renewed term, shall each be that maximum amount set forth on page 1; provided, however, that such amounts shall not be construed as guaranteed sums, and compensation shall be based upon services actually rendered and reimbursable expenses actually incurred.

(b) Advance Funding.

1. Use of Funds. To the extent this Agreement may permit advance funding of services and expenses, use of funds delineated in this Agreement is limited to the term of performance unless otherwise modified in accordance with Paragraph 2.17 (Amendment/Modification). COUNTY may at its discretion recapture funds obligated under the authority of this Agreement if expenditure plans are not being met.

2. Reversion of Funds. If funds awarded to CONTRACTOR have not been expended in accordance with this Agreement and COUNTY has determined after consultation with CONTRACTOR that funds will not be spent in a timely manner, such funds will revert to COUNTY for that reason and to the extent permitted by and in a manner consistent with federal and state law, regulations, and policies.

(c) Availability of Funds. It is mutually understood that, for the benefit of both parties, this Agreement may have been written before ascertaining the availability of congressional and/or state legislative appropriation of funds in order to avoid program and fiscal delays that would occur if the Agreement were

executed after that determination was made. If funding of this Agreement is dependent upon the availability of congressional and legislative appropriation of funds, then:

1. This Agreement shall be deemed automatically terminated if the Congress and and/or the State Legislature do not appropriate funds needed for this Agreement;

2. At COUNTY's discretion, this Agreement may be deemed automatically terminated or this Agreement may be modified or amended in accordance with Paragraph 2.17 (Amendment/Modifications), if the Congress and/or State Legislature do not appropriate sufficient funds needed for this Agreement; and

3. This Agreement is subject to any additional restrictions, limitations, or conditions enacted by the Congress or State Legislature, or any statute enacted by the Congress or State Legislature, that may in any manner affect the provisions, terms, or funding of this Agreement.

(d) COUNTY may withhold any compensation due CONTRACTOR as an offset for any revenues lost arising from an act or omission in billing or documentation practices by CONTRACTOR. CONTRACTOR shall make COUNTY whole for any such lost revenues.

#### 2.4 **Method of Payment.**

(a) Invoices. All payments for compensation and reimbursement for expenses shall be made only upon presentation by CONTRACTOR to COUNTY of an itemized billing invoice in a form acceptable to the Napa County Auditor which indicates, at a minimum, CONTRACTOR's name, address, Social Security or Taxpayer Identification Number, itemization of the hours worked or, where compensation is on a per-task basis, a description of the tasks completed during the billing period, the person(s) actually performing the services and the position(s) held by such person(s), and the approved hourly or task rate. Where expense reimbursement is sought, the invoice shall describe the nature and cost of the expense, the task(s) if any to which the expense was related, and the date incurred. CONTRACTOR shall submit invoices not more often than monthly to the Contract Administrator. After review and approval as to form and content, the invoice shall be submitted to the Napa County Auditor no later than fifteen (15) calendar days following receipt.

(b) Legal status. So that COUNTY may properly comply with its reporting obligations under federal and state laws pertaining to taxation, if CONTRACTOR is or becomes a corporation during the term of this Agreement, proof that such status is currently recognized by and complies with the laws of both the state of incorporation or organization and the State of California, if different, shall be provided to the Contract Administrator upon request during the term of this Agreement in a form satisfactory to the Napa County Auditor. Such proof shall include, but need not be limited to, a copy of any annual or other periodic filings or registrations required by the state of origin or California, the current address for service of process on the corporation or limited liability partnership, and the name of any agent designated for service of process by CONTRACTOR within the State of California.

2.5 **Independent Contractor.** CONTRACTOR shall perform this Agreement as an independent contractor. CONTRACTOR and the officers, agents and employees of CONTRACTOR are not, and shall not be deemed, COUNTY employees for any purpose, including workers' compensation and employee benefits.

CONTRACTOR shall, at CONTRACTOR's own risk and expense, determine the method and manner by which duties imposed on CONTRACTOR by this Agreement shall be performed; provided, however, that COUNTY may monitor the work performed by CONTRACTOR. COUNTY shall not deduct or withhold any amounts whatsoever from the compensation paid to CONTRACTOR, including, but not limited to amounts required to be withheld for state and federal taxes. As between the parties to this Agreement, CONTRACTOR shall be solely responsible for all such payments.

2.6 **Specific Performance.** It is agreed that CONTRACTOR, including the agents, employees and authorized subcontractors of CONTRACTOR, shall be the sole providers of the services required by this Agreement. Because the services to be performed by CONTRACTOR under the terms of this Agreement are of a special, unique, unusual, extraordinary, and intellectual or time-sensitive character which gives them a peculiar value, the loss of which cannot be reasonably or adequately compensated in damages in an action of law, COUNTY, in addition to any other rights or remedies which COUNTY may possess, shall be entitled to injunctive and other equitable relief to prevent a breach of this Agreement by CONTRACTOR.

2.7. **Insurance.** CONTRACTOR shall obtain and maintain in full force and effect throughout the term of this Agreement, and thereafter as to matters occurring during the term of this Agreement, the following insurance coverage:

(a) Workers' Compensation Insurance. To the extent required by law during the term of this Agreement, CONTRACTOR shall provide workers' compensation insurance for the performance of any of CONTRACTOR's duties under this Agreement, including but not limited to, coverage for workers' compensation and employer's liability and a waiver of subrogation, and shall provide COUNTY with certification of all such coverages upon request by COUNTY's Risk Manager.

(b) Liability Insurance. CONTRACTOR shall obtain and maintain in full force and effect during the term of this Agreement the following liability insurance coverages, issued by a company admitted to do business in California and having an A.M. Best rating of A:VII or better, or equivalent self-insurance:

(1) General Liability. Commercial general liability [CGL] insurance coverage (personal injury and property damage) of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence, covering liability or claims for any personal injury, including death, to any person and/or damage to the property of any person arising from the acts or omissions of CONTRACTOR or any officer, agent, or employee of CONTRACTOR under this Agreement. If the coverage includes an aggregate limit, the aggregate limit shall be no less than twice the per occurrence limit.

(2) Professional Liability/Errors and Omissions. Professional liability [or errors and omissions] insurance for all activities of CONTRACTOR arising out of or in connection with this Agreement in an amount not less than ONE MILLION DOLLARS (\$1,000,000) per claim.

(3) Comprehensive Automobile Liability Insurance. Comprehensive automobile liability insurance (Bodily Injury and Property Damage) on owned, hired, leased and non-owned vehicles used in conjunction with CONTRACTOR's business of not less than ONE MILLION DOLLARS (\$1,000,000) combined single limit per occurrence. Coverage shall be business auto insurance coverage using Insurance Services Office (ISO) form number CA 0001 06 92 including symbol 1 (any Auto) or the exact equivalent. If CONTRACTOR owns no vehicles, this requirement may be satisfied by a non-owned auto endorsement to the General Liability Insurance described in subparagraph (b)(1) above. If CONTRACTOR or CONTRACTOR's employees, officers, or agents will use personal automobiles in any way in the performance of this Agreement, CONTRACTOR shall provide evidence of personal auto liability coverage for each such person upon request.

(c) Certificates of Coverage. All insurance coverages referenced in 2.7(b), above, shall be evidenced by one or more certificates of coverage or, with the consent of COUNTY's Risk Manager, demonstrated by other evidence of coverage acceptable to COUNTY's Risk Manager, which shall be filed by CONTRACTOR with the Health and Human Services Agency prior to commencement of performance of any of CONTRACTOR's duties.

(1) The certificate(s) or other evidence of coverage shall reference this Agreement by its COUNTY number or title and department; shall be kept current during the term of this Agreement; shall provide that COUNTY shall be given no less than thirty (30) days prior written notice of any non-renewal, cancellation, other termination, or material change, except that only ten (10) days prior written notice shall be

required where the cause of non-renewal or cancellation is non-payment of premium; and shall provide that the inclusion of more than one insured shall not operate to impair the rights of one insured against another insured, the coverage afforded applying as though separate policies had been issued to each insured, but the inclusion of more than one insured shall not operate to increase the limits of the company's liability.

(2) **Waiver of Subrogation and Additional Insured Endorsements.** For the commercial general liability insurance coverage referenced in 2.7(b)(1) and, for the comprehensive automobile liability insurance coverage referenced in 2.7(b)(3) where the vehicles are covered by a commercial policy rather than a personal policy, CONTRACTOR shall also file with the evidence of coverage an endorsement from the insurance provider naming COUNTY, its officers, employees, agents and volunteers as additional insureds and waiving subrogation. For the Workers Compensation insurance coverage, CONTRACTOR shall file with the evidence of coverage an endorsement waiving subrogation.

(3) The certificate or other evidence of coverage shall provide that if the same policy applies to activities of CONTRACTOR not covered by this Agreement, then the limits in the applicable certificate relating to the additional insured coverage of COUNTY shall pertain only to liability for activities of CONTRACTOR under this Agreement, and that the insurance provided is primary coverage to COUNTY with respect to any insurance or self-insurance programs maintained by COUNTY. The additional insured endorsements for the general liability coverage shall use Insurance Services Office (ISO) Form No. CG 20 09 11 85 or CG 20 10 11 85, or equivalent, including (if used together) CG 2010 10 01 and CG 2037 10 01; but shall not use the following forms: CG 20 10 10 93 or 03 94.

