

**NAPA COUNTY AGREEMENT NO. 230135B  
PROFESSIONAL SERVICES AGREEMENT**

**THIS AGREEMENT (the “Agreement”)** is made and entered into as of this 1<sup>st</sup> day of July 2022, by and between NAPA COUNTY, a political subdivision of the State of California, hereinafter referred to as "COUNTY", and **MENTIS, INC.**, whose mailing address is 709 Franklin Street, Napa CA 94559, 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 September 1, 2007, COUNTY and CONTRACTOR entered into Napa County Agreement No. 170738D (previously Agreement No. 6869), hereinafter referred to as the "Agreement" for CONTRACTOR to provide specialty mental health services for seriously mentally ill adult clients of the Health and Human Services Agency; and

**WHEREAS**, as of the effective date of this Agreement, the Parties wish to terminate Agreement No. 170738D and replace it with this Agreement No. 230135B; and

**WHEREAS**, COUNTY wishes to obtain specialized services in order for CONTRACTOR to provide specialty mental health services for seriously mentally ill adults in a supportive permanent living environment.

**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.

**[SIGNATURE PAGE FOLLOWS]**

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

<p><b>NAPA COUNTY</b>, a political subdivision of the State of California</p>	<p><b>CONTRACTOR</b></p>
<p>By _____  <b>RYAN GREGORY, Chair of the Board of Supervisors</b></p> <p>ATTEST: NEHA HOSKINS, Clerk of the Board</p> <p>By: _____</p> <p>DATE APPROVED BY THE BOARD: _____</p> <p>Processed by: _____  Deputy</p>	<p>Signature</p> <p><i>Robert Weiss</i></p> <hr/> <p>ROB WEISS, Executive Director</p> <p><i>Julissa Marcencia</i>  <small>Julissa Marcencia (Aug 26, 2022 16:55 PDT)</small></p> <hr/> <p>JULISSA MARCENCIA, Board Secretary</p> <hr/>

<p>Maximum Amount of this Agreement: \$85,186.00</p>
<p>Term Expires: June 30, 2023</p>
<p>Automatic renewal of term applies <input checked="" type="checkbox"/> does not apply <input type="checkbox"/> is modified <input type="checkbox"/>.</p>

<p>APPROVED AS TO FORM BY NAPA COUNTY COUNSEL</p> <p>By: <i>Rachel L. Ross (e-signature)</i>                      Date: August 16, 2022</p>
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**TERMS AND CONDITIONS OF NAPA COUNTY AGREEMENT NO. 230135B**

**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: Cassandra Eslami, Deputy Director of HHS/Behavioral Health Director
- 1.5 The Contract Contact Person for CONTRACTOR shall be: Rob Weiss, 709 Franklin Street, Napa, CA 94559
- 1.6 CONTRACTOR is a  sole proprietor  partnership  corporation  public agency  other (specify) .
- 1.7 The source of funding for this Agreement shall be: MediCAL/State Behavioral Health Realignment funds.
- 1.8 In entering into this Agreement, CONTRACTOR acknowledges and agrees to abide from time to time: Department of Health Care Services, Napa County Agreement No. 3315-Performance and Napa County Agreement No.4028-Managed Care.

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.

**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

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

Exhibit D: HIPAA Business Associate Agreement

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

**Mentis**  
**Supportive Living Program**  
**July 1, 2022 through June 30<sup>th</sup>, 2023**  
**(and each subsequent automatic annual renewal thereof)**

**Introduction**

COUNTY'S Health and Human Services Department wishes to provide specialty mental health services to individuals with serious mental illnesses who are COUNTY'S Medi-Cal eligible individuals living in a permanent or transitional housing environment. COUNTY wishes to provide services at various levels of care as part of its residential continuum of care for adults residing in Napa County.

**Program Description**

CONTRACTOR's Supportive Living Program (SLP) shall provide specialty mental health services to Medi-Cal eligible individuals or individuals in families with serious mental illness in the County of Napa who are unable to maintain independent housing placements in the community because of insufficient structure and mental health support in these placements or who are placed in permanent housing but need support and supervision in these placements in order to remain housed at this level of care. CONTRACTOR shall coordinate with other providers in the community to ensure qualified individuals receive necessary mental health services and supports as a component of their housing in CONTRACTOR's permanent housing project.

**Description of Program Requirements**

**Certification as an Organizational Provider:** CONTRACTOR shall operate as, and meet all standards required of, an organizational provider defined and regulated in Title 9, Division 1, Chapter 11, California Code of Regulations (CCR). CONTRACTOR shall meet the MHP's certification process to include a site review in addition to a review of relevant documentation. At minimum, COUNTY certification requires that CONTRACTOR meets the following standards:

- a) Staff providing specialty mental health services shall possess the necessary license or certification to provide those services. CONTRACTOR certifies that all staff providing services hereunder are qualified to provide the service for which reimbursement is claimed, based upon education, experience and licensure. CONTRACTOR shall maintain records verifying said qualifications for each service provider providing services under this agreement, and documenting the provision of supervised hours as required by the Board of Behavioral Sciences for Marriage and Family Counselor- Interns, (MFTI), Licensed Professional Clinical Counselors-Interns (LPCC), or an Associate Clinical Social Workers (ASW). CONTRACTOR shall provide evidence of said records as requested by COUNTY. Maintain a safe facility. If staff providing services are not licensed or registered interns, CONTRACTOR shall provide evidence of specified qualifications as requested by COUNTY
- b) Maintain medical records in a manner that meets state and federal standards. All medical record requirements for Specialty Mental Health services shall be met and/or exceeded.
- c) Meet any additional requirements established by the MHP as part of a credentialing or other evaluation process.

- d) Possess the necessary license to operate.
- e) Provide for appropriate supervision of staff.
- f) Have as head of service a licensed mental health professional or other appropriate individual as described in Sections 622 through 630 of Title 9, Division 1, Chapter 3, of the California Code of Regulations.
- g) Possess appropriate liability insurance.
- h) Have accounting and fiscal practices that are sufficient to comply with its obligations pursuant to CCR Title 9, Division 1, Chapter 11, Section 1840.105.
- i) As a condition for reimbursement, CONTRACTOR shall ensure beneficiaries shall receive the same level of services as provided all other clients served.
- j) Inform the MHP of any sentinel event or occurrence in which COUNTY'S individual receiving services covered under this contract suffers physical injury, emotional trauma, death or serious side-effect which could be attributed as caused in any way by CONTRACTOR. Such events shall be immediately reported to the Napa County Mental Health Director and/or his/her designee.
- k) CONTRACTOR shall provide culturally and linguistically appropriate services to individuals as defined in the Napa County Specialty Mental Health Implementation Plan
- l) CONTRACTOR shall post Napa County Guide to Medi-Cal Services (MHP Beneficiary Brochure) in both public areas of housing unit and programmatic areas of agency.
- m) CONTRACTOR shall post Napa County Grievance forms and self-addressed envelopes in both public areas of housing unit and programmatic areas of agency.

### **Contract Monitoring**

COUNTY shall monitor CONTRACTOR's performance under this agreement to ensure the safety of individuals served, the appropriateness of services provided, their efficacy and effectiveness, and to protect against fiscal disallowances.

