

BOS No.  
Infor Contract No.:  
Cobblestone ID No.:

**AGREEMENT  
(BOS AGREEMENT NO. \_\_\_\_ - \_\_\_\_)**

This Agreement (“Agreement”) is made and entered into as of the last date signed below by and between the County of Yolo, a political subdivision of the State of California (“County”), and OLE Health, dba CommuniCare OLE, a non-profit corporation authorized to do business in the State of California (“Contractor”), jointly referred to as the “Parties” herein and who agree as stated below.

**WHEREAS**, the County desires to obtain Integrated Behavioral Health Services (IBHS) for the Latino community and families; and

**WHEREAS**, the County has entered into agreements with the State of California, Department of Health Care Services, to provide mental health services to County of Yolo residents, (e.g., State Performance Agreement, State Managed Care Agreement, and Mental Health Services Act Agreement, hereinafter collectively referred to as the “State Contracts”); these agreements are incorporated herein by this reference and are available to Contractor at <https://www.yolocounty.org/government/general-government-departments/health-human-services/providers-partners/contracts-request-for-proposals>; and

**WHEREAS**, the State Contracts require that all subcontracts be governed by and construed in accordance with all applicable laws, regulations, and contractual obligations set forth in the State Contracts, and that all County subcontractors (including, but not limited to, Contractor) comply with all terms and conditions of the State Contracts; and

**WHEREAS**, on or about August 22, 2023, the County circulated and distributed a Request for Proposals for Integrated Behavioral Health Services, identified as RFP No. GSDRFPKK2322 (2023 RFP) and can be viewed at [www.bidsync.com](http://www.bidsync.com); and

**WHEREAS**, Contractor responded to the 2023 RFP with a proposal that was subsequently chosen by County; County issued a Letter of Intent to Award a contract to Contractor; and

**WHEREAS**, Contractor represents and warrants that neither Contractor, nor any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent owners, is excluded or debarred from participating in or being paid for participation in any Federal or State program; and

**WHEREAS**, Contractor further represents and warrants that no conditions or events now exist which give rise to Contractor or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent owners being excluded or debarred from any Federal or State program; and

**WHEREAS**, Contractor understands that the County is relying upon these representations in entering into this Agreement; and

**WHEREAS**, Contractor further represents and warrants to the County that it has the necessary training, experience, expertise and competency to provide the services, goods and materials that are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions; and that it will do so in a manner consistent with and furthering of the Values of Yolo County, a copy of which can be found <https://www.yolocounty.org/about-us/mission-values-strategic-plan>

**NOW, THEREFORE**, the County and the Contractor agree as follows:

//

BOS No.  
 Infor Contract No.:  
 Cobblestone ID No.:

**I. TERMS**

- A.** The term of this Agreement shall be from **January 1, 2024 through June 30, 2026** unless sooner terminated as provided in this Agreement. At the County’s option, this Agreement may be extended for two (2) additional twelve (12) month periods on the same terms and conditions as set forth in this Agreement upon written notice to the Contractor by the Yolo County Health and Human Services Agency Director or their designee (“Director”).
- B.** Either party may terminate this Agreement in its sole discretion, for any reason or for no reason at all, upon at least thirty (30) days’ advance written notice to the other party. This Agreement may also be terminated for cause or for insufficient funds as prescribed in Section XI. of Exhibit C.

**II. SERVICES**

- A.** Contractor shall furnish and perform the services as set forth in the Scope of Services attached to this Agreement as Exhibit A, in conformance with this Agreement (including, but not limited to, all exhibits), and in a manner satisfactory to the Director.
- B.** Contractor shall comply with all applicable provisions of State and Federal regulations and provisions as incorporated herein as if fully set forth in this place, including those found in the State Performance Agreement, and any regulatory or sub-regulatory guidance regarding Mental Health Services Act (MHSA) funding.
- C.** Contractor shall also comply with all applicable provisions of the Behavioral Health Compliance Plan, and any and all applicable County policies and procedures. The Contractor has accessed and reviewed all of these documents, which are available to the Contractor [https://www.yolocounty.org/government/general-government-departments/health-human-services/mental-health/behavioral-health-quality-management/-folder-2796#docan1597\\_10556\\_7495](https://www.yolocounty.org/government/general-government-departments/health-human-services/mental-health/behavioral-health-quality-management/-folder-2796#docan1597_10556_7495) and are incorporated herein by this reference. Contractor may also send an email to Health and Human Services Agency (HHS)-Behavioral Health Quality Management at [HHSQualityManagement@yolocounty.org](mailto:HHSQualityManagement@yolocounty.org) to obtain copies of any of these documents.

**III. COMPENSATION AND PAYMENT TERMS**

- A.** Subject to the satisfactory performance of the services required of Contractor pursuant to this Agreement, and to the terms and conditions set forth in this Agreement, and following Contractor’s submission of an appropriate claim, and such other documentation that the County may require, County shall pay Contractor according to the terms set forth in Exhibit B, Terms of Payment. Contractor agrees to accept the foregoing payments as full and complete payment for all services provided pursuant to this Agreement, irrespective of whether the cost of such services and related administrative expenses exceed such payments.
- B1.** Any other provision of this Agreement notwithstanding, the maximum payment obligation to Contractor through **June 30, 2026**, shall be no greater than **ONE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$1,500,000)** specified as follows:

Fiscal Year 2023-24 January 1, 2024 Through June 30, 2024	Fiscal Year 2024-25 July 1, 2024 through June 30, 2025	Fiscal Year 2025-26 July 1, 2025 through June 30, 2026	<b>Total</b>
\$300,000	\$600,000	\$600,000	<b>\$1,500,000</b>

BOS No.  
 Infor Contract No.:  
 Cobblestone ID No.:

**B2.** Option Years: The County may exercise its option to extend the term of the Agreement pursuant to Paragraph I.A. above. Upon request of the County, Contractor shall provide a contract budget for each option year in conformance with the requirements of this Agreement. The option year contract budgets shall be sent to [HHSAContracts@yolocounty.org](mailto:HHSAContracts@yolocounty.org) for review and approval by the Director. In the event that the County elects to exercise an option, County shall notify the Contractor in writing. The notice shall include the revised agreement term, approved funding amount to be added to the Agreement; and revised agreement maximum payment obligation, subject to the maximums set forth below:

<b>Option Year/ Fiscal Year (OY/FY)</b>	<b>Revised Agreement Expiration Date Per OY/FY</b>	<b>Maximum Increased Funding Amount Per OY/FY</b>	<b>Revised Agreement Lifetime Maximum Per OY/FY</b>
OY/FY 2026-27	On or before June 30, 2027	Less than or equal to \$600,000	Less than or equal to \$2,100,000
OY/FY 2027-28	On or before June 30, 2028	Less than or equal to \$600,000	Less than or equal to \$2,700,000

In no event shall the term of the Agreement extend beyond **June 30, 2028**, nor shall the total contract maximum exceed the amount of **TWO MILLION SEVEN HUNDRED THOUSAND DOLLARS (\$2,700,000)**, unless otherwise agreed to in writing by the parties and in conformity with the then-current Yolo County Procurement Policy approved by the Yolo County Board of Supervisors.

**C.** Administrative/indirect costs shall not exceed 15% of personnel costs calculated based on salaries, wages, benefits and taxes per fiscal year.

**D.** County shall pay Contractor using a combination of funding sources, as the County deems appropriate.

**IV. OPTION YEAR AND AMENDMENT AUTHORITY**

**A.** Director’s Authority: The Director may exercise the option year(s) and execute related option notices in conformance with the conditions of Section III of this Agreement.

**B.** Procurement Manager’s Authority: The Yolo County Procurement Manager (“Procurement Manager”) may approve and execute amendments regarding allocation of funds between categories of services, scope of services, billing rates, and other contract language changes set forth elsewhere in this Agreement provided the modifications are generally consistent with the original approved scope of the contract. This authority includes the ability to approve and execute amendments to increase to the maximum payment obligation, provided the increase is within the Procurement Manager’s Authority, as prescribed in the then current Yolo County Procurement Policy.

**C.** Yolo County Board of Supervisors’ Authority: All other authority to approve and execute amendments or exercise option year(s) related to this Agreement is reserved by the Yolo County Board of Supervisors.

**V. ENTIRE AGREEMENT**

**A.** The complete Agreement shall include the following exhibits and attachment(s) attached hereto and incorporated herein:

Exhibit A: Scope of Services

BOS No.

Infor Contract No.:

Cobblestone ID No.:

- Exhibit B: Terms of Payment
- Exhibit C: Terms and Conditions
- Exhibit D: Contract Budget
- Exhibit E: Performance Measures
- Exhibit F: HIPAA Compliance, including Attachment I – State Agreement Information Confidentiality, Security, and Privacy Requirements


**B.** The County and Contractor shall each comply with the terms and conditions set forth in these exhibits and attachment(s). In the event of any conflict between any of the provisions of this Agreement (including Exhibits and attachments), the provision that requires the highest level of performance from Contractor for the County’s benefit shall prevail.

**C.** This Agreement constitutes the entire agreement between the County and Contractor and supersedes all prior negotiations, representations, or agreements, whether written or oral. In the event of a dispute between the parties as to the language of this Agreement or the construction or meaning of any term hereof, this Agreement shall be deemed to have been drafted by the parties in equal parts so that no presumptions or inferences concerning its terms or interpretation may be construed against any party to this Agreement.

**IN WITNESS WHEREOF**, the Parties have executed this Agreement as of the day and year first set forth above.

**CONTRACTOR**

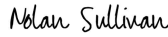
**COUNTY OF YOLO**

DocuSigned by:  
  
4384571AEF8D438...  
 Alicia Hardy, Chief Executive Officer  
 OLE Health dba CommuniCare OLE

\_\_\_\_\_  
 Lucas Frerichs, Chair  
 Board of Supervisors

Date: 12/20/2023

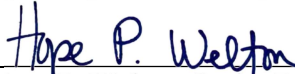
Date: \_\_\_\_\_

DocuSigned by:  
  
D196B33D5DAB46E...  
 Nolan Sullivan, Director  
 Health and Human Services Agency

Attest:  
 Julie Dachtler, Senior Deputy Clerk  
 Board of Supervisors

By \_\_\_\_\_  
 Deputy (Seal)

Approved as to Form:  
 Philip J. Pogledich, County Counsel

By   
 Hope P. Welton, Senior Deputy

**EXHIBIT A – SCOPE OF SERVICES**

Contractor shall provide services in accordance with the following provisions.

**I. SERVICE LOCATION(S)**

Services rendered pursuant to this Agreement shall be provided at the following location(s):

CommuniCare OLE Hansen Family Health Center 215 West Beamer Street Woodland, CA 95695	CommuniCare OLE John H. Jones Community Clinic 500B Jefferson Blvd, Suite 195 West Sacramento, CA 95605
--	--

**II. PURPOSE**

**A.** To provide Integrated Behavioral Health Services (IBHS) for the Latino community of Yolo County. Contractor shall provide culturally responsive outreach, referral, and support services to Yolo County Latino/Hispanic residents, particularly farmworkers, and those with health issues, mental health illnesses, and/or substance use issues. While serving the entire Latino community, Contractor shall target outreach efforts to Latino men/heads of household. In addition, Contractor shall develop relationships between consumers of services, support partners, families, various service providers, and the community. Contractor shall aim for the following:

1. To decrease the cost to County and other service providers for uninsured individuals,
2. Reduce mental health hospitalizations and length of hospital stays for individuals within the target population,
3. Improve the quality of life and independence for clients within the target population,
4. Expand the input on programmatic structure, outreach, and treatment activities for individuals within the target population,
5. Reduce mental health stigma, and
6. Increase service penetration rates in the Latino community.

**III. TARGET POPULATION**

Latino/Hispanic residents of Yolo County aged sixteen (16) years and older with health, and/or behavioral health issues.

**IV. REQUIREMENTS**

Contractor shall employ Bilingual/Bicultural staff to provide services to clients in English and Spanish.

**V. SERVICES**

Contractor shall conduct the following activities:

**A.** Utilize Promoters to serve as community liaisons or “cultural brokers” who identify and relay the needs and desires of the community, targeted to address engagement challenges.

**B.** Provide outreach and engagement services to rural areas of Yolo County (including Winters, Esparto, Dunnigan, Clarksburg, Capay Valley, Guinda and Cache Creek area).

## **EXHIBIT A – SCOPE OF SERVICES**

- C.** Demonstrate increase access to primary care, mental health, and substance abuse treatment services for Latino/Hispanic residents of Yolo County, including weekly outreach activities and whole-person health screenings.
- D.** Demonstrate a priority focus on engaging the family system with specific strategies for engaging male heads of household.
- E.** The following strategies to encourage male participation shall be used:
- 1.** Sponsoring and/or assisting with community/family events in schools, churches, and local community-based organizations.
  - 2.** Partnering with other community-based organizations providing outreach and/or services to the Hispanic male population in rural Yolo County.
  - 3.** Encouraging partner participation in counseling services.
  - 4.** Extending hours of services as needed to meet the needs of working males.
  - 5.** Engaging fathers in parenting education.
  - 6.** Providing substance use education and treatment access.
  - 7.** Exploring ways to offer services at specific locations where males heads of household are most likely to be, such as migrant camps/housing.
- F.** Provide behavioral health screening, mental health assessments, short-term solution-focused therapy, trauma informed care/interventions, and psychiatry/medication supports.
- G.** Provide culturally competent, evidence based and evidence informed practices training for program staff. Contractor shall include Motivational Interviewing in its practice.
- H.** Connect the target population to entitlement supports as needed and appropriate.
- I.** Provide counseling services in accessible locations at convenient hours for the target population.
- J.** Demonstrate stigma reduction and increased service penetration rates in the Latino/Hispanic community.
- K.** Create and maintain an advisory panel with representation from the target population and community-based agencies to guide ongoing outreach activities, program outcomes and recommendations for ongoing service improvements and sustainability plans.

## EXHIBIT B – TERMS OF PAYMENT

### I. METHOD OF PAYMENT

A. Contractor shall submit a claim/invoice for payment to the County no later than thirty (30) days after completion of the month in which services have been rendered. Any claim/invoice that is submitted and rejected due to lack of necessary information must be resubmitted within fifteen (15) days of the date of the initial rejection.

B. 1. Claims/invoices for payment may be submitted to the County in an electronic format. All claims/invoices shall be submitted with any required supporting documentation accompanying the claim/invoice. If a claim/invoice or the supporting documentation contains confidential client information, the submission must be encrypted for transmission.

2. Claims/invoices shall be submitted to:

[HSA.AccountsPayable@yolocounty.org](mailto:HSA.AccountsPayable@yolocounty.org)

C. County shall pay Contractor for actual expenditures in conformance with the contract budget(s) attached hereto as Exhibit D.

1. Contractor shall adhere to the contract budget(s) in performing services that have been authorized and provided in accordance with the provisions of this Agreement.

2. Amendments to the contract budget including but not limited to shifting the allocation of funds between categories of services, must be mutually agreed upon in writing. Contractor shall provide a revised budget to the Director for approval. Contract budget amendments must be approved pursuant to Section IV. of this Agreement.

3. In the event the County requests an updated contract budget for any option year, the option year budget shall be approved in conformance with Section III(B2) of this Agreement, in the sole discretion of the HHS Director.

D. County shall authorize payment within forty-five (45) days of the receipt of Contractor's appropriate claim/invoice, required reports, and any further supporting documentation requested by the County for purposes of this Agreement. Final compensation to the Contractor shall not exceed the maximum payable set forth in Section III of this Agreement.

In the event that the Contractor fails to comply with any provision of this Agreement, County may withhold payment otherwise due Contractor pursuant to this Agreement or any other agreement between Contractor and County until such noncompliance has been corrected.

E. 1. County will demand repayment from Contractor for compensation made to the Contractor, in the event that any goods and/or services related to such compensation are subsequently determined disallowable, regardless of reason.

2. Any such disallowance related to the current term of this Agreement will be due and payable immediately to the County. County will recoup from Contractor by offsetting any payment otherwise due Contractor pursuant to this Agreement or any other agreement between Contractor and County.