(4) Upon request by COUNTY's Risk Manager, CONTRACTOR shall provide or arrange for the insurer to provide within thirty (30) days of the request, certified copies of the actual insurance policies or relevant portions thereof.

(d) **Deductibles/Retentions.** Any deductibles or self-insured retentions shall be declared to, and be subject to approval by, COUNTY's Risk Manager, which approval shall not be denied unless the COUNTY's Risk Manager determines that the deductibles or self-insured retentions are unreasonably large in relation to compensation payable under this Agreement and the risks of liability associated with the activities required of CONTRACTOR by this Agreement. At the option of and upon request by COUNTY's Risk Manager if the Risk Manager determines that such deductibles or retentions are unreasonably high, either the insurer shall reduce or eliminate such deductibles or self-insurance retentions as respects COUNTY, its officers, employees, agents and volunteers or CONTRACTOR shall procure a bond guaranteeing payment of losses and related investigations, claims administration and defense expenses.

(e) **Inclusion in Subcontracts.** CONTRACTOR agrees to require all subcontractors and any other entity or person who is involved in providing services under this Agreement to comply with the Workers Compensation and General Liability insurance requirements set forth in this Paragraph 2.7.

(f) Failure to demand evidence of full compliance with the insurance requirements set forth in this Agreement or failure to identify any insurance deficiency shall not relieve CONTRACTOR, nor be construed or deemed a waiver of, its obligation to maintain the required insurance at all times during the performance of this Agreement.

## 2.8 **Hold Harmless/Defense/Indemnification.**

(a) **In General.** To the full extent permitted by law, CONTRACTOR shall hold harmless, defend at its own expense, and indemnify COUNTY and the officers, agents, employees and volunteers of COUNTY from any and all liability, claims, losses, damages or expenses, including reasonable attorney's fees, for personal injury (including death) or damage to property, arising from all acts or omissions to act of CONTRACTOR or its officers, agents, employees, volunteers, contractors and subcontractors in rendering services under this Agreement, excluding, however, such liability, claims, losses, damages or expenses arising from the negligence

or willful acts of COUNTY or its officers, agents, employees or volunteers or other contractors or their subcontractors. Each party shall notify the other party immediately in writing of any claim or damage related to activities performed under this Agreement. The parties shall cooperate with each other in the investigation and disposition of any claim arising out of the activities under this Agreement, providing that nothing shall require either party to disclose any documents, records or communications that are protected under peer review privilege, attorney-client privilege, or attorney work product privilege.

(b) Obligations Relating to Criminal Background Checks.

1. If CONTRACTOR's obligations under this Agreement involve contact with vulnerable populations such as children, elderly, mentally ill or disabled persons (hereafter in this paragraph referred to as "third persons"), then CONTRACTOR shall investigate by reasonable means, including but not limited to obtaining information from official government sources as the result of taking fingerprints, the criminal background of each and all of its officers, agents, employees, interns, and volunteers, however denominated (hereafter, "employees"), who will have direct personal contact with, or provide direct personal services to, third persons in the performance of this contract. Depending upon the information acquired by its investigation, CONTRACTOR shall not allow any of its employees to have personal contact with, or provide direct personal services to, third persons where it may reasonably be concluded as a result of its investigation that an employee should not have such contact or provide such service. Nothing herein requires CONTRACTOR to investigate the criminal background of an employee who is currently licensed by the State of California and whose license requires a criminal background investigation.

2. Notwithstanding anything to the contrary in (a) or (c), CONTRACTOR shall defend and indemnify COUNTY and its officers, agents and employees from any and all claims, actions, settlements or judgments of whatever kind which may arise from the failure of CONTRACTOR to conduct the criminal background investigation described in this subparagraph (b) or from the failure of CONTRACTOR after the investigation to reasonably disallow an employee from having such personal contact or providing such direct personal service.

(c) Employee Character and Fitness. CONTRACTOR accepts responsibility for determining and approving the character and fitness of its employees (including volunteers, agents or representatives) to provide the services required of CONTRACTOR under this Agreement, including completion of a satisfactory criminal/background check and period rechecks to the extent permitted by law. Notwithstanding anything to the contrary in this Paragraph, CONTRACTOR shall hold COUNTY and its officers, agents and employees harmless from any liability for injuries or damages resulting from a breach of this provision or CONTRACTOR's actions in this regard.

**2.9 Termination for Cause.**

(a) If either party shall fail to fulfill in a timely and proper manner that party's obligations under this Agreement or otherwise breach this Agreement and fail to cure such failure or breach within ten (10) days of receipt of written notice from the other party describing the nature of the breach, the non-defaulting party may, in addition to any other remedies it may have, terminate this Agreement by giving five (5) days written notice to the defaulting party in the manner set forth in Paragraph 2.13 (Notices).

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

**2.10 Other Termination.**

(a) This Agreement may be terminated by either party for any reason and at any time by giving prior written notice of such termination to the other party specifying the effective date thereof at least thirty (30) days prior to the effective date; provided, however, that no such termination may be effected by COUNTY unless an opportunity for consultation is provided prior to the effective date of the termination.

(b) The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to terminate this Agreement under this Paragraph.

#### **2.11. Disposition of, Title to and Payment for Work upon Expiration or Termination.**

(a) Upon expiration or termination of this Agreement, if and to the extent CONTRACTOR has provided services through Software and Applications materials licensed to COUNTY, COUNTY shall promptly return the Software and Application materials to CONTRACTOR. In addition, to the extent CONTRACTOR maintains COUNTY data on those portions of digital software hosted by CONTRACTOR and not controlled by COUNTY ("County data"), CONTRACTOR shall promptly return County data to COUNTY Information Technology Department (ITS) in a format designated by ITS and shall subsequently purge County data from CONTRACTOR's systems upon confirmation from COUNTY that the copy of the data provided to COUNTY is comprehensive of the data previously hosted by CONTRACTOR.

(b) Upon expiration or termination of this Agreement, all finished or unfinished documents and other materials, if any, and all rights therein shall become, at the option of COUNTY, the property of and shall be promptly returned to COUNTY, although CONTRACTOR may retain a copy of such work for its personal records only. Unless otherwise expressly provided in this Agreement, any copyrightable or patentable work created by CONTRACTOR under this Agreement shall be deemed a "work made for hire" for purposes of copyright or patent law and only COUNTY shall be entitled to claim or apply for the copyright or patent thereof.

(c) Notwithstanding the provisions set forth in subparagraph (b ) above, if the services involve development or improvement of previously patented inventions or previously copyrighted software, upon expiration or termination of this Agreement, title to, ownership of, and all applicable patents, copyrights and trade secrets in the products developed or improved under this Agreement, shall remain with CONTRACTOR or any other person or entity if such person previously owned or held such patents, copyrights, and trade secrets, and such persons shall retain complete rights to market such product; provided, however, that COUNTY shall receive, at no additional cost, a perpetual license to use such products for its own use or the use of any consortium or joint powers agency to which COUNTY is a party. If the product involves a source code, CONTRACTOR shall either provide a copy of the source code to COUNTY or shall place the source code in an escrow account, at CONTRACTOR's expense, from which the source code may be withdrawn and used by COUNTY for the sole purpose of maintaining and updating the system dependent upon such code when such use is necessary to prevent loss of service to COUNTY.

(d) CONTRACTOR shall be entitled to receive compensation for any satisfactory work completed prior to expiration or receipt of the notice of termination or commenced prior to receipt of notice of termination and completed satisfactorily prior to the effective date of the termination; except that CONTRACTOR shall not be relieved of liability to COUNTY for damages sustained by COUNTY by virtue of any breach of the Agreement by CONTRACTOR whether or not the Agreement expired or was otherwise terminated, and COUNTY may withhold any payments not yet made to CONTRACTOR for purpose of setoff until such time as the exact amount of damages due to COUNTY from CONTRACTOR is determined.

2.12 **No Waiver.** The waiver by either party of any breach or violation of any requirement of this Agreement shall not be deemed to be a waiver of any such breach in the future, or of the breach of any other requirement of this Agreement.

2.13 **Notices.**

(a) In General. Except as set forth in subparagraph (b) below with respect to notice of automatically adopted provisions, all notices required or authorized by this Agreement shall be in writing and shall be delivered in person or by deposit in the United States mail, by certified mail, postage prepaid, return receipt requested. Any notice sent by mail in the manner prescribed by this subparagraph shall be deemed to have been received on the date noted on the return receipt or five days following the date of deposit, whichever is earlier. Any mailed notice, demand, request, consent, approval or communication that COUNTY desires to give to CONTRACTOR shall be addressed to CONTRACTOR's Contract Contact Person at the mailing address set forth in SECTION 1 of this Agreement. Any mailed notice, demand, request, consent, approval or communication that CONTRACTOR desires to give to COUNTY shall be addressed to COUNTY's Contract Administrator at the mailing address set forth in SECTION 1 of this Agreement. Either party may change its address by notifying the other party of the change of address.

(b) Provisions Adopted Automatically. COUNTY reserves the right to provide notice to CONTRACTOR via facsimile of terms, which automatically become part of this Agreement upon approval by the Napa County Board of Supervisors. Notice delivered by facsimile shall be deemed to have been received on the date a successful delivery confirmation report is generated.