COUNTY shall designate its Provider Services Coordinator as the individual who shall monitor CONTRACTOR's performance under this agreement and serve as the primary point of contact regarding this agreement.

### **Monitoring Site Visits**

This agreement contains provisions related to required objective service documentation standards, adherence to clinical standards of care, client satisfaction levels, client outcomes, authorization processes and invoicing. Without limiting those provisions, COUNTY shall have the right to conduct one or more site visits to the CONTRACTOR's place of business to monitor performance under this agreement. COUNTY will normally provide CONTRACTOR with thirty (30) days or more prior notice of such site visits. This notice shall include:

- 1) the specific monitoring tool(s) that will be utilized,
- 2) the preparation required of the CONTRACTOR prior to the monitoring visit. HHSa may require the provision of specific information in writing prior to the site visit to expedite the monitoring activities.
- 3) the information to be available for review at the time of the visit, which may include, among other things, individual service records, program policies and procedures, proof of licensure or certification, and documentation substantiating staff hours or other costs incurred by CONTRACTOR in providing the services being purchased.

As an outcome of the site visit, COUNTY shall provide CONTRACTOR with a preliminary monitoring report for review before it is finalized. This report shall contain a summary of information collected or reviewed; the

evaluator's assessment, conclusions, and recommendations; and, any requirements or sanctions to be imposed on the CONTRACTOR, such as disallowances, recoupments, or requests for plans of action.

CONTRACTOR will have two (2) weeks to give notice of any disagreement with any of the findings and to present information supporting the provider's position. If appropriate, COUNTY may conduct additional monitoring activities to evaluate the CONTRACTOR's position.

COUNTY shall then finalize and issue its report. If the final report identifies material variations between CONTRACTOR's service activities and the standards required under this agreement, COUNTY may require CONTRACTOR to prepare a written plan of action to address those variations. COUNTY will also have such other remedies as are provided under this agreement.

### **Referral and Admission**

Individuals targeted for referral are those who:

- a) are identified as having a major mental illness;
- b) are verified as Medi-Cal eligible
- c) need mental health support in order to live in the community without 24 hour supervision;
- d) wish to, and have some capacity to live more independently;
- e) are able to self-administer medications (with support as needed).

Issues that have impacted these individuals' ability to live completely independent at this level include such things as: non-compliance with or resistance to medications, non-assaultive aggressiveness, psychotic ideation; hygiene deficiencies; and substance abuse histories, among other issues. The group of those individuals who will be served includes those who are discharged directly from higher levels of care as deemed appropriate through the SLP admission process.

SLP referrals shall be solicited from various community agencies and from COUNTY. CONTRACTOR shall select individuals for the receipt of services in accordance with the criteria contained herein. Candidates will be ranked by motivation, willingness to adhere to tenant/landlord contracts, health/medical urgency, stability of functioning, and date of referral. Housing placements will be matched according to availability. COUNTY, at its discretion may require CONTRACTOR to direct all individuals requesting CONTRACTOR's services to contact COUNTY's ACCESS program for assessment for mental health needs and referrals to any services that may address those needs.

CONTRACTOR shall be responsible for verifying Napa County Medi-Cal status and eligibility for individuals whose referrals originated from providers other than COUNTY.

### **Request for Service and Authorization Requirements**

CONTRACTOR shall maintain a Request for Services Log to document all SLP referrals that are not made by COUNTY, which shall be presented to COUNTY'S staff for review upon request. At a minimum, the



CONTRACTOR'S Request for Services Log shall include: name of individual, date of request, the initial disposition of the request and the first date of service provided by CONTRACTOR staff.

CONTRACTOR staff shall interview and assess all SLP candidates and shall obtain authorization from COUNTY prior to accepting individuals into the program. Authorization requests shall be reviewed and approved by COUNTY's ACCESS staff.

### **Informing Requirements**

All individuals enrolling in CONTRACTOR's SLP program who are not, at the time of enrollment, already receiving Napa County Mental Health Plan services require receipt of special beneficiary informing materials as required by State and Federal Health Care regulations. CONTRACTOR shall coordinate with COUNTY staff to ensure that each individual meeting these criteria shall be provided the materials listed below. COUNTY and CONTRACTOR shall mutually agree which party will provide these materials to the individual being considered for enrollment. Should CONTRACTOR be determined responsible, CONTRACTOR shall maintain written verification that materials were distributed and/or completed for each individual receiving services. Materials shall be provided at the intervals specified below and documentation shall include at minimum: the exact materials provided, the name of the individual receiving the materials, the date the materials were provided, and the name of the staff member providing these materials.

#### **Informing Materials To Be Provided At Intake:**

- a) The Napa County Guide to Medi-Cal Mental Health Services (MHP Beneficiary Brochure)
- b) The Napa County Provider Directory
- c) Information on Advance Health Care Directives
- d) Information Sheet on TBS Services
- e) Napa County Admission Agreement & Consent to Treatment Form
- f) Authorization for Release of Information to appropriate parties including Napa County Mental Health providers.

#### **Informing Materials To Be Provided Annually, At Time Of Client Plan Renewal:**

- a) The Napa County Guide to Medi-Cal Services (MHP Beneficiary Brochure)
- b) The Napa County Provider Directory
- c) Admission Agreement & Consent to Treatment Form
- d) Napa County Grievance Procedures and Protocol

In addition to the Informing Materials listed above, and if CONTRACTOR is deemed responsible, CONTRACTOR shall provide COUNTY with verification as requested that the following administrative paperwork has been provided to CONTRACTOR's individuals served on the schedule listed below:

- a) Napa County Mental Health Demographic form – At intake, and updated annually
- b) A five Axis diagnosis signed and dated by a licensed practitioner, if not provided by COUNTY at Intake
- c) HIPAA Privacy Rights and Acknowledgement of Receipt – At Intake
- d) Client Financial Review form – At intake and updated annually

## **Services Provided**

CONTRACTOR shall provide and document as specified herein for the specialty mental health services listed in the *Service Definitions* section below, and as authorized by COUNTY.

Upon acceptance of an individual, the CONTRACTOR'S SLP staff shall make a mental health assessment of the individual or family's needs, resources, strengths, and weaknesses, then develop a written service plan. The assessment and plan shall include documentation of all elements necessary to meet medical necessity criteria as set forth herein. The assessment and plan shall consider the individual's functioning abilities, as well as the individual's strengths and challenges in regard to housing, substance abuse counseling, mental health and/or peer support counseling, social linkages, educational activities, public benefits assessments and applications, vocational assessments, health services, nutritional counseling, living skills development and job or volunteer placement.

COUNTY may require CONTRACTOR to utilize a standardized Level of Care tool approved by COUNTY to document initial and ongoing client need for SLP level services. If COUNTY does not require a specific level of care tool CONTRACTOR may utilize any instrument that can accurately address a range of domains such as internalizing and externalizing behaviors and symptoms and allow for repeated administrations over the course of recurring CONTRACTOR's SLP visits and to allow SLP staff to gauge client's progress or lack of progress while receiving SLP services.

CONTRACTOR shall visit all clients at a minimum one time per week.