3. Any such disallowance related to the prior terms of this Agreement or any other agreement between Contractor and County will be due and payable within forty-five (45) days of mailing a demand letter from County to Contractor. Thereafter, unless otherwise negotiated with and approved by the Director, County will recoup from Contractor the amount due, by offsetting any payment otherwise due Contractor pursuant to this Agreement or any other agreement between Contractor and County.

## **EXHIBIT B – TERMS OF PAYMENT**

**4.** In the event that the aggregated payment otherwise due Contractor pursuant to this Agreement or any other agreement between Contractor and County is less than the amount due, and when all payments otherwise due Contractor have been exhausted, Contractor shall make payment to the County for any balance due based on a payment plan negotiated with and approved by the Director.

**F.** Any other provision of this Agreement notwithstanding, because this Agreement is funded in whole or in part by the federal and/or state governments, the County's obligation to compensate Contractor pursuant to this Agreement is contingent upon, and subject to, the County's receipt of such funding from the federal and/or state governments, and the absence or removal of any constraints imposed by the federal and/or state governments upon such receipt and payment.

**G.** Contractor shall use the funds provided by County exclusively for the purposes of performing the services required by this Agreement. No funds provided by County pursuant to this Agreement shall be used for any political activity or political contribution.

**H.** Contractor shall hold harmless the State and clients in the event that the County does not pay for services in accordance with this Agreement.

**EXHIBIT C – TERMS AND CONDITIONS****I. COUNTY AUTHORITY; CONTRACTOR ELIGIBILITY**

Contractor represents and warrants to the County that it has the necessary licensing, certification, training, experience, expertise, and competency to provide the services, goods, and materials that are described in this Agreement, at a cost to the County as herein specified; that it will be able to perform the herein described services at minimum cost to the County by virtue of its current and specialized knowledge of relevant data, issues, and conditions. The County is relying upon this representation in entering into this Agreement.

**II. PERSONNEL; PERFORMANCE STANDARDS**

**A.** Contractor shall furnish professional personnel in accordance with the regulations, including all amendments thereto, issued by the County, California Department of Healthcare Services, Centers for Medicare or Medicaid Services, the Office of the Inspector General, the Comptroller General of the United States, and any other authorized federal and state agencies. Contractor shall operate continuously throughout the term of this Agreement with at least the minimum staff required by law for provision of services hereunder. Such personnel shall be qualified in accordance with all applicable laws.

**B.** Employment of persons to provide treatment services who do not possess the required licenses, certifications or permits to provide services under this contract shall be deemed a breach of this Agreement and constitutes grounds for the termination of this Agreement by County.

**C.** Contractor shall make available to County, on written request of the Director, a list of the persons who provide services under this Agreement. This list shall state the name, title, professional degree, National Provider Identifier (NPI), if applicable, and work experience of such persons, and copies of all required licenses and certification, if applicable.

**D.** Contractor shall verify prior to hire and monthly thereafter (unless another frequency is specified below) that all of Contractor's employees and subcontractors are eligible to provide services under this Agreement pursuant to all applicable Federal, State, and County laws, rules and regulations. Contractor shall maintain documentation of verification on file and provide such documentation to County upon request. Verification check shall include:

1. Criminal background checks including fingerprinting (upon hire or rehire only, not required monthly);
2. Social Security Administration's Death Master File (at least annually);
3. National Plan and Provider Enumeration System (NPPES); and
4. Applicable Licenses
5. System for Award Management (SAM)
6. Exclusion from Medi-Cal and Medicaid provider participation, at a minimum to include Contractor's use of the following websites:
  - a. Office of Inspection General [http://oig.hhs.gov/exclusions/exclusions\\_list.asp](http://oig.hhs.gov/exclusions/exclusions_list.asp)
  - b. Medi-Cal Suspended and Ineligible List <https://files.medi-cal.ca.gov/pubsdoco/SandILanding.asp>
  - c. System for Award Management <https://cage.dla.mil/>
  - d. National Practitioner Database

If the Contractor is unable to certify to any of the statements in this section the Contractor shall submit an explanation to the Director, prior to executing this Agreement. The terms and

## EXHIBIT C – TERMS AND CONDITIONS

definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement for cause or default.

**E.** Contractor shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement and shall provide all services in accordance with any applicable laws and regulations incorporated in this Agreement and its Exhibits.

**F.** Contractor shall furnish all facilities, equipment, personnel, labor, and materials necessary to provide the services in accordance with this Agreement unless otherwise provided in the scope of services.

### III. RECORDS, RETENTION, REVIEW, ETC.

**A.** Records include but are not limited to: financial and client records as described below and all other physical and electronic records and documents originated or prepared pursuant to Contractor's performance under this Agreement including but not limited to: working papers, reports, financial records and documents of account, patient records, prescription files, subcontracts, and any other documentation pertaining to covered services and other related services for clients.

#### **B. Financial Records**

**1.** Contractor shall maintain financial records and other evidence, sufficient to support all direct and indirect costs of whatever nature that are claimed to have been incurred in the performance of this Agreement. These may include but are not limited to: complete client service and financial records, which clearly reflect the actual cost and related fees received for each type of service for which payment is claimed, books, accounting procedures and practices, and audit work papers.

**2.** Contractor shall preserve and make available his/her financial records for a period of ten (10) years from the date of final payment under this Agreement, and for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (a) or (b) below.

**a.** If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.

**b.** If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the ten-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular ten-year period, whichever is later.

#### **C. Client Records**

**1.** If applicable, Contractor shall maintain adequate client records for each client, in sufficient detail to permit an evaluation of services, which shall include, but not be limited to, the following: admission information, demographic information, consent for treatment, medical history, screenings, assessment and diagnostic studies, client plan, records of patient interviews, and records of all services provided. Such records shall also comply with all applicable Federal, State, and County record retention requirements. If applicable, Contractor shall comply with the Federal, State and County requirements as

## **EXHIBIT C – TERMS AND CONDITIONS**

to maintaining electronic health records. County and Contractor will collaborate to provide patients with access to patient healthcare records in compliance with all applicable Federal, State, and County regulations.

2. All client records shall be kept for whichever time period listed below is longer:
  - a. Ten (10) years from the date of final payment under this Agreement, and for such longer period, if any, as is required by applicable statute, by any other provision of this Agreement, or by subparagraphs (i) or (ii) below.
  - b. If this Agreement is completely or partially terminated, the records relating to the work terminated shall be preserved and made available for a period of five years from the date of any resulting final settlement.
  - c. If any litigation, claim, negotiation, audit, or other action involving the records has been started before the expiration of the ten-year period, the records shall be retained until completion of the action and resolution of all issues which arise from it, or until the end of the regular 10-year period, whichever is later.
3. a minimum of ten (10) years from the patient's date of discharge, if the patient is eighteen (18) years old or older when they are discharged; or
4. until the patient's 28th birthday, if the patient was treated and discharged while they were a minor; or
5. if the patient was pregnant at the time of treatment, patient's records shall be maintained for 25 years from last date of treatment while pregnant. In the event the client was pregnant more than once while they received treatment, the last date of treatment of the last pregnancy shall be used to calculate the appropriate time frames for record retention. In the event that the last day of treatment while pregnant cannot be ascertained from the client record, the last day of treatment while pregnant shall be calculated as one year from the initial report of pregnancy in the client record.

**D.** In the event that Contractor ceases to provide the services required by this Agreement for any reason, Contractor will contact County and make appropriate arrangements for transfer of care of the clients and for County to take possession of client records. Electronic health care records shall be made available to the County in an electronic format readable by the County.

**E.** Contractor may, at its discretion, following receipt of final payment under this Agreement, reduce its accounts, books, and records related to this Agreement to microfilm, computer disk, CD ROM, DVD, or other data storage medium. Upon request by an authorized representative to inspect, audit or obtain copies of said records, Contractor must supply or make available applicable devices, hardware, and/or software necessary to view, copy, and/or print said records. Applicable devices may include, but are not limited to, microfilm readers and microfilm printers, etc.

**F.** This section shall survive the termination or completion of this Agreement for the full period of time allowed by law.

### **IV. REPORTS**

**A.** Contractor shall submit to County the following listed reports. Contractor shall make further reports as may be reasonably requested by Director, the State and/or Federal government concerning Contractor's activities as they affect the services and obligations required by this Agreement, including any data and information required by State and/or Federal government for the County to receive funds used for these services. All reports must be submitted as prescribed by this Agreement or as otherwise reasonably requested by the Director.

## EXHIBIT C – TERMS AND CONDITIONS

### B. Practitioner Information Report:

#### 1. NPI/License List

Practitioners must obtain a NPI prior to first day of service. A copy of current license and NPI provider registry date printout must be submitted to Yolo County Health and Human Services Agency. Note that the practitioner's legal name must appear on both the current license and NPI printout. The NPI printout may be accessed at: <https://npiregistry.cms.hhs.gov/>.

#### 2. Practitioner ID Request Form

A complete Practitioner ID Request Form, which is available on the Yolo County website, must be provided for all personnel for the first month of this Agreement, and thereafter, for new personnel immediately upon hire or changed information.

Each Practitioner ID Request form must be accompanied with a copy of current license and NPI provider registry date printout. Note that the practitioner's legal name must appear on both the current license and NPI printout. The NPI printout may be accessed at: <https://npiregistry.cms.hhs.gov/>.

For staff to be classified as Mental Health Rehabilitation Specialist (MHRS), the Practitioner ID Request form must also be accompanied with a completed MHRS application, and the staff must meet the minimum regulatory requirements set forth in the California Code of Regulations, 9 CCR section 630, which states:

#### **§ 630. Mental Health Rehabilitation Specialist.**

A mental health rehabilitation specialist shall be an individual who has a baccalaureate degree and four years of experience in a mental health setting as a specialist in the fields of physical restoration, social adjustment, or vocational adjustment. Up to two years of graduate professional education may be substituted for the experience requirement on a year-for-year basis; up to two years of post-associate arts clinical experience may be substituted for the required educational experience in addition to the requirement of four years' experience in a mental health setting. (9 CCR § 630).

The Practitioner ID Request form and accompanying documentation must be submitted to Yolo County Health and Human Services Agency for approval prior to first day of service. Submit these reports electronically via email to: [HHSAQualityManagement@yolocounty.org](mailto:HHSAQualityManagement@yolocounty.org)

### C. Employee Verification Report: (See Section II of this Exhibit.)

Contractor shall verify prior to hire that all of Contractor's employees and subcontractors are eligible to provide services under this Agreement pursuant to all applicable state and federal rules, including applicable sections of the State Contracts. Contractor shall maintain documentation of verification on file and provide such documentation to County upon request.

### D. Performance Outcome Measures (POM) Report: (See Exhibit E of this Agreement)

Contractor shall maintain data and reports of performance outcome measures in compliance with the Federal and State requirements. On a quarterly basis, Contractor shall make these data and reports available to the County, as specified in Exhibit E.

## EXHIBIT C – TERMS AND CONDITIONS

### E. Contract Expenditure Reports

1. *Mid-Year Report*: This includes the total contract expenditures for the period of July 1<sup>st</sup> through December 31<sup>st</sup> and year-to-date information on actual expenditures and revenues. To be submitted by January 31<sup>st</sup>.

2. *End of Year Report*: This includes contract expenditures for the period of July 1 through June 30 and year end information on actual expenditures and revenues. To be submitted by July 31<sup>st</sup>.

Submit the Contract Expenditures reports electronically via email to: [HNSA.accountspayable@yolocounty.org](mailto:HNSA.accountspayable@yolocounty.org).

### F. Fiscal Year Annual Reports

1. *Equipment Report (See Section VII. OWNERSHIP OF EQUIPMENT, below)*  
Due date: July 31, following the completion of a fiscal year

2. *Certified Mental Health Cost Report*  
Due date: October 31, following the completion of a fiscal year

3. *Certified Audited Financial Reports*  
Due date: June 30, following the completion of next fiscal year, i.e., two hundred seventy (270) days following the above said due date for the Certified Mental Health

All annual reports, with the exception of Certified Mental Health Cost Report and Certified Audited Financial Reports, shall be sent electronically via email to: [HNSAQualityManagement@yolocounty.org](mailto:HNSAQualityManagement@yolocounty.org)

The Certified Mental Health Cost Report and Certified Audited Financial Reports shall be sent to:

Yolo County Health and Human Services Agency  
137 N. Cottonwood Street  
Woodland, CA 95695  
Attn: Cost Report

## V. AUDITS

A. Contractor shall allow the County, California Department of Healthcare Services, Centers for Medicare or Medicaid Services, the Office of the Inspector General, the Comptroller General of the United States, and any other authorized federal and state agencies, or their duly authorized designees, to evaluate Contractor's performance under this contract, including the quality, appropriateness, and timeliness of services provided, and to inspect, evaluate, and audit any and all records, documents, and the premises, equipment and facilities maintained by the Contractor and its subcontractors pertaining to such services at any time. Contractor shall allow such inspection, evaluation and audit of its records, documents and facilities, and those of its subcontractors, for **10 years** from the term end date of this Contract or in the event the Contractor has been notified that an audit or investigation of this Contract has been commenced, until such time as the matter under audit or investigation has been resolved, including the exhaustion of all legal remedies, whichever is later. (See 42 C.F.R. §§ 438.3(h), 438.230(c)(3)(i-iii).) Records are defined in Section III.A., above.

Any failure or refusal by Contractor to permit access to records by the County, California Department of HealthCare Services, Centers for Medicare or Medicaid Services, the Office of the Inspector General, the Comptroller General of the United States, and any other authorized federal and state agencies, or their duly authorized designees, as otherwise provided by this

## **EXHIBIT C – TERMS AND CONDITIONS**

Agreement, the State Contracts, State and/or Federal laws and regulations, shall constitute an express and immediate breach of this Agreement.

The Contractor shall also be subject to the examination and audit of the Auditor General for a period of three (3) years after final payment under contract (Government Code, § 8546.7).

**B.** Should Contractor expend seven hundred fifty thousand dollars (\$750,000) or more in Federal funds during any fiscal year, Contractor shall furnish County copies of the Certified Audited Financial Reports from an independent Certified Public Accountant (CPA) firm, covering the Cost Report period, i.e., July 1 through June 30, or covering a twelve (12) month period that is most recent and relevant to the Cost Report period, and provide a detailed audit of all costs included in the Cost Report. This Audit shall be performed in accordance with Office of Management and Budget (OMB) Uniform Grant Guidance or Super Circular (2 CFR part 200, subpart F) conducted in accordance with generally accepted government auditing standards as described in Government Auditing Standards (2003 Revision) and provided in a form satisfactory to the Director.

Contractor shall provide these Audited Financial Reports within two hundred seventy (270) days following the due date of the Certified Mental Health Cost Report. In the event that this Agreement expires or is terminated on a date other than June 30, Contractor shall provide County such Certified Audited Financial Reports covering the preceding period of July 1 through the date of expiration or termination no later than forty-five (45) days after the date of expiration or termination unless otherwise specified by the Director.

- C.**
- 1.** Should an Audit Report or any County, State and/or Federal government audit subsequently disallow any paid goods and/or services, or determine that Contractor has misspent funds, or been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Contractor in the amount of such audit findings.
  - 2.** In the event of disallowances or offsets as a result of federal audit exceptions, the provisions of California Welfare and Institutions Code section 814718 shall apply.
  - 3.** County shall offset the state matching funds for payments made by the Medi-Cal intermediary pursuant to California Welfare and Institutions Code against any funds held by the County on behalf of the Contractor. Method of repayment is detailed in Exhibit B.

## **VI. CULTURAL COMPETENCY**

**A.** Cultural competence is defined as a set of congruent practice behaviors, attitudes, and policies that come together in a system, agency, or among consumer providers and professionals which enable that system, agency, or those professional and consumer providers to work effectively in cross-cultural situations.

**B.** Contractor recognizes that cultural competence is a goal toward which professionals, agencies, and systems should strive. Becoming culturally competent is a developmental process and incorporates at all levels the importance of culture, the assessment of cross-cultural differences, the expansion of cultural knowledge, and the adaptation of services to meet culturally unique needs. Providing medically necessary specialty behavioral health, substance abuse, and co-occurring disorder services in a culturally competent manner is fundamental in any effort to ensure success of high quality and cost-effective services. Offering those services in a manner that fails to achieve its intended result due to cultural and linguistic barriers is not cost effective.