(c) Waiver of Notice by CONTRACTOR. If receipt of notice is refused by CONTRACTOR or if notice is undeliverable due to CONTRACTOR's failure to provide a change of address, notice shall be deemed waived and COUNTY may proceed as though notice were accomplished.

2.14 **Compliance with COUNTY Policies on Waste, Harassment, Drug/Alcohol-Free Workplace, and Computer Use.** CONTRACTOR hereby agrees to comply, and require its employees and subcontractors to comply, with the following policies, copies of which are on file with the Clerk of the Board of Supervisors and incorporated by reference herein. Future versions of the following policies shall automatically become part of this Agreement upon approval by the Napa County Board of Supervisors and notice to CONTRACTOR pursuant to Paragraph 2.13. CONTRACTOR also agrees that it shall not engage in any activities, or permit its officers, agents and employees to do so, during the performance of any of the services required under this Agreement, which would interfere with compliance or induce violation of these policies by COUNTY employees or contractors.

(a) Waste Source Reduction and Recycled Product Content Procurement Policy.

(b) County of Napa "Policy for Maintaining a Harassment and Discrimination Free Work Environment."

(c) Drug and Alcohol Policy.

(d) Napa County Information Technology Use and Security Policy. To this end, all employees and subcontractors of CONTRACTOR whose performance of services under this Agreement requires access to any portion of the COUNTY computer network shall sign and have on file with COUNTY's ITS Department prior to receiving such access the certification attached to said Policy.

(e) Napa County Workplace Violence Policy, adopted by the BOS effective May 23, 1995 and subsequently revised effective November 2, 2004, which is located in the County of Napa Policy Manual Part I, Section 37U.

2.15 **Confidentiality.**



(a) Maintenance of Confidential Information. Confidential information is defined as all information disclosed to or created by CONTRACTOR which relates to COUNTY's past, present, and future activities, as well as activities under this Agreement. CONTRACTOR shall hold all such information as CONTRACTOR may receive or create, if any, in trust and confidence, except with the prior written approval of COUNTY, as expressed through the Department Director. Upon cancellation or expiration of this Agreement, to the extent permitted by law, CONTRACTOR shall return to COUNTY all written and descriptive matter which contains any such confidential information, except that CONTRACTOR may retain for its files a copy of CONTRACTOR's work product if such product has been made available to the public by COUNTY.

(b) Protection of Personally Identifiable Information and Protected Health Information.

(1) To the extent CONTRACTOR is provided, creates, or has access to, Protected Health Information (PHI), Personally Identifiable Information (PII), or any other legally protected confidential information or data in any form or matter (collectively referred to as "Protected Information"), CONTRACTOR shall adhere to all federal, state and local laws, rules and regulations protecting the privacy of such information. CONTRACTOR shall adhere to all existing and future federal, state and local laws, rules and regulations regarding the privacy and security of Protected Information, including, but not limited to, laws and regulations requiring data encryption or policy and awareness programs for the protection of COUNTY Protected Information provided to, or accessed or created by, CONTRACTOR.

(2) CONTRACTOR agrees to adhere to the applicable terms regarding the privacy and security of Protected Information as set forth in the COUNTY-entity agreements identified in Paragraph 1.8 of Section 1 of this Agreement (Contract Administration). CONTRACTOR shall also observe and comply with those requirements set forth in "Addendum For Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County's Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at:

[www.countyofnapa.org](http://www.countyofnapa.org).

(3) CONTRACTOR shall ensure that its staff is trained to its privacy and security policies and procedures and that appropriate physical, technological and administrative safeguards are in place to protect the confidentiality of COUNTY's Protected Information, including, but not limited to, PHI and PII. Upon request, CONTRACTOR shall make available to COUNTY its policies and procedures, staff training records and other documentation of compliance with this Paragraph 2.15.

(4) CONTRACTOR agrees to notify COUNTY, by and through the Napa County Privacy Officer at 2751 Napa Valley Corporate Dr. Suite B, Napa, CA 94559, or 707.253-4715 immediately in the following instances:

- (A) Upon the discovery of a breach of PHI/PII/other Protected Information in electronic or other media;
- (B) Upon the discovery that PHI/PII/other Protected Information was, or is reasonably believed to have been accessed or acquired by an unauthorized person;
- (C) Upon the discovery of a suspected security incident that involves PHI/PII/other Protected Information; or
- (D) Upon the discovery of any breach, security incident, intrusion, or unauthorized access, use, or disclosure of PHI/PII/other Protected Information.

(5) CONTRACTOR will be responsible for all costs associated with CONTRACTOR's breach of the security and privacy of PHI/PII/other Protected Information, or its unauthorized access to or disclosure of PHI/PII/or other Protected Information, including, but not limited to, mitigation of the breach, cost to the County of any monetary sanctions resulting from breach, notification of individuals affected by the breach, and any other action required by federal, state, or local laws, rules or regulations applicable at the time of the breach.

(c) To the extent CONTRACTOR creates, is provided, or has access to applications and records concerning any individual made or kept by COUNTY in connection with public social services (records) as defined in California Welfare & Institutions Code Section 10850, CONTRACTOR shall maintain the confidentiality of such records in accordance with Section 10850, except as otherwise permitted by COUNTY and as necessary for purposes of providing services under this Agreement.

(d) Protection of County Data. If CONTRACTOR will be processing and storing the COUNTY's data in an offsite location, such as a cloud service site, cloud storage site, hosted application site, or hosted storage site, CONTRACTOR shall guarantee that such data is encrypted using an encryption algorithm that meets the current US Department of Defense minimum requirements in order to protect COUNTY data against a breach of protected data if lost or stolen. All offsite cloud applications and storage systems utilized by CONTRACTOR shall be located in the United States, which includes any backup and failover facilities. Application and storage solutions in any foreign location is prohibited.

All desktop and laptop computers, as well other similar type computer systems, used by CONTRACTOR shall be encrypted using the same encryption algorithm described above. All data in transit shall require the same encryption. Storage of COUNTY data on removable portable storage is prohibited.

Upon termination of this agreement, CONTRACTOR shall purge all COUNTY data from all CONTRACTOR systems using a forensic grade deletion that conforms to US Department of Defense DoD 5220.22-M (E) standards.

CONTRACTOR shall reimburse the COUNTY for all associated costs of a breach, including but not limited to reporting costs and associated penalties the COUNTY must bear.

(e) HHS Contractor Security Requirements. Whenever CONTRACTOR utilizes their own equipment to perform work under this Agreement, CONTRACTOR warrants that they have reviewed "HHS Contractor Security Requirements" and can adhere to the minimum standards at all time. A copy of "HHS Contractor Security Requirements" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

## 2.16 **No Assignments or Subcontracts.**

(a) In general. A consideration of this Agreement is the personal reputation of CONTRACTOR; therefore, CONTRACTOR shall not assign any interest in this Agreement or subcontract any of the services CONTRACTOR is to perform hereunder without the prior written consent of COUNTY, which shall not be unreasonably withheld. The inability of the assignee to provide personnel equivalent in experience, expertise, and numbers to those provided by CONTRACTOR, or to perform any of the remaining services required under this Agreement within the same time frame required of CONTRACTOR shall be deemed to be reasonable grounds for COUNTY to withhold its consent to assignment. For purposes of this subparagraph, the consent of COUNTY may be given by the Department Director.

(b) Effect of Change in Status. If CONTRACTOR changes its status during the term of this Agreement from or to that of a corporation, limited liability partnership, limited liability company, general partnership, or sole proprietorship, such change in organizational status shall be viewed as an attempted assignment of this Agreement by CONTRACTOR. Failure of CONTRACTOR to obtain approval of such assignment under this Paragraph shall be viewed as a material breach of this Agreement.

## 2.17 **Amendment/Modification.**

(a) Except as specifically provided herein, this Agreement may be modified or amended only in writing and with the prior written consent of both parties. In particular, only COUNTY, by the Department Director (as long as the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed \$10,000), or by COUNTY's Purchasing Agent (as long as

the aggregate compensation payable to CONTRACTOR by COUNTY under this and all prior agreements with CONTRACTOR will not exceed the maximum aggregate amount for Purchasing Agent contracts as specified by Napa County Code section 2.36.040 (G)) or by COUNTY's Board of Supervisors (in all other instances), in the form of an amendment of this Agreement, may authorize extra and/or changed work if beyond the scope of services prescribed by "Exhibit A." Failure of CONTRACTOR to secure such authorization in writing in advance of performing any of the extra or changed work shall constitute a waiver of any and all rights to adjustment in the contract price or contract time and no compensation shall be paid for such extra work.

(b) Notwithstanding anything to the contrary in (a), this Agreement may be unilaterally modified by COUNTY upon written notice to CONTRACTOR under the following circumstances:

1. There is a decrease in state or federal funding needed for this Agreement;
2. There is a no-cost extension of the end date of the Agreement as authorized by a state or federal funding source; or
3. There is a change in state/federal law or regulation requiring a change in a provision of this Agreement.

(c) The Department Director is delegated the authority to modify this Agreement in accordance with subparagraph (b), but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; provided, however, that nothing in this delegation prevents the Department Director from requesting the Board of Supervisors to modify this Agreement under subparagraph (b).

## 2.18 Interpretation; Venue.

(a) Interpretation. The headings used herein are for reference only. The terms of the Agreement are set out in the text under the headings. This Agreement shall be governed by the laws of the State of California without regard to the choice of law or conflicts.