## **Service Definitions**

“Assessment”: a service activity, which may include a clinical analysis of the history and current status of an individual's mental, emotional, or behavioral disorder, relevant cultural issues and history; diagnosis; and the use of testing procedures. The activity includes the time taken to gather information for an assessment or reassessment as well as the time taken to complete an assessment or reassessment.

“Collateral”: a service activity to a significant support person in an individual's life with the intent of improving or maintaining the mental health status of the individual. The individual may or may not be present for this service activity.

“Rehabilitation”: a service activity which includes assistance in improving, maintaining, or restoring an individual's or group of individuals' functional skills, daily living skills, social and leisure skills, grooming and personal hygiene skills, meal preparation skills, and support resources; and/or medication education. Can be done on an individual or group format.

“Plan Development”: a service activity which consists of development of individual service plans, approval of individual service plans, and/or monitoring of an individual's progress. Units of time spent on plan development activities may be billed regardless of whether there is a face-to-face or phone contact with the beneficiary.

“Crisis Intervention”: a service, lasting less than 24 hours, to or on behalf of an individual for a condition that requires more timely response than a regularly scheduled visit. Service activities include, but are not limited to, one or more of the following: crisis assessment, collateral contacts made for the purpose of crisis intervention and crisis counseling. It is the COUNTY's expressed preference that individuals requiring further assessment

for risk and possible placement in a higher level of care be directed to COUNTY; however, crisis intervention services may be performed by the CONTRACTOR as needed.

“Targeted Case Management” means service activities related to locating, coordinating and monitoring necessary and appropriate services for a beneficiary related to their treatment. Targeted Case Management services must be provided in close coordination with other service providers to ensure each provider is focusing their work on a specific aspect of each individual’s goals and/or objectives. COUNTY will not authorize CONTRACTOR to provide Targeted Case Management Services if individual is already receiving Napa County Mental Health Plan services from another Napa County Mental Health Plan provider. Additionally, CONTRACTOR will inquire of each individual served whether or not other service providers are assisting the individual with the goals/objectives identified on their mental health treatment plan. If the individual being served confirms this as fact, CONTRACTOR shall contact other provider’s to ensure they are not duplicating other provider’s efforts. If other provider confirms that they are providing similar assistance to help the individual with the same objective(s) then CONTRACTOR shall not provide Targeted Case Management services to the individual that target those objective(s).

**Case Management Responsibilities**

CONTRACTOR shall have sole mental health case management responsibility for all individuals enrolled in the SLP program. Individuals in this program will not be eligible for a COUNTY case management services unless COUNTY and CONTRACTOR agree, for overall treatment reasons, that an individual requires case management from both parties and this is approved in writing by COUNTY’S Mental Health Director or Designee. Both COUNTY and CONTRACTOR will complete a joint treatment plan delineating the specific services each party shall provide for any individuals approved to receive services from both COUNTY staff and CONTRACTOR staff.

**Discharge**

Discharge from the program will occur, ideally, by mutual agreement between the individual and CONTRACTOR that the goals have been completed and the participant is able to live independently. Longitudinal Level of Care scores should also support this joint decision to discharge. Discharge may also occur by sole decision of the individual, or by sole decision of the CONTRACTOR. It is expected that all efforts to reach a mutually agreed-upon discharge plan will be put forth, but that there will be situations in which an individual chooses to leave the Program against the advice of the staff, or that the staff reach the conclusion that continuing to provide service to an individual would be against the best interests of the individual, would create a risk for other individuals, would impair their ability to benefit from the program, or would otherwise be detrimental to the program. CONTRACTOR preserves the right to discharge individuals from the program for cause, and shall do so in accordance with all applicable federal and state regulations.

Upon discharge CONTRACTOR shall complete a Discharge Summary for the purpose of capturing essential elements of treatment – referring problem, treatment conducted, response to treatment, and disposition. Additionally, CONTRACTOR shall promptly inform COUNTY that the individual is no longer enrolled in the SLP by submitting a Napa County Notification of Case Assignment, Termination, or Transfer form.

**Staffing Levels**

CONTRACTOR shall hire, train, and supervise staff to perform services under this agreement. CONTRACTOR’S staff members shall deliver services at CONTRACTOR’S housing program location or in other community housing sites. CONTRACTOR may also conduct other offsite activities with or for the benefit

of program's participants in other community locations as necessary. Staff will provide services to individuals in their apartments in accordance with individuals' needs as determined through the assessment, level of care tool, and functional evaluation process as set forth in the individual's service plan. Services may be provided seven days per week. Minimum client contact time is once per week. CONTRACTOR will provide 24-hour emergency telephone support.

### **Medi-Cal Service Documentation Requirements**

A unit is defined as one minute of service. All authorized service activities provided by an eligible staff providing a Medi-Cal eligible service to a Napa County Medi-Cal eligible individual shall be recorded per minute. The following requirements apply for Medi-Cal service documentation of services:

- a) The exact number of minutes that a reimbursable service was provided by program staff shall be documented and reported.
- b) In no case shall more than 60 units of time be reported or claimed for any one individual during a one-hour period.
- c) In no case shall the units of time reported or claimed by one staff person exceed the hours worked.
- d) When a staff person provides service to, or on behalf of, more than one individual at the same time, the staff person's time must be prorated to each individual. When more than one staff person provides a service to more than one individual at the same time, the time utilized by all those providing the service shall be added together to yield the total claimable services. The total time claimed shall not exceed the actual time utilized for claimable services.
- e) All documentation of services provided to, or on behalf of, more than one individual at the same time or services provided by multiple staff members to one or more beneficiaries at the same time must clearly indicate the clinical need for such a treatment approach
- f) All documentation of services provided to, or on behalf of, more than one individual at the same time, or services provided by multiple staff members to one or more individuals at the same time must clearly delineate the total minutes of the direct service, the total minutes of documentation and the total individuals served.
- g) The time required for documentation and travel is billable when the documentation or travel is a component of a reimbursable service activity, whether or not the time is on the same day as the reimbursable service activity.

**Non-reimbursable Services:** The following services are not reimbursable under the terms of this agreement:

- a) Academic educational services
- b) Vocational services which have as a purpose actual work or work training
- c) Recreation
- d) Socialization is not reimbursable if it consists of generalized group activities which do not provide systematic individualized feedback to the specific targeted behaviors of the individuals involved.
- e) Transportation of an individual to a service is not reimbursable unless the travel is a component of a reimbursable service activity.

**Lockouts:** The following services are not reimbursable as the setting the individual resides in or the type and amount of service is non-reimbursable through Medi-Cal. Lockouts include the following:

- a) Mental Health services provided during the time an individual resides in an institution for mental disease.
- b) Mental Health services provided during the time an individual is a resident of juvenile hall or another correctional facility.

- c) Mental Health Services provided during the time an individual is residing in a Crisis Residential Treatment program except on the day of admission.

**Medical Necessity Criteria for Adult Services**

CONTRACTOR shall only seek Medi-Cal reimbursement for mental health services when the beneficiary being served meets the medical necessity requirements described herein, pursuant to Welfare and Institutions Code section 14184.402(a). For individuals 21 years of age or older, a service is “medically necessary” or a “medical necessity” when it is reasonable and necessary to protect life, to prevent significant illness or significant disability, or to alleviate severe pain as set forth in Welfare and Institutions Code section 14059.5.