**C.** Contractor shall assess the demographic make-up and population trends of its service area to identify the cultural and linguistic needs of the eligible beneficiary population. Such studies

## EXHIBIT C – TERMS AND CONDITIONS

are critical to designing and planning for providing appropriate and effective behavioral health, substance abuse, and co-occurring disorder services.

**D.** Contractor shall provide cultural competency training on an annual basis to all staff. This training shall address the ethnic, cultural, and language needs of clients. Training can be provided by County on a space available basis or obtained by Contractor from an independent source(s). Contractor shall provide the County with documentation of the cultural competency trainings by submitting the required reports as outlined in Exhibit D.

**E.** Contractor shall implement practices and protocols that are inclusive and responsive to the needs of diverse cultural populations, including Lesbian, Gay, Bisexual, Transgender and Queer/Questioning (LGBTQ) individuals, families and communities.

**F.** Contractor shall adopt the National Standards for Culturally and Linguistically Appropriate Services (CLAS) in Health and Health Care to improve health care quality and advance health equity. Refer to <http://minorityhealth.hhs.gov> (US Department of Health and Human Services Office of Minority Health).

**G.** Language Access and Translation Requirements

**1.** “Threshold Language” pursuant to the Dymally-Alatorre Bilingual Services Act and “Prevalent Language” pursuant to State Contracts and 42 CFR section 438.10(a), means a language that has been identified as the primary language, as indicated on the Medi-Cal Eligibility System (MEDS), of 3,000 beneficiaries or five percent of the beneficiary population, whichever is lower, in County’s Medi-Cal service area. (Cal. Govt. Code §§ 7290-7299.8; 42 CFR § 438.10(a); 9 CCR § 1810.410(a)(3).)

**2.** Contractor shall comply with the linguistic requirements included herein.

- a.** The Contractor shall provide all written materials for potential clients and clients in a font size no smaller than 12 point. (42 CFR § 438.10(d)(6)(ii).)
- b.** The Contractor shall ensure its written materials are available in alternative formats, including large print, upon request of the potential client or client at no cost. Large print means printed in a font size no smaller than 18 point. (42 CFR § 438.10(d)(3).)
- c.** The Contractor shall make its written materials that are critical to obtaining services, including, at a minimum, provider directories, beneficiary handbooks, appeal and grievance notices, denial and termination notices, and Contractor’s behavioral health education materials, available in the prevalent non-English languages in the county. (42 CFR § 438.10(d)(3).)
- d.** The Contractor shall notify clients that written translation is available in prevalent languages free of cost and shall notify clients how to access those materials. (See 42 CFR § 438.10(d)(5)(i) & (iii); 9 CCR § 1810.410(e)(4).)
  - i.** The Contractor shall include taglines in the prevalent non-English languages in the State of California, as well as large print, explaining the availability of written translation or oral interpretation to understand the information provided. (42 CFR § 438.10(d)(2).)
  - ii.** The Contractor shall include taglines in the prevalent non-English languages in the State of California, as well as large print, explaining the availability of the toll-free and Teletypewriter Telephone/Text Telephone (TTY/TDY) telephone number of the Contractor’s member/customer service unit. (42 CFR § 438.10(d)(3).)

## **EXHIBIT C – TERMS AND CONDITIONS**

- iii.** The Contractor shall notify clients that written translation is available in prevalent languages free of cost and shall notify clients how to access those materials. (42 CFR § 438.10(d)(5)(i), (iii); Cal. Code Regs., tit. 9, § 1810.410, subd. (e), para. (4).)
- e.** The Contractor shall make oral interpretation and auxiliary aids and services, such as TTY/TDY and American Sign Language (ASL), available and free of charge for any language. Contractor shall notify clients that the service is available and how to access those services. (42 CFR § 438.10(d).)

### **VII. OWNERSHIP OF EQUIPMENT**

- A.** County shall have and retain ownership and title to all equipment valued over five thousand dollars (\$5,000) (including shipping and taxes) purchased by Contractor with County funds under this Agreement. County shall inventory tag all equipment and shall conduct, or require Contractor to conduct, an annual physical inventory of the equipment. Contractor shall make all equipment available to County during normal business hours for tagging or inventory.
- B.** Contractor shall maintain an Equipment Report listing of all equipment purchased under this Agreement together with bills of sale and any other documents as may be necessary to show clear title and reasonableness of the purchase price. The Equipment Report shall specify the quantity, name, description, purchase price, and date of purchase of all equipment.
- C.** Annually, Contractor shall submit to the County the Equipment Report. This report is due by July 31 each year and will cover the period from the inception of this Agreement through June 30 of the preceding fiscal year.

### **VIII. CLINICAL REVIEW AND/OR PROGRAM EVALUATION**

- A.** Contractor shall establish and maintain systems to review the quality and appropriateness of services rendered pursuant to this Agreement in accordance with applicable, Federal, State and County laws, regulations, and directives.
- B.** Contractor shall permit, at any reasonable time, County, State and/or Federal government personnel designated by the Director to enter Contractor's premises for the purpose of making periodic inspections (including, but not limited to, examining and auditing clinical records) to determine the fiscal and clinical quality, appropriateness and effectiveness of the services being rendered. Contractor shall furnish the Director with such information as may be required to evaluate fiscal and clinical quality, appropriateness and effectiveness of the services being rendered.
- C.** Should a clinical review, program evaluation or chart review by the County, State and/or Federal government identify billed units of service or goods and/or services that are determined disallowable, the Contractor shall repay County for any amount determined disallowable. Method of repayment is detailed in Exhibit B.

### **IX. CONFIDENTIALITY**

Contractor shall comply with, and require its officers, agents, employees, participants, and volunteers to comply with:

- A.** all applicable laws and regulations regarding the confidentiality of patient information, including but not limited to California Welfare and Institutions Code sections 5328 et. seq.,

## EXHIBIT C – TERMS AND CONDITIONS

10850, and 14100 et. seq., 42 U.S.C. section 1320d, and the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”), the HIPAA Omnibus Rule, 45 CFR Parts 160 and 164, and its implementing regulations, and the Federal Confidentiality of Substance Abuse Disorder Patient Records laws and regulations, Title 42 of the United States Code section 290dd-2 and 42 CFR Part 2 (“Part 2 Regulations”);

- B.** the privacy and security requirements of Exhibit F attached hereto; and
- C.** any additional regulations pertaining to confidentiality that the Federal, State or the County shall so specify that do not conflict with State or Federal regulations.

### **X. DISPUTES**

Should a dispute arise between the Contractor and the County relating to performance under this Agreement other than disputes governed by a dispute resolution process in Chapter 11 of Division 1, Title 9, California Code of Regulations (CCR), the Contractor shall, prior to exercising any other remedy which may be available, provide the County with written notice of the particulars of the dispute within thirty (30) calendar days of the incident. Upon receipt of the written notice, the County shall meet with the Contractor, review the facts in the dispute, and recommend a means of resolving the dispute. Final written response to the Contractor will be provided within thirty (30) days of receipt of the Contractor’s original written notice.

### **XI. TERMINATION**

**A.** Should either party fail to substantially perform its obligations in accordance with this Agreement, the other party may notify the defaulting party of such default in writing and provide not fewer than thirty (30) days to cure the default. Such notice shall describe the default and shall not be deemed a forfeiture or termination of this Agreement. If such default is not cured within said thirty (30) day period (or such longer period as is specified in the notice or agreed to by the parties), the party that gave notice of default may terminate this Agreement upon not fewer than fifteen (15) days advance written notice. The foregoing notwithstanding, neither party waives the right to recover damages against the other for breach of this Agreement.

**B.** This Agreement is subject to the County, the State of California and the Federal government appropriating and approving sufficient funds for the payments required by this Agreement. If the County's adopted budget and/or its receipts from the State and the Federal government do not contain sufficient funds for this Agreement, the County may terminate this Agreement by giving ten (10) days advance written notice thereof to the Contractor, in which event the County shall have no obligation to pay the Contractor any further funds or provide other consideration and the Contractor shall have no obligation to provide any further services pursuant to this Agreement. If the County terminates the Agreement pursuant to this subparagraph, the County will pay Contractor in accordance with this Agreement for all services performed to the satisfaction of the Director before such termination and for which funds have been appropriated as required by law.

**C.** The County may terminate this Agreement upon ten (10) days written notice to the Contractor in the event that Contractor becomes excluded, debarred, or suspended from participation from federally funded programs, or the Federal government, State of California, or County has otherwise determined that the Contractor does not meet the requirements for participation in the Medicaid or Medi-Cal program.

**D.** If, in the Director’s sole judgment, Contractor’s performance of the obligations, duties and responsibilities required of Contractor by this Agreement jeopardize the health, safety, or

## **EXHIBIT C – TERMS AND CONDITIONS**

welfare of any person, then County may terminate this Agreement immediately upon written notice served upon the Contractor.

**E.** If this Agreement is terminated, the Contractor shall promptly supply all information necessary for the reimbursement of any claims submitted to the State.

### **XII. APPLICABLE LAWS, REGULATIONS, ETC.**

**A.** In the performance of the services required by this Agreement, Contractor shall comply with all applicable Federal, State, and County laws, statutes, ordinances, regulations, and directives (including but not limited to all Federal, State and County letters and notices which set policy and/or provide guidelines for policy and/or performance). This Agreement is also subject to any additional restrictions or conditions that may subsequently be imposed upon the County by the Federal or State government.

**B.** This Agreement shall be deemed to be executed within the State of California and construed in accordance with and governed by the laws of the State of California. Any action or proceeding arising out of this Agreement shall be filed and resolved in a California State court located in Woodland, California.

### **XIII. NON-DISCRIMINATION IN SERVICES AND EMPLOYMENT**

**A.** Contractor shall not employ unlawful discriminatory practices in the admission of patients, assignments of accommodations, treatment, evaluation, employment of personnel, differing hours of operation for Medi-Cal versus non Medi-Cal clients, or in any other respect on the basis of race, color, gender, religion, marital status, national origin, age, sexual orientation, or mental or physical handicap, in accordance with the requirements of applicable Federal or State law, including, but not limited to, the following: denying a participant any service or benefit which is different, or is provided in a different manner or at a different time from that provided to other participants under this Agreement; subjecting a participant to segregation or separate treatment in any way in the enjoyment or any advantage or privilege enjoyed by others receiving any service or benefit; treating a participant differently from others in determining whether the participant has satisfied any admission, enrollment quota, eligibility, membership, or other requirement or condition which individuals must meet in order to be provided any service or benefit; and the assignment of times or places for the provision of services.

**B.** The provisions of the Americans with Disabilities Act of 1990, Section 504 of the Rehabilitation Act of 1973, the California Fair Employment and Housing Act (Government Code, §§ 12900 et. seq.), and the applicable regulations promulgated thereunder (2 California Code of Regulations (CCR), §§ 7285 et. seq.).

### **XIV. ADMISSION POLICIES AND PATIENTS' RIGHTS**

**A.** Contractor's admission policies (if applicable) shall be in writing and available to the public and shall include a provision that patients are accepted for care without discrimination as described in this Agreement.

**B.** Contractor shall adhere to and comply with all applicable State standards and requirements regarding timely access of Beneficiaries to care and services.

**C.** Contractor shall immediately notify the Director in writing whenever Contractor has reached its maximum lawful capacity to provide the services required by this Agreement in accordance with all applicable laws and regulations.

## EXHIBIT C – TERMS AND CONDITIONS

**D.** No provision of this Agreement shall be construed to replace or conflict with the duties of County patient's rights advocates described in Section 5520 of the California Welfare and Institutions Code.

### XV. INDEMNIFICATION

**A.** Contractor shall exercise all of the care and judgment consistent with good practices in the performance of the services required by this Agreement.

**B.** With the exception that this Section shall in no event be construed to require indemnification by Contractor to a greater extent than permitted under the laws or public policy of the State of California, Contractor shall indemnify, defend and hold harmless the County of Yolo and its officers, agents, employees and volunteers from and against any and all claims, damages, demands, losses, defense costs, expenses (including attorneys' fees) and liability of any kind or nature arising out of or resulting from performance of the work, provided that any such claim, damage, demand, loss, cost, expense or liability is caused in whole or in part by any negligent or intentional act or omission of the contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, regardless of whether or not it is caused in part by a party indemnified hereunder. Contractor and/or any subcontractor's responsibility for such defense and indemnity obligations shall survive the termination or completion of this Agreement for the full period of time allowed by law. The defense and indemnification obligations of this Agreement are undertaken in addition to, and shall not in any way be limited by, the insurance obligations contained in this Agreement. In providing any defense under this Section, Contractor shall utilize counsel approved by the Office of the County Counsel in its reasonable discretion.

**C.** Any subcontractor must agree to be bound to the County of Yolo in the same manner and to the same extent as Contractor is bound to the County of Yolo under this Agreement. Any subcontractors must further agree to include the same requirements and provisions of this Agreement, including the indemnity and insurance requirements, with any sub-subcontractor to the extent they apply to the scope of the sub-subcontractor's work.

### XVI. INSURANCE

**A.** During the term of this Agreement, Contractor shall at all times maintain, at its expense, the following coverages and requirements:

- 1.** Minimum Scope of Insurance – Coverage shall be at least as broad as the latest version of the following:
  - a.** Commercial General Liability: Insurance Services Office form CG 000. The policy shall not contain any exclusions contrary to the Agreement, including but not limited to endorsements or provisions limiting coverage for 1) Contractual liability such as ISO CG 24 26 or 21 29; or 2) cross liability or suits by one insured against another.
  - b.** Automobile Liability: Insurance Services Office form CA 00 01, code 1- Any Auto or including Hired and Non-Owned vehicles.
  - c.** Workers' Compensation and Employers' Liability: Workers' Compensation insurance as required by the State of California and Employers' Liability.
  - d.** Professional Liability (Errors and Omissions) (If applicable, see below)
- 2.** Minimum Limits (as applicable) - Insurance coverage shall be with limits not less than the following:

## EXHIBIT C – TERMS AND CONDITIONS

- a. **Commercial General Liability** – \$2,000,000/occurrence and \$4,000,000 annual aggregate or an aggregate of \$2,000,000 that applies separately to this project (ISO CG 25 03 or 25 04).
- b. **Automobile Liability** – \$1,000,000 per accident for bodily injury and property damage
- c. **Professional Liability/Malpractice/Errors and Omissions** –\$2,000,000 per occurrence and annual aggregate (If any engineer, architect, attorney, accountant, medical professional, psychologist, or other licensed professional performs work under a contract, or other professional contractors, such as computer and software designers the contractor must provide this insurance. If not, then this requirement automatically does not apply.)
- d. **Workers’ Compensation** – Statutory Limits/Employers’ Liability - \$1,000,000/accident for bodily injury or disease (If no employees, this requirement automatically does not apply.)

It shall be a requirement under this agreement that any available insurance proceeds broader than or in excess of the specified minimum Insurance coverage requirements and/or limits shall be available to the Additional Insured. Furthermore, the requirements for coverage and limits shall be (1) the minimum coverage and limits specified in this Agreement; or (2) the broader coverage and maximum limits of coverage of any Insurance policy or proceeds available to the named Insured; whichever is greater.

### 3. Other Insurance Provisions

- a. **Additional Insured Status** - The County, its officers, agents, employees and volunteers shall be named as additional insured on the CGL policy with respect to liability arising out of work or operations performed by or in behalf of the Contractor including, materials, parts, or equipment furnished in connection with such work or operations. Coverage can be provided in the form or an endorsement to the Contractor’s insurance (at least as broad as CG 20 10 11 85 or if not available, through the addition of both CG 20 37 and one of the following: CG 20 10, CG 20 26, or CG 20 33). [NOTE: Evidence of additional insured is needed as a separate endorsement or comparable policy language due to wording on the certificate negating any additional coverage listed writing in the description box.]
  - b. **Primary Coverage** - The Contractor’s policy shall be “primary and non-contributory” and will not seek contribution from the County’s insurance or self-insurance and shall be at least as broad as CG 20 01 04 13.
  - c. **Notice of Cancellation** – Each insurance policy required above shall provide that coverage shall not be cancelled, except with notice to the County.
  - d. **Waiver of Subrogation** – Contractor hereby grants to the County a waiver of any right to subrogation which any insurer of said Contractors may acquire against the County by virtue of the payment or any loss under such insurance. Contractor agrees to obtain any endorsement that may be necessary to affect this waiver of subrogation, but this provision applies regardless of whether or not the County has received a waiver of subrogation endorsement from the insurer.
4. The limits of Insurance required in this Agreement may be satisfied by a combination of primary and umbrella or excess Insurance. Any umbrella or excess Insurance shall contain or be endorsed to contain a provision that such coverage shall also apply on a primary and noncontributory basis for the benefit of the County of Yolo (if agreed to in a written contract or agreement) before the County’s own Insurance or self-insurance shall be called upon to protect it as a named insured.