(b) Venue. This Agreement is made in Napa County, California. The venue for any legal action in state court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement shall be in the Superior Court of California, County of Napa, a unified court. The venue for any legal action in federal court filed by either party to this Agreement for the purpose of interpreting or enforcing any provision of this Agreement lying within the jurisdiction of the federal courts shall be the Northern District of California. The appropriate venue for arbitration, mediation or similar legal proceedings under this Agreement shall be Napa County, California; however, nothing in this sentence shall obligate either party to submit to mediation or arbitration any dispute arising under this Agreement.

2.19 **Compliance with Laws.** CONTRACTOR shall observe and comply with all applicable Federal, State and local laws, ordinances, and codes. **CONTRACTOR acknowledges its independent duty to be and to remain informed of all changes in such laws without reliance on COUNTY to provide notice of such changes.** Such laws shall include, but not be limited to, the following, except where prohibited by law:

(a) Non-Discrimination. During the performance of this Agreement, CONTRACTOR and its subcontractors shall not deny the benefits thereof to any person on the basis of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS), or political affiliation or belief nor shall they discriminate unlawfully against any employee or applicant for employment because of race, color, ancestry, national origin or ethnic group identification, religion or religious creed, gender or self-identified gender, sexual orientation, marital status, age (over 40), mental disability, physical disability, genetic information, or medical condition (including cancer, HIV and AIDS, use of family care leave, or political affiliation or belief. CONTRACTOR

shall ensure that the evaluation and treatment of employees and applicants for employment are free of such discrimination or harassment. In addition to the foregoing general obligations, CONTRACTOR shall comply with the provisions of the Fair Employment and Housing Act (Government Code section 12900, et seq.), the regulations promulgated thereunder (Title 2, California Code of Regulations, section 7285.0, et seq.), the provisions of Article 9.5, Chapter 1, Part 1, Division 3, Title 2 of the Government Code (sections 11135-11139.5) and any state or local regulations adopted to implement any of the foregoing, as such statutes and regulations may be amended from time to time. To the extent this Agreement subcontracts to CONTRACTOR services or works required of COUNTY by the State of California pursuant to agreement between COUNTY and the State, the applicable regulations of the Fair Employment and Housing Commission implementing Government Code section 12990 (a) through (f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations are expressly incorporated into this Agreement by reference and made a part hereof as if set forth in full, and CONTRACTOR and any of its subcontractors shall give written notice of their obligations thereunder to labor organizations with which they have collective bargaining or other agreements.

(b) Documentation of Right to Work. CONTRACTOR agrees to abide by the requirements of the Immigration and Control Reform Act pertaining to assuring that all newly-hired employees of CONTRACTOR performing any services under this Agreement have a legal right to work in the United States of America, that all required documentation of such right to work is inspected, and that INS Form 1-9 (as it may be amended from time to time) is completed and on file for each employee. CONTRACTOR shall make the required documentation available upon request to COUNTY for inspection.

(c) Federal Grant Source. Notwithstanding anything to the contrary in this Agreement, if the funds for this Agreement are derived from a grant from a federal agency, pursuant to 29 CFR 97.36(i)(8) and (9), CONTRACTOR is hereby notified of, and shall comply with the requirements and regulations imposed by the federal granting agency with respect to any discovery or invention which arises or is developed pursuant to this Agreement, and pertaining to any copyrights or rights in data created or otherwise developed when engaging in activities of CONTRACTOR under this Agreement. The requirements and regulations imposed by the federal granting agency are set forth in the original grant agreement specified in Section 1 of the Agreement and are incorporated by reference herein. The original grant agreement is on file with the Clerk of the Board of Supervisors.

(d) Prevailing Wages. If the services to be provided relate to construction or pre-construction-related services, including but not limited to testing, surveying, and inspection, then this Agreement includes the following provisions:

(1) Affected work. CONTRACTOR shall comply with Labor Code sections 1774 and 1775 in relation to payment of prevailing wages for any portion of the required work performed under this Agreement on or after January 1, 2002 relating to construction design, testing, surveying and/inspection work, and construction if the State Director of Industrial Relations has established prevailing wage rates for the types of work involved.

(2) Prevailing wages rates. In accordance with the provisions of Section 1774 of the Labor Code of the State of California, to the extent the Director of Industrial Relations has established the general prevailing rate of wages (which rate includes employer payments for health and welfare, pension, vacation and similar purposes) for the above-described portions of the work required under this Agreement, such rates of wages will be on file and available for inspection at the office of the County of Napa Department of Public Works, 1195 Third Street, Room 201, Napa, California.

(3) Payroll records. In accordance with Labor Code section 1776, a copy of all payrolls for work subject to this subparagraph shall be submitted weekly to COUNTY's Director of Public Works. Payrolls shall contain the full name, address and social security number of each employee, his correct classification, rate of pay, daily and weekly number of hours worked, itemized deductions made and actual wages paid. They shall also

indicate apprentices and ratio of apprentices to journeymen. The employee's address and social security number need only appear on the first payroll on which his name appears. The payroll shall be accompanied by a "Statement of Compliance" signed by the employer or his agent indicating that the payrolls are correct and complete and that the wage rates contained therein are not less than those required by the contract. The "Statement of Compliance" shall be on forms furnished by the Director of Public Works or his designee or on any form with identical wording. CONTRACTOR shall be responsible for the submission of copies of payrolls of all subcontractors.

(4) Apprentices. CONTRACTOR shall be responsible for ensuring compliance with the provisions of Labor Code section 1777.5 relating to employment and payment of apprentices for work under this Agreement relating to land surveying and/or construction inspection if the total compensation to be paid CONTRACTOR for such work is \$30,000 or more.

(e) Inclusion in Subcontracts. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include all of the provisions of this Paragraph 2.19 in all such subcontracts as obligations of the subcontractor.

(f) Notwithstanding any other provisions of this contract, CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement.

**2.20 Taxes.** CONTRACTOR agrees to file all applicable federal and state tax returns or applicable withholding documents and to pay all applicable taxes or to make all required withholdings on amounts paid pursuant to this Agreement, and shall be solely liable and responsible to make such withholdings and/or pay such taxes and other obligations including, without limitation, state and federal income and FICA taxes. CONTRACTOR agrees to indemnify and hold COUNTY harmless from any liability it may incur to the United States or the State of California as a consequence of CONTRACTOR's failure to pay or withhold, when due, all such taxes and obligations. In the event that COUNTY is audited for compliance regarding any withholding or other applicable taxes or amounts, CONTRACTOR agrees to furnish COUNTY with proof of payment of taxes or withholdings on those earnings.

**2.21 Access to Records/Retention.** COUNTY, any federal or state grantor agency funding all or part of the compensation payable hereunder, the State Controller, the Comptroller General of the United States, or the duly authorized representatives of any of the above, shall have access to any books, documents, papers and records of CONTRACTOR which are directly pertinent to the subject matter of this Agreement for the purpose of making audit, examination, excerpts and transcriptions. Except where longer retention is required by any federal or state law, CONTRACTOR shall maintain all required records, including clinical documentation, for at least ten (10) years after COUNTY makes final payment for any other work authorized hereunder and all pending matters are closed, whichever is later.

**2.22 Authority to Contract.** CONTRACTOR and COUNTY each warrant hereby that they are legally permitted and otherwise have the authority to enter into and perform this Agreement. The parties further warrant that the signatories to this Agreement are authorized to execute this Agreement on behalf of their respective parties and that any action necessary to bind each such party has been taken by that party prior to entering into this Agreement.

**2.23 Conflict of Interest.**

(a) Covenant of No Undisclosed Conflict. The parties to the Agreement acknowledge that they are aware of the provisions of Government Code section 1090, et seq., and section 87100, et seq., relating to

conflict of interest of public officers and employees. CONTRACTOR hereby covenants that it presently has no interest not disclosed to COUNTY and shall not acquire any interest, direct or indirect, which would conflict in any material manner or degree with the performance of its services or confidentiality obligation hereunder, except as such as COUNTY may consent to in writing prior to the acquisition by CONTRACTOR of such conflict. CONTRACTOR further warrants that it is unaware of any financial or economic interest of any public officer or employee of County relating to this Agreement. CONTRACTOR agrees that if such financial interest does exist at the inception of this Agreement, COUNTY may terminate this Agreement immediately upon giving written notice without further obligation by COUNTY to CONTRACTOR under this Agreement. The Department Director is delegated the authority to terminate this Agreement in accordance with this Paragraph on behalf of COUNTY, but may exercise such authority only after consultation with, and concurrence of, the County Counsel and the County Executive Officer or their respective designees; however, nothing in this delegation prevents the Department Director from requesting the Board of Supervisors terminate this Agreement.

(b) Statements of Economic Interest. CONTRACTOR acknowledges and understands that COUNTY has developed and approved a Conflict of Interest Code as required by state law which requires CONTRACTOR to file with the Elections Division of the Napa County Assessor-Clerk Recorder “assuming office”, “annual”, and “leaving office” Statements of Economic Interest as a “consultant”, as defined in section 18701(a)(2) of Title 2 of the California Code of Regulations, unless COUNTY, through a person authorized to execute this Agreement on behalf of COUNTY, or the Department Director, has determined in writing that CONTRACTOR, although holding a “designated” position as a consultant, has been hired to perform a range of duties so limited in scope as to not be required to fully comply with such disclosure obligation. CONTRACTOR agrees to timely comply with all filing obligations for a consultant under COUNTY’s Conflict of Interest Code unless such a determination is on file on the filing dates for each of the required Statements of Economic Interest.