Services provided to a beneficiary must be medically necessary and clinically appropriate to address the beneficiary’s presenting condition.

**PROCEDURES:**

**A. Criteria for Adult Beneficiaries to Access the Specialty Mental Health Services Delivery System**

For beneficiaries 21 years of age or older, CONTRACTOR shall provide covered specialty mental health services (SMHS) for beneficiaries who meet **both of the following** criteria, (1) and (2) below:

- 1. The beneficiary has **one or both** of the following:
  - a. Significant impairment, where impairment is defined as distress, disability, or dysfunction in social, occupational, or other important activities; and/or,
  - b. A reasonable probability of significant deterioration in an important area of life functioning;

**AND**

- 2. The beneficiary’s condition as described in paragraph (2) of the policy statement is due to **either of the following**:
  - a. A diagnosed mental health disorder, according to the criteria of the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) and the International Statistical Classification of Diseases and Related Health Problems (ICD); or,
  - b. A suspected mental disorder that has not yet been diagnosed.

**B. Additional Coverage Requirements and Clarifications**

This criteria for a beneficiary to access the SMHS delivery system (except for psychiatric inpatient hospital and psychiatric health facility services) set forth above shall not be construed to exclude coverage for, or reimbursement of, a clinically appropriate and covered mental health prevention, screening, assessment, treatment, or recovery service under any of the following circumstances:

- 1. Services were provided prior to determining a diagnosis, including clinically appropriate and covered services provided during the assessment process.
- 2. The prevention, screening, assessment, treatment, or recovery service was not included in an individual treatment plan.
- 3. The beneficiary has a co-occurring substance use disorder.

Per Welfare and Institutions Code section 14184.402(f)(1)(A), a mental health diagnosis is not a prerequisite for access to covered SMHS. This does not eliminate the requirement that all Medi-Cal claims, including SMHS claims, include a CMS approved ICD-10 diagnosis code.

### **Documentation Requirements for Services**

**Assessments:** CONTRACTOR shall ensure that all program participants' Medical Records include an assessment of each individual's need for mental health services. An Assessment shall be completed as soon as possible but within 30 days of the first clinical service contact.

Assessments shall contain, at minimum, the following:

- a) Identifying information
- b) Sources of information
- c) Referral information and context
- d) Presenting concerns, symptoms and objective impairments in behavior or functioning, and relevant conditions affecting the client's physical and mental health.
- e) Relevant health care issues and medical history reported by the individual being served.
- f) Relevant conditions, events and situations affecting the individual's physical and mental health.
- g) Current risk factors associated with danger to self, others and/or property.
- h) Past and present use of tobacco, alcohol and caffeine. Illicit drugs prescribed and over the counter medications should also be included.
- i) Mental health and psychiatric history including: previous treatment dates, providers, interventions and responses, sources of clinical data, relevant family history and results of lab tests and consultations reports.
- j) For children and adolescents, prenatal and perinatal events as well as complete developmental history
- k) Family history, composition, interactions, socioeconomic factors, strengths and resources
- l) Occupational and/or school history, including social and academic functioning
- m) Medications prescribed. Psychiatrists will include informed consent, dosages of each medication and date of initial prescription.
- n) Individual's report of allergies and adverse reactions to medications.
- o) Legal history and status.
- p) Relevant cultural issues and history.
- q) A mental status exam.
- r) A five-axis diagnosis consistent with the information gathered. Axis I and Axis II diagnoses, or changes to them, may only be made by licensed clinicians.
- s) Clinical observations and impression of mental status, functioning and service needs.
- t) Individual's strengths in achieving goals.
- u) Treatment recommendations (including prognosis for individuals receiving medication services)

**Reassessment.** The Reassessment is to be completed one (1) year from the date of the first session. The Reassessment form is the tool for evaluating current problems, functioning, and progress to drive the New Client Plan.

Individual Service Plans: CONTRACTOR shall ensure that an individual service plan shall be completed within 60 days of the date of intake into services and at a minimum annually. Individual Service Plans shall contain, at minimum, the following:

- a) Specific observable and/or specific quantifiable goals
- b) Proposed types of interventions
- c) Proposed duration of interventions
- d) Staff Signature, License and/or Job Title, and Date
- e) Individual's Signature and Date

Additional Requirements for Individual Service Plans:

- a) Individual Service Plans shall be consistent with the diagnoses, and the focus of intervention shall be consistent with the individual plan goals, and there shall be documentation of individual's participation in and agreement with the plan. The Individual Service Plan is to be collaboratively constructed with the individual.
- b) Documentation of clients' agreement with the plan is best evidenced by inclusion of the client's signature and date of signature on the plan. In lieu of this signature CONTRACTOR shall reference to the individual's participation in the body of the plan or document the extent of the individual's participation and agreement in progress notes.
- c) When the individual's signature is required on the Individual Service Plan and the individual refuses or is unavailable for signature, the Individual Service Plan or an individual progress note, shall include written explanation of the refusal or unavailability. Contractor shall document ongoing efforts to secure documentation of the individual's participation in, and agreement with their plan during the course of treatment.
- d) The CONTRACTOR shall document that a copy of the Individual Service Plan was offered to the individual.

Progress Notes: CONTRACTOR shall ensure that all services provided are accurately and legibly documented in service or progress notes. A Progress Note is to be completed for every meaningful contact with the individual. Progress Notes are to be completed in a timely manner, sufficient to ensure continuity of care.

Progress Notes for each service shall contain, at minimum, the following information:

- a) Individual's name and medical record number
- b) Mode of service identified by proper activity code
- c) Program (subunit) code
- d) Date of service
- e) Start time of direct service
- f) End time of direct service
- g) Total documentation time
- h) Total travel time (if travel is component of mental health service activity)
- i) Service indicators (person contacted, type of contact, place of service, appointment type, evidence based practice/service strategy)
- j) Name of clinician providing service
- k) Narrative description of contact
- l) Clinical decisions and interventions
- m) Individual's response to interventions, including progress toward client plan goals
- n) Documentation of any existing risk factors
- o) Signature of clinician providing service, license and/or job title, and date of signature

At a minimum, all documentation shall include accurate clinical and administrative records as required by law and policy. Such records shall be legible, shall list each date of services, and include the total time for each service including documentation time. All services shall be documented utilizing COUNTY approved templates and contain all required elements as described herein. Activity codes shall be documented on each date of service using activity codes included herein. Upon written notice from designated Contract Administrator, COUNTY, at its sole discretion, may impose additional requirements for documentation.

Discharge Summary: To be completed at case closing. The purpose of the Closing Summary is to capture essential elements of treatment – referring problem, treatment conducted, response to treatment, and disposition.

CONTRACTOR shall provide COUNTY with access to all documentation of services provided under this agreement for COUNTY’S use in administering this agreement. Without limitation, COUNTY shall have access to such documentation for quality assurance and for audit or substantiation of claims for payment of services.