**EXHIBIT C – TERMS AND CONDITIONS**

5. Said policies shall remain in force through the life of this Agreement and, with the exception of professional liability coverage, shall be payable on a “per occurrence” basis unless the County Risk Manager specifically consents in writing to a “claims made” basis. For all “claims made” coverage, in the event that the Contractor changes insurance carriers Contractor shall purchase “tail” coverage covering the term of this Agreement and not less than three years thereafter. Proof of such “tail” coverage shall be required at any time that the Contractor changes to a new carrier prior to receipt of any payments due.
  6. The Contractor shall declare all aggregate limits on the coverage before commencing performance of this Agreement, and the County’s Risk Manager reserves the right to require higher aggregate limits to ensure that the coverage limits required for this Agreement as set forth above are available throughout the performance of this Agreement.
  7. Any deductibles or self-insured retentions must be declared to and are subject to the approval of the County Risk Manager. All self-insured retentions (SIR) must be disclosed to Risk Management for approval and shall not reduce the limits of liability. Policies containing any SIR provision shall provide or be endorsed to provide that the SIR may be satisfied either by the named Insured or Yolo County.
  8. Insurance is to be placed with insurers with a current A.M. Best's rating of no less than A:VII, unless otherwise approved by the County Risk Manager.
  9. The policies shall cover all activities of Contractor, its officers, employees, agents and volunteers arising out of or in connection with this Agreement.
  10. For any claims relating to this Agreement, the Contractor's insurance coverage shall be primary, including as respects the County, its officers, agents, employees and volunteers. Any insurance maintained by the County shall apply in excess of, and not contribute with, insurance provided by Contractor's liability insurance policy.
- B.** Prior to commencing services pursuant to this Agreement, Contractor shall furnish the County with original policies or endorsements reflecting coverage required by this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. All endorsements are to be received by, and are subject to the approval of, the County Risk Manager before work commences. Upon County’s request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications.
- C.** During the term of this Agreement, Contractor shall furnish the County with original endorsements reflecting renewals, changes in insurance companies and any other documents reflecting the maintenance of the required coverage throughout the entire term of this Agreement. The endorsements are to be signed by a person authorized by that insurer to bind coverage on its behalf. Upon County’s request, Contractor shall provide complete, certified copies of all required insurance policies, including endorsements reflecting the coverage required by these specifications. Yolo County reserves the right to obtain a full certified copy of any Insurance policy and endorsements. Failure to exercise this right shall not constitute a waiver of right to exercise later.
- D.** Contractor agrees to include with all Subcontractors in their subcontract the same requirements and provisions of this Agreement including the indemnity and Insurance requirements to the extent they apply to the scope of the Subcontractor’s work. Subcontractors hired by Contractor agree to be bound to Contractor and the County of Yolo

**EXHIBIT C – TERMS AND CONDITIONS**

in the same manner and to the same extent as Contractor is bound to the County of Yolo under the

- E.** Contract Documents. Subcontractor further agrees to include these same provisions with any Sub-subcontractor. A copy of the Owner Contract Document Indemnity and Insurance provisions will be furnished to the Subcontractor upon request. The General Contractor and/or Contractor shall require all Subcontractors to provide a valid certificate of insurance and the required endorsements included in the Agreement prior to commencement of any work and General Contractor and/or Contractor will provide proof of compliance to the County of Yolo. (Coverage can be provided in the form or an endorsement to the Contractor’s insurance (at least as broad as CG 20 38 for operations and CG 20 40 for completed operations).
- F.** Contractor shall maintain insurance as required by this Agreement to the fullest amount allowed by law and shall maintain insurance for a minimum of five years following the completion of this project. In the event Contractor fails to obtain or maintain completed operations coverage as required by this Agreement, the County at its sole discretion may purchase the coverage required and the cost will be paid by Contractor.

**XVII. WORKERS’ COMPENSATION**

Contractor shall provide worker’s compensation coverage as required by State law, and prior to commencing services pursuant to this Agreement shall file the following statement with the County in a form substantially as set forth below.

**WORKERS’ COMPENSATION CERTIFICATE**

I am aware of the provisions of the California Labor Code, Section 3700 that requires every employer to be insured against liability for workers’ compensation or to undertake self-insurance in accordance with the provisions of that code, and I will comply with such provisions before commencing any services required by this Agreement.

The person executing this certificate on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to do so on behalf of Contractor; both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

**XVIII. NOTICE**

**A.** All notices shall be deemed to have been given when made in writing and delivered or mailed to the respective representatives of County and Contractor at their respective addresses as follows:

<b>Contractor:</b> OLE Health dba CommuniCare OLE 1141 Pear Tree Lane, Suite 100 Napa, CA 94558 Alicia Hardy, CEO	<b>County:</b> Yolo County Health and Human Services Agency 137 N. Cottonwood Street Woodland, CA 95695 Nolan Sullivan, Director
---	--

**B.** In lieu of written notice to the above addresses, any party may provide notices through the use of email provided the following email addresses are used:

//

## EXHIBIT C – TERMS AND CONDITIONS

**Contractor:**

[Shannon.garza@communicareole.org](mailto:Shannon.garza@communicareole.org)  
and  
[Kevin.Moses@CommuniCareOLE.org](mailto:Kevin.Moses@CommuniCareOLE.org)

**County:**

Contracts Unit: [HHSAContracts@YoloCounty.org](mailto:HHSAContracts@YoloCounty.org)  
Contract Administrator: [Mila.Green@yolocounty.org](mailto:Mila.Green@yolocounty.org)

**C.** Any party may change the email address to which such communications are to be given by providing the other parties with written notice of such change at least fifteen (15) calendar days prior to the effective date of the change.

**D.** All notices shall be effective upon receipt and shall be deemed received through delivery if personally served or served using email, or on the fifth (5th) day following deposit in the mail if sent by first class mail.

### **XIX. CONFLICT OF INTEREST**

**A.** Contractor shall comply with the laws and regulations of the State of California and County regarding conflicts of interest, including, but not limited to, Article 4 of Chapter 1, Division 4, Title 1 of the California Government Code, commencing with Section 1090, and Chapter 7 of Title 9 of said Code, commencing with Section 87100 including regulations promulgated by the California Fair Political Practices Commission.

**B.** Contractor covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of Contractor's obligations and responsibilities hereunder. Contractor further covenants that in the performance of this Agreement no person having any such interest shall be employed. This covenant shall remain in force until Contractor completes performance of the services required of it under this Agreement.

**C.** Contractor agrees that if any fact comes to its attention that raises any question as to the applicability of any conflict-of-interest law or regulation, Contractor will immediately inform the County and provide all information needed for resolution of the question.

### **XX. ASSIGNMENT AND SUBCONTRACTS**

The services and obligations required of Contractor under this Agreement are not assignable in whole or in part. In addition, Contractor shall not subcontract any portion of the services required of Contractor by this Agreement without the express written consent of the County. If any portion of the services required of Contractor are subcontracted, the subcontractor(s) shall maintain the same insurance as required of Contractor by this Agreement and Contractor shall be fully responsible to the County for all work undertaken by subcontractors.

### **XXI. STATUS OF CONTRACTOR**

**A.** It is understood and agreed by all the Parties hereto that Contractor is an independent contractor, and that no relationship of employer-employee exists between the County and Contractor. Neither Contractor nor Contractor's assigned personnel shall be entitled to any benefits payable to employees of the County. Contractor hereby indemnifies and holds the County harmless from any and all claims that may be made against the County based upon any contention by any third party that an employer-employee relationship exists by reason of this Agreement or any services provided pursuant to this Agreement.

**B.** It is further understood and agreed by all the Parties hereto that neither Contractor nor Contractor's assigned personnel shall have any right to act on behalf of the County in any capacity whatsoever as an agent or to bind the County to any obligation whatsoever.

## EXHIBIT C – TERMS AND CONDITIONS

### XXII. FEDERAL/STATE DEBARMENT/EXCLUSIONS

**A.** Contractor shall not permit any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent (5%) owners to provide services pursuant to this Agreement if such individual has been excluded or debarred from any Federal or State health care program.

**B.** Contractor shall verify that each of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent (5%) owners, is not excluded or debarred from participating in or being paid for participation in any Federal or State program within thirty (30) days of such person or entity becoming Contractor's officer, agent, employee, contractor, subcontractor, volunteer, or five percent (5%) owner, and thereafter not less frequently than once each year.

**C.** Contractor shall notify County, within twenty-four (24) hours of Contractor's knowledge, of any action taken by local, State or Federal agencies to exclude or bar Contractor, or any of its officers, agents, employees, contractors, subcontractors, volunteers or five percent (5%) owners from any Federal or State health care program. Contractor shall also notify County within twenty-four (24) hours of any event or condition that occurs, or which may arise which could lead to Contractor's, or any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent (5%) owner's exclusion or debarment from any Federal or State health care program.

**D.** Contractor shall provide County information as requested by the Director regarding the status of Contractor's providers officers, agents, employees, contractors, subcontractors, volunteers or five percent (5%) owners regarding participation, exclusion or debarment of Contractor, or any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent (5%) owners from any Federal or State health care program.

**E.** Any other provision of this Agreement notwithstanding, Contractor shall not be entitled to any compensation for any services provided pursuant to this Agreement by any of its officers, agents, employees, contractors, subcontractors, volunteers, or five percent (5%) owners who has been excluded or debarred from any Federal or State health care program.

#### **F. DEBARMENT AND SUSPENSION CERTIFICATION**

**1.** By signing this Agreement, the Contractor agrees to comply with applicable federal suspension and debarment regulations including, but not limited to 7 CFR Part 3017, 45 CFR 76, 40 CFR 32 or 34 CFR 85.

**2.** By signing this Agreement, the Contractor certifies to the best of its knowledge and belief, that it and its principals:

**a)** Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded by any federal department or agency;

**b)** Have not within a three-year period preceding this Agreement been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

## EXHIBIT C – TERMS AND CONDITIONS

- c) Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in Paragraph B(2) herein; and
  - d) Have not within a three-year period preceding this Agreement had one or more public transactions (Federal, State or local) terminated for cause or default.
  - e) Shall not knowingly enter into any lower tier covered transaction with a person who is proposed for debarment under federal regulations (i.e., 48 CFR part 9, subpart 9.4), debarred, suspended, declared ineligible, or voluntarily excluded from participation in such transaction, unless authorized by the State.
  - f) Will include a clause entitled, “Debarment and Suspension Certification” that essentially sets for the provisions herein, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
3. If the Contractor is unable to certify to any of the statements in this certification, the Contractor shall submit an explanation to the Director.
4. The terms and definitions herein have the meanings set out in the Definitions and Coverage sections of the rules implementing Federal Executive Order 12549.
5. If the Contractor knowingly violates this certification, in addition to other remedies available to the Federal Government, the County may terminate this Agreement for cause or default.

### XXIII. FALSE CLAIMS ACT

**A.** Contractor and its employees, contractors, and agents shall read, acknowledge receipt of, and comply with all provisions of the County’s policies and procedures designed to detect and prevent fraud, waste, and abuse in the provision of medical assistance, in accordance with 42 USC 1396(a) (68) (section 6032 of the Deficit Reduction Act and the Federal False Claims Act (31 U.S.C. §§3729-3733). Failure to comply with any of these policies and procedures is a material breach of this contract and grounds for termination for cause.

**B.** Contractor shall certify, on an annual basis that it, and all of its employees, contractors, and agents have read and understand the County’s policies and procedures regarding the detection and prevention of fraud, waste, and abuse in the provision of medical assistance, as referenced above. This certification shall be submitted with the provider’s annual cost report. In addition, at the time Contractor hires a new employee, contractor, or agent, Contractor will certify that individual has read and understands the County’s policies and procedures regarding the detection and prevention of fraud, waste, and abuse in the provision of medical assistance.

### XXIV. COVENANTS AND CONDITIONS

Where there is a doubt as to whether a provision of this Agreement is a covenant or a condition, the provision shall carry the legal effect of both. Should the County choose to excuse any given failure of Contractor to meet any given condition, covenant or obligation (whether precedent or subsequent), that decision will not be, or have the legal effect of, a waiver of the legal effect in subsequent circumstances of either that condition, covenant or obligation or any other found in this Agreement. All conditions, covenants and obligations continue to apply no matter how often County may choose to excuse a failure to perform them.

### XXV. ADDITIONAL PROVISIONS

Except where specifically stated otherwise in this Agreement, the promises in this Agreement benefit the County and Contractor only. They are not intended to, nor shall they be interpreted or

## EXHIBIT C – TERMS AND CONDITIONS

applied to, give any enforcement rights to any other persons (including corporate) which might be affected by the performance or non-performance of this Agreement, nor do the Parties hereto intend to convey to anyone any “legitimate claim of entitlement” with the meaning and rights that phrase has been given by case law.

### XXVI. AMENDMENT

Except as provided under paragraph IV, Terms and Conditions, in the Agreement, this Agreement may be amended only by written instrument signed by the County and Contractor; provided, however, that the County may unilaterally amend this Agreement, in whole or in part, to reflect any changes to the State Contracts.

### XXVII. WAIVER

The waiver by the County or any of its officers, agents, or employees, or the failure of the County or its officers, agents, or employees to take action with respect to any right conferred by, or any breach of any obligation or responsibility of this Agreement shall not be deemed to be a waiver of such obligation or responsibility, or subsequent breach of same, or of any terms, covenants or conditions of this Agreement.

### XXVIII. AUTHORIZED REPRESENTATIVE

The person executing this Agreement on behalf of Contractor affirmatively represents that she/he has the requisite legal authority to enter into this Agreement on behalf of Contractor and to bind Contractor to the terms and conditions of this Agreement. Both the person executing this Agreement on behalf of Contractor and Contractor understand that the County is relying on this representation in entering into this Agreement.

### XXIV. PUBLIC RECORDS ACT

Upon its execution, this Agreement (including all exhibits and attachments) shall be subject to disclosure pursuant to the California Public Records Act.

### XXX. COST SETTLEMENT

**A.** If the Contractor provides mental health services as defined in CCR Title 9 (whether Medi-Cal or non-Medi-Cal), Contractor shall provide County a Certified Annual Mental Health Cost Report. Contractor shall certify and submit a Cost Report covering the preceding County fiscal year of July 1 through June 30, in a form satisfactory to the Director and as prescribed by the State in the Cost Reporting Data Collection Manual and Short-Doyle/Medi-Cal cost report instructions. This Cost Report is due to the County no later than October 31 unless otherwise specified by the Director. In the event that this Agreement expires or is terminated on a date other than June 30, Contractor shall provide County such a Cost Report, covering the preceding period of July 1 through the date of expiration or termination no later than forty-five (45) days after the date of expiration or termination unless otherwise specified by the Director.

**B.** The Cost Report calculates the Cost per unit as the lowest of Actual Cost, Published Charge, and County Maximum Allowance (CMA) or approved Negotiated Rate. If actual cost is MORE than the CMA, the contractor will incur a loss, and if the CMA is LESS than the cost, then the amount of excess payment beyond cost must be returned to the County when cost settlement occurs.

**C.** In the event that Contractor’s per unit rates in the Cost Report are less than the rates paid by County, County may cost settle with Contractor. In the event of cost settlement, the County

## EXHIBIT C – TERMS AND CONDITIONS

shall invoice Contractor for repayment upon County's final review of the annual Cost Report. Contractor shall remit payment to County within forty-five (45) days of invoice, unless an alternate repayment agreement is structured in writing and approved by the Health and Human Services Agency Director.

**D.** Contractor will be subject to Federal, State, or local audits at any time. Contractor and County will each be responsible for any audit errors or omissions on their part. The annual State Department of Health Care Services/Federal Audit may not occur until five years after close of fiscal year and not besettled until all Audit appeals are completed/closed.