**2.24 Non-Solicitation of Employees.** Each party agrees not to solicit for employment the employees of the other party who were directly involved in the performance of the services hereunder for the term of this Agreement and a period of six (6) months after termination of this Agreement except with the written permission of the other party, except that nothing in this Paragraph shall preclude either party from publishing or otherwise distributing applications and information regarding that party’s job openings where such publication or distribution is directed to the general public.

**2.25 Third Party Beneficiaries.** Nothing contained in this Agreement shall be construed to create any rights in third parties and the parties do not intend to create such rights.

**2.26 Attorney's Fees.** In the event that either party commences legal action of any kind or character to either enforce the provisions of this Agreement or to obtain damages for breach thereof, the prevailing party in such litigation shall be entitled to all costs and reasonable attorney's fees incurred in connection with such action.

**2.27 Severability.** If any provision of this Agreement, or any portion thereof, is found by any court of competent jurisdiction to be unenforceable or invalid for any reason, such provision shall be severable and shall not in any way impair the enforceability of any other provision of this Agreement.

**2.28 Entirety of Contract.** This Agreement, including documents incorporated by reference and not attached hereto, constitutes the entire agreement between the parties relating to the subject of this Agreement and supersedes all previous agreements, promises, representations, understandings and negotiations, whether written or oral, among the parties with respect to the subject matter hereof.

**2.29. Other Terms and Conditions [Reserved.]**

**2.30 Acknowledgment of Funds; Compliance with Government Code Section 7550.**

(a) **In General.** Because the monies provided by COUNTY are funded by taxpayer dollars, it is important that the public know the individuals and organizations that are receiving funds from COUNTY under this Agreement. Therefore, CONTRACTOR shall acknowledge funding received under this Agreement in statements or printed materials relating thereto. All printed materials shall contain the following information in a type size and style appropriate to the materials: “Made possible by funding provided by the County of Napa.”

(b) **Compliance With Government Code Section 7550.** In addition, if the Scope of Work includes preparation of a document or written report and the total cost of the work is more than \$5,000, each document or report prepared by CONTRACTOR for or under the direction of COUNTY pursuant to this Agreement shall contain the numbers and dollar amounts of the Agreement and all subcontracts under the Agreement relating to the preparation of the document or written report as required by Government Code section 7550. The Agreement and subcontract dollar amounts shall be contained in a separate section of the document or written report. If multiple documents or written reports are the subject of the Agreement or subcontracts, the disclosure section may also contain a statement indicating that the total contract amount represents compensation for multiple documents or written reports.

**2.31 Compliance with Federal Health Care Program Requirements.** If CONTRACTOR will be performing services under this Agreement that are covered by a Federal Health Care Program, then:

(a) CONTRACTOR shall observe and comply with all applicable Federal Health Care Program Requirements, including but not limited to those requirements set forth in “Addendum For Contracts Involving Federal Health Care Programs—Revision of March 22, 2021.” The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and is online at:

[www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall attend and/or provide Compliance Trainings as required by the Department Director unless otherwise deemed exempt by the Department Director or designee thereof.

(c) CONTRACTOR shall make COUNTY whole for any revenues lost arising from an act or omission in billing practices by CONTRACTOR.

(d) CONTRACTOR warrants that no one providing services is an Excluded Individual as such term is defined for Federal Health Care Programs.

(e) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR’s failure to comply with the obligations imposed by the “Addendum for Contractors Involving Federal Health Care Programs”. Said penalties and fines that may be assessed are as follows: civil monetary penalties of \$11,000 per item or service; treble damages for the submission of claims for reimbursement from an excluded health care provider.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR’s failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the Addenda in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR agrees to abide by COUNTY'S policies entitled "Whistleblower Protections", "The False Claims Act (Federal & State Statutes) & Other Administrative Remedies & Statutes", "Federal Anti-Kickback Prohibitions" and "Physicians Referrals – The Stark Law". The policies are on file with the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(i) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

**2.32 Compliance with State Medi-Cal Specialty Mental Health Services Requirements.** If CONTRACTOR, under this Agreement, is required to and performs services that are covered by a State Medi-Cal Specialty Mental Health Services Program, then:

(a) CONTRACTOR shall observe and comply with all applicable State Medi-Cal Specialty Mental Health Services Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Medi-Cal Specialty Mental Health Services--Revision No. 1" for services performed on or after July 1, 2014. The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator, or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(c) CONTRACTOR is subject to any audits of its services or claims conducted by the Department, the California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(d) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, disallowances for payment or lost revenues identified and discovered by COUNTY that are attributable to CONTRACTOR'S actions when performing its obligations under this Agreement, such as insufficient documentation by CONTRACTOR of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal or State General Funds.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR'S failure to comply with all applicable Federal or State Health Care Program Requirements, including, but not limited to any penalties or fines which may be assessed under a Federal or State False Claims Act provision.



(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the applicable Addendum in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

**2.33 Compliance with Mental Health Activities Requirements.** If CONTRACTOR, under this Agreement, is required to perform mental health activities, then:

(a) CONTRACTOR shall provide such documentation as required by the Department Director, Contract Administrator or designees thereof at any time for purposes of quality assurance, audit, or to substantiate claims for payment. COUNTY may elect to withhold payment, or request reimbursement of payments made, for failure by CONTRACTOR to provide such documentation as required by COUNTY.

(b) CONTRACTOR shall be subject to any audits of its services or claims conducted by Department, California State Department of Mental Health or other auditors. Any resulting audit exemption shall be repaid to COUNTY.

(c) CONTRACTOR shall make COUNTY whole for any losses, including, but not limited to, lost revenues as identified and discovered by the COUNTY that are attributable to CONTRACTOR's performance under this Agreement such as CONTRACTOR's insufficient documentation of services as required by the Agreement.

(e) To the extent that CONTRACTOR must make COUNTY whole under this Paragraph, COUNTY may elect to withhold any payments for past services, offset against any payments for future services for which CONTRACTOR provides, or demand reimbursement without offset.

(f) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR's failure to comply with all applicable requirements.

(g) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party; CONTRACTOR shall include the provisions of this Paragraph in all such subcontracts as obligations of the subcontractor.

(h) CONTRACTOR shall provide copies of any and all clinical documentation supporting the services it provided pursuant to this Agreement at any time requested by COUNTY, including after this Agreement is terminated. CONTRACTOR shall provide copies of documentation requested by COUNTY immediately, and by no later than 14 calendar days, after such request is made. As set forth in Paragraph 2.21, CONTRACTOR is required to maintain all records, including clinical documentation, for a period of ten (10) years after COUNTY makes final payment for any work authorized pursuant to this Agreement and after all audit and fiscal matters are closed by COUNTY, whichever is later. Failure by CONTRACTOR to provide such documentation upon request by COUNTY shall subject contractor to monetary damages, in addition to CONTRACTOR reimbursing the payments it received from COUNTY for services related to the requested

documentation, and all remedies and damages that COUNTY may seek for CONTRACTOR'S breach of its specific performance of the services provided pursuant to this Agreement.

**2.34 Compliance with Federal Health Insurance Portability and Accountability Act of 1996.** If CONTRACTOR shall perform services under this Agreement involving the receipt, use, or disclosure of protected health information, then:

(a) Federal and other applicable law. CONTRACTOR shall observe and comply with all applicable requirements of the Federal Insurance Portability and Accountability Act of 1996 and regulations promulgated thereunder by the U.S. Department of Health and Human Services (collectively referred to as "HIPAA"), and other applicable laws.

(b) HIPAA Business Associate Agreement. If applicable, CONTRACTOR shall comply with the terms and conditions of the HIPAA Business Associate Agreement previously entered into with COUNTY, which is incorporated by reference herein and on file with the Clerk of the Board of Supervisors.

(c) Use or Disclosure of Protected Health Information. CONTRACTOR may use or disclose protected health information for the purpose of performing functions, activities for or on behalf of COUNTY, as specified in this Agreement, provided that such use or disclosure would not violate HIPAA, if done by COUNTY, or the provisions of any applicable HIPAA Business Associate Agreement.

(d) Subcontractors. To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall require compliance with all applicable HIPAA provisions, other applicable law, and any applicable HIPAA Business Associate Agreement(s) in such subcontracts as obligations of the subcontractor.

**2.35 Compliance With COUNTY'S Obligations Under Contracts With Other Entities.** If CONTRACTOR under this Agreement shall perform services as a subcontractor under COUNTY'S contract(s) with other entities, including, but not limited to State and Federal Agencies, and such services involve the use or disclosure of personally identifiable information, then:

(a) CONTRACTOR shall observe and comply with all applicable terms of COUNTY'S contract(s) with other entities, including, but not limited to, those requirements set forth in "Addendum For Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County'S Agreements with Other Entities" which is incorporated by reference herein, is on file with the Clerk of the Board of Supervisors and the Department, and is also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

(b) CONTRACTOR shall pay any penalty or fine assessed against COUNTY arising from CONTRACTOR'S failure to comply with the obligations imposed by the "Addendum for Contracts Involving Personally Identifiable Information Subject to Confidentiality or Security Provisions of County'S Agreements with Other Entities".