### **Grievance Requirements**

CONTRACTOR shall comply with COUNTY’s grievance policy and procedure to address any concern or problem voiced by the individual, and to provide individuals with a means to register, and to resolve grievances and appeals. CONTRACTOR shall ensure that the following procedures are followed:

- a) Post information regarding County’s problem resolution process in program and living spaces. Information will be provided in the “living spaces” of clients by creating a binder for each client upon moving into a housing unit. Fliers will also be posted in frequently trafficked areas such as the laundry room of the building. Information will be posted in “program areas” where program director and case managers meet with clients for administrative and/or clinical tasks.
- b) Make readily available to program participants in the above areas, the Napa County HHS&A Mental Health Grievance forms in English and in Spanish along with postage paid addressed envelopes.
- c) When an individual expresses a concern regarding CONTRACTOR’S services, CONTRACTOR shall determine the nature of the concern and, if the concern is easily fixed or poses a risk to others, it should be immediately resolved.
- d) For all grievances, provide the individual with the Mental Health Grievance Form for Medi-Cal Eligible Beneficiaries (Grievance Form) and direct them to fill it out and return it to COUNTY’s Mental Health Quality Coordinator in the postage paid envelope. CONTRACTOR is responsible for completing the Grievance form for oral grievances received.
- e) Provide beneficiaries with reasonable assistance in completing forms and taking procedural steps including, but not limited to, providing interpreter services and toll-free numbers that have adequate TTY/TTD and interpreter capability.
- f) Notify COUNTY’s Mental Health Quality Coordinator within 24 hours of the next business day via fax or phone that a grievance has been made and provide the details of the grievance. Provide the individual’s name, the date and time that the grievance was made, CONTRACTOR’s name, a brief description of the concern, and any steps taken to resolve the matter.

### **Electronic Medical Record and Billing Provision:**

As specified by COUNTY, CONTRACTOR shall update its clinical and fiscal practices at the COUNTY’S request where change is necessary to ensure the following:



- Correct billing of Medi-Cal services by COUNTY to Short-Doyle/Medi-Cal (SD/MC)
- Congruence with COUNTY requirements for documentation, clinical or fiscal
- Seamless integration with and use of the electronic medical record, the electronic billing system, and other relevant aspects of the Anasazi software system.

Additional costs incurred by CONTRACTOR shall be solely borne by CONTRACTOR except as otherwise specified in subsequent amendments to this contract.

COUNTY shall require CONTRACTOR full integration into COUNTY-specific Electronic Health Record when deemed appropriate.

#### **Orientation, Training and Technical Assistance**

COUNTY will endeavor to provide CONTRACTOR with training and support in the skills and competencies to (a) conduct, participate in, and sustain the performance levels called for in the contract and (b) conduct the quality management activities called for by the contract.

COUNTY shall provide CONTRACTOR with all applicable standards for the delivery and accurate documentation of services. COUNTY shall make ongoing technical assistance available in the form of direct consultation to the contractor upon CONTRACTOR's request to the extent that COUNTY has capacity and capability to provide this assistance. In so doing COUNTY is not relieving CONTRACTOR of its duty to provide training and supervision to its staff or to ensure that its activities comply with applicable regulations and other requirements included in the terms and conditions of this agreement. Any requests for technical assistance by CONTRACTOR regarding any part of this agreement shall be directed to the COUNTY's designated contract monitor.

#### **Performance Standards**

**In evaluating the records of individuals served under this agreement, COUNTY will evaluate services with reference to applicable contract, state, and federal standards for service delivery and documentation to determine whether they qualify for payment under this agreement.**

In the event COUNTY revises any required standards in the course of the contract year, the revised information shall be provided to the CONTRACTOR, along with an explanation of the impact of any changes on the contractor.

COUNTY and CONTRACTOR agree to work collaboratively to develop key service quality indicators and outcomes and identify sources of reliable data to measure them. In addition, attributes and characteristics of individuals served and other information needed shall be identified.

CONTRACTOR shall institute and conduct a Quality Assurance Process for all services provided hereunder. Said process shall include as a minimum a system for verifying that all services provided and claimed for reimbursement shall meet specialty mental health service definitions and be documented accurately.

CONTRACTOR will provide COUNTY with notification and a summary of any internal audit exceptions and the specific corrective actions taken to sufficiently reduce the errors that are discovered through CONTRACTOR'S internal audit process. CONTRACTOR shall provide this notification and summary to COUNTY in a timely manner.

CONTRACTOR shall reimburse COUNTY for all overpayments identified by CONTRACTOR, COUNTY, and/or State or Federal oversight agencies as an audit exception. CONTRACTOR shall make any repayment based on audit exception(s) upon discovery of said exception(s).

**Program Performance Objectives**

CONTRACTOR shall participate in the statewide performance outcome system that requires County Mental Health Departments and its contractor providers to administer consumer perception surveys to all individuals and their caregivers who are seen for services during a two week reporting period semi-annually

**Specific Performance Objectives During the Term of this Agreement.**

1. Improved Independent Living skills:
  - 75% of all individuals that enter and remain in the program for at least one (1) year will demonstrate improvement in their independent living skills as measured by completion of an independent living skills checklist assessment form at intake and re-evaluation on an annual basis.
2. Attainment of Personal Goals:
  - 75% of individuals that enter and remain in the program for at least one (1) year will achieve a least one (1) of their personal goals as identified on their individual service plan-personal goals form completed at intake and re-evaluated on an annual basis.

**Program Reporting**

CONTRACTOR staff will provide program utilization review data to COUNTY upon request.

CONTRACTOR will conduct an annual client satisfaction survey to regularly assess clients satisfaction of services delivered. Contractor will report findings to COUNTY annually.

**EXHIBIT B**  
**COMPENSATION**

**From July 1, 2022 through June 30, 2023**  
**(and each subsequent automatic renewal thereof)**

COUNTY shall compensate CONTRACTOR for the pre-authorized contract services actually provided and documented as defined in Exhibit A of contract to Medi-Cal only clients. Rates billed for contract services during the contract term shall be based on the lesser of CONTRACTOR'S actual cost or at the following rates:

Assessment	\$ 3.00 per minute
Plan Development	\$ 3.00 per minute
Individual Rehabilitation	\$ 3.00 per minute
Group Rehabilitation	\$ 3.00 per minute
Collateral	\$ 3.00 per minute
Targeted Case Management	\$ 3.00 per minute
Crisis Intervention Services	\$ 3.00 per minute

Total contract payments for the term shall not exceed the contract maximum which is based on an estimate of services that may be performed during the contract period and shall not be considered a guaranteed sum.

CONTRACTOR shall submit monthly, itemized invoices to the COUNTY Mental Health Fiscal Analyst by the 20<sup>th</sup> of the month for all authorized contract services provided in the preceding month. Invoices received later than 60 days past service date may not be paid. The monthly invoice shall itemize, at a minimum, for each billed service the following information:

- Clients name and date of birth and/or Napa Co. Mental Health ID number (MH#)
- Program name client is enrolled in
- Description of service provided (or identifiable activity code from below)
- Date of service
- Length of service
- Rate of service
- Name of clinician providing service (or given Napa County server ID#)
- Total amount billed for each service

An invoice template will be provided by the Mental Health Fiscal Analyst. Monthly invoice shall only include billing for the contract services actually performed in the manner described herein. Any questions related to billing may be directed to the Mental Health Fiscal Analyst at (707) 253-4662.