**E.** Contractor may use unaudited financial statements as the basis of cost information for completion of the Cost Report. Contractor will forward a copy of the unaudited financial statements to County along with the completed Cost Report.

**F.** Contractor shall provide the Certified Audited Financial Reports to the County as specified in Section IV of Exhibit C.

**G.** This Cost Report is subject to examination and audit by Federal, State, or local government, and their authorized representatives, to determine its compliance with this Agreement and any applicable laws and regulations.

**H.** County shall inform Contractor of any audit finding relevant to the Contractor. Contractor and County shall take any necessary actions to respond to, correct, and resolve the audit findings.

**I.** Should the County, State and/or Federal government, and their authorized representatives, disallow any paid goods and/or services, or determine that Contractor has misspent funds, or been overpaid based on the requirements of this Agreement and applicable laws and regulations, County shall demand repayment from Contractor for any amount determined disallowable.

**J.** Method of repayment, either due from the County to Contractor or vice versa, is detailed in Exhibit B.

**K.** County shall determine the final compensation to the Contractor based on the final audited Cost Report at the actual rate and the total compensation shall not exceed the maximum payable set forth Section III of this Agreement.

**EXHIBIT D – CONTRACT BUDGET**

<b>OLE Health dba CommuniCare OLE</b>		
<b>Integrated Behavioral Health Services (IBHS)</b>		
	Cost Items	Fiscal Year 2023-24 January 1, 2024 through June 30, 2024
1	a. Personnel (Salary, Benefits, and Payroll Taxes)	\$250,000
	b. Indirect/Overhead/Administration, not to exceed 15% of Personnel Costs (Item 1a)	\$37,500
2	Operating	\$8,500
3	Direct to Clients	\$4,000
4	<b>Total</b>	<b>\$300,000</b>

<b>OLE Health dba CommuniCare OLE</b>		
<b>Integrated Behavioral Health Services (IBHS)</b>		
	Cost Items	Fiscal Year 2024-25 July 1, 2024 through June 30, 2025
1	a. Personnel (Salary, Benefits, and Payroll Taxes)	\$492,420
	b. Indirect/Overhead/Administration, not to exceed 15% of Personnel Costs (Item 1a)	\$73,863
2	Operating	\$28,145
3	Direct to Clients	\$5,572
4	<b>Total</b>	<b>\$600,000</b>

<b>OLE Health dba CommuniCare OLE</b>		
<b>Integrated Behavioral Health Services (IBHS)</b>		
	Cost Items	Fiscal Year 2025-26 July 1, 2025 through June 30, 2026
1	a. Personnel (Salary, Benefits, and Payroll Taxes)	\$492,420
	b. Indirect/Overhead/Administration, not to exceed 15% of Personnel Costs (Item 1a)	\$73,863
2	Operating	\$28,145
3	Direct to Clients	\$5,572
4	<b>Total</b>	<b>\$600,000</b>

**EXHIBIT E – PERFORMANCE MEASURES**

INTEGRATED BEHAVIORAL HEALTH SERVICES	CommuniCare OLE	Alicia Hardy
Program Purpose	To provide Integrated Behavioral Health Services (IBHS) for the Latino community of Yolo County. This program will provide culturally responsive outreach, referral, and support services to Yolo County Latino/Hispanic residents, particularly farmworkers, and those with health issues, mental health illnesses, and/or substance use issues.	
Program Information	<p>While serving the entire Latino community, the program will target outreach efforts to Latino men/heads of household. This program will develop relationships between consumers of services, support partners, families, various service providers, and the community. Program services aim:</p> <p>to decrease the cost to county and other service providers for uninsured individuals,</p> <ul style="list-style-type: none"> <li>• reduce mental health hospitalizations and length of hospital stays for individuals within the target population,</li> <li>• improve the quality of life and independence for clients within the target population,</li> <li>• expand the input on programmatic structure, outreach, and treatment activities for individuals within the target population,</li> <li>• reduce mental health stigma, and</li> <li>• increase service penetration rates in the Latino community.</li> </ul>	
<b>PM1: How much did we do?</b>		
1.1	Total FTE by classification, bilingual and bicultural status.	
1.2	Total # of participants served.	
1.3	Total # of unduplicated participants served.	
1.4	Total # of participants identified as male heads of household.	
1.5	Total # of participants who received services in Spanish as their preferred language.	
1.6	Total # of Promotors and FTE equivalent involved in the program.	
1.7	<p># of outreach events held or attended in rural areas of Yolo counties and average # of participants at each event (broken down by city):</p> <ul style="list-style-type: none"> <li>• Cache Creek area</li> <li>• Capay Valley</li> <li>• Clarksburg</li> <li>• Dunnigan</li> <li>• Esparto</li> <li>• Winters</li> <li>• Knights Landing</li> </ul>	
1.8	# of Latino Farmworker Events held or attended and average number of participants at each Latino Farmworker events.	
1.9	Total # of unduplicated participants who received a whole-health person screening, with percentage (%) of participants screened for a history of trauma.	
<b>PM2: How well did we do it?</b>		
2.1	# and % of participants who reported satisfaction with services (e.g., services were provided at a convenient time and location; program staff made me feel welcomed, connected me to resources in a timely manner, treated me with respect, respected my cultural background / beliefs, spoke to me in a language that I understood).	
2.2	<p># and % of participants referred to:</p> <ul style="list-style-type: none"> <li>• Primary Care services</li> </ul>	

**EXHIBIT E – PERFORMANCE MEASURES**

	<ul style="list-style-type: none"> <li>• Mental Health / Substance Use Disorder services</li> <li>• Other support services (e.g., health benefits enrollment, food resources, housing support).</li> </ul>
2.3	# and % of program staff trained in an Evidence-Informed or Evidence-Based practices.
<b>PM3: Is anyone better off?</b>	
3.1	# and % of participants reporting reduced stigmatizing attitudes, knowledge, and/or behavior related to mental illness and/or substance use and seeking behavioral health services.
3.2	# and % of participants reporting increased knowledge of services and coping (e.g., they learned new skills to help them in their mental wellness, they learned how to define health/behavioral health needs, they learned how to access culturally sensitive health/behavioral health services).
3.3	# and % of participants who engaged in treatment. Engagement is defined as participating at least once to which they were referred, including: <ul style="list-style-type: none"> <li>• Primary Care Services</li> <li>• Mental Health / Substance Use Disorder services</li> <li>• Other support Services (e.g., health benefit enrollment, food resources, housing support)</li> </ul>
3.4	# and % of participants who, at program follow-up, reported improved outcomes because of any referral.
3.5	# and % of new participants with improved functional outcomes (e.g., enrollment in entitlement benefits, employment status, housing status, health insurance coverage, food security).
3.6	# and % of total program participants reporting improved mental, physical, and/or emotional well-being outcomes.

Performance Measures Reports are due Quarterly as follows:

Submit October 30th for the period of July 1<sup>st</sup> through September 30<sup>th</sup>

Submit January 31st for the period of October 1<sup>st</sup> through December 31<sup>st</sup>

Submit April 30th for the period of January 1<sup>st</sup> through March 30<sup>th</sup>

Submit July 31st for the period of April 1<sup>st</sup> through June 30<sup>th</sup>

Contractor shall submit the Performance Outcome Measures report electronically via email to:

[Mila.Green@yolocounty.org](mailto:Mila.Green@yolocounty.org)

**EXHIBIT F – HIPAA COMPLIANCE**

**I.** The County and Contractor shall protect the privacy and provide for the security of protected health information (PHI) pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (“HIPAA”), the HIPAA Omnibus Rule, Title 45, Code of Federal Regulations (“C.F.R.”) Parts 160 and 164, the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (“the HITECH Act”), and regulations promulgated there under by the U.S. Department of Health and Human Services (the “HIPAA Regulations”) and other applicable laws (collectively “the Privacy Laws”). The requirements of the Privacy Laws include but are not limited to: the use of methods of encryption for any electronic submissions containing PHI; and specific notice requirements should there be a security incident as defined in 45 CFR section 164.304 or breach of unsecured PHI as defined by 45 CFR section 164.402.

**II.** Pursuant to HIPAA and the other Privacy Laws, as set forth in, but not limited to, 45 CFR sections 164.314(a), 164.502(e) and 164.504(e), the County, Contractor, and other third party entity or entities may be required to enter into a Business Associate Agreement or Business Associate Agreement & Qualified Service Organization Agreement containing the specific requirements regarding Contractor’s acquisition, access, use, or disclosure of PHI prior to such acquisition, access, use, or disclosure of PHI. If the County determines, in its sole discretion, that a Business Associate Agreement or Business Associate Agreement & Qualified Service Organization Agreement is required, the parties mutually agree to execute same.

**III.** By signing this Agreement, Contractor certifies it has reviewed, understands the contents of, and shall comply with:

**A.** the requirements set forth in Attachment I – *Information Confidentiality and Security Requirements* and *Exhibit E – Privacy and Information Security Provisions* of the State Performance Agreement, which are attached hereto as Attachment I and are hereby incorporated by reference.

**B.** the Yolo County HHS Behavioral Health Compliance Plan, available to the Contractor [here](#).

**IV.** Contractor shall report, as soon as reasonably practicable, within twenty-four (24) hours for security incidents, as defined in 45 CFR section 164.304, and one (1) hour for breaches of unsecured PHI as defined by Section 164.402 of the HIPAA Regulations to:

**A.** Alberto Lara, County’s Interim Privacy Officer-Risk Manager/Safety Officer at [Alberto.Lara@yolocounty.org](mailto:Alberto.Lara@yolocounty.org), and

**B.** Lee Gerney, County’s Information Security Officer-Chief Technology Officer at [lee.gerney@yolocounty.org](mailto:lee.gerney@yolocounty.org), and

**C.** Charles Egbert, County’s HHS Privacy Officer at [Charles.Egbert@yolocounty.org](mailto:Charles.Egbert@yolocounty.org), and

**D.** Katherine Barrett, HHS Behavioral Health Compliance Officer at [HHSA.BHCompliance@yolocounty.org](mailto:HHSA.BHCompliance@yolocounty.org).

**V.** The provisions of this **Exhibit F** shall survive the termination, expiration, or cancellation of this Agreement.

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

1. **Definitions.** For purposes of this Exhibit, the following definitions shall apply:
  - A. **Public Information:** Information that is not exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - B. **Confidential Information:** Information that is exempt from disclosure under the provisions of the California Public Records Act (Government Code sections 6250-6265) or other applicable state or federal laws.
  - C. **Sensitive Information:** Information that requires special precautions to protect from unauthorized use, access, disclosure, modification, loss, or deletion. Sensitive Information may be either Public Information or Confidential Information. It is information that requires a higher than normal assurance of accuracy and completeness. Thus, the key factor for Sensitive Information is that of integrity. Typically, Sensitive Information includes records of agency financial transactions and regulatory actions.
  - D. **Personal Information:** Information that identifies or describes an individual, including, but not limited to, their name, social security number, physical description, home address, home telephone number, education, financial matters, and medical or employment history. **It is DHCS' policy to consider all information about individuals private unless such information is determined to be a public record.** This information must be protected from inappropriate access, use, or disclosure and must be made accessible to data subjects upon request. Personal Information includes the following:

Notice-triggering Personal Information: Specific items of personal information (name plus Social Security number, driver license/California identification card number, or financial account number) that may trigger a requirement to notify individuals if it is acquired by an unauthorized person. For purposes of this provision, identity shall include, but not be limited to name, identifying number, symbol, or other identifying particular assigned to the individual, such as finger or voice print or a photograph. See Civil Code sections 1798.29 and 1798.82.
2. **Nondisclosure.** The Contractor and its employees, agents, or subcontractors shall protect from unauthorized disclosure any Personal Information, Sensitive Information, or Confidential Information (hereinafter identified as PSCI).
3. The Contractor and its employees, agents, or subcontractors shall not use any PSCI for any purpose other than carrying out the Contractor's obligations under this Agreement.
4. The Contractor and its employees, agents, or subcontractors shall promptly transmit to the DHCS Program Contract Manager all requests for disclosure of any PSCI not emanating from the person who is the subject of PSCI.
5. The Contractor shall not disclose, except as otherwise specifically permitted by this Agreement or authorized by the person who is the subject of PSCI, any PSCI to anyone other than DHCS without prior written authorization from the DHCS Program Contract Manager, except if disclosure is required by State or Federal law.
6. The Contractor shall observe the following requirements:

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

A. **Safeguards.** The Contractor shall implement administrative, physical, and technical

safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the PSCI, including electronic PSCI that it creates, receives, maintains, uses, or transmits on behalf of DHCS. Contractor shall develop and maintain a written information privacy and security program that includes administrative, technical and physical safeguards appropriate to the size and complexity of the Contractor's operations and the nature and scope of its activities, Including at a minimum the following safeguards:

**1) Personnel Controls**

- a. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of DHCS, or access or disclose DHCS PSCI, must complete information privacy and security training, at least annually, at Business Associate's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following contract termination.
- b. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
- c. **Confidentiality Statement.** All persons that will be working with DHCS PSCI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to DHCS PSCI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for DHCS inspection for a period of six (6) years following contract termination.
- d. **Background Check.** Before a member of the workforce may access DHCS PSCI, a thorough background check of that worker must be conducted, with evaluation of the results to assure that there is no indication that the worker may present a risk to the security or integrity of confidential data or a risk for theft or misuse of confidential data. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years following contract termination.

**2) Technical Security Controls**

- a. **Workstation/Laptop encryption.** All workstations and laptops that process and/or store DHCS PSCI must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the DHCS Information Security Office.
- b. **Server Security.** Servers containing unencrypted DHCS PSCI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- c. **Minimum Necessary.** Only the minimum necessary amount of DHCS PSCI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain DHCS PSCI data must be

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, smartphones, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.

- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store DHCS PSCI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store DHCS PSCI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing DHCS PSCI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password, at maximum within 24 hours. Passwords are not to be shared. Passwords must be at least eight characters and must be a non-dictionary word. Passwords must not be stored in readable format on the computer. Passwords must be changed every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:
  - i. Upper case letters (A-Z)
  - ii. Lower case letters (a-z)
  - iii. Arabic numerals (0-9)
  - iv. Non-alphanumeric characters (punctuation symbols)
- h. **Data Destruction.** When no longer needed, all DHCS PSCI must be cleared, purged, or destroyed consistent with NIST Special Publication 800-88, Guidelines for Media Sanitization such that the PSCI cannot be retrieved.
- i. **System Timeout.** The system providing access to DHCS PSCI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to DHCS PSCI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for DHCS PSCI, or which alters DHCS PSCI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If DHCS PSCI is Information Confidentiality and Security Requirements stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- l. **Access Controls.** The system providing access to DHCS PSCI must use role based access controls for all user authentications, enforcing the principle of least privilege.

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

- m. *Transmission encryption.*** All data transmissions of DHCS PSCI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES. Encryption can be end to end at the network level, or the data files containing PSCI can be encrypted. This requirement pertains to any type of PSCI in motion such as website access, file transfer, and E-Mail.
- n. *Intrusion Detection.*** All systems involved in accessing, holding, transporting, and protecting DHCS PSCI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**3) Audit Controls**

- a. *System Security Review.*** All systems processing and/or storing DHCS PSCI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. *Log Reviews.*** All systems processing and/or storing DHCS PSCI must have a routine procedure in place to review system logs for unauthorized access.
- c. *Change Control.*** All systems processing and/or storing DHCS PSCI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

**4) Business Continuity / Disaster Recovery Controls**

- a. *Emergency Mode Operation Plan.*** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of electronic DHCS PSCI in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- b. *Data Backup Plan.*** Contractor must have established documented procedures to backup DHCS PSCI to maintain retrievable exact copies of DHCS PSCI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore DHCS PSCI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of DHCS data.

**5) Paper Document Controls**

- a. *Supervision of Data.*** DHCS PSCI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. DHCS PSCI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- b. *Escorting Visitors.*** Visitors to areas where DHCS PSCI is contained shall be escorted and DHCS PSCI shall be kept out of sight while visitors are in the area.
- c. *Confidential Destruction.*** DHCS PSCI must be disposed of through confidential

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

means, such as cross cut shredding and pulverizing.