(c) To the extent any of the services required of CONTRACTOR under this Agreement are subcontracted to a third party, CONTRACTOR shall include the provisions of the "Addendum for Contracts Involving Protected Information Subject to Confidentiality or Security Provisions of County'S Agreements with Other Entities" in all such subcontracts as obligations of the subcontractor.

**2.36 Napa Health Matters Listing.** If CONTRACTOR is an organization providing health, human, or social services of a type recognized for listing on the "Napa Health Matters" website, CONTRACTOR agrees to maintain a current and accurate listing on [www.NapaHealthMatters.org](http://www.NapaHealthMatters.org) for such services.

**2.37 Licensure Status.**

(a) **License in Good Standing.** If CONTRACTOR is providing services under this Agreement as a state-licensed professional, CONTRACTOR shall ensure that CONTRACTOR's professional license is in good standing with all applicable licensing boards. CONTRACTOR understands COUNTY may terminate the Agreement if CONTRACTOR fails to maintain a current professional license in good standing. For purposes of this Agreement, "license in good standing" means there is no suspension, revocation or probation for any reason (including the failure to pay licensing fees), nor any restriction upon the provisions of the license: including, but not limited to, restrictions placed by a licensing agency upon CONTRACTOR's license pursuant to any consent or settlement agreement or to an administrative decision of the licensing agency.

(b) **Expiration of License.** In the event that CONTRACTOR's professional license is not renewed on or before its expiration, CONTRACTOR shall neither provide nor be reimbursed for services pursuant to this Agreement commencing the day after license expiration and until CONTRACTOR's professional license is renewed. For purposes of this Agreement, renewal date is the date the licensing board issues a renewed license, and it is irrelevant whether the licensing board subsequently recognizes any lapse in licensure.

**2.38 Code of Ethics.** CONTRACTOR understands that Napa County Health and Human Services (HHS) has adopted a Code of Ethics. If the Department Director determines that the HHS Code of Ethics applies to CONTRACTOR's activities under this Agreement, CONTRACTOR shall read, understand, and abide by the Code of Ethics, and CONTRACTOR shall on an annual basis provide written certification to HHS that CONTRACTOR has received, read, understands, and will abide by HHS's Code of Ethics. The Code of Ethics may be found online at [www.countyofnapa.org](http://www.countyofnapa.org) or may be obtained from HHS upon written request.

**2.39 Electronic Billing System.** CONTRACTOR understands that Napa County Health and Human Services (HHS) operates an electronic billing system program, which seeks reimbursement from the State of California for the delivery of alcohol, drug abuse and mental health services. If CONTRACTOR provides any services related to alcohol, drug abuse or mental health services under the terms of CONTRACTOR's Agreement, CONTRACTOR agrees, upon request of the Director of HHS or the Director's designee, to implement the COUNTY's sponsored electronic health record system as part of CONTRACTOR's requirement for the delivery of these services.

**2.40 Audit Report Requirements.** If COUNTY has determined that CONTRACTOR is a "subrecipient" (also known as a "pass-through entity") as defined in 2 C.F.R. § 200 et. seq., CONTRACTOR represents that it will comply with the applicable cost principles and administrative requirements including claims for payment or reimbursement by COUNTY as set forth in 2 C.F.R. § 200 et. seq., as currently enacted or as may be amended throughout the term of this Agreement. CONTRACTOR shall observe and comply with all applicable Audit Report Requirements, including but not limited to those requirements set forth in "Addendum for Contracts Involving Federal Awards." The Addendum is incorporated by reference as if set forth herein. A copy of the Addendum is on file with and available for inspection in the offices of the Clerk of the Napa County Board of Supervisors and the Department and are also online at: [www.countyofnapa.org](http://www.countyofnapa.org).

**ADDENDUM FOR CONTRACTS INVOLVING  
FEDERAL HEALTH CARE PROGRAMS  
Revision of March 22, 2021**

This Addendum for Contracts Involving Federal Health Care Programs (“Addendum”) establishes certain compliance guidelines in order to protect COUNTY, its Health & Human Services Agency (“HHS”), and Federal Health Care Programs (“FHCPs”) from fraud, waste, or abuse in regard to CONTRACTOR’s performance of Covered Services under this Agreement.

**I. Definitions.** For the purposes of this Addendum, the following terms have the meanings set forth below.

Agency Officer means CONTRACTOR’s Chief Executive Officer, Chief Financial Officer, general counsel, director of health information management, director of human resources, Program Director, or Clinical Director.

Board Member means any member of CONTRACTOR’s Board of Directors or similar governing body.

Compliance Program means the policies, procedures, and/or processes created and implemented by CONTRACTOR that collectively satisfy the requirements of this Addendum in order to foster compliance with applicable Legal Requirements.

Confidential Disclosure Program means the program created by HHS pursuant to federal statutes, regulations, and requirements for the confidential reporting of fraud, waste, and abuse.

Covered Individual means any of the following:

- Any employee, paid or unpaid intern, volunteer, independent contractor, or subcontractor of CONTRACTOR’s that meets any of the following:
  - Provides a Covered Service.
  - Has been determined by a manager of CONTRACTOR to be a Covered Individual.
- Any Agency Officer of CONTRACTOR.

Covered Lite means a program funded in whole or in part by any agency of the federal government or any FHCP, but which is determined by HHS to not provide a Covered Service, and as a result, whose compliance training requirements are adjusted by HHS on a case-by-case basis. An example of a contractor that may be determined to be Covered Lite would be a contractor that delivers program administrative services that indirectly benefit HHS Beneficiaries.

Covered Service means any service that includes ordering, providing, documenting, coding, or billing, directly or indirectly, in whole or in part, for any service payable by a FHCP. Covered Services may also include administrative and management services, such as health information technology services and support, strategic planning, billing and accounting, staff training or personnel services.

Disclosure Statement means the Napa County Health and Human Services Agency Provider Disclosure Statement.

Exclusion Screening means screening conducted by CONTRACTOR of any and all Covered Individuals to identify any excluded individuals or entities utilizing, at a minimum, all of the following databases:

- The HHS/OIG List of Excluded Individuals/Entities.
- The System for Award Management.
- The Medi-Cal Suspended and Ineligible Provider List.
- The Social Security Administration’s Death Master File.

Federal Health Care Program (“FHCP”) means a federally funded program that pays or reimburses HHSA for Covered Services that it or its contractors provide in compliance with all applicable all Legal Requirements. FHCPs include, but are not limited to, Medicare, Medicaid, Medi-Cal, and other federally funded programs administered by the California Department of Health Care Services (“DHCS”).

HHSA Beneficiary means any person or individual receiving any services from HHSA, or any person or individual who received Covered Services monitored, reviewed, approved, or paid for, in whole or in part, by HHSA.

HHSA Compliance & Privacy Officer means the individual, or designee, designated and communicated to CONTRACTOR by HHSA as the HHSA Compliance & Privacy Officer for the purposes of the Agreement.

In-County Services means the provision of any Covered Service by CONTRACTOR to any HHSA Beneficiary at any location within the geographic boundaries of Napa County, including at any HHSA facility.

Legal Requirement means any and every FHCP law, rule, regulation, program guideline, term of an agreement between COUNTY and DHCS, or any requirement imposed by HHSA on CONTRACTOR through a contract or policy, or other requirement that applies to CONTRACTOR’s performance of Covered Services under the Agreement, as such requirement may from time to time be amended.

Out-of-County Services means the provision of any Covered Service by CONTRACTOR to any HHSA Beneficiary at any location not within the geographic boundaries of Napa County.

Privacy and Security Incident means any potential or actual breach of information deemed confidential by any federal or state law, relating to any HHSA Beneficiary or any Covered Service provided by CONTRACTOR.

Suspended Status means a status applied to CONTRACTOR by HHSA when CONTRACTOR meets all of the following conditions:

- CONTRACTOR provides only Specialty Mental Health Covered Services, as defined by DHCS.
- During a consecutive six-month period, CONTRACTOR has not:
  - Provided any Covered Service to any HHSB Beneficiary; or
  - Housed any HHSB Beneficiary in any facility owned or operated by CONTRACTOR.

## **II. General Compliance Requirements.**

- A. Compliance with Legal Requirements. CONTRACTOR shall comply with all Legal Requirements applicable to the Covered Services provided by CONTRACTOR under this Agreement, whether or not referenced, directly or indirectly, in this Addendum. In the event that a provision of this Addendum is or becomes incompatible with a Legal Requirement, the Legal Requirement shall control.
- B. Documentation Compliance. CONTRACTOR shall abide by all HHSB policies and procedures, as provided and required by HHSB, relating to clinical or documentation issues.
- C. Reporting of Privacy and Security Incidents. CONTRACTOR, and all of CONTRACTOR's Covered Individuals, shall report any known or discovered Privacy and Security Incident to the HHSB Compliance & Privacy Officer.
- D. Hours of Operation. CONTRACTOR shall have hours of operation during which services are provided to Medi-Cal beneficiaries that are no less than the hours of operation during which CONTRACTOR offers services to non-Medi-Cal beneficiaries. If CONTRACTOR only serves Medi-Cal beneficiaries, CONTRACTOR shall require that hours of operation are comparable to the hours CONTRACTOR makes available for Medi-Cal services that are not covered by CONTRACTOR, or a subcontractor.
- E. Timely Access Requirements. CONTRACTOR shall comply with all mechanisms to ensure that network providers comply with the timely access requirements set forth in California law and regulations. CONTRACTOR shall cooperate with monitoring procedures to regularly determine network provider compliance with timely access requirements. CONTRACTOR shall take corrective action if there is a failure to comply with timely access requirements.