For Mental Health Services CONTRACTOR shall itemize invoices using the following codes and using County-assigned subunit:

Activity Description	Code
Assessment	9
Collateral	33
Individual Rehab	34

Group Rehab	35
Plan Development	13
Targeted Case Management	50
Crisis Intervention	70

Monthly invoice shall only include billing for the contract services actually performed and pre-authorized by Napa County in the manner described herein. Any questions related to billing can be directed to the Mental Health Fiscal Analyst.

COUNTY will bill the services performed by CONTRACTOR and provided by CONTRACTOR to HHSA 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 COUNTY in obtaining the maximum legal reimbursement for the services provided. CONTRACTOR is responsible for ensuring that the CONTRACTOR adhere to this provision.

**Clients with Medi-Cal and Other Health Coverage (OHC)**

Per Federal Regulation providers must bill all other health coverage prior to submitting claims to Napa County for Medi-Cal reimbursement.

The OHC insurer is considered the primary insurance and may pay all, part, or none of the cost of services. Any unreimbursed cost may be claimable to Medi-Cal. Claims where OHC exists must be submitted to Napa County within 30 days from receipt of the Explanation of Benefits (EOB), but no later than 5 months from the date of service. When submitting claims to Napa County for individuals with OHC, a copy of the OHC EOB or denial must be attached to the CMS-1500 form.

In order to submit claims to Napa County within 5 months from the date of service, it is in the best interest of the client and the provider to submit claims to the OHC insurer in a timely manner. If no response or EOB is received from the OHC insurer primary insurance within 90-days from the date of claim submission, the provider may presume denial from the OHC and submit their CMS-1500 claim to Napa County. When submitting claims with a presumed denial from the OHC, attach a letter stating that no response was received from the OHC, include in the letter the name of the OHC and the date the claim was submitted.

The MHP makes every attempt to identify eligibility and notify providers if OHC eligibility exists. As eligibility verification for OHC can be inconsistent, it is also imperative that you inquire with the client/guardian as to possible OHC and notify the MHP if OHC eligibility is discovered.

The MHP is unable to provide a comprehensive list of procedures and points of contact for OHC insurers as they are numerous and have individual requirements. Therefore, CONTRACTOR is responsible for obtaining the necessary information to fulfill its duty to bill OHC insurers. As able, the MHP will assist providers in finding contact information for OHC insurers but the MHP is under no obligation to do so and this does not alleviate CONTRACTOR from the sole responsibility to do so.

### **Limitations Affecting Payments**

CONTRACTOR shall perform services and provide such documentation as required by all applicable State and Federal laws, rules, and regulations, and as described in Exhibit A of this agreement. Other limitations affecting contract payments may include, but are not limited to:

- 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 will be withheld until the cost report is received by the COUNTY.
- CONTRACTOR shall provide such documentation as required by COUNTY at any time in order to substantiate its claims for payment. COUNTY may elect to withhold payment for failure by CONTRACTOR to provide such documentation required by COUNTY.
- Contractor's services and claims are subject to any audits conducted by COUNTY, the State of California or federal government, or other auditors. Any resulting audit exemption shall be repaid to COUNTY.
- CONTRACTOR shall make COUNTY whole for disallowances for payment or lost revenues as identified and discovered by the COUNTY that are attributable to Contractor's performance under this Agreement, including, but not limited to, Contractor's insufficient documentation of Medical Necessity or billing errors by CONTRACTOR that preclude COUNTY from claiming the Federal Financial Participation share of Medi-Cal.
- To the extent CONTRACTOR shall make whole the COUNTY 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.
- 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 and fines which may be assessed under a Federal or State False Claims Act provision.
- CONTRACTOR shall submit an annual cost report due by August 31st following the end of the fiscal year. Failure to submit the cost report timely may result in the suspension of payments until the cost report is received by the COUNTY. Any funds received in excess of actual costs shall be refunded to the county.

Non-compliance with this agreement may lead at any time to withholding of payments and/or a termination of the agreement based on breach of contract.

## 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/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).

## HIPAA BUSINESS ASSOCIATE AGREEMENT

This Exhibit shall constitute the Business Associate Agreement (the “Agreement”) between **ADVOCATES FOR HUMAN POTENTIAL, INC. (AHP)**, (the “Business Associate”) and Napa County (the “Covered Entity”), and applies to the functions Business Associate will perform on behalf of Covered Entity (collectively, “Services”), that are identified in the Master Agreement (as defined below).

1. **Purpose.** This Agreement is intended to ensure that the Business Associate will establish and implement appropriate privacy and security safeguards with respect to “Protected Health Information” (as defined below) that the Business Associate may create, receive, maintain, transmit, use, or disclose in connection with the Services to be provided by the Business Associate to the Covered Entity, and that such safeguards will be consistent with the standards set forth in regulations promulgated under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”) as amended by the Health Information Technology for Economic and Clinical Health Act as set forth in Title XIII of Division A and Title IV of Division B of the American Recovery and Reinvestment Act of 2009 (“HITECH Act”).
2. **Regulatory References.** All references to regulatory Sections, Parts and Subparts in this Agreement are to Title 45 of the Code of Federal Regulations as in effect or as amended, and for which compliance is required, unless otherwise specified.
3. **Definitions.** Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms are defined in Sections 160.103, 164.304 and 164.501.
  - (a) **Business Associate.** “Business Associate” shall mean the party identified above as the “Business Associate”.
  - (b) **Breach.** “Breach” shall have the same meaning as the term “breach” in Section 164.402.
  - (c) **Covered Entity.** “Covered Entity” shall mean the County of Napa, a hybrid entity, and its designated covered components, which are subject to the HIPAA Rules.
  - (d) **Designated Record Set.** “Designated Record Set” shall have the same meaning as the term “designated record set” in Section 164.501.
  - (e) **Electronic Media.** “Electronic Media” shall have the same meaning as the term is defined in Section 160.103.
  - (f) **Electronic Protected Health Information.** “Electronic Protected Health Information” (“EPHI”) is a subset of Protected Health Information and means individually identifiable health information that is transmitted or maintained in electronic media, limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
  - (g) **HIPAA Rules.** “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.
  - (h) **Individual.** “Individual” shall have the same meaning as the term “Individual” in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
  - (i) **Master Agreement.** “Master Agreement” shall mean the contract or other agreement to which this Exhibit is attached and made a part of.
  - (j) **Minimum Necessary.** “Minimum Necessary” shall mean the minimum amount of Protected Health Information necessary for the intended purpose, as set forth at Sections 164.502(b) & 164.514(d): *Standard: Minimum Necessary*.
  - (k) **Privacy Rule.** “Privacy Rule” shall mean the Standards for Privacy of Individually Identifiable Health Information at Part 160 and Part 164, Subparts A and E.



(l) Protected Health Information. “Protected Health Information” shall have the same meaning as the term “protected health information” in Section 160.103, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

(m) Required By Law. “Required by law” shall have the same meaning as the term “required by law” in Section 164.103.