- d. **Removal of Data.** DHCS PSCI must not be removed from the premises of the Contractor except with express written permission of DHCS.
  - e. **Faxing.** Faxes containing DHCS PSCI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
  - f. **Mailing.** Mailings of DHCS PSCI shall be sealed and secured from damage or inappropriate viewing of PSCI to the extent possible. Mailings which include 500 or more individually identifiable records of DHCS PSCI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of DHCS to use another method is obtained.
- B. **Security Officer.** The Contractor shall designate a Security Officer to oversee its data security program who will be responsible for carrying out its privacy and security programs and for communicating on security matters with DHCS.

***Discovery and Notification of Breach. Notice to DHCS:***

- (1) To notify DHCS **immediately** upon the discovery of a suspected security incident that involves data provided to DHCS by the Social Security Administration. This notification will be **by telephone call plus email or fax** upon the discovery of the breach. (2) To notify DHCS **within 24 hours by email or fax** of the discovery of unsecured PSCI in electronic media or in any other media if the PSCI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, any suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI in violation of this Agreement and this Addendum, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by the contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of the contractor.

Notice shall be provided to the DHCS Program Contract Manager, the DHCS Privacy Officer and the DHCS Information Security Officer. If the incident occurs after business hours or on a weekend or holiday and involves data provided to DHCS by the Social Security Administration, notice shall be provided by calling the DHCS EITS Service Desk. Notice shall be made using the “DHCS Privacy Incident Report” form, including all information known at the time. The contractor shall use the most current version of this form, which is posted on the DHCS Privacy Office website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select “Privacy” in the left column and then “Business Use” near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

- C. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of PSCI, the Contractor shall take:
- 1) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment and
  - 2) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.

- D. **Investigation of Breach.** The Contractor shall immediately investigate such security

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:**

**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

incident, breach, or unauthorized use or disclosure of PSCI. If the initial report did not include all of the requested information marked with an asterisk, then within seventy-two (72) hours of the discovery, The Contractor shall submit an updated “DHCS Privacy Incident Report” containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer:

- E. **Written Report.** The Contractor shall provide a written report of the investigation to the DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer, if all of the required information was not included in the DHCS Privacy Incident Report, within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall include, but not be limited to, the information specified above, as well as a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure.
  - F. **Notification of Individuals.** The Contractor shall notify individuals of the breach or unauthorized use or disclosure when notification is required under state or federal law and shall pay any costs of such notifications, as well as any costs associated with the breach. The DHCS Program Contract Manager, the DHCS Privacy Officer, and the DHCS Information Security Officer shall approve the time, manner and content of any such notifications.
7. **Affect on lower tier transactions.** The terms of this Exhibit shall apply to all contracts, subcontracts, and subawards, regardless of whether they are for the acquisition of services, goods, or commodities. The Contractor shall incorporate the contents of this Exhibit into each subcontract or subaward to its agents, subcontractors, or independent consultants.
8. **Contact Information.** To direct communications to the above referenced DHCS staff, the Contractor shall initiate contact as indicated herein. DHCS reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Exhibit or the Agreement to which it is incorporated.

<b>DHCS Program Contract Manager</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
See the Scope of Work Exhibit for Program Contract Manager information	Privacy Officer c/o Office of Legal Services Department of Health Care Services P.O. Box 997413, MS 0011 Sacramento, CA 95899-7413  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a> Telephone: (916) 445-4646	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a> Telephone: ITSD Help Desk (916) 440-7000 or (800) 579-0874

9. **Audits and Inspections.** From time to time, DHCS may inspect the facilities, systems, books and records of the Contractor to monitor compliance with the safeguards required in the Information Confidentiality and Security Requirements (ICSR) Exhibit. Contractor shall promptly remedy any violation of any provision of this ICSR Exhibit. The fact that DHCS inspects,

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:**

**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve Contractor of its responsibility to comply with this ICSR Exhibit.

**PRIVACY AND INFORMATION SECURITY PROVISIONS**

This Exhibit is intended to protect the privacy and security of specified Department information that Contractor may access, receive, or transmit under this Agreement. The Department information covered under this Exhibit consists of: (1) Protected Health Information as defined under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA")(PHI); and (2) Personal Information (PI) as defined under the California Information Practices Act (CIPA), at California Civil Code sections 1798-1798.78, Personal Information may include data provided to the Department by the Social Security Administration.

This Exhibit consists of the following parts:

1. Exhibit E.1-1, HIPAA
2. Business Associate Addendum, which provides for the privacy and security of PHI.
3. Exhibit E.1-2, which provides for the privacy and security of PI in accordance with specified provisions of the Agreement between the Department and the Social Security Administration, known as the Information Exchange Agreement (IEA) and the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (Computer Agreement) to the extent Contractor access, receives, or transmits PI under these Agreements. Exhibit E-2 further provides for the privacy and security of PI under Civil Code Section 1798.3(a) and 1798.29.
4. Exhibit E.1-3, Miscellaneous Provision, sets forth additional terms and conditions that extend to the provisions of Exhibit E in its entirety.

**EXHIBIT E.1-1 HIPAA Business Associate Addendum**

**1. Recitals.**

- A. A business associate relationship under the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 ("HIPAA"), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 ("the HITECH Act"), 42 U.S.C. Section 17921 et seq., and their implementing privacy and security regulations at 45 CFR Parts 160 and 164 ("the HIPAA regulations") between Department and Contractor arises only to the extent that Contractor creates, receives, maintains, transmits, uses or discloses PHI or ePHI on the Department's behalf, or provides services, arranges, performs or assists in the performance of functions or activities on behalf of the Department that are included in the definition of "business associate" in 45 C.F.R. 160.103 where the provision of the service involves the disclosure of PHI or ePHI from the Department, including but not limited to, utilization review, quality assurance, or benefit management. To the extent Contractor performs these services, functions, and activities on behalf of Department, Contractor is the Business Associate of the Department, acting on the Department's behalf. The Department and Contractor are each a party to this Agreement and are collectively referred to as the "parties."
- B. The Department wishes to disclose to Contractor certain information pursuant to the terms of this Agreement, some of which may constitute Protected Health Information

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

(“PHI”), including protected health information in electronic media (“ePHI”), under federal law, to be used or disclosed in the course of providing services and activities as set forth in Section 1.A. of Exhibit F-1 of this Agreement. This information is hereafter referred to as “Department PHI”.

- C. The purpose of this Exhibit E.1-1 is to protect the privacy and security of the PHI and ePHI that may be created, received, maintained, transmitted, used or disclosed pursuant to this Agreement, and to comply with certain standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, including, but not limited to, the requirement that the Department must enter into a contract containing specific requirements with Contractor prior to the disclosure of PHI to Contractor, as set forth in 45 CFR Parts 160 and 164 and the HITECH Act. To the extent that data is both PHI or ePHI and Personally Identifying Information, both Exhibit E.1-2 (including Attachment B, the SSA Agreement between SSA, CHHS and DHCS, referred to in Exhibit E.1-2) and this Exhibit E.1-1 shall apply.
- D. The terms used in this Exhibit E.1-1, but not otherwise defined, shall have the same meanings as those terms have in the HIPAA regulations. Any reference to statutory or regulatory language shall be to such language as in effect or as amended.

**2. Definitions**

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

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

reasonable basis to believe the information can be used to identify the individual, as set forth under 45 CFR section 160.103.

- H. Privacy Rule shall mean the HIPAA Regulations that are found at 45 CFR Parts 160 and 164, subparts A and E.
- I. Protected Health Information (PHI) means individually identifiable health information that is transmitted by electronic media, maintained in electronic media, or is transmitted or maintained in any other form or medium, as set forth under 45 CFR Section 160.103 and as defined under HIPAA.
- J. Required by law, as set forth under 45 CFR Section 164.103, means a mandate contained in law that compels an entity to make a use or disclosure of PHI that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.
- K. Secretary means the Secretary of the U.S. Department of Health and Human Services ("HHS") or the Secretary's designee.
- L. Security Incident means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of Department PHI, or confidential data utilized by Contractor to perform the services, functions and activities on behalf of Department as set forth in Section 1.A. of Exhibit E.1-1 of this Agreement; or interference with system operations in an information system that processes, maintains or stores Department PHI.
- M. Security Rule shall mean the HIPAA regulations that are found at 45 CFR Parts 160 and 164.
- N. Unsecured PHI shall have the meaning given to such term under the HITECH Act, 42 U.S.C. section 17932(h), any guidance issued by the Secretary pursuant to such Act and the HIPAA regulations.

**3. Terms of Agreement**

**A. Permitted Uses and Disclosures of Department PHI by Contractor.**

Except as otherwise indicated in this Exhibit E.1-1, Contractor may use or disclose Department PHI only to perform functions, activities or services specified in Section 1.A of Exhibit E.1-1 of this Agreement, for, or on behalf of the Department, provided that such use or disclosure would not violate the HIPAA regulations or the limitations set forth in 42 CFR Part 2, or any other applicable law, if done by the Department. Any such use or disclosure, if not for purposes of treatment activities of a health care provider as defined by the Privacy Rule, must, to the extent practicable, be limited to the limited data set, as defined in 45 CFR section 164.514(e)(2), or, if needed, to the minimum necessary to accomplish the intended

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

purpose of such use or disclosure, in compliance with the HITECH Act and any guidance issued pursuant to such Act, and the HIPAA regulations.

**B. Specific Use and Disclosure Provisions.** Except as otherwise indicated in this Exhibit E.1-1, Contractor may:

- 1) **Use and Disclose for Management and Administration.** Use and disclose Department PHI for the proper management and administration of the Contractor's business, provided that such disclosures are required by law, or the Contractor obtains reasonable assurances from the person to whom the information is disclosed, in accordance with Section D(7) of this Exhibit E.1-1, that it will remain confidential and will be used or further disclosed only as required by law or for the purpose for which it was disclosed to the person, and the person notifies the Contractor of any instances of which it is aware that the confidentiality of the information has been breached.
- 2) **Provision of Data Aggregation Services.** Use Department PHI to provide data aggregation services to the Department to the extent requested by the Department and agreed to by Contractor. Data aggregation means the combining of PHI created or received by the Contractor, as the Business Associate, on behalf of the Department with PHI received by the Business Associate in its capacity as the Business Associate of another covered entity, to permit data analyses that relate to the health care operations of the Department

**C. Prohibited Uses and Disclosures**

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

**D. Responsibilities of Contractor**

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PHI other than as permitted or required by this Agreement or as required by law, including but not limited to 42 CFR Part 2.
- 2) **Compliance with the HIPAA Security Rule.** To implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Department PHI, including electronic PHI, that it creates, receives, maintains, uses or transmits on behalf of the Department, in compliance with 45 CFR Sections 164.308, 164.310 and 164.312, and to prevent use or disclosure of Department PHI other than as provided for by this Agreement. Contractor shall implement reasonable and appropriate policies and procedures to comply with the

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

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

- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, Data Security Requirements;
  - b. Achieving and maintaining compliance with the HIPAA Security Rule (45 CFR Parts 160 and 164), as necessary in conducting operations on behalf of DHCS under this Agreement; and
  - c. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A-130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies.
- 4) **Security Officer.** Contractor shall designate a Security Officer to oversee its data security program who shall be responsible for carrying out the requirements of this Section and for communicating on security matters with the Department.
- 5) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PHI by Contractor or its subcontractors in violation of the requirements of this Exhibit E.1.
- 6) **Reporting Unauthorized Use or Disclosure.** To report to Department any use or disclosure of Department PHI not provided for by this Exhibit E.1 of which it becomes aware.
- 7) **Contractor's Agents and Subcontractors.**
  - a. To enter into written agreements with any agents, including subcontractors and vendors to whom Contractor provides Department PHI, that impose the same restrictions and conditions on such agents, subcontractors and vendors that apply to Contractor with respect to such Department PHI under this Exhibit E.1, and that require compliance with all applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, including the requirement that any agents, subcontractors or vendors implement reasonable and appropriate administrative, physical, and technical safeguards to protect such PHI. As required by HIPAA, the HITECH Act and the HIPAA regulations, including 45 CFR Sections 164.308 and 164.314, Contractor shall incorporate, when applicable, the relevant provisions of this Exhibit E.1-1 into each subcontract or subaward to such agents,

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

subcontractors and vendors, including the requirement that any security incidents or breaches of unsecured PHI be reported to Contractor.

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

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

- a. To provide access as the Department may require, and in the time and manner designated by the Department (upon reasonable notice and during Contractor's normal business hours) to Department PHI in a Designated Record Set, to the Department (or, as directed by the Department), to an Individual, in accordance with 45 CFR Section 164.524. Designated Record Set means the group of records maintained for the Department health plan under this Agreement that includes medical, dental and billing records about individuals; enrollment, payment, claims adjudication, and case or medical management systems maintained for the Department health plan for which Contractor is providing services under this Agreement; or those records used to make decisions about individuals on behalf of the Department. Contractor shall use the forms and processes developed by the Department for this purpose and shall respond to requests for access to records transmitted by the Department within fifteen (15) calendar days of receipt of the request by producing the records or verifying that there are none.
- b. If Contractor maintains an Electronic Health Record with PHI, and an individual requests a copy of such information in an electronic format, Contractor shall provide such information in an electronic format to enable the Department to fulfill its obligations under the HITECH Act, including but not limited to, 42 U.S.C. Section 17935(e) and the HIPAA regulations.

**9) Amendment of Department PHI.** To make any amendment(s) to Department PHI that were requested by a patient and that the Department directs or agrees should be made to assure compliance with 45 CFR Section 164.526, in the time and manner designated by the Department, with the Contractor being given a minimum of twenty

(20) days within which to make the amendment.

**10) Internal Practices.** To make Contractor's internal practices, books and records relating to the use and disclosure of Department PHI available to the Department or to the Secretary, for purposes of determining the Department's compliance with the HIPAA regulations. If any information needed for this purpose is in the exclusive possession of

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

any other entity or person and the other entity or person fails or refuses to furnish the information to Contractor, Contractor shall provide written notification to the Department and shall set forth the efforts it made to obtain the information.

- 11) **Documentation of Disclosures.** To document and make available to the Department or (at the direction of the Department) to an individual such disclosures of Department PHI, and information related to such disclosures, necessary to respond to a proper request by the subject Individual for an accounting of disclosures of such PHI, in accordance with the HITECH Act and its implementing regulations, including but not limited to 45 CFR Section 164.528 and 42 U.S.C. Section 17935(c). If Contractor maintains electronic health records for the Department as of January 1, 2009 and later, Contractor must provide an accounting of disclosures, including those disclosures for treatment, payment or health care operations. The electronic accounting of disclosures shall be for disclosures during the three years prior to the request for an accounting.
- 12) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:

- a. **Initial Notice to the Department.** (1) To notify the Department **immediately by telephone call or email or fax** upon the discovery of a breach of unsecured PHI in electronic media or in any other media if the PHI was, or is reasonably believed to have been, accessed or acquired by an unauthorized person. (2) To notify the Department **within 24 hours (one hour if SSA data) by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of PHI in violation of this Agreement or this Exhibit E.1-1, or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic PHI, notice shall be provided by calling the Information Protection Unit (916.445.4646, 866-866-0602) or by emailing [privacyofficer@dhcs.ca.gov](mailto:privacyofficer@dhcs.ca.gov)). Notice shall be made using the DHCS "Privacy Incident Report" form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select "Privacy" in the left column and then "Business Partner" near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>

Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PHI, Contractor shall take:

- i) Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

- ii) Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- b. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI . Within 72 hours of the discovery, Contractor shall submit an updated “Privacy Incident Report” containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Information Protection Unit.
- c. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the breach or unauthorized use or disclosure. The report shall be submitted on the “Privacy Incident Report” form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred under applicable provisions of HIPAA, the HITECH Act, and the HIPAA regulations. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the “Privacy Incident Report” form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated “Privacy Incident Report” form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.
- d. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in 42U.S.C. section 17932 and its implementing regulations, including notification to media outlets and to the Secretary (after obtaining prior written approval of DHCS). If a breach of unsecured Department PHI involves more than 500 residents of the State of California or under its jurisdiction, Contractor shall first notify DHCS, then the Secretary of the breach immediately upon discovery of the breach. If a breach involves more than 500 California residents, Contractor shall also provide, after obtaining written prior approval of DHCS, notice to the Attorney General for the State of California, Privacy Enforcement Section. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

action to prevent duplicate reporting.