**III. Compliance Program Required.** CONTRACTOR shall develop and implement a Compliance Program that meets or exceeds the requirements set forth in this Addendum. Failure to develop and implement a Compliance Program shall constitute a material breach of the Agreement.

**IV. Compliance Program Requirements Prior to Execution of Agreement.** The following requirements shall be fulfilled by CONTRACTOR prior to CONTRACTOR's execution of the Agreement.

- A. Acknowledgement of Code of Ethics.
  - 1. Applicable Code of Ethics.

- a. If CONTRACTOR provides In-County Services, HHSA's Code of Ethics, as provided to CONTRACTOR by HHSA, shall be the Applicable Code of Ethics.
  - b. If CONTRACTOR provides only Out-of-County Services, CONTRACTOR may select either of the following to be the Applicable Code of Ethics:
    - i. HHSA's Code of Ethics, as provided to CONTRACTOR by HHSA; or
    - ii. CONTRACTOR's Code of Ethics, if pre-approved by the HHSA Compliance and Privacy Officer.
2. CONTRACTOR shall provide HHSA with written acknowledgment that CONTRACTOR and all of CONTRACTOR's Covered Individuals and Board Members shall abide by the Applicable Code of Ethics.
  3. CONTRACTOR shall obtain and retain from each Covered Individual and each Board Member a signed written statement acknowledging and agreeing to abide by the Applicable Code of Ethics.

B. Exclusion Screening.

1. Exclusion Screening for All Covered Individuals and Board Members. CONTRACTOR shall conduct Exclusion Screening for all Covered Individuals and Board Members. CONTRACTOR shall retain evidence of the completion of Exclusion Screening.
2. Method for Completing Exclusion Screening.
  - a. CONTRACTOR must select, and notify HHSA of that selection, any of the following methods to comply with the Exclusion Screening requirement:
    - i. Contract with HHSA's current vendor for Exclusion Screening services.
    - ii. Contract with a vendor of CONTRACTOR's choosing for Exclusion Screening services.
    - iii. Submit to the HHSA Compliance & Privacy Officer an alternative plan proposal that provides for Exclusion Screening. Such proposal shall be accepted or rejected as fulfillment of the Exclusion Screening requirement at the sole discretion of HHSA Compliance & Privacy Officer.
  - b. If CONTRACTOR decides, at any point after making an initial selection of an Exclusion Screening selection, that CONTRACTOR wishes to select a different Exclusion Screening method from the options above, CONTRACTOR shall promptly notify the HHSA Compliance & Privacy Officer of the newly selected option.

3. Written Certification of Exclusion Screening Results.
  - a. After conducting Exclusion Screening, CONTRACTOR shall provide to HHSA a written statement certifying all of the following, if true:
    - i. Neither CONTRACTOR nor any of CONTRACTOR's Covered Individuals or Board Members is currently excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP;
    - ii. Neither CONTRACTOR nor any of CONTRACTOR's Covered Individuals or Board Members has been convicted of a criminal offense relating to the provision of health care items or services; and
    - iii. If CONTRACTOR has previously been excluded, suspended, debarred, or ineligible to participate in an FHCP, that CONTRACTOR has been reinstated to participation and that any period of exclusion, suspension, debarment, or ineligibility has concluded.
  - b. If, after conducting Exclusion Screening, CONTRACTOR is unable to provide truthful certification of all of the statements in Section IV.B.3.a., above, CONTRACTOR shall immediately notify HHSA.

C. Staff List and Organization Chart.

1. *Staff List.* CONTRACTOR shall provide to HHSA a list containing the names and position titles of all of the following:
  - a. All Agency Officers;
  - b. All Board Members; and
  - c. All other Covered Individuals who will work in any program that provides a Covered Service.
2. *Organization Chart.* CONTRACTOR shall provide to HHSA an organization chart that includes all of the following:
  - a. Identification of all administrative units, including fiscal units, that provide support to any Covered Service; and
  - b. CONTRACTOR's hierarchical structure, linking all Covered Individuals to the CONTRACTOR's Chief Executive Officer or Agency Officer of equivalent responsibility.

D. Disclosure of Ownership and Control Interests. CONTRACTOR shall submit to the HHSA contract manager for the relevant HHSA division a Disclosure Statement that meets all of the



requirements of this section. If CONTRACTOR utilizes any subcontractor that provides a Covered Service, CONTRACTOR shall also submit to the HHSa contract manager for the relevant HHSa division a Disclosure Statement completed by the subcontractor that meets all of the requirements of this section.

1. The Disclosure Statement shall include all information required pursuant to 42 CFR 455.100, *et seq.*
2. The Disclosure Statement must be completed by an authorized representative of the CONTRACTOR or subcontractor, as applicable. CONTRACTOR, or the relevant subcontractor, shall designate its authorized representative for the purpose of this requirement.

E. Information to be Provided by CONTRACTOR to CONTRACTOR's Covered Individuals. CONTRACTOR shall provide to all of CONTRACTOR's Covered Individuals the information or materials identified in this section.

1. CONTRACTOR shall inform all Covered Individuals of HHSa's Confidential Disclosure Program.
2. CONTRACTOR shall provide to all Covered Individuals the Applicable Code of Ethics.
3. CONTRACTOR shall provide to all Covered Individuals HHSa's toll-free telephone number for confidential reporting of suspected violations of law, regulations, policies, or the Applicable Code of Ethics.

V. Ongoing Compliance Program Requirements During Term of Agreement. The following requirements shall be fulfilled by CONTRACTOR throughout the term of the Agreement.

A. Submission of Progress Note Documentation.

1. CONTRACTOR shall submit to HHSa a copy of all progress note documentation for all Covered Services provided to any HHSa Beneficiary during the first six months following the full execution of the Agreement. CONTRACTOR shall provide this documentation to HHSa as soon as reasonably practicable following the end of the first six months of the term of the Agreement.
2. CONTRACTOR shall allow any duly authorized representative of the HHSa division responsible for the Agreement to conduct an annual site visit to any CONTRACTOR site outside of the geographical boundaries of Napa County for the purposes of performing a progress note compliance review for the previous six months. CONTRACTOR shall allow such representative access to the records necessary to fulfill this requirement.

B. Monthly Requirements. The following requirements shall be fulfilled by CONTRACTOR on a monthly basis during the term of the Agreement.

1. *Exclusion Screening.* CONTRACTOR shall conduct Exclusion Screening for all Covered Individuals and Board Members as described in Section IV.B.1 and Section IV.B.2., above. Should CONTRACTOR discover that any Covered Individual or Board Member is excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP, CONTRACTOR shall notify HHSa immediately.
- C. Semi-Annual Requirements. The following requirements shall be fulfilled by CONTRACTOR on a semi-annual basis (in January and in June of each year) during the term of the Agreement.
1. *Updated Staff List.* CONTRACTOR shall provide HHSa with an updated staff list meeting the requirements described in Section IV.C.1., above, that includes all Covered Individuals, Board Members, and Agency Officers, including those added to CONTRACTOR's organization or newly assigned to provide a Covered Service since CONTRACTOR last provided HHSa with such a staff list.
- D. Annual Requirements. The following requirements shall be fulfilled by CONTRACTOR on an annual basis (in January of each year) during the term of the Agreement.
1. *Updated Organization Chart.* CONTRACTOR shall provide HHSa with an updated organization chart meeting the requirements described in Section IV.C.2., above, that includes all Covered Individuals, including those added or newly assigned to provide a Covered Service, and including any structural or hierarchical changes made since CONTRACTOR last provided HHSa with such an organization chart.
  2. *Acknowledgement of Code of Ethics.* CONTRACTOR shall obtain and retain from each Covered Individual a signed written statement acknowledging and agreeing to abide by the Applicable Code of Ethics.
  3. *Disclosure of Ownership and Control Interests.* CONTRACTOR, and any subcontractor of CONTRACTOR, if applicable, shall submit to the HHSa contract manager for the relevant HHSa division a Disclosure Statement that meets all of the requirements described in Section IV.D., above.
- E. Other Requirements. The following requirements shall be fulfilled by CONTRACTOR as specified during the term of the Agreement.
1. *Disclosure of Ownership and Control Interests.* CONTRACTOR, and any subcontractor of CONTRACTOR, if applicable, shall submit to the HHSa contract manager for the relevant HHSa division a Disclosure Statement that meets all of the requirements described in Section IV.D., above, upon the following milestones:
    - a. Upon renewal of the Agreement; and
    - b. Within 35 days of a change in ownership of a fiscal agent, as defined in 42 CFR 455.100, *et seq.*

**VI. Compliance Program Requirements for New Hires or Newly Assigned Covered Individuals.** The following requirements shall be fulfilled by CONTRACTOR as specified upon the hiring of a new Covered Individual or the assignment of existing CONTRACTOR staff to a position that provides a Covered Service.

- A. Notification to HHS. Within 30 days of hiring a new Covered Individual or assigning existing staff to provide a Covered Service, CONTRACTOR shall notify HHS about such action and inform HHS as to whether or not said individual will be expected to provide a Covered Service to any HHS Beneficiary.
- B. Requirements Upon or Prior to Hiring of a New Covered Individual. Upon or before CONTRACTOR hires any individual who will become a Covered Individual, CONTRACTOR shall fulfill the following requirements:
  - 1. *Queries Relating to Eligibility.* CONTRACTOR shall query and obtain a satisfactory answer from the prospective Covered Individual with regard to all of the following:
    - a. Whether the prospective Covered Individual is now or ever has been excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP;
    - b. Whether the prospective Covered Individual has been convicted of a criminal offense related to the provision of health care items or services; and
    - c. If the prospective Covered Individual has been excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP, whether the prospective Covered Individual has been reinstated to participate in all FHCPs.
  - 2. *Exclusion Screening.* CONTRACTOR shall conduct Exclusion Screening for the prospective Covered Individual as described in Section IV.B.1 and Section IV.B.2., above.

**VII. Alternative Compliance Program for Contractors Deemed Covered Lite.** If CONTRACTOR is determined by HHS to be Covered Lite, CONTRACTOR's full compliance with the requirements of this section shall be deemed complete fulfillment of CONTRACTOR's Compliance Program requirements.

- A. General Requirements for Contractors Deemed Covered Lite. If CONTRACTOR is deemed by HHS to be Covered Lite, CONTRACTOR shall fulfill all of the following requirements upon or before execution of the Agreement.
  - 1. CONTRACTOR shall provide to HHS a staff list that meets all of the requirements described in Section IV.C.1., above.
  - 2. CONTRACTOR shall provide to HHS an organization chart that meets all of the requirements described in Section IV.C.2., above.

3. CONTRACTOR shall submit to HHSa a signed Organizational Provider New Covered Individual Notification Form for each Covered Individual.
  4. CONTRACTOR shall provide the HHSa Fiscal Contract Analyst with the information necessary to conduct Exclusion Screening of CONTRACTOR.
- B. Requirements for Contractors Deemed Covered Lite Providing In-County Services. If CONTRACTOR is deemed by HHSa to be Covered Lite, and CONTRACTOR provides In-County Services, CONTRACTOR shall fulfill all of the following requirements within 30 days of the full execution of the Agreement.
1. CONTRACTOR shall provide HHSa with written documentation showing that all Covered Individuals have completed, at a minimum, HHSa's one-hour General Compliance and Ethics Training.

#### **VIII. Effect and Removal of Suspended Status.**

- A. Effect of Suspended Status. If CONTRACTOR is placed on Suspended Status, CONTRACTOR shall be exempt from and shall not be required to comply with any and all requirements as described in Sections V, VI, or VII during the period during which CONTRACTOR is deemed to be on Suspended Status.
- B. Removal From Suspended Status. CONTRACTOR shall be no longer be deemed to be on Suspended Status upon the engagement of CONTRACTOR by HHSa to provide any Covered Service to any HHSa Beneficiary, or upon the actual provision of any Covered Service by CONTRACTOR to any HHSa Beneficiary, including the placement of any HHSa Beneficiary into any facility owned or operated by CONTRACTOR.
- C. Compliance Program Requirements Upon Removal From Suspended Status. Within 30 days of being removed from Suspended Status, CONTRACTOR shall comply with all of the following.
1. *Updated Staff List.* CONTRACTOR shall provide HHSa with an updated staff list meeting the requirements described in Section IV.C.1., above, that includes all Covered Individuals, Board Members, and Agency Officers, including those added to CONTRACTOR's organization or newly assigned to provide a Covered Service since CONTRACTOR last provided HHSa with such a staff list.
  2. *Updated Organization Chart.* CONTRACTOR shall provide HHSa with an updated organization chart meeting the requirements described in Section IV.C.2., above, that includes all Covered Individuals, including those added or newly assigned to provide a Covered Service, and including any structural or hierarchical changes made since CONTRACTOR last provided HHSa with such an organization chart.

3. *Acknowledgement of Code of Ethics.* CONTRACTOR shall obtain and retain from each Covered Individual a signed written statement acknowledging and agreeing to abide by the Applicable Code of Ethics.
  4. *Disclosure of Ownership and Control Interests.* CONTRACTOR, and any subcontractor of CONTRACTOR, if applicable, shall submit to the HHS contract manager for the relevant HHS division a Disclosure Statement that meets all of the requirements described in Section IV.D., above.
  5. *Exclusion Screening.* CONTRACTOR shall conduct Exclusion Screening for all Covered Individuals and Board Members as described in Section IV.B.1 and Section IV.B.2., above. Should CONTRACTOR discover that any Covered Individual or Board Member is excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP, CONTRACTOR shall notify HHS immediately.
- D. Failure to Comply. In the event that CONTRACTOR fails to comply with the requirements described in Section VIII.C., above, HHS shall have the authority to suspend all payments under the Agreement until HHS is satisfied that CONTRACTOR has fully complied with Section VIII.C.

## **IX. Effect of Exclusion.**

- A. Exclusion of CONTRACTOR. If HHS learns that CONTRACTOR is excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP, or that CONTRACTOR has been charged with a criminal offense relating to any FHCP, CONTRACTOR shall be removed responsibility for, or involvement with, any and all of HHS's business operations relating to any FHCP. HHS shall additionally remove CONTRACTOR and all of CONTRACTOR's Covered Individuals from any position in which CONTRACTOR's payments under the Agreement may be paid, in whole or in part, directly or indirectly, by reimbursement or other payment from any FHCP or any other source of federal funds. Such removals shall remain in effect unless and until such time that CONTRACTOR is reinstated to HHS's satisfaction.
- B. Exclusion of Covered Individual or Board Member. If HHS learns that any of CONTRACTOR's Covered Individuals or Board Members is excluded, suspended, debarred, or otherwise ineligible to participate in an FHCP, or has been convicted of a criminal offense relating to the provision of health care services, CONTRACTOR shall ensure that said Covered Individual or Board Member does not perform any work, either directly or indirectly, relating to the provision of a Covered Service to any HHS Beneficiary.

## **X. Record Retention, Audits, and Access to Records.**

- A. Record Retention. CONTRACTOR shall retain all records, documents, contracts, and similar materials, whether stored in physical or electronic form, relating to Medi-Cal enrollees, Medi-Cal-related activities, services and activities furnished under the agreement to which this Addendum is attached, and determinations of amounts payment for a period of 10 years from the date of creation.

- B. Cooperation with Audits. CONTRACTOR agrees to cooperate fully with any requests for information from HHSa which may be necessary to complete any internal or external audits.
- C. Audits by Other Agencies.
1. *Access to Facilities and Administrative Records.* For a period of 10 years from the end of the term of the Agreement, or from the date of completion of any audit, whichever is later, CONTRACTOR shall make all of its premises, physical facilities, equipment, books, records, documents, contracts, computers, or other electronic systems pertaining to Medi-Cal enrollees, Medi-Cal-related activities, services and activities furnished under the terms of the Agreement, or determinations of amounts payable available at any time for inspection, examination or copying by the Department of Health & Human Services, Centers for Medicare & Medicaid Services, HHS Inspector General, United States Comptroller General, their designees, and other authorized federal and state agencies. CONTRACTOR shall allow the Department of Health Care Services, Centers for Medicare & Medicaid Services, and/or the HHS Inspector General to inspect, evaluate, and audit any subcontractor of CONTRACTOR at any time when there is a reasonable possibility of fraud or similar risk.
  2. *Access to Records Relating to Quality, Appropriateness, and Timeliness of Services.* CONTRACTOR shall allow the Department of Health Care Services, Centers for Medicare & Medicaid Services, the Office of the Inspector General, the Comptroller General of the United States, and other authorized federal and state agencies, or their duly authorized designees, to evaluate CONTRACTOR's and any subcontractors' performance under the Agreement, including the quality, appropriateness, and timeliness of services provided, and to inspect, evaluate, and audit any and all records, documents, and the premises, equipment and facilities maintained by the contractor and its subcontractors pertaining to such services at any time. CONTRACTOR shall allow such inspection, evaluation, and audit of its records, documents and facilities, and those of its subcontractors, for 10 years from the end of the term of the Agreement, or, in the event that CONTRACTOR has been notified that an audit or investigation of the Agreement has been commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later.

**XI. Remedies and Right of Termination.** In addition to and without waiving any other remedies available at law or as specified in the Agreement, HHSa shall have the right to seek remedies, including termination of the Agreement, as described below.

- A. Protection from Excluded Individuals. Notwithstanding any of the provision of this Addendum or the Agreement, HHSa may, at its discretion, terminate the Agreement or require adequate assurance (as determined by HHSa) that no excluded, suspended, debarred, or otherwise ineligible individual will perform work, either directly or indirectly, relating to any Covered Service for any HHSa Beneficiary. In the event that HHSa determines, in its sole discretion, that termination of the Agreement is not a viable option for HHSa, HHSa shall reserve the right to take other appropriate action necessary to prevent fraud, waste, or abuse.

- B. Material Breach. HHSa shall have the right to terminate the Agreement in the event of any material breach of this Addendum or the Agreement, including but not limited to, failure by CONTRACTOR to develop or implement a Compliance Program, and any breach of HHSa's Code of Ethics when HHSa's Code of Ethics is the Applicable Code of Ethics for CONTRACTOR.