(n) Secretary. “Secretary” shall mean the Secretary of the United States Department of Health and Human Services (“DHHS”) or his/her designee.

(o) Security Incident. “Security Incident” shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of personally identifiable information. A Security Incident includes the attempted or successful unauthorized access, use, disclosure, modification, or destruction of or interference with systems operations in an information system which processes Protected Health Information that is under the control of Covered Entity, or Business Associate of Covered Entity, but does not include minor incidents that occur on a daily basis, such as scans, “pings”, or unsuccessful random attempts to penetrate computer networks or servers maintained by Business Associate.

(p) Security Rule. “Security Rule” shall mean the Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.

(q) Subcontractor. “Subcontractor” means a subcontractor of Business Associate that creates, receives, maintains, or transmits Protected Health Information on behalf of the Business Associate.

(r) Unsecured Protected Health Information. “Unsecured Protected Health Information” shall have the same meaning as the term “unsecured protected health information” in Section 164.402, limited to the information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity.

#### **4. Business Associate’s Obligations and Compliance with the HIPAA Privacy and Security Rules.**

(a) Business Associate acknowledges that it is directly required to comply with the HIPAA Rules and that Business Associate (including its subcontractors) may be held directly liable and subject to penalties for failure to comply. To the extent the Business Associate is to carry out one or more of Covered Entity’s obligations under Subpart E of 45 CFR Part 164 of the Privacy Rule, Business Associate agrees to comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

(b) Business Associate agrees not to use or further disclose Protected Health Information other than as permitted or required by this Agreement, or as required by law.

(c) Business Associate shall not sell Protected Health Information.

#### **5. Permitted Uses and Disclosures.**

(a) Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified in Attachment 1 to this Exhibit, which if completed and attached hereto is incorporated by reference, or as otherwise specified in the Master Agreement, subject to limiting use and disclosure to applicable minimum necessary rules, regulations and statutes and provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity. Business Associate must make reasonable efforts to limit Protected Health Information to the Minimum Necessary to accomplish the intended purpose of the use, disclosure, or request.

(b) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

(c) Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health

Information for the proper management and administration of the Business Associate, provided that disclosures are Required by Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

(d) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by Section 164.504(e)(2)(i)(B).

(e) Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities consistent with Section 164.502(j).

(f) Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 of the Privacy Rule if done by Covered Entity, except for the specific uses and disclosures set forth herein.

## **6. Appropriate Safeguards.**

(a) Business Associate agrees to use appropriate safeguards to prevent the use or disclosure of Protected Health Information other than as provided for by this Agreement. Appropriate safeguards shall include implementing administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Protected Health Information that is created, received, maintained or transmitted on behalf of the Covered Entity and limiting use and disclosure to the Minimum Necessary.

(b) Safeguarding Electronic Protected Health Information. Business Associate agrees to comply with Subpart C of 45 CFR Part 164 with respect to Electronic Protected Health Information. Business Associate must secure all Electronic Protected Health Information by technological means that render such information unusable, unreadable, or indecipherable to unauthorized individuals and in accordance with the National Institute of Standards Technology (NIST) Standards and Federal Information Processing Standards (FIPS) as applicable, Should Business Associate fail to comply with this provision, it agrees to hold harmless, defend at its own expense and indemnify Covered Entity in accordance with the terms of Section 9 of the Agreement, "Indemnification".

(c) Destruction of Protected Health Information on paper, film, or other hard copy media must involve either shredding or otherwise destroying the Protected Health Information so that it cannot be read or reconstructed.

(d) Should any employee or subcontractor of Business Associate have direct, authorized access to computer systems of Covered Entity that contain Protected Health Information, Business Associate shall immediately notify Covered Entity of any change of such personnel (e.g. employee or subcontractor termination, or change in assignment where such access is no longer necessary) in order for Covered Entity to disable the previously authorized access.

## **7. Reporting Unauthorized Uses and Disclosures.**

(a) Business Associate agrees to notify Covered Entity of any access, use or disclosure of Protected Health Information not permitted or provided for by the Agreement of which it becomes aware, including any breach as required at Section 164.410, or security incident,. Such notification will be made immediately after discovery by telephone call at 707.259.8349], plus e-mail at Privacy.Officer@countyofnapa.org, and will include, to the extent possible, the identification of each Individual whose Unsecured Protected Health Information has been, or is reasonably believed by the Business Associate to have been, accessed, acquired, used or disclosed, a description of the Protected Health Information involved, the nature of the unauthorized

access, use or disclosure, the date of occurrence, and a description of any remedial action taken or proposed to be taken by Business Associate. Business Associate will also provide to Covered Entity any other available information that the Covered Entity is required to include in its notification to the Individual under Section 164.404(c) at the time of the initial report or promptly thereafter as the information becomes available.

(b) In the event of a request by law enforcement under Section 164.412, Business Associate may delay notifying Covered Entity for the applicable timeframe.

(c) A breach or unauthorized access, use, or disclosure shall be treated as discovered by the Business Associate on the first day on which such unauthorized access, use, or disclosure is known, or should reasonably have been known, to the Business Associate or to any person, other than the individual committing the unauthorized disclosure, that is an employee, officer, subcontractor, agent or other representative of the Business Associate.

(d) In meeting its obligations under this section, it is understood that Business Associate is not acting as the Covered Entity's agent. In performance of the work, duties, and obligations and in the exercise of the rights granted under this Agreement, it is understood and agreed that Business Associate is at all times acting as an independent contractor in providing services pursuant to this Agreement and the Master Agreement.

#### **8. Mitigating the Effect of a Breach, Security Incident, or Unauthorized Access, Use or Disclosure of Unsecured Protected Health Information.**

(a) Business Associate agrees to mitigate, to the greatest extent possible, any harm that results from the breach, security incident, or unauthorized access, use or disclosure of Unsecured Protected Health Information by Business Associate or its employees, officers, subcontractors, agents, or other representatives.

(b) Following a breach, security incident, or any unauthorized access, use or disclosure of Unsecured Protected Health Information, Business Associate agrees to take any and all corrective action necessary to prevent recurrence, to document any such action, and to make this documentation available to Covered Entity.

(c) Except as required by law, Business Associate agrees that it will not inform any third party of a breach or unauthorized access, use or disclosure of Unsecured Protected Health Information without obtaining the Covered Entity's prior written consent. Covered Entity hereby reserves the sole right to determine whether and how such notice is to be provided to any Individuals, regulatory agencies, or others as may be required by law, regulation or contract terms, as well as the contents of such notice. When applicable law requires the breach be reported to a federal or state agency or that notice be given to media outlets, Business Associate shall cooperate with and coordinate with Covered Entity to ensure such reporting is in compliance with applicable law and to prevent duplicate reporting, and to determine responsibilities for reporting.

#### **9. Indemnification.**

(a) Business Associate agrees to hold harmless, defend at its own expense, and indemnify Covered Entity for the costs of any mitigation undertaken by Business Associate pursuant to Section 8, above.