- e. **Responsibility for Notification of Affected Individuals.** If the cause of a breach of Department PHI is attributable to Contractor or its agents, subcontractors or vendors and notification of the affected individuals is required under state or federal law, Contractor shall bear all costs of such notifications as well as any costs associated with the breach. In addition, the Department reserves the right to require Contractor to notify such affected individuals, which notifications shall comply with the requirements set forth in 42U.S.C. section 17932 and its implementing regulations, including, but not limited to, the requirement that the notifications be made without unreasonable delay and in no event later than 60 calendar days after discovery of the breach. The Department Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.
  
- f. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

Department Program Contract Manager	DHCS Privacy Officer	DHCS Information Security Officer
See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 (916) 445-4646; (866) 866- 0602  Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>  Fax: (916) 440-7680	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413  Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a>  Telephone: ITSD Service Desk (916)440-7000; (800) 579-0874 Fax: (916)440-5537

13) **Termination of Agreement.** In accordance with Section 13404(b) of the HITECH Act and to the extent required by the HIPAA regulations, if Contractor knows of a material breach or violation by the Department of this Exhibit E.1-1, it shall take the following steps:

- a. Provide an opportunity for the Department to cure the breach or end the violation and terminate the Agreement if the Department does not cure the Agreement Between County of Yolo and CommuniCare OLE FY 2023-26

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

breach or end the violation within the time specified by Contractor; or

- b. Immediately terminate the Agreement if the Department has breached a material term of the Exhibit E.1-1 and cure is not possible.
- 14) **Sanctions and/or Penalties.** Contractor understands that a failure to comply with the provisions of HIPAA, the HITECH Act and the HIPAA regulations that are applicable to Contractors may result in the imposition of sanctions and/or penalties on Contractor under HIPAA, the HITECH Act and the HIPAA regulations.

**E. Obligations of the Department.**

The Department agrees to:

- 1) **Permission by Individuals for Use and Disclosure of PHI.** Provide the Contractor with any changes in, or revocation of, permission by an Individual to use or disclose Department PHI, if such changes affect the Contractor's permitted or required uses and disclosures.
- 2) **Notification of Restrictions.** Notify the Contractor of any restriction to the use or disclosure of Department PHI that the Department has agreed to in accordance with 45 CFR Section 164.522, to the extent that such restriction may affect the Contractor's use or disclosure of PHI.
- 3) **Requests Conflicting with HIPAA Rules.** Not request the Contractor to use or disclose Department PHI in any manner that would not be permissible under the HIPAA regulations if done by the Department.
- 4) **Notice of Privacy Practices.** Provide Contractor with the web link to the Notice of Privacy Practices that DHCS produces in accordance with 45 CFR Section 164.520, as well as any changes to such notice. Visit the DHCS website to view the most current Notice of Privacy Practices at: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/NoticeofPrivacyPractices.aspx> or the DHCS website at [www.dhcs.ca.gov](http://www.dhcs.ca.gov) (select "Privacy in the right column and "Notice of Privacy Practices" on the right side of the page).

**F. Audits, Inspection and Enforcement**

If Contractor is the subject of an audit, compliance review, or complaint investigation by the Secretary or the Office for Civil Rights, U.S. Department of Health and Human Services, that is related to the performance of its obligations pursuant to this HIPAA Business Associate Exhibit E.1-1, Contractor shall immediately notify the Department. Upon request from the Department, Contractor shall provide the Department with a copy of any Department PHI that Contractor, as the Business Associate, provides to the Secretary or the Office of Civil Rights concurrently with providing such PHI to the Secretary. Contractor is responsible for any civil penalties assessed due to an audit or investigation of Contractor, in accordance with 42 U.S.C. Section 17934(c).

**G. Termination.**

- 1) **Term.** The Term of this Exhibit E.1-1 shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(J).

- 2) **Termination for Cause.** In accordance with 45 CFR Section 164.504(e)(1)(iii), upon the Department’s knowledge of a material breach or violation of this Exhibit E.1-1 by Contractor, the Department shall:
  - a. Provide an opportunity for Contractor to cure the breach or end the violation and terminate this Agreement if Contractor does not cure the breach or end the violation within the time specified by the Department; or
  - b. Immediately terminate this Agreement if Contractor has breached a material term of this Exhibit E.1-1 and cure is not possible.

**E.1-2 Privacy and Security of Personal Information and Personally Identifiable Information Not Subject to HIPAA**

1. **Recitals.**

- A. In addition to the Privacy and Security Rules under the Health Insurance Portability and Accountability Act of 1996 (HIPAA) the Department is subject to various other legal and contractual requirements with respect to the personal information (PI) and personally identifiable information (PII) it maintains. These include:
  - 1) The California Information Practices Act of 1977 (California Civil Code §§1798 et seq.),
  - 2) The Agreement between the Social Security Administration (SSA) and the Department, known as the Information Exchange Agreement (IEA), which incorporates the Computer Matching and Privacy Protection Act Agreement (CMPPA) between the SSA and the California Health and Human Services Agency. The IEA, including the CMPPA is hereby incorporated in this Agreement.
  - 3) Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2.
- B. The purpose of this Exhibit E.1-2 is to set forth Contractor’s privacy and security obligations with respect to PI and PII that Contractor may create, receive, maintain, use, or disclose for or on behalf of Department pursuant to this Agreement. Specifically, this Exhibit applies to PI and PII which is not Protected Health Information (PHI) as defined by HIPAA and therefore is not addressed in Exhibit E.1-1 of this Agreement, the HIPAA Business Associate Addendum; however, to the extent that data is both PHI or ePHI and PII, both Exhibit E.1-1 and this Exhibit E.1-2 shall apply.
- C. The IEA Agreement referenced in A.2 above requires the Department to extend its substantive privacy and security terms to subcontractors who receive data provided to DHCS by the Social Security Administration. If Contractor receives data from DHCS that includes data provided to DHCS by the Social Security Administration, Contractor must comply with the following specific sections of the IEA Agreement: E. Security Procedures, F. Contractor/Agent Responsibilities, and G. Safeguarding and Reporting Responsibilities for Personally Identifiable Information (“PII”), and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the Social

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

Security Administration. Contractor must also ensure that any agents, including a subcontractor, to whom it provides DHCS data that includes data provided by the Social Security Administration, agree to the same requirements for privacy and security safeguards for such confidential data that apply to Contractor with respect to such information.

- D. The terms used in this Exhibit E.1-2, but not otherwise defined, shall have the same meanings as those terms have in the above referenced statute and Agreement. Any reference to statutory, regulatory, or contractual language shall be to such language as in effect or as amended.

2. Definitions

- A. "Breach" shall have the meaning given to such term under the IEA and CMPPA. It shall include a "PII loss" as that term is defined in the CMPPA.
- B. "Breach of the security of the system" shall have the meaning given to such term under the California Information Practices Act, Civil Code section 1798.29(f).
- C. "CMPPA Agreement" means the Computer Matching and Privacy Protection Act Agreement between the Social Security Administration and the California Health and Human Services Agency (CHHS).
- D. "Department PI" shall mean Personal Information, as defined below, accessed in a database maintained by the Department, received by Contractor from the Department or acquired or created by Contractor in connection with performing the functions, activities and services specified in this Agreement on behalf of the Department.
- E. "IEA" shall mean the Information Exchange Agreement currently in effect between the Social Security Administration (SSA) and the California Department of Health Care Services (DHCS).
- F. "Notice-triggering Personal Information" shall mean the personal information identified in Civil Code section 1798.29 whose unauthorized access may trigger notification requirements under Civil Code section 1798.29. For purposes of this provision, identity shall include, but not be limited to, name, address, email address, identifying number, symbol, or other identifying particular assigned to the individual, such as a finger or voice print, a photograph or a biometric identifier. Notice-triggering Personal Information includes PI in electronic, paper or any other medium.
- G. "Personally Identifiable Information" (PII) shall have the meaning given to such term in the IEA and CMPPA.
- H. "Personal Information" (PI) shall have the meaning given to such term in California Civil Code Section 1798.3(a).
- I. "Required by law" means a mandate contained in law that compels an entity to make a use or disclosure of PI or PII that is enforceable in a court of law. This includes, but is not limited to, court orders and court-ordered warrants, subpoenas or summons issued by a court, grand jury, a governmental or tribal inspector general, or an administrative body

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

authorized to require the production of information, and a civil or an authorized investigative demand. It also includes Medicare conditions of participation with respect to health care providers participating in the program, and statutes or regulations that require the production of information, including statutes or regulations that require such information if payment is sought under a government program providing public benefits.

- J. “Security Incident” means the attempted or successful unauthorized access, use, disclosure, modification, or destruction of PI, or confidential data utilized in complying with this Agreement; or interference with system operations in an information system that processes, maintains or stores PI.

**3. Terms of Agreement**

**A. Permitted Uses and Disclosures of Department PI and PII by Contractor**

Except as otherwise indicated in this Exhibit E.1-2, Contractor may use or disclose Department PI only to perform functions, activities or services for or on behalf of the Department pursuant to the terms of this Agreement provided that such use or disclosure would not violate the California Information Practices Act (CIPA) if done by the Department.

**B. Responsibilities of Contractor**

Contractor agrees:

- 1) **Nondisclosure.** Not to use or disclose Department PI or PII other than as permitted or required by this Agreement or as required by applicable state and federal law.
- 2) **Safeguards.** To implement appropriate and reasonable administrative, technical, and physical safeguards to protect the security, confidentiality and integrity of Department PI and PII, to protect against anticipated threats or hazards to the security or integrity of Department PI and PII, and to prevent use or disclosure of Department PI or PII other than as provided for by this Agreement. Contractor shall develop and maintain a written information privacy and security program that include administrative, technical and physical safeguards appropriate to the size and complexity of Contractor’s operations and the nature and scope of its activities, which incorporate the requirements of Section 3, Security, below. Contractor will provide DHCS with its current policies upon request.
- 3) **Security.** Contractor shall take any and all steps necessary to ensure the continuous security of all computerized data systems containing PHI and/or PI, and to protect paper documents containing PHI and/or PI. These steps shall include, at a minimum:
  - a. Complying with all of the data system security precautions listed in Attachment A, Business Associate Data Security Requirements;
  - b. Providing a level and scope of security that is at least comparable to the level and scope of security established by the Office of Management and Budget in OMB Circular No. A- 130, Appendix III- Security of Federal Automated Information Systems, which sets forth guidelines for automated information systems in Federal agencies; and

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

- c. If the data obtained by Contractor from DHCS includes PII, Contractor shall also comply with the substantive privacy and security requirements in the Computer Matching and Privacy Protection Act Agreement between the SSA and the California Health and Human Services Agency (CHHS) and in the Agreement between the SSA and DHCS, known as the Information Exchange Agreement, which are attached as Attachment B and incorporated into this Agreement. The specific sections of the IEA with substantive privacy and security requirements to be complied with are Sections E, F, and G, and in Attachment 4 to the IEA, Electronic Information Exchange Security Requirements, Guidelines and Procedures for Federal, State and Local Agencies Exchanging Electronic Information with the SSA. Contractor also agrees to ensure that any agents, including a subcontractor to whom it provides DHCS PII, agree to the same requirements for privacy and security safeguards for confidential data that apply to Contractor with respect to such information.
- 4) **Mitigation of Harmful Effects.** To mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of Department PI or PII by Contractor or its subcontractors in violation of this Exhibit E.1-2.
- 5) **Contractor's Agents and Subcontractors.** To impose the same restrictions and conditions set forth in this Exhibit E.1-2 on any subcontractors or other agents with whom Contractor subcontracts any activities under this Agreement that involve the disclosure of Department PI or PII to the subcontractor.
- 6) **Availability of Information to DHCS.** To make Department PI and PII available to the Department for purposes of oversight, inspection, amendment, and response to requests for records, injunctions, judgments, and orders for production of Department PI and PII. If Contractor receives Department PII, upon request by DHCS, Contractor shall provide DHCS with a list of all employees, contractors and agents who have access to Department PII, including employees, contractors and agents of its subcontractors and agents.
- 7) **Cooperation with DHCS.** With respect to Department PI, to cooperate with and assist the Department to the extent necessary to ensure the Department's compliance with the applicable terms of the CIPA including, but not limited to, accounting of disclosures of Department PI, correction of errors in Department PI, production of Department PI, disclosure of a security breach involving Department PI and notice of such breach to the affected individual(s).
- 8) **Confidentiality of Alcohol and Drug Abuse Patient Records.** Contractor agrees to comply with all confidentiality requirements set forth in Title 42 Code of Federal Regulations, Chapter I, Subchapter A, Part 2. Contractor is aware that criminal penalties may be imposed for a violation of these confidentiality requirements.
- 9) **Breaches and Security Incidents.** During the term of this Agreement, Contractor agrees to implement reasonable systems for the discovery and prompt reporting of any breach or security incident, and to take the following steps:
- a. Initial Notice to the Department. (1) To notify the Department

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

**immediately by telephone call or email or fax** upon the discovery of a breach of unsecured Department PI or PII in electronic media or in any other media if the PI or PII was, or is reasonably believed to have been, accessed or acquired by an unauthorized person, or upon discovery of a suspected security incident involving Department PII. (2) To notify the Department **within one (1) hour by email or fax** if the data is data subject to the SSA Agreement; and **within 24 hours by email or fax** of the discovery of any suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII in violation of this Agreement or this Exhibit E.1-2 or potential loss of confidential data affecting this Agreement. A breach shall be treated as discovered by Contractor as of the first day on which the breach is known, or by exercising reasonable diligence would have been known, to any person (other than the person committing the breach) who is an employee, officer or other agent of Contractor.

- b. Notice shall be provided to the Information Protection Unit, Office of HIPAA Compliance. If the incident occurs after business hours or on a weekend or holiday and involves electronic Department PI or PII, notice shall be provided by calling the Department Information Security Officer. Notice shall be made using the DHCS “Privacy Incident Report” form, including all information known at the time. Contractor shall use the most current version of this form, which is posted on the DHCS Information Security Officer website ([www.dhcs.ca.gov](http://www.dhcs.ca.gov), then select “Privacy” in the left column and then “Business Partner” near the middle of the page) or use this link: <http://www.dhcs.ca.gov/formsandpubs/laws/priv/Pages/DHCSBusinessAssociatesOnly.aspx>.
- c. Upon discovery of a breach or suspected security incident, intrusion or unauthorized access, use or disclosure of Department PI or PII, Contractor shall take:
  - i. Prompt corrective action to mitigate any risks or damages involved with the breach and to protect the operating environment; and
  - ii. Any action pertaining to such unauthorized disclosure required by applicable Federal and State laws and regulations.
- d. **Investigation and Investigation Report.** To immediately investigate such suspected security incident, security incident, breach, or unauthorized access, use or disclosure of PHI. Within 72 hours of the discovery, Contractor shall submit an updated “Privacy Incident Report” containing the information marked with an asterisk and all other applicable information listed on the form, to the extent known at that time, to the Department Information Security Officer.
- e. **Complete Report.** To provide a complete report of the investigation to the Department Program Contract Manager and the Information Protection Unit within ten (10) working days of the discovery of the

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

breach or unauthorized use or disclosure. The report shall be submitted on the “Privacy Incident Report” form and shall include an assessment of all known factors relevant to a determination of whether a breach occurred. The report shall also include a full, detailed corrective action plan, including information on measures that were taken to halt and/or contain the improper use or disclosure. If the Department requests information in addition to that listed on the “Privacy Incident Report” form, Contractor shall make reasonable efforts to provide the Department with such information. If, because of the circumstances of the incident, Contractor needs more than ten (10) working days from the discovery to submit a complete report, the Department may grant a reasonable extension of time, in which case Contractor shall submit periodic updates until the complete report is submitted. If necessary, a Supplemental Report may be used to submit revised or additional information after the completed report is submitted, by submitting the revised or additional information on an updated “Privacy Incident Report” form. The Department will review and approve the determination of whether a breach occurred and whether individual notifications and a corrective action plan are required.

- f. **Responsibility for Reporting of Breaches.** If the cause of a breach of Department PI or PII is attributable to Contractor or its agents, subcontractors or vendors, Contractor is responsible for all required reporting of the breach as specified in CIPA, section 1798.29 and as may be required under the IEA. Contractor shall bear all costs of required notifications to individuals as well as any costs associated with the breach. The Privacy Officer shall approve the time, manner and content of any such notifications and their review and approval must be obtained before the notifications are made. The Department will provide its review and approval expeditiously and without unreasonable delay.
- g. If Contractor has reason to believe that duplicate reporting of the same breach or incident may occur because its subcontractors, agents or vendors may report the breach or incident to the Department in addition to Contractor, Contractor shall notify the Department, and the Department and Contractor may take appropriate action to prevent duplicate reporting.
- h. **Department Contact Information.** To direct communications to the above referenced Department staff, the Contractor shall initiate contact as indicated herein. The Department reserves the right to make changes to the contact information below by giving written notice to the Contractor. Said changes shall not require an amendment to this Addendum or the Agreement to which it is incorporated.

<b>Department Program Contract</b>	<b>DHCS Privacy Officer</b>	<b>DHCS Information Security Officer</b>
--	-----------------------------	--

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

See the Exhibit A, Scope of Work for Program Contract Manager information	Information Protection Unit c/o: Office of HIPAA Compliance Department of Health Care Services P.O. Box 997413, MS 4722 Sacramento, CA 95899-7413 Telephone: (916) 445-4646 Email: <a href="mailto:privacyofficer@dhcs.ca.gov">privacyofficer@dhcs.ca.gov</a>	Information Security Officer DHCS Information Security Office P.O. Box 997413, MS 6400 Sacramento, CA 95899-7413 Email: <a href="mailto:iso@dhcs.ca.gov">iso@dhcs.ca.gov</a> Telephone: ITSD Service Desk (916) 440-7000 or (800) 579-0874
---	--	--

**10) Designation of Individual Responsible for Security**

Contractor shall designate an individual, (e.g., Security Officer), to oversee its data security program who shall be responsible for carrying out the requirements of this Exhibit E.1-2 and for communicating on security matters with the Department.

**E.1-3 Miscellaneous Terms and Conditions**

- 1) **Disclaimer.** The Department makes no warranty or representation that compliance by Contractor with this Exhibit, HIPAA or the HIPAA regulations will be adequate or satisfactory for Contractor’s own purposes or that any information in Contractor’s possession or control, or transmitted or received by Contractor, is or will be secure from unauthorized use or disclosure. Contractor is solely responsible for all decisions made by Contractor regarding the safeguarding of the Department PHI, PI and PII.
  
- 2) **Amendment.** The parties acknowledge that federal and state laws relating to electronic data security and privacy are rapidly evolving and that amendment of this Exhibit may be required to provide for procedures to ensure compliance with such developments. The parties specifically agree to take such action as is necessary to implement the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. Upon either party’s request, the other party agrees to promptly enter into negotiations concerning an amendment to this Exhibit embodying written assurances consistent with the standards and requirements of HIPAA, the HITECH Act, and the HIPAA regulations, and other applicable state and federal laws. The Department may terminate this Agreement upon thirty (30) days written notice in the event:
  - a) Contractor does not promptly enter into negotiations to amend this Exhibit when requested by the Department pursuant to this Section; or
  - b) Contractor does not enter into an amendment providing assurances regarding the safeguarding of Department PHI that the Department deems is necessary to satisfy the standards and requirements of HIPAA and the HIPAA regulations.
  
- 3) **Judicial or Administrative Proceedings.** Contractor will notify the Department if it is named as a defendant in a criminal proceeding for a violation of HIPAA or other security or privacy law. The Department may terminate this Agreement if Contractor is found guilty of a criminal violation of HIPAA. The Department may terminate this Agreement if a finding or stipulation that the Contractor has violated any standard or requirement of HIPAA, or other security or privacy laws is made in any administrative or civil proceeding in which the Contractor is a party or has been joined. DHCS will consider the nature and seriousness of

**ATTACHMENT I  
STATE PERFORMANCE AGREEMENT:  
INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

the violation in deciding whether or not to terminate the Agreement.

- 4) **Assistance in Litigation or Administrative Proceedings.** Contractor shall make itself and any subcontractors, employees or agents assisting Contractor in the performance of its obligations under this Agreement, available to the Department at no cost to the Department to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against the Department, its directors, officers or employees based upon claimed violation of HIPAA, or the HIPAA regulations, which involves inactions or actions by the Contractor, except where Contractor or its subcontractor, employee or agent is a named adverse party.
- 5) **No Third-Party Beneficiaries.** Nothing express or implied in the terms and conditions of this Exhibit is intended to confer, nor shall anything herein confer, upon any person other than the Department or Contractor and their respective successors or assignees, any rights, remedies, obligations or liabilities whatsoever.
- 6) **Interpretation.** The terms and conditions in this Exhibit shall be interpreted as broadly as necessary to implement and comply with HIPAA, the HITECH Act, and the HIPAA regulations. The parties agree that any ambiguity in the terms and conditions of this Exhibit shall be resolved in favor of a meaning that complies and is consistent with HIPAA, the HITECH Act and the HIPAA regulations, and, if applicable, any other relevant state and federal laws.
- 7) **Conflict.** In case of a conflict between any applicable privacy or security rules, laws, regulations or standards the most stringent shall apply. The most stringent means that safeguard which provides the highest level of protection to PHI, PI and PII from unauthorized disclosure. Further, Contractor must comply within a reasonable period of time with changes to these standards that occur after the effective date of this Agreement.
- 8) **Regulatory References.** A reference in the terms and conditions of this Exhibit E.1 to a section in the HIPAA regulations means the section as in effect or as amended.
- 9) **Survival.** The respective rights and obligations of Contractor under Section 3, Item D of Exhibit E.1-1, and Section 3, Item B of Exhibit E.1-2, Responsibilities of Contractor, shall survive the termination or expiration of this Agreement.
- 10) **No Waiver of Obligations.** No change, waiver or discharge of any liability or obligation hereunder on any one or more occasions shall be deemed a waiver of performance of any continuing or other obligation, or shall prohibit enforcement of any obligation, on any other occasion.
- 11) **Audits, Inspection and Enforcement.** From time to time, and subject to all applicable federal and state privacy and security laws and regulations, the Department may conduct a reasonable inspection of the facilities, systems, books and records of Contractor to monitor compliance with this Exhibit E.1. Contractor shall promptly remedy any violation of any provision of this Exhibit E.1. The fact that the Department inspects, or fails to inspect, or has the right to inspect, Contractor's facilities, systems and procedures does not relieve

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

Contractor of its responsibility to comply with this Exhibit E.1. The Department's failure to detect a non-compliant practice, or a failure to report a detected non-compliant practice to Contractor does not constitute acceptance of such practice or a waiver of the Department's enforcement rights under this Agreement, including this Exhibit E.1.

- 12) **Due Diligence.** Contractor shall exercise due diligence and shall take reasonable steps to ensure that it remains in compliance with this Exhibit and is in compliance with applicable provisions of HIPAA, the HITECH Act and the HIPAA regulations, and other applicable state and federal law, and that its agents, subcontractors and vendors are in compliance with their obligations as required by this Exhibit.
- 13) **Term.** The Term of this Exhibit shall extend beyond the termination of the Agreement and shall terminate when all Department PHI is destroyed or returned to the Department, in accordance with 45 CFR Section 164.504(e)(2)(ii)(I), and when all Department PI and PII is destroyed in accordance with Attachment A of the State Performance Agreement.
- 14) **Effect of Termination.** Upon termination or expiration of this Agreement for any reason, Contractor shall return or destroy all Department PHI, PI and PII that Contractor still maintains in any form, and shall retain no copies of such PHI, PI or PII. If return or destruction is not feasible, Contractor shall notify the Department of the conditions that make the return or destruction infeasible, and the Department and Contractor shall determine the terms and conditions under which Contractor may retain the PHI, PI or PII. Contractor shall continue to extend the protections of this Exhibit to such Department PHI, PI and PII, and shall limit further use of such data to those purposes that make the return or destruction of such data infeasible. This provision shall apply to Department PHI, PI and PII that is in the possession of subcontractors or agents of Contractor.
- 15) **Personnel Controls**
- a. **Employee Training.** All workforce members who assist in the performance of functions or activities on behalf of the Department, or access or disclose Department PHI or PI must complete information privacy and security training, at least annually, at Contractor's expense. Each workforce member who receives information privacy and security training must sign a certification, indicating the member's name and the date on which the training was completed. These certifications must be retained for a period of six (6) years following termination of this Agreement.
  - b. **Employee Discipline.** Appropriate sanctions must be applied against workforce members who fail to comply with privacy policies and procedures or any provisions of these requirements, including termination of employment where appropriate.
  - c. **Confidentiality Statement.** All persons that will be working with Department PHI or PI must sign a confidentiality statement that includes, at a minimum, General Use, Security and Privacy Safeguards, Unacceptable Use, and Enforcement Policies. The statement must be signed by the workforce member prior to access to Department PHI or PI. The statement must be renewed annually. The Contractor shall retain each person's written confidentiality statement for Department inspection for a period of six

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

(6) years following termination of this Agreement.

- d. **Background Check.** Before a member of the workforce may access Department PHI or PI, a background screening of that worker must be conducted. The screening should be commensurate with the risk and magnitude of harm the employee could cause, with more thorough screening being done for those employees who are authorized to bypass significant technical and operational security controls. The Contractor shall retain each workforce member's background check documentation for a period of three (3) years.

16) **Technical Security Controls**

- a. **Workstation/Laptop encryption.** All workstations and laptops that store Department PHI or PI either directly or temporarily must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as Advanced Encryption Standard (AES). The encryption solution must be full disk unless approved by the Department Information Security Office.
- b. **Server Security.** Servers containing unencrypted Department PHI or PI must have sufficient administrative, physical, and technical controls in place to protect that data, based upon a risk assessment/system security review.
- c. **Minimum Necessary.** Only the minimum necessary amount of Department PHI or PI required to perform necessary business functions may be copied, downloaded, or exported.
- d. **Removable media devices.** All electronic files that contain Department PHI or PI data must be encrypted when stored on any removable media or portable device (i.e. USB thumb drives, floppies, CD/DVD, Blackberry, backup tapes etc.). Encryption must be a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.
- e. **Antivirus software.** All workstations, laptops and other systems that process and/or store Department PHI or PI must install and actively use comprehensive anti-virus software solution with automatic updates scheduled at least daily.
- f. **Patch Management.** All workstations, laptops and other systems that process and/or store Department PHI or PI must have critical security patches applied, with system reboot if necessary. There must be a documented patch management process which determines installation timeframe based on risk assessment and vendor recommendations. At a maximum, all applicable patches must be installed within 30 days of vendor release. Applications and systems that cannot be patched within this time frame due to significant operational reasons must have compensatory controls implemented to minimize risk until the patches can be installed. Applications and systems that cannot be patched must have compensatory controls implemented to minimize risk, where possible.
- g. **User IDs and Password Controls.** All users must be issued a unique user name for accessing Department PHI or PI. Username must be promptly disabled, deleted, or the password changed upon the transfer or termination of an employee with knowledge of the password. Passwords are not to be shared. Passwords must be at least eight characters and must be a non- dictionary word. Passwords must not be stored in readable format on

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

the computer. Passwords must be changed at least every 90 days, preferably every 60 days. Passwords must be changed if revealed or compromised. Passwords must be composed of characters from at least three of the following four groups from the standard keyboard:

- 1) Upper case letters (A-Z)
- 2) Lower case letters (a-z)
- 3) Arabic numerals (0-9)
- 4) Non-alphanumeric characters (punctuation symbols)

- h. **Data Destruction.** When no longer needed, all Department PHI or PI must be wiped using the Gutmann or US Department of Defense (DoD) 5220.22-M (7 Pass) standard, or by degaussing. Media may also be physically destroyed in accordance with NIST Special Publication 800-88. Other methods require prior written permission of the Department Information Security Office.
- i. **System Timeout.** The system providing access to Department PHI or PI must provide an automatic timeout, requiring re-authentication of the user session after no more than 20 minutes of inactivity.
- j. **Warning Banners.** All systems providing access to Department PHI or PI must display a warning banner stating that data is confidential, systems are logged, and system use is for business purposes only by authorized users. User must be directed to log off the system if they do not agree with these requirements.
- k. **System Logging.** The system must maintain an automated audit trail which can identify the user or system process which initiates a request for Department PHI or PI, or which alters Department PHI or PI. The audit trail must be date and time stamped, must log both successful and failed accesses, must be read only, and must be restricted to authorized users. If Department PHI or PI is stored in a database, database logging functionality must be enabled. Audit trail data must be archived for at least 3 years after occurrence.
- l. **Access Controls.** The system providing access to Department PHI or PI must use role based access controls for all user authentications, enforcing the principle of least privilege.
- m. **Transmission encryption.** All data transmissions of Department PHI or PI outside the secure internal network must be encrypted using a FIPS 140-2 certified algorithm which is 128bit or higher, such as AES.  
  
Encryption can be end to end at the network level, or the data files containing Department PHI can be encrypted. This requirement pertains to any type of Department PHI or PI in motion such as website access, file transfer, and E-Mail.
- n. **Intrusion Detection.** All systems involved in accessing, holding, transporting, and protecting Department PHI or PI that are accessible via the Internet must be protected by a comprehensive intrusion detection and prevention solution.

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

**17) Audit Controls**

- a. **System Security Review.** Contractor must ensure audit control mechanisms that record and examine system activity are in place. All systems processing and/or storing Department PHI or PI must have at least an annual system risk assessment/security review which provides assurance that administrative, physical, and technical controls are functioning effectively and providing adequate levels of protection. Reviews should include vulnerability scanning tools.
- b. **Log Reviews.** All systems processing and/or storing Department PHI or PI must have a routine procedure in place to review system logs for unauthorized access.
- c. **Change Control.** All systems processing and/or storing Department PHI or PI must have a documented change control procedure that ensures separation of duties and protects the confidentiality, integrity and availability of data.

**18) Business Continuity / Disaster Recovery Controls**

- a. **Emergency Mode Operation Plan.** Contractor must establish a documented plan to enable continuation of critical business processes and protection of the security of Department PHI or PI held in an electronic format in the event of an emergency. Emergency means any circumstance or situation that causes normal computer operations to become unavailable for use in performing the work required under this Agreement for more than 24 hours.
- b. **Data Backup Plan.** Contractor must have established documented procedures to backup Department PHI to maintain retrievable exact copies of Department PHI or PI. The plan must include a regular schedule for making backups, storing backups offsite, an inventory of backup media, and an estimate of the amount of time needed to restore Department PHI or PI should it be lost. At a minimum, the schedule must be a weekly full backup and monthly offsite storage of Department data.

**19) Paper Document Controls**

- a. **Supervision of Data.** Department PHI or PI in paper form shall not be left unattended at any time, unless it is locked in a file cabinet, file room, desk or office. Unattended means that information is not being observed by an employee authorized to access the information. Department PHI or PI in paper form shall not be left unattended at any time in vehicles or planes and shall not be checked in baggage on commercial airplanes.
- b. **Escorting Visitors.** Visitors to areas where Department PHI or PI is contained shall be escorted and Department PHI or PI shall be kept out of sight while visitors are in the area.
- c. **Confidential Destruction.** Department PHI or PI must be disposed of through confidential means, such as crosscut shredding and pulverizing.
- d. **Removal of Data.** Only the minimum necessary Department PHI or PI may be removed from the premises of the Contractor except with express written permission of the Department. Department PHI or PI shall not be considered "removed from the premises" if it is only being transported from one of Contractor's locations to another of

**ATTACHMENT I**  
**STATE PERFORMANCE AGREEMENT:**  
**INFORMATION CONFIDENTIALITY, SECURITY AND PRIVACY REQUIREMENTS**

Contractor's locations.

- e. **Faxing.** Faxes containing Department PHI or PI shall not be left unattended and fax machines shall be in secure areas. Faxes shall contain a confidentiality statement notifying persons receiving faxes in error to destroy them. Fax numbers shall be verified with the intended recipient before sending the fax.
- f. **Mailing.** Mailings containing Department PHI or PI shall be sealed and secured from damage or inappropriate viewing of such PHI or PI to the extent possible. Mailings which include 500 or more individually identifiable records of Department PHI or PI in a single package shall be sent using a tracked mailing method which includes verification of delivery and receipt, unless the prior written permission of the Department to use another method is obtained.