(b) Business Associate agrees to assume responsibility for any and all costs associated with the Covered Entity's notification of Individuals affected by a breach or unauthorized access, use or disclosure by Business Associate or its employees, officers, subcontractors, agents or other representatives when such notification is required by any state or federal law or regulation, or under any applicable contract to which Covered Entity is a party.

(c) Business Associate agrees to hold harmless, defend at its own expense and indemnify Covered Entity, including Covered Entity's employees, directors, officers, subcontractors, agents or other members of its workforce (each of the foregoing hereinafter referred to as "Indemnified Party"), against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with any breach of this Agreement or from any acts or omissions related to this Agreement by Business Associate or its

employees, directors, officers, subcontractors, agents or other members of its workforce. Accordingly, on demand, Business Associate shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, lost profits, fines, penalties, costs or expenses (including reasonable attorneys' fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Business Associate's acts or omissions hereunder. Business Associate's obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement.

(d) Survival. The obligations of Business Associate under this Section 9 shall survive this Agreement.

#### **10. Individuals' Rights.**

(a) Business Associate agrees to provide access, at the request of Covered Entity, and in the time and manner designated by the Covered Entity, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under Section 164.524.

(b) Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to make pursuant to Section 164.526, at the request of Covered Entity or an Individual, and in the time and manner designated by the Covered Entity.

(c) Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(d) Business Associate agrees to provide to Covered Entity or an Individual, in the time and manner designated by Covered Entity, information collected in accordance with Section 10(c) of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.

(e) Business Associate agrees to comply with any restriction to the use or disclosure of Protected Health Information that Covered Entity agrees to in accordance with Section 164.522.

#### **11. Obligations of Covered Entity.**

(a) Covered Entity shall provide Business Associate with the notice of privacy practices that Covered Entity produces in accordance with Section 164.520, as well as any changes to such notice.

(b) Covered Entity shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.

(c) Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to in accordance with Section 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

#### **12. Agents and Subcontractors of Business Associate.**

(a) Business Associate agrees to enter into written agreements with any agent, subcontractor or vendor, to whom it provides Protected Health Information received from Covered Entity or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity, that impose the same restrictions, conditions and requirements that apply through this Agreement to Business Associate with respect to such information, including the requirement to immediately notify the Business Associate of any instances of any breach, security incident, intrusion, or unauthorized access to or use or disclosure of Protected Health Information of which it becomes aware. Upon request, Business Associate shall provide copies of such agreements to Covered Entity.

(b) Business Associate shall implement and maintain sanctions against any agent, subcontractor or other representative that violates such restrictions, conditions or requirements and shall mitigate the effects of any such violation.

**13. Audit, Inspection, and Enforcement.**

(a) Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from Covered Entity or created, received, maintained, or transmitted by Business Associate on behalf of Covered Entity, available to any state or federal agency, including the Secretary, for the purposes of determining compliance with HIPAA and any related regulations or official guidance.

(b) With reasonable notice, Covered Entity and its authorized agents or contractors may audit and/or examine Business Associate's facilities, systems, policies, procedures, and documentation relating to the security and privacy of Protected Health Information to determine compliance with the terms of this Agreement. Business Associate shall promptly correct any violation of this Agreement found by Covered Entity and shall certify in writing that the correction has been made. Covered Entity's failure to detect any unsatisfactory practice does not constitute acceptance of the practice or a waiver of Covered Entity's enforcement rights under this Agreement.

**14. Permissible Requests by Covered Entity.** Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity.

**15. Term and Termination.**

(a) The terms of this Agreement shall remain in effect for the duration of all services provided by Business Associate under the Master Agreement and for so long as Business Associate remains in possession of any Protected Health Information received from Covered Entity, or created, received, maintained or transmitted by Business Associate on behalf of Covered Entity unless Covered Entity has agreed in accordance with this Section 15 that it is not feasible to return or destroy all Protected Health Information.

(b) Upon termination of the Master Agreement, Business Associate shall recover any Protected Health Information relating to the Master Agreement and this Agreement in its possession and in the possession of its subcontractors, agents or representatives. Business Associate shall return to Covered Entity, or destroy with the consent of Covered Entity, all such Protected Health Information, in any form, in its possession and shall retain no copies.

(c) If Business Associate believes it is not feasible to return or destroy the Protected Health Information, Business Associate shall so notify Covered Entity in writing. The notification shall include: (1) a statement that the Business Associate has determined that it is not feasible to return or destroy the Protected Health Information in its possession, and (2) the specific reasons for such determination. Business Associate may retain only that Protected Health Information which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities. If Covered Entity agrees in its sole discretion that Business Associate cannot feasibly return or destroy the Protected Health Information, Business Associate shall ensure that any and all protections, requirements and restrictions contained in the Master Agreement and this Agreement shall be extended to any Protected Health Information for so long as Business Associate maintains such Protected Health Information, and that any further uses and/or disclosures will be limited to the purposes that make the return or destruction of the Protected Health Information infeasible.

(d) Covered entity may immediately terminate the Master Agreement if it determines that Business Associate has violated a material term of this Agreement.

(e) Survival. The obligations of Business Associate under this Section 15 shall survive this Agreement.

16. **Amendment.** The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity and Business Associate to comply with the requirements of the HIPAA Rules.

17. **Entire Agreement.** This Exhibit constitutes the entire HIPAA Business Associate Agreement between the parties, and supersedes any and all prior HIPAA Business Associate Agreements between them.

18. **Notices.**

(a) 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 paragraph 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.

(b) Any mailed notice, demand, request, consent, approval or communication that Covered Entity desires to give to Business Associate shall be addressed to Business Associate at the mailing address set forth in the Master Agreement.

(c) Any mailed notice, demand, request, consent, approval or communication that Business Associate desires to give to Covered Entity shall be addressed to Covered Entity at the following address:

Napa County Privacy Officer  
Office of County Counsel  
1195 Third Street, Suite 301  
Napa, CA 94559  
707.259.8349

(d) For purposes of subparagraphs (b) and (c) above, either party may change its address by notifying the other party of the change of address.

19. **Lost Revenues; Penalties/Fines.**

(a) Lost Revenues. Business Associate shall make Covered Entity whole for any revenues lost arising from an act or omission in billing practices by Business Associate.

(b) Penalties/Fines for Failure to Comply with HIPAA. Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate's failure to comply with the obligations imposed by HIPAA.

(c) Penalties/Fines (other). Business Associate shall pay any penalty or fine assessed against Covered Entity arising from Business Associate'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.

## **HIPAA BUSINESS ASSOCIATE PROVISIONS**

### **ATTACHMENT 1 TO EXHIBIT D**

As provided in Paragraph 5 of Exhibit D of this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity for the purposes specified below, or as otherwise specified in the Master Agreement authorizing functions, activities, or services for, or on behalf of, Covered Entity, provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity.

Authorized Purposes:










# FINAL - Agr#Mentis (SLP)\_Corrected

Final Audit Report

2022-08-26

Created:	2022-08-26
By:	Charlotte Tyran (ctyran@mentisnapa.org)
Status:	Signed
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-  Signer julissa@winedownmedia.com entered name at signing as Julissa Marcencia  
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-  Document e-signed by Julissa Marcencia (julissa@winedownmedia.com)  
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-  Agreement completed.  